informed, and on information and belief alleged to be true, that this action has been commenced against the said Board of Canvassers for the purpose of affecting the election of this deponent; and the said deponent has an interest in this action in this, that he is a candidate for said office, and is the person elected thereto, and is therefore entitled to said office.

This deponent therefