ty in interest, and hence was incapable of maintaining an action for conversion. There are other allegations in the answer, but these it is unnecessary to recite. A replication was filed by plaintiff. The record contains none of the evidence upon the trial. It embraces certain bills of exceptions, but these contain none of the evidence. In one of these bills of exceptions it is recited that Black asked the court to make certain findings and conclusions of law, and there is set forth therein his request for the same. The request contains a statement of the evidence on which Black relies, but it is merely Black's version of what the evidence was, and does not purport, so far as any identification or authentication is concerned, to be the evidence before the trial court. The appeal is by defendant Black alone, and purports to be from the judgment in favor of plaintiff and from an order denying a motion for a new trial. There is no statement of motion for new trial contained in the record, and nothing to indicate, beyond a formal order of the lower court denying the motion for a new trial, that any such motion was ever made.

Luce & Luce, for appellant. Hartman Bros. & Stewart, for appellee.

BUCK, J. (after stating the facts). It does not appear that any default was entered in behalf of defendant Black in obedience to his præcipe therefor filed with the clerk of the district court on May 22, 1895. When he (Black) filed his motion for judgment on the pleadings, and to strike plaintiff's amended complaint from the files, the trial court was confronted with this fact, namely: that, with Black's own consent, said amended complaint had been filed in the suit. Under these conditions, there was no abuse of discretion in the overruling of said motions.

The main question involved is whether defendant Black is in a position to urge any defense to this suit on the ground that Radford had no authority to accept a renewal of the note and mortgage belonging to the Godwin estate. Gaskill, through whom Black claims the cattle in controversy, dealt with Radford as the representative of the Godwin estate. So did Black himself. Black's very mortgage on which he bases his right to the cattle recites that his lien is subject to that of the Radford mortgage. Manifestly, Radford was induced by the action of Gaskill and Black to surrender a security belonging to the Godwin estate, and accept a new note and mortgage. Whether Radford had authority to accept the new note and mortgage becomes immaterial. We are clearly of the opinion that the lower court committed no error in holding that Radford was a trustee for the Godwin estate, and a proper party plaintiff to the suit. Black is clearly estopped in the premises. His attitude is that of one who seeks to avail himself of the very rules of law designed and enunciated to prevent such conduct as his in order to deprive the Godwin estate of a security which belongs to it, and which he himself had recognized as belonging to it. There are other objections urged by appellant, but they are without sufficient merit for discussion. The judgment is affirmed. Affirmed.

PEMBERTON, C. J., and HUNT, J., concur.

(24 Colo. 303)

LEIGHTON et al. v. BATES, County Clerk.

(Supreme Court of Colorado. Oct. 18, 1897.)

ELECTIONS—NOMINATION CERTIFICATES—VALIDITY—REVIEW BY COURTS—PRACTICE.

1. The method of invoking the jurisdiction of the supreme court under Sess. Laws 1897, p. 154, giving it discretion to review the judicial proceedings therein provided for determining the validity of certificates of nominations for office, is by motion on petition filed, and notice thereof.

2. Under Sess. Laws 1897, p. 154, the supreme court will review a case, where the lower court erred in refusing to allow a party to have his rights determined, under the procedure therein provided.

3. Under Sess. Laws 1897, p. 154, authorizing a court to "review" the decision of an officer respecting the validity of a nomination filed with him as provided in section 20 thereof, which provides that the court shall "hear and dispose of any such issues," the court may hear evidence that was not heard by such officer.

Petition by Frank L. Leighton and others against John W. Bates, county clerk of El Paso county, to have their names printed on a certain official ballot. There was a judgment for respondent, and petitioners petitioned for review. Reversed.

J. M. Johnson and G. W. Musser, for petitioners. G. M. Irwin and Brooks & Armit, for respondent.

PER CURIAM. This proceeding is here upon a record certified up from the district court of El Paso county. So far as material to the only question properly presented therein, the facts are as follows: The petitioners represent the nominees of a county ticket which claims to be the regular ticket of the People's party of El Paso county. Before the certificate of said nominations was filed with the county clerk, another one, also claiming to contain the regular nominees of that party, was filed. The petitioners made a protest against the filing of the latter, and against its certification upon the official ballot, which the clerk stated to be his purpose. This protest was decided against petitioners, whereupon they instituted these proceedings in the district court of El Paso county under the law of 1897 (Sess. Laws 1897, p. 154) to restrain the threatened acts of the county clerk, and to obtain an order requiring him to certify, upon the official ballot, the names of petitioners. The district court dismissed the petition, and affirmed the ruling of the county clerk. To review this judgment is the ob-

