thus present at this meeting, and participating in its acts; and, under the ruling of the majority in Twombley v. Smith, 55 Pac. 254, they had full power to set aside and declare void all previous acts of the committee, acting as a central body, or by its executive committee.

There is in the record a list of the members present at the meeting of the central committee of July 27th; and a comparison of this list with that of the members present at the August meeting discloses the fact that of the 23 present in July, 13, or a majority, were present at the August meeting. There is no question but that these 13 were bona fide members. The petitioner concedes this, because they were present and participated in the meeting of the county central committee in July, and constituted a majority of the members present at that meeting, on whose acts petitioner bases his entire claim. If, however, there is a conflict in the testimony as to the composition of the meeting of August 26th, it seems to me the finding of the district court should not be disturbed. The court specifically found that there were at least 40 bona fide members then present, and the record abundantly supports the finding.

For another reason it is clear to my mind that the meeting of the committee in August was competent to act as it did. No question is raised concerning the regularity of the call therefor, or as to the notice given to its members. The rule with reference to the authority of a committee to act should be, and is, analogous to that governing conventions; and in the case of Phillips v. Smith, 55 Pac. 177, we held that the lawful delegates to a convention who respond to the party call are competent to act, even though a majority who are entitled to participate may not attend; and that a majority of those who do respond constitute a quorum for the transaction of the business for which the convention was called. The 13 members of the committee who did attend were, therefore, competent to act, and, it appearing beyond question that the action of the committee at the August meeting was unanimous, the vote thereat, rescinding all its own previous actions and those of the executive committee in calling the convention, was valid and lawful; and this makes the McKnight ticket the only regular one of the party. If the act of 23 members of the committee in July was authorized, certainly the act of the 13 in August was equally binding. For if, as we held in the Phillips Case, supra, the acts of a convention composed of 65 or 70 delegates can be entirely set aside at an adjourned meeting of the same convention when only 29 delegates are present and participating, I fail to see why the application of the same principle does not make valid the acts of the central committee of August 26th, when 13 delegates undid the previous acts of the 23 delegates at the meeting in July. In the former case we strictly applied the principle, and there is no legal or valid reason why it should not be applied here.

For an additional reason the ticket represented by the respondents is entitled to the use of the party name and emblem. It appears that there were two factions of the Silver Republican party in this county corresponding to the two factions represented in the state convention of the party, known as the "Blood" and "Broad" factions, whose rights with respect to the use of the party name and emblem have been determined in this court, in the case of Whipple v. Broad, 55 Pac. 172, in favor of the Broad faction. The nominees represented by petitioner belong to the Blood faction, by respondents to the Broad faction; and each repudiates any connection with, and disclaims any authority over them by, the state officials of the other faction. This, of itself, to my mind, estops the list of nominees represented by petitioner to any right or benefit of the party name or emblem, which has been awarded by this court to the state faction of the party antagonistic to that to which said nominees belong. As my reasons for this conclusion have been fully stated in the case of Twombly v. Smith, supra, they need not be repeated here. The nominees represented by respondents should be entitled to the use of the name and emblem of the party in El Paso county.

(25 Colo. 400)

SCHAFER v. WHIPPLE, Secretary of State.[1]

(Supreme Court of Colorado. Dec. 5, 1898.)

ELECTIONS—BALLOTS—PARTY EMBLEMS — POLITICAL PARTY.

1. A set of candidates for offices, nominated by a petition of electors, are entitled to be designated on the official ballot by a party name and emblem, under 3 Mills' Ann. St. § 1625r (Sess. Laws 1894, p. 62), authorizing the political party or nominating committee by which a set of candidates was nominated to be designated on the ballot by an emblem; and section 1625c (Sess. Laws 1891, p. 143), providing that conventions of parties polling a specified per cent. of the votes at the preceding election, which presented candidates at such preceding election, and also a specified number of voters, may nominate candidates for offices.

2. Under 3 Mills' Ann. St. § 1625r (Sess. Laws 1894, p. 62, § 2), authorizing a stated number of electors to nominate candidates for offices by petition, such number of electors may, by coming together and agreeing on a certain policy, making a list of nominees, and selecting a party name and emblem, form a political party, the nominees of which are entitled to the same privileges on the official ballot as if they were nominated by a convention or nominating committee of an existing party.

Review from district court, Arapahoe county.

