did not authorize her name to be so indorsed by the grand jury, and knew nothing whatever of the proceedings until after the judgment against her was rendered—in short, that such judgment is void because she had no notice of the hearing when judgment was pronounced. Whether a full and adequate remedy at law exists, we are not required to say; and it is unnecessary for us to determine whether, if the facts be as she alleges, petitioner is entitled to any relief, or whether, if the petitioner were in a position to urge this objection, she could, in the present proceedings, be heard upon it. It is upon the record alone that review by certiorari is had, not upon the averments in the petition for the writ, or on facts not appearing in the record. People v. County Com'rs, 27 Colo. 86, 59 Pac. 733. And even if matters which become part of the record by being put into a bill of exceptions can be examined, there are none such in this record. The objections to the judgment urged below and here were presented to the district court by a motion supported by affidavit. Neither the motion nor the affidavit is a part of the record proper, and could be made such only by being incorporated into a bill of exceptions. No attempt was made, so far as we are properly advised, to except to any ruling of the court below, or to take or preserve exceptions thereto. Certainly no bill of exceptions has been prepared or filed in this or the district court, or, if so, the fact has not been called to our attention. We cannot, therefore, under our established practice, in any event, in this proceeding, and for the reasons given, consider the objections made to the judgment.

Since, upon this record, it appears that the court was exercising lawful jurisdiction —at least, there is nothing before us to negative its existence—and the petitioner not being in position to contradict the same, the writ heretofore issued should be quashed, and it is so ordered. Writ of certiorari quashed.

PEOPLE ex rel. SMITH et al. v. DISTRICT COURT OF THIRD JUDICIAL DIST. et al.

(Supreme Court of Colorado. Nov. 7, 1904.)

ELECTIONS — REGISTRATION—STRIKING NAMES FROM LIST—JUDGES OF ELECTION—POWERS—STATUTES — CONSTRUCTION — MANDAMUS — JURISDICTION.

1. The election law (Gen. St. 1883, pp. 435, 436, §§ 110–112) requires the judges of election to meet three weeks before election day and make a list of all persons entitled to vote at the ensuing election in the ward or precinct of which they are judges. They are authorized to take the poll list filed by the judges of the last preceding election in the precinct. In making up the list they are required to enter all names vouched for by one or more of the persons acting as judges, and the name of any person personally appearing who shall take the prescribed oath. Within two days after the list is completed, they are required to post a copy in some conspicuous place where the last election was held. At the succeeding meeting, one week previous to the election, they are required to meet for the purpose of revising, correcting, and completing the registration list. At such time any elector whose name is not on the revised registry may have his name placed thereon by making the required affidavit. *Held*, that at the second meeting the judges have no power to inquire into the qualifications of persons whose names were placed on the list at the first meeting, or to strike names from the list.

Original application for writ of prohibition by the people of the state of Colorado, on the relation of Milton Smith and others, against the district court of the Third Judicial District and another. Writ denied.

S. W. Belford, for petitioners. Henry J. Hersey, for respondents.

PER CURIAM. Proceedings were instituted in the district court of the Third Judicial District to prevent certain judges of election in specified precincts in Las Animas county from striking the names of registered voters from the registration lists. It was charged in the petition upon which the proceedings in the district court were based that the judges of election in the several precincts had conspired, confederated, and agreed to strike from the registration lists in each of the election precincts the names of a large number of persons qualified and entitled to vote at the next ensuing election, and who had been theretofore duly registered. From such petition it also appears that the several judges named had theretofore convened as a board of registration, as by law required, and at this meeting the persons whose names, it is alleged, will be stricken from the registration lists, were duly registered. On the filing of the petition a temporary restraining order was issued, by which the several judges were restrained from striking from the registry lists of voters the names of the persons specifically set forth in the petition, as well as the names of any and all other persons whose names then appeared upon the registry lists of the several election precincts, until the further order of the court. The petitioners here then applied for a writ of prohibition against the district court. On the filing of their petition, consideration thereof was suspended until the question of jurisdiction could first be presented to the district court, and determined by that tribunal. That court has decided that it has jurisdiction. From the petition originally filed here, and the supplemental one filed since the district court passed upon the question of its jurisdiction, it appears that the several judges will meet in their several precincts on Tuesday, the 1st prox., as by law required, for the purpose of revising, correcting, and completing the registration lists of the several precincts. The petitioners aver that on these registration lists, as made at their first meeting, there are the names of a great number of

