



Greeley v. Holland

14 Nev. 320 (1879) | Cited 0 times | Nevada Supreme Court | July 25, 1879

By the Court, Hawley, J.:

Upon the oral argument in this case, on motion of respondent, the minutes of the district court, affidavit for continuance, bill of exceptions with the exhibits attached thereto, and all other matters not embraced in the co-called statement on appeal, judgment-roll, or authenticated as by law required, were stricken from the transcript on appeal.

The minutes of the court, affidavit for continuance, and some other matters, were stricken out because they were not embodied in the statement on appeal.

The minutes of the court, having been stricken out, can not be considered, and there is nothing left in the record to show that the bill of exceptions was filed within the time required by law.

A motion was also made to strike out the statement on appeal. This motion ought, perhaps, also to prevail.

The statement has no formal beginning or ending. It is difficult to tell, as counsel claim, "where the statement begins or what the judge certifies to as being correct."

If the certificate applies to all matters included in the transcript, which are contained in the so-called statement, still the other objection exists that it does not affirmatively appear that the statement was ever "served upon the adverse party," as required by section 332 of the civil practice act (1 Comp. Laws, 1393.) But, without deciding this motion, it is enough to say that the statement does not authorize a reversal of the judgment.

The complaint, tested either by sections 4 and 5 of the quo warrantor act (1 Comp. Laws, 392-3) or by section 40 of the election law (2 Comp. Laws. 2543) is clearly sufficient. And, inasmuch as the court found that all the material

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allegations of the complaint are true, and that there was such irregularity in the receiving of the votes at Candelaria precinct as amounted to malconduct on the part of the board of inspectors, and inasmuch as the so-called statement does not purport to contain all the evidence, we are bound to presume that there was evidence submitted sufficient to sustain the findings of the court.



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The judgment of the district court is affirmed.