Charles H. S. Whipple, secretary of state, having refused to designate on the official ballot, by a party name and emblem, a set of candidates for state offices, nominated by petition of electors, such refusal was, on review by the district court, affirmed, and Hen-

[1] For opinion on motion to retax costs, see 55 Pac. 1081.

ry Schafer, representing such candidates, petitions for review. Reversed.

John Hipp and Grant L. Hudson, for petitioner. Calvin E. Reed, Asst. Atty. Gen., amicus curiæ.

CAMPBELL, C. J. The district court of Arapahoe county, affirming a ruling of the secretary of state, held that the list of nominees for state offices of the Socialist Labor party, represented by the petitioner, was not entitled to be designated by a party emblem or device, because the nominations were not made by a political party or nominating committee, but by a petition of qualified electors. There is no dispute as to the facts in this proceeding, and the only question is one of law, viz. may a set of nominees, made by a petition of electors, be designated by an emblem? That the present discussion may be intelligible to one not familiar with our somewhat incongruous Australian ballot act, it is well to premise by saying that section 18, as now in force, after providing that every ballot shall contain the names of all candidates whose nominations have been duly made and accepted, and how the names shall be arranged thereon, thus continues: "It shall be lawful to designate the political party or nominating committee by which each list of candidates is nominated, by an appropriate emblem or design, such as a flag, eagle, rooster or other device, as may be set forth in the certificate of nomination." Sess. Laws 1894, p. 62 (3 Mills' Ann. St. § 1625r). That a list of nominees made by a convention representing a political party of the kind designated in section 3 may be, and is, entitled to the use of the party name and emblem, is conceded; but the contention here is, as the right to an emblem is purely statutory, unless the statute clearly gives it, it does not exist at all. Counsel do not altogether agree upon the purpose of the legislature in permitting a voter to place a cross mark in the square following the party name and emblem. By one side it is said that the object was to furnish to the illiterate voters of the state a simple and effectual method of casting their ballots for a list of nominees, the names of whom they would be unable to read or select from a complicated ballot; while, upon the other hand, it is said that the sole object is to enable all voters, whether illiterate or educated, to vote a straight ticket. Whatever the purpose of the legislature may have been, we are satisfied that this method of voting was intended for all electors who desire to vote a straight ticket, whether that ticket is nominated by a convention of a political party, or of its nominating committee, or, as provided by section 6, by a certificate of nomination signed by qualified electors. Under section 18, as originally adopted in 1891, it is conceded that it may have been permissible for persons making nominations by petition to claim an emblem, but under the section as amended in 1894 it is contended that the right or privilege is taken away. The language of the original section as to the point under consideration is as follows: "Each set of nominations shall be arranged in a list running lengthwise of the ballot, with the appropriate designation of the political party, committee *or persons* making such nominations as set forth in the certificate thereof; and it shall be lawful to designate each or any set of nominations in the certificate thereof, and upon the ballots, by an appropriate emblem or design." Sess. Laws 1891, p. 151, § 18. It is said that the presence of the words "or persons," italicized above, conferred upon nominees selected by petition the right to the use of an emblem. The language of the section, as amended in 1894, has already been given.

We appreciate the force of the argument concerning the significance of the omission of the italicized words, and the change of language in other particulars, and were there no other statutory provisions bearing upon the question before us, we would be inclined to adopt the views of respondent. Under section 18, as it now stands, no question is raised as to the right of some sort of a political party to the use of an emblem. But, say counsel for respondent, under section 3 of the act the right is further limited to the class therein designated. Section 3 is as follows: "Any convention of delegates of a political party which presented candidates at the last preceding election held for the purpose of making nominations to public office, and also voters to the number hereinafter specified, may nominate candidates for public offices to be filled by election within this state. A convention within the meaning of this act is an organized assemblage of voters or delegates representing a political party, which at the last election before the holding of such convention polled at least ten per centum of the entire vote cast in the state, county or other political division or district for which the nomination may be made. A committee appointed by any such convention may also make nominations to public office when authorized to do so by resolution duly passed by the convention at which such committee was appointed." Sess. Laws, 1891, p. 143; 3 Mills' Ann. St. § 1625c. The construction respondent puts upon section 18, as already stated, is that the right to an emblem is limited to some classes of political parties and their nominating committees; while section 3 further restricts the right, as they say, to political parties or nominating committees of the specified rank. This construction is not only too narrow, but it is not even technically correct. The statute does not purport to give a definition of a political party. In the Century Dictionary a political party is thus defined: "A company or number of persons ranged on one side, or united in opinion or design, in opposition to others in the community; those who favor or are united to promote cer-