persons who are not entitled to vote at the next ensuing general election, and that such persons, unless the election judges are permitted to strike their names from the lists, will vote at such election. In short, according to the averments of the original and supplemental petitions filed here, the judges of election claim that at their next meeting, to be held on the 1st prox., they have the authority to strike from the registration lists the names of all persons who, in their judgment, are not legally qualified voters, and that it is their purpose to strike such names. The vital question is, have they this authority? If they have, then the district court is without jurisdiction to restrain them; but, if not, then that tribunal is not exceeding its jurisdiction by inhibiting them from exercising a power which they do not possess.

In rural precincts the method of registration, as provided by law, is substantially as follows: The judges of election are required to meet on Tuesday, three weeks before the day upon which any general election shall be held, and make a list of names of all persons qualified and entitled to vote at the ensuing election in the ward or precinct in which they are judges. For the convenience of the board, they are authorized to take from the office of the county clerk the poll list of the ward or precinct filed by the judges of the last preceding election in such precinct. In making up the registration list, they are required to place thereon all names vouched for by one or more of the persons acting as judges. They are also required to place on such list the name of any person personally appearing before them who shall take and subscribe the prescribed oath. Within two days after the completion of the registration list made at the first meeting, it is the duty of the judges to post a copy of such list in some conspicuous place where the last election was held. At the succeeding meeting, which is to be held one week previous to the election, the judges are again required to meet for the purpose of revising, correcting, and completing the registry list. At this time any elector whose name is not on the revised registry list may have his name placed thereon upon making the required affidavit. The judges are also required to meet at the place designated for holding an election on the day preceding such election, at which time any elector whose name is not on the revised registry list may have his name placed thereon, provided he takes and subscribes the required oath, and shall prove by the oath of two registered electors of his precinct certain specified facts.

It is apparent from the provisions of law above referred to that when persons are vouched for as specified, or take and subscribe the required oath, which at the last meeting must be supplemented by the oath of two registered electors, their names shall be placed upon the registration lists; that, after these requirements have been complied with, the judges have no authority to inquire whether the statements made with respect to the qualifications of the persons registered are true or not. At the second meeting it is their duty to revise, correct, and complete the registration list, but they have no authority to enter into an ex parte inquisition for the purpose of ascertaining whether or not the persons whose names were placed upon the registration list at their first meeting were qualified voters. Previous to this meeting, notice has been given by the posting of a copy of the list made at the first meeting of the board that the names of certain persons have been placed upon the registration list. Persons examining that list have the right to assume that their names will remain there. If, at the second meeting, the list first made could be revised by striking names of persons which the members of the board concluded were not qualified voters, then those who had examined the copy of the first registration list, or who had appeared personally and been registered, would have no assurance that their names would remain on the list. The law expressly prohibits any person from voting whose name is not upon the registration list. If the board could exercise the authority claimed, then many persons who would have the right to assume, from an inspection of the original list, or because they had appeared personally before the board and been registered, that their names were on the list, might find that on the day of election they were not registered. If the election judges had the right, as they claim in this instance, to strike from the registration list at the second meeting the names of persons who, in their judgment, were not qualified electors, it would be practically in their power to disfranchise the electors of a precinct. Such authority, if exercised, would place it within the power of the political party having a majority of the election judges to disfranchise all voters of the opposite political faith. The law never contemplated that they should have such authority. Their duty consists of making up the registration list when the prescribed conditions have been complied with.

It is not impossible that, if the law should be construed to vest in the judges of election the power at their second meeting which it is claimed on the part of counsel for petitioner they have the right to exercise, the representatives of the political party on whose behalf this application is presented would find that on Tuesday next, in other precincts where a majority of the election judges are of the opposite political faith, the names of persons registered would be stricken from the lists, to their great detriment. It was to prevent a possible exercise of such arbitrary power by judges of election, whose actions might be influenced by political affiliations, that the law has wisely prescribed that, when certain formalities are complied

with, names shall be placed on the registration lists. Persons whose names appear on such lists are prima facie entitled to vote, but they may be challenged when they offer to vote, so that ample provision is made to prevent those from voting who do not possess the necessary legal qualifications.

