

precinct No. 1, aforesaid, is certified, as required by law. That full return from said precinct has never been furnished to this board, as required by law.

That the statute requires (general section 255, special section 17, Election Law, Compiled Laws, vol. I, 323) "That after the canvass shall have been completed, the judges of election shall add up and determine the number of votes cast for each person for the several offices, which result shall be placed on the list made by the judges acting as clerks of election, and the judges shall thereupon certify to the same, and shall forward all the lists, securely sealed, together with the ballot boxes, to the County Clerk, by a qualified voter of the County," etc.

That the said judges of election have never returned such a list or such a certification, or any certification made by the judges acting as clerks of election. That the only return made by the said judges of election are those annexed to this answer, and made a part thereof, for the purpose of showing what the return was.

That as from the entire returns from the whole of the County of Salt Lake it appears that only the initials were used in this return, Poll No. 1 of Precinct No. 1, Salt Lake County and in East Mill Creek and Butler Precinct, and in that only; and the board of canvassers judged that it was such a matter of discrepancy as justified, under the statute, the liberty of asking for the ballot boxes to be examined, to see for whom, in fact, the ballots were cast, and did accordingly order that said ballot boxes be produced, and would have examined the same, and determined the result, except for the institution of this proceeding under the name of mandamus, which has been served upon the defendants in this case.

And this Board further return, that it is premature now to determine who is or who is not elected; that there is nothing now to appear whether the said Henry Page, or the said John H. Rumel, Jr., is elected; and the Board allege that it has no knowledge, information or belief sufficient to enable it to answer, until the said canvass is complete; and therefore, for the purpose of this action, deny that Henry Page has been elected to said office of County Recorder, and in like manner deny that he has a plurality of the votes cast for the said office, and in like manner deny that he is entitled to a certificate of election; and said board deny that it appears upon the face of the returns of the whole of the County of Salt Lake that the said Henry Page is elected, or has received a plurality of the votes cast for said office; and this board alleges that the election can only be ascertained by a complete canvass of the votes of said county, under the statute, which this board has not yet completed.

The Board further answering say: That it is claimed by John H. Rumel, Jr., and by his counsel appear-

ing before the board, that the votes in the ballot box of poll No. 1 of precinct No. 1, Salt Lake City, are all cast for John H. Rumel, Jr., in fact, although appearing differently upon the return; and that the return of the initials of the name J. H. Rumel, instead of John H. Rumel, Jr., was a clerical error on the part of the judges; and this Board returns that the truth of that allegation and claim cannot be determined except by opening and investigating the ballot boxes.

And this Board deny that the said board is exceeding its duties, or its jurisdiction, or acting illegally.

These defendants further show that the only canvass made by them was a preliminary one, in which were set down, in a table prepared for that purpose, the vote received by each candidate; that the number of votes which this Board has caused to be set down in the said table for John H. Rumel and for Henry Page show that John H. Rumel received a majority over Henry Page of 73 votes. This tabulation or preliminary canvass was made without reference to the questions of identity of John H. Rumel and John H. Rumel, Jr., and preliminary to the decision, and before the opinion heretofore filed. If this board should be compelled by this mandamus to accept that canvass, then John H. Rumel, Jr., would have a majority of the votes for said office.

The purpose of this Board in requiring the ballot boxes of said Poll No. 1, of Precinct No. 1, and East Mill Creek and Butler Precincts, and the other ballot boxes contained in this order, was to determine whether, in fact, John H. Rumel, Jr., was the recipient of the votes with which this Board had already accredited him, and to ascertain whether they were cast for him or for J. H. Rumel; and the opinion filed by the member of the Board, J. W. Judd, was with reference to what would be ascertained when said ballot boxes disclosed that the ballots were cast for J. H. Rumel, if such was the fact.

Wherefore these defendants pray to be hence dismissed.

ARTHUR BROWN,
J. L. RAWLINS,
Attorneys for defendants.

The mandamus proceedings in the election case came up before Judge Zane Aug. 28. Col. Stone and Col. Ferguson were there for Col. Page, the "Liberal" candidate, and Messrs. Arthur Brown and J. L. Rawlins representing the Board of Canvassers and J. H. Rumel, Jr., the Workingmen's and People's candidate. The result sought to be brought about by the "Liberals" is to deprive Mr. Rumel of the office of county recorder, because at Poll 1, First precinct, the judges of election certified to votes for J. H. Rumel instead of John H. Rumel, Jr. In the same poll the returns showed H. Page instead of Henry Page. The Board of Canvassers decided to go to the ballot box to find for whom the votes were actually cast, and then, if they were found to be for different persons, to

so certify. It is this going to the ballot box that the "Liberals" are making such a strong fight against.

When court opened today Mr. Brown asked leave, on behalf of J. H. Rumel, Jr., to intervene in the case, as he was an interested party. He offered the following affidavit:

In the District Court of the Third Judicial District, Utah Territory, County of Salt Lake:

Henry Page, plaintiff, vs. Elijah Sells, J. W. Judd, Hugh Anderson, W. W. Riter, and Elias Smith, defendants.

TERRITORY OF UTAH,
County of Salt Lake.

John H. Rumel, Jr., being duly sworn, deposes and says:

That at the county election, held on the 4th day of August, 1890, for the election of county officers of the County of Salt Lake, Territory of Utah, held in pursuance of law, he was a candidate for and was voted for, for the office of recorder of Salt Lake County. That he was a candidate upon two tickets—one entitled the People's Ticket, also another called the Independent Workingmen's ticket. That there was no other Rumel, or person by that name, running for that office on that day, or as a candidate for that office, either on that day or at any other time. That there was no other person by the name of Rumel eligible.

That by the returns made from the judges of the precincts of the election in said county, it appears that there was a majority of votes cast for this deponent, and that this deponent was lawfully elected to said office of county recorder; but that, in some of the returns, the names of the various candidates were abbreviated. That in some of the returns it appears that Henry Page received a number of ballots, and that H. Page received a number of ballots.

That in the first poll of the first precinct, Salt Lake City, it appears that J. H. Rumel received—votes, and that H. Page received—votes. That the J. H. Rumel therein mentioned, this deponent is informed and believes true, was this deponent. That it could be nobody else. That no other Rumel was candidate for office; no other Rumel was eligible for office.

That this deponent received a large number of votes throughout the other precincts of the county, which showed that he was entitled to the entire vote thus cast in the first poll of the first precinct.

Deponent further says that, if counted literally as contained in the returns, the said ballots cast for H. Page could not be counted for Henry Page, any more than the ballots cast for J. H. Rumel could be counted for this deponent; but if counted according to the intentment, under the circumstances of the case, the ballots for J. H. Rumel must be counted for this deponent; and that the said intentment was well known to the said Board of Canvassers, and it was well known to the said Board of Canvassers that all the facts stated in this affidavit were true.

Defendant further says that he is