

longed argument ensued, in which all the attorneys on the case took part. Judge Loofborough, in the course of his remarks, declared the issue of this whole proceeding to be: Did there appear, upon the face of the returns, such a discrepancy as gave to the board, under the law, authority to resort to and count the ballots?

The plaintiff holds that such a discrepancy did not exist, and that the board had not, therefore, the right to open the ballot box and count the votes. The fact that some of the returns showed that J. H. Rumel was voted for, while others showed that J. H. Rumel Jr. was a candidate, was not, the counsel for plaintiff held, a discrepancy.

When the arguments in the Page-Rumel controversy closed last evening, it was with the understanding that Chief Justice Zane, who heard the case, would render a decision at ten o'clock this morning, and at the opening of court, the Judge promptly announced his conclusions. He said that the canvassing board, who were made defendants in this proceeding, were required by law to canvass the votes cast at the county election on August 4, for county officers, and declare the result. It appeared from the returns from Poll 1, First Precinct, Salt Lake County, that H. Page received 288 votes for the office of recorder of the county, and that J. H. Rumel received 261 votes for the same office. It is further alleged that the Board of Canvassers have determined the fact that these votes were so cast; also that in 38 other polls votes were cast for John H. Rumel, Jr., and the consequent discrepancy authorized the board to open and examine the returns, to ascertain whether the votes were not actually cast for John H. Rumel, Jr. This alternative writ of mandate requires the canvassers to count the votes in that poll for J. H. Rumel, or to show cause why they do not do so. The law requires that the board shall examine the returns from all the polls of the county, and from those returns state the result. In order to do that it is necessary to ascertain the persons for whom the votes were cast. One of the questions before the court is whether the votes cast for J. H. Rumel in the first poll, first precinct, and in two other polling places in the county, shall be counted for J. H. Rumel, and the votes cast in thirty-eight other polls for J. H. Rumel, or John H. Rumel, Jr. If the court is of the opinion that the votes cast in the first poll, First precinct, and in the other two polls should be regarded by the board as having been cast for John H. Rumel, Jr., then the peremptory writ would be denied.

The courts and law writers differ as to the rules governing canvassing boards of this character, in determining who are the persons voted for, in cases where the word "Jr." is used at some polls and omitted in others, and where the initials only are used in some polls and the full names in others. The weight of authority and the better rule, I think, is that the board has the right to

take into consideration everything that appears on the face of the returns, by which to determine the result. That is the most reasonable rule. They may also take into account matters of public notoriety, as courts are required to do. That being so, the board had a right to take into consideration the fact that ballots were cast at forty one polls, and that at thirty-eight of them all the votes for Rumel were cast for John H. Rumel, Jr., or J. H. Rumel, Jr., and that in three only the returns showed they were for John H. Rumel or J. H. Rumel, with the term "Jr." omitted. They had the right to take into consideration the fact that at the First precinct, all the voters whose names commenced with the letter A, and from that down to L, voted at the first poll, and those whose names commenced with letter M, and all below, to Z, were required to vote at the second poll of the precinct.

That being the case, these two facts afford some inference to a reasonable man that all the votes at the various polls, both for J. H. Rumel and J. H. Rumel, Jr., were intended for the same man. That those at the first poll, First Precinct, were for J. H. Rumel, Sen., and that the voters at thirty-eight other polls intended to cast their votes for John H. Rumel, Jr., would be a very unreasonable position to assume, in view of the facts before the board. That all the men whose names commenced with certain letters intended to vote for Rumel, Sen., and all below the letter M for Rumel, Jr., is not a reasonable presumption. That is not the way in which human intelligence acts. Men do not divide their preferences in that way. It would be unreasonable to assume that the voters did this, and voted for different men of the same name.

It is the view of the court, and I think it the weight of authorities—for under our statute it is required only that the name of the man voted for, and the office for which he is intended, be designated on the ballot, without any further description—that the more reasonable rule is that the canvassers should take notice of who the candidates are that are nominated by political parties, when the existence of such parties and the nominations made are matters of public notoriety. When the candidates have done all that the law requires of them, if the Board cannot take note of who the candidates are, it would be impossible to apply the vote to proper individuals. If the Board may take notice of the fact of who the candidates are, they may draw all reasonable inferences from that fact, and those inferences are drawn from the reasonable actions of men.

It is a matter of common public notoriety that there are political parties who put forth candidates and that the people decide themselves with respect to these political parties, and do not fritter away their strength by voting for two men of the same name. If the word "Sen." had been used at poll one, it would have been different. But "Jr." as

a description was omitted, but was added at 38 others. The candidate may have been described as a dark or light man, a tall or a short man, all of which might be used to distinguish the man. But the name John H. Rumel describes John H. Rumel or J. H. Rumel, and here is a general description given. The canvassing board can take into consideration the further fact that J. H. Rumel, Jr., was publicly known to be a candidate. The court is of the opinion that the canvassing board can take into consideration these facts, and that in thirty-eight polls "Jr." was added to Mr. Rumel's name, and in three it was not. They also had a right to take into consideration the further fact that the returns at the first poll, First Precinct, were for J. H. Rumel, without "Jr.," and at the second poll in the same precinct for J. H. Rumel with the "Jr.," and the fact that J. H. Rumel, Jr., was publicly known to be a candidate for recorder. With these facts before them, any fair-minded and reasonable man would say that the same man was intended where the name of J. H. Rumel was used, whether the "Jr." was added or not. Any other rule to deny the canvassers this right would be very narrow and unreasonable, and would require a reasonable man to stultify himself.

This being the view of the court in this case, of course it will not order the writ of mandate. The other question raised it will not be necessary to decide. I am not prepared to say that a discrepancy might not be determined from comparing all the precincts in the county, because the board must take into consideration all the returns of the county. That being so, if a discrepancy appears in the returns, and if in the judgment of the board one poll affects the result, or affects the right of any candidate, it would be their right to ascertain the truth. In this case it is not necessary, however, to decide that. The peremptory is denied.

Judge Judd—The view and decision of the court is that the board should go forth and count all those votes, and that they should be counted for J. H. Rumel, Jr.

Judge Zane—Yes, sir.

At 2 o'clock August 30th the canvassing board were seated around a table in the apartment in which they have been working, when Judge Judd remarked:

"Well, gentlemen, I haven't much time to stay with you, and, as I understand it, we are here to do a very small job. We simply have to count all the votes cast for any Rumel, as if they had been cast for John H. Rumel, Jr."

A member of the board—Is that the purport of Judge Zane's decision?

Judge Judd—Yes; and to make sure I asked him the direct question, and he replied in the affirmative. While I dissent from his version of the law, I am here to do the mandate of the court. Judge Zane decided that we need not go to the ballot boxes, and we have only to