tain views or opinions;" and the definition in Webster's Dictionary is substantially the same. In this state there is no statute that in any way qualifies this definition, and a political party here, as elsewhere generally, is a voluntary association of voters who are desirous of promoting a common political end, or carrying out a certain line of public policy. The association may be formed, not merely by a convention, but in other ways; and when electors to the number named in section 6 of the statute come together and agree upon a certain policy, and make a certain list of nominees, and select a party name and emblem, they may file with the proper officer the certificate evidencing their acts; and, while the mere filing of the certificate or petition may not create a political party, it is, nevertheless, the evidence of its previous formation; and the result of the acts of the association of electors culminating in a list of nominees gives to the organization, with respect to its nominees, the same rights on the official ballot that are acquired by the nominees of a previously existing political party that makes its nominations by convention or a nominating committee.

It is to be observed that section 18 does not attempt to restrict the right of selecting an emblem to any particular kind or class of political parties, nor does section 3 declare that a political party of the rank therein designated is the only kind of a political party recognized by the statute. The latter merely limits to the specified kind of political parties the right to nominate by a convention or nominating committee; while section 6 gives to voters the right to make nominations otherwise than by convention when a sufficient number of them conform to its provisions, which, in this case, was done; and in such a case, viz. when nominations have been made, and the certificate thereof executed and acknowledged in accordance with the method commonly known in this state as that of "petition," the section declares that it is attended with the same incidents, and has the same effect, as if the nomination had been made by a convention or nominating committee. In Kratzer v. Allen, 10 Colo. App. 492, 50 Pac. 209, while the point was not mooted, yet the court of appeals assumed that the right to select an emblem by petition existed; and in Le Bert v. Shirley, 24 Colo. 269, 50 Pac. 862, while the question was not raised, this court rendered a judgment in favor of petitioners who had selected a party name and emblem. Considering, therefore, that under the Australian ballot act the right to an emblem is to furnish voters desirous of casting their ballots for a straight ticket an easy and expeditious method of doing so by placing a cross mark in the appropriate square following the party name and emblem, and that such right is clearly conferred upon voters belonging to a political party who may lawfully nominate candidates for office by a convention or nominating committee, and that the act expressly purports to give to a list of nominees made by petition the same effect as if nominated by a convention of a political party or its nominating committee, we are of opinion that list of nominees made by petition may be designated by an emblem. This result follows upon either of two grounds: First, that a political party may be formed by the acts of electors who comply with section 6, so that the nominees by petition are, in fact, those of a political party; or, second, that the same rights and privileges belong to a list of nominees made by petition as to a list made by a convention of a previously existing political party of the specified grade. To hold otherwise would be to discriminate between voters of different political parties; and, if we should deny the right in a case like this, it would be impossible to form a new political party after the act took effect, and, in effect, would be a holding that no political party, in the sense of the statute, exists in this state at the present time, except the Republican party, and, possibly, the People's party. It is pertinent to observe that very generally throughout the state this right which we have declared to exist has been recognized, and the officials, generally, with whom certificates of nomination are to be filed, have so held. This construction, of course, is not controlling with the courts, but, as it must have been known to the general assembly, and the latter has not changed the law in this respect, we refer to it in connection with the argument of counsel that the court should so interpret the law as to simplify the official ballot.

We appreciate the argument that the construction of the statute we now give may, and possibly will, add to the size of the official ballot, stimulate the filing of numerous nominations for improper purposes, and greatly increase the cost to the taxpayers; but these considerations are for the general assembly, and not for the courts. We must declare the law as we find it, and leave to the legislative department, where it belongs, the question of amending or changing the law. The judgment of the district court, not being in harmony with the views above expressed, is therefore reversed, and the cause remanded, with instructions to the district court to direct the secretary of state to certify to the proper officers the emblem selected to be placed upon the official ballot, as the law provides. Reversed.

(25 Colo. 469)

McKNIGHT et al. v. WHIPPLE, Secretary of State.

(Supreme Court of Colorado. Dec. 5, 1898.)

ELECTIONS—CONVENTIONS—DELEGATES—EMBLEMS.

1. A district chairman, having regularly called a party convention, called it to order, and proceeded in the regular manner to complete its organization. An ineffectual attempt being made to remove him, the opposing delegates, without attempting to participate further in,