ject of petitioners here. They ask now that we take original jurisdiction of the matter, and enter a final judgment upon the merits. For various reasons, all of which need not now be mentioned, we decline to assume such jurisdiction. It is enough to say that the act does not purport to confer upon this court original jurisdiction. Though the statute does not provide for bringing such a case here by appeal, certiorari, writ of error, or in any particular manner, we think the proper way to invoke our appellate jurisdiction to review such proceedings below is by motion made on a petition filed, and giving notice thereof, which is what petitioners substantially have done. This is the practice to be observed. See In re Cuddeback (Sup.) 39 N. Y. Supp. 388. Whether, when the application is made, this court will exercise its appellate jurisdiction, or to what extent it will interfere, is another question. As will be seen from the citation hereinafter set forth, the statute makes the decision of the filing officer, as to formal matters, final, but not as to matters of substance. The latter are open to review by the county or district court; and, when reviewed in the manner provided by the act, the decision of such court thereupon is "final," subject only to the power conferred upon this court, in its own discretion, to review in a summary manner the judicial proceeding below. It is not, perhaps, wise to attempt by general rule to specify in just what cases this appellate jurisdiction will be exercised. It is better to determine this from time to time as the cases come before us. It is sufficient, however, to say that it should be exercised in the case at bar. Unquestionably, the legislature meant to provide a speedy remedy; and when it declared that the decision of the trial courts having jurisdiction should be final, due and full effect should be given to its direction. That cases might arise, however, which this court, in its discretion, ought to review, was foreseen and provided for in the act itself. Where, as in this case, the error of the trial court was one not committed in the progress of the trial in accordance with what we hold to be the practice and procedure established by the special act, but was an error in altogether refusing to allow one of the parties to have his cause heard and his rights determined under the procedure therein provided, we ought to review the ruling complained of, not only in justice to the party objecting, but in order to settle the procedure, which seems to have been misconceived by several of the learned district judges of the state. In other words, a review in this court should be entertained where the ruling objected to goes to the very jurisdiction of the trial court concerning the method of procedure which it must pursue, and the statutory remedy has, by such ruling, been denied. The decision of the district court was in part based upon the proposition, and proceeded upon the theory, that its jurisdiction, being a special statutory one, was, by the act conferring jurisdiction, strictly limited to a review of the case as made before the county clerk, and upon a certified copy of the proceedings before him; and that the court could not take any additional evidence, or try the case de novo. Hence it refused petitioners' offer to produce evidence in support of their case. As no evidence was heard by the county clerk, his ruling was affirmed. The language of the act of 1897 is as follows: "The officer with whom the original certificate is filed shall pass upon the validity of all objections, whether of form or substance, and his decision upon matters of form shall be final. His decisions upon matters of substance shall be open to review, if prompt application be made, as provided in section 20 of this act. But the remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final, and not subject to review by any other court, except that the supreme court may, in the exercise of its discretion, review any such judicial proceeding in a summary way." The meaning clearly is that, if prompt application is made therefor, the review in the district court shall be had as provided in section 20; and the kind of review is to be determined from its provisions. Turning now to section 20, we find that the same, as originally enacted in 1891, was amended in 1894. Sess. Laws 1894, p. 64. The addition then made is, in substance, as follows: "Whenever any controversy shall arise between any official charged with any duty or function under this act, and any candidate, * * * upon the filing of a petition by any such official or persons, * * * it shall be the duty of such court, or the judge thereof in vacation, to issue an order commanding the respondent in such petition to be and appear before the court or judge, and answer under oath to such petition; and it shall be the duty of the court or judge to summarily hear and dispose of any such issues, with a view of obtaining a substantial compliance with the provisions of this act by the parties to such controversy. * * * The provisions of this act shall be liberally construed, so as to carry out the intent of this act, and of political parties, nominees and others in proceedings under this act." In its ordinary signification a "review" means "the judicial examination of the proceedings of a lower court by a higher." Webst. Dict. It is "a reconsideration; second view or examination; * * * used especially of the examination of a cause by an appellate court." Black, Law Dict. While a review is ordinarily had of the record only, and as made by the lower tribunal, yet it may not be so limited; but, on the contrary, because of accompanying or explanatory words, may be enlarged so as to embrace the taking of additional evidence, or practically to constitute a trial de