We conclude that the district court has jurisdiction to prevent the judges of election from striking from the registration lists the names of persons theretofore registered. Perhaps the order originally entered was too broad, in that, literally construed, it would prevent the board from revising or correcting the first list. This order, however, does not oust the court of jurisdiction. We must assume that in making the final order it will be so worded that the judges will not be inhibited from revising and correcting the registration lists to the extent comtemplated by section 110 of the election law (Gen. St. 1883, p. 435).

Writ denied and proceeding dismissed.

MITCHELL v. CITY OF DENVER et al.

(Supreme Court of Colorado. Nov. 7, 1904.)

STREETS — DEDICATION—RESERVATION—RIGHTS OF OWNERS—TAX DEEDS—PRIMA FACIE CASE—ADVERSE POSSESSION—EVIDENCE.

1. Where the owners of certain land, on platting the same, reserved a parcel between two blocks for their private use, and had no intention to dedicate the tract to the public, the fact that subsequent owners of such blocks treated the strip as public property, which was not known to or acquiesced in either by plaintiff or his grantors of the strip, did not vest any rights in the public therein.

2. Under Mills' Ann. St. § 3902, providing that a tax deed is prima facie evidence that the property described therein was subject to taxation, the production of a tax deed to real estate claimed by plaintiff to be private and by defendant city to be dedicated to its use is sufficient to establish a prima facie case for plaintiff.

3. Where the owners of certain property platted the same expressly reserving a strip between two blocks for their private use, that the city, or some of its constituent municipal corporations, six or seven years before the trial of an action to recover the same, graded such strip as a street, put up signposts at the intersection of adjoining streets, and placed thereon the names of such streets, was not sufficient evidence of acquiescence by the owners of the strip to establish a common-law dedication thereof.

4. Such facts were also insufficient to establish public ownership of the strip by adverse possession.

Appeal from District Court, Arapahoe County; Samuel L. Carpenter, Judge.

Action by Walter C. Mitchell against the city of Denver and another. From a judgment in favor of defendants, plaintiff appeals. Reversed.

W. C. Mitchell, per se. H. A. Lindsley and H. L. Ritter, for appellees.

CAMPBELL, J. The present controversy is over a strip of land which is within the city and county Denver, and which formerly formed a part of what is called in the record "North Highlands." The city claims it as a part of Goss street, and the appellant, Mitchell, as his exclusive private property, acquired under a tax deed. While the quarter section of which the disputed strip is a part was owned by the American Baptist Missionary Union and the American Baptist Home Mission Society, they platted a large part of it into lots and blocks, and in the year 1873 filed a map or plat of the same with the county clerk and recorder of the proper county, in which they dedicated to the public all of the streets and alleys which were marked as such upon the plat, but saved and reserved for the private use and benefit of themselves, their successors and assigns, this particular strip between blocks 9 and 10, which was not so designated, along with certain other named tracts. In the answer of the city, after a general denial, was a special defense that the makers of this plat intended to dedicate the premises in controversy to the public to be used as a highway, and that the same was accepted, used, and thenceforth so maintained by the municipal authorities. In the city's brief, filed in this court, at least a partial change of position seems to have been taken, for the city now, if we correctly understand its counsel, claims the land by adverse user. The case was not tried upon the theory of a prescriptive right, but, if it was, the testimony falls far short of establishing any such right of the city to the property in controversy. The proof conclusively shows that the owners of the land, at the time they laid it out into lots and blocks and filed the map, instead of dedicating it to the public as a highway, expressly reserved it to their own private use and benefit and that of their successors and assigns. From the abstract of title to this property, admitted in evidence without objection as showing the true condition, it appears that by subsequent transfers they disposed of the same, or a portion thereof, to private individuals. There is not a word of evidence that any of them ever had or manifested any intention with respect to the reserved parcel other than that contained in the recitals on the face of the map, which was an express reservation of the same to their own private use. So far, therefore, as the intention of the owners is concerned, it conclusively appears that there was no intention to dedicate this tract to the public. That subsequent owners of blocks 9 and 10, between which this strip lies—some of whom made and platted subdivisions of the same—proceeded on the assumption that the reserved strip was public, not private, property, does not affect the plaintiff, for neither he nor his grantors are shown to have known of or acquiesced in the same. Under the statutory law of this state a tax deed is prima facie evidence that the property described therein was subject to taxation. Mills' Ann. St. § 3902;