when it is not so attached to Rumel's name.

Upon this question I have had no small difficulty. But here, again, by a resort to the decided cases, and the reason of the law, I believe I am able to work out a correct result, or at any rate one which is entirely satisfactory to myself.

Bouvier, in his Law Dictionary, vol. 1, says of this word: "It has been held to be no part of a man's name, but an addition by use and a convenient distinction between a father and son of the same name. Any matter that distinguishes persons renders the addition of Junior and Senior unnecessary. But if father and son have the same name, the father shall be prima facie intended, if Júnior be not added, or some other matter of distinction." For this the author cites many authorities.

Turning to the decided cases, I find in the case of Brown vs. Benight, reported in 3 Blackford, 39 S. C., 23 Am. Dec. 373, it is said: "That if father and son are both called A B, by naming A B the father prima facie shall be intended." And in the case of Johnson vs. Ellison, 16 Am. Dec. 163, it is said: "Junior is no part of the name of a man. It is neither the name of baptism nor the name of his family. It is an addition to distinguish between two persons bearing the same name. Supposing there are two persons named James Wyatt, usually distinguished by the addition of Jr. or Sr., the defendant has made a note to one of them, but to which the note, on its face, does not certainly and conclusively designate. To which of the two the note is made and delivered is a question of fact, which res s in averment. That this note was made to James Wyatt, Jr., is a permissable averment. There is nothing in the note to estop such an allegation."

In the case of Boyden vs. Hastings. 17 Pick. 200, it is said: "In an action of debt, brought by S. D., Jr., upon a judgment, the description set forth the record of a judgment in favor of S. B.; but the record produced set forth a judgment recovered by S. B., Jr." Held that this was a variance The court, in its opinion, say: "It seems very clear to us that there is no record as the plaintiff hath set forth in his declaration. If we were to say otherwise, it would be determined that Samuel Boyden, Jr., was Samuel Boyden without any averment to the fact. Thus, in the second Esp. Dig. 744: "If a man pleads outlawry of the plaintiff by the name of J. S. *Knight*, and the record brought in be of J. S. *Gentleman*, this is a failure of record. * * * * As the pleadings now stand, we cannot presume that Samuel Boyden, Jr., and Samuel Boyden are the same person. It is true that junior is no part of the name; but it is used to designate the person, and it is used where the father and son have the same name, and when it is so used the court is bound to presume that such is the truth of the case."

In the case of Coit vs. Starkweather, 8 Conn. 289, it is said: "Where a deed is executed to a person named therein of a certain town, and it is shown that there are two persons of that name, father and son, residing in such town, it is a case of latent ambiguity, and parol evidence is admissible to show which of these persons is intended as the grantee Therefore, where a deed was executed to E. W., of P., and it appeared that there were at that time two persons named E. W., father and son, residing in P., the father, being called E. W. and the son E. W., Jr., parol evidence was introduced to show that the negotiation was intended with the son, that the deed was intended for him, and that it was delivered to him; and that, these facts being thus proved, it was held that the title was transferred by such deed to the son."

These authorities (and many more might be cited) establish that Junior and Senior are no parts of the name of the person to whom they may be attached, but are terms used to designate and distinguish one person from another, and that where there are two persons of the same name, and there being no suffix to designate or distinguish the one from the other, the father shall be intended to be the person dealt with. But the authorities further establish that whether the one or the other be intended is a question of fact, and open to proof. Now, I have shown that these returns mention J. H. Rumel and John H. Rumel. They likewise mention J. H. Rumel, Jr., and John H. Rumel, Jr.; and according to the returns, each of these persons has received votes for the office of County Recorder, and the question made here is, which one is intended?

I have shown from a proper construction of the statute that this Board can take no proof on any such a question. That it is confined in its scope to taking proof or examining witnesses to such discrepancies as may appear upon the returns, and I am strengthened in this conclusion by the decision of the Court of Appeals of New York, which had this question before them in the case of the People against Cook, reported in 8 N. Y., 67, where it is said with reference to Canvassing Boards: "The Board of State Canvassers are in the main ministerial in making their certificate. They cannot be charged with error in refusing to add to the votes given for Benjamin Welch, Jr., those given for Benjamin C. Welch, Jr., or for Benjamin Welch. Their judicial authority extends no farther than to take notice of such matters of general notoriety as that certain abbreviations are used for particular names. They cannot hear evidence beyond the return to show the intention of the voters." Who the voters intended to deposit their ballot for is a question of fact to be arrived at by proof in a court having jurisdiction to inquire into such matters. Whether the votes cast for John H. Rumel were intended for John H. Rumel, Jr., is a question of fact, and is not such a one as this board has any power to enter upon the investigation of.

Mr. Cooley, in his work on Constitutional Law, first ed. 622, in discussing the power of canvassing boards, says: "The action of such boards is to be carefully confined to an examination of the papers before them, and to a determination of the result therefrom, in the light of such facts of public notoriety connected with the election as every one takes notice of, and which may enable them to apply such ballots as are in any respect imperfect to the proper candidates or officers for which they are intended, provided the intent is sufficiently indicated by the ballot in connection with such facts, so that extraneous evidence is not necessary for this purpose." It will be seen that the author carefully confines the action of the board in its interpretation of the return to such facts as are of public notoriety, that can be taken notice of by everybody; and they can in no event take evidence of an extraneous character for the purpose of arriving at the intent of the voter, so as to apply the ballot to the return.

But here, again, I am of opinion that this is such a discrepancy upon these returns as requires this board to open the ballot box, and examine the ballots cast at the precincts where these irregularities appear; and if it shall appear from an inspection of the ballots that they were cast for John H. Rumel, Jr., then it will be the duty of this board in canvassing the returns to count such votes for John H. Rumel, Jr. But if it should appear that some ballots are for John H. Rumel, while others are for John H. Rumel, Jr., this raises a question of fact, which is: Who the voter intended to vote for, whether for John H. Rumel, Jr., or for John H. Rumel? The presumption of law is that if there were nothing to designate which one, the elder Rumel is intended. But if, as matter of fact, the voters did intend to vote for John H. Rumel, Jr., although they may have deposited their ballots for John H. Rumel, that is a question which can be settled as between the parties by the District Court, upon proper proceedings instituted for that purpose. But, in my opinion, it is a question upon which this board cannot enter; but that they will have done their duty simply by certifying the number of votes cast for John H. Rumel, and also the number of votes cast for John H. Rumel, Jr., and the number of votes cast for Henry Page.

The next question, in the regular order, to which I come, is as to the question raised upon the returns from Box Elder Precinct, Box Elder County.

We have been told that the Utah Commission appointed a set of judges who, under such appointment, proceeded to open and hold an election according to law; and we have been told, at the same time, that after their appointment, and before they had performed the duties imposed upon them, another set were appointed by the Utah Commission, for reasons satisfactory to the Commission, and that they met