novo. There would seem to be no question that the review in the trial courts contemplated by the act of 1897 was such as section 20 of the election act, as amended in 1894, provided; and it is equally clear that section 20 contemplates the taking of evidence where the issues require it. If the issues joined are of fact, evidence must be heard. It is apparent that effect could not, in certain cases, be given to the election act, unless evidence was heard in the district court; and the case before us is an excellent illustration, for the reason that no testimony at all was heard by the county clerk. In support of respondent's contention, we are cited to In re Cuddeback, supra. A section of the act there construed reads as follows: "The supreme court or any justice thereof, within the judicial district, or any county judge within his county, shall have summary jurisdiction, upon complaint of any citizen, to review the determination and acts of such officer, and to make such order in the premises as justice may require." The supreme court of that state held that under this section "courts and judges have no original jurisdiction in respect to the filing of certificates of nomination, the power vested in them being simply to 'review' the decisions of the filing officer." In that statute, however, the word "review" was obviously used *in its ordinary sense as a re-examination* by an appellate tribunal of the proceedings of a subordinate one, and upon the record of the latter. The "determination and acts of such officer" are to be reviewed. But the review contemplated by our statute may, in addition, be in the nature of a trial de novo, if either of the parties desire it, and the controversy requires it, as it involves the determination of issues both of law and fact raised in the pleadings filed for the first time in the trial court.

There is an additional point made by the respondent which, though not calling for a decision now, should not be unnoticed, lest an improper inference be drawn from our silence. It is said that the ruling below should be affirmed, even though the court erred in refusing to hear evidence, because the petition is fatally defective, and the face of the record shows that petitioners' ticket is illegal. *This being so, the petitioners are* not in a position to question the decision of the county clerk. The alleged defect in the petition is that fraud is charged only in general terms, the facts not being set up. The cause of action, however, is not based on fraud. If the clerk was mistaken as to his duty, and should have, under the law and the facts, sustained the protest of the petitioners, their petition was sufficient without these general allegations, which are but mere *conclusions of the pleader*, and may be disregarded as surplusage. The illegality of the ticket is said to consist in the fact that, after the convention itself had nominated a full ticket, by resolution it appointed a committee to which it assumed to give authority also to nominate a ticket, and this committee nominated the ticket which is represented by petitioners; the point being that, while a convention may, under section 3 of the election act of 1891, delegate to a committee the power to nominate a ticket, yet, when the convention itself has made a ticket, it is then functus officio, so far as its power as to the ticket is concerned, unless it receive new and additional authority from its party; and it may not thereafter give to a committee power to do that which the convention itself no longer has power to do. To this is cited People v. Board of Police Com'rs (Super. N. Y.) 31 N. Y. Supp. 112. Whatever may be the law as to this contention, and whether or not the alleged error is such as comes within the scope of a review under this act, we think the question is not presented by this record. The alleged fact does not appear in the petition, or any of the pleadings, or any of the exhibits thereto. A copy, certified by the county clerk, and purporting to be a true copy, of an instrument filed in his office, setting forth the doings of the convention and this committee, from which it is said the illegality of the petitioners' ticket is made to appear, is found among the files of this case in this court. Whether it was used in the district court or not, we have no means of knowing, as it is not certified to by the clerk of that court as a part of the record, nor is it incorporated in the bill of exceptions, or even certified to by the clerk of the district court as having been filed in his office. *It is therefore clear that our* opinion as to the point should be withheld. Under proper issues this may or may not become a material question in the case in the court below, and, if it is, the parties, both petitioners and respondent, may wish to be heard further as to the facts. The judgment of dismissal should be set aside because of the refusal of the district court to hear evidence. Its judgment is therefore reversed, and the cause remanded, with instructions, if further proceedings are had, that they be in conformity to this decision. Reversed.

HAYT, C. J., not sitting.

LEIGHTON et al. v. BATES, County Clerk.
(Supreme Court of Colorado. Nov. 15, 1897.)

ELECTIONS — VALIDITY OF NOMINATION CERTIFICATES—REVIEW BY SUPREME COURT—POLITICAL CONVENTIONS—GRANT OF AUTHORITY—REVOCATION.

1. The finding of the district court as to the validity of nomination certificates on conflicting evidence will not be disturbed, under Sess. Laws 1897, p. 154, making such decision respecting the validity of nomination certificates final, subject to review by the supreme court in its discretion.

2. A nomination of a ticket by a political convention is a revocation of a power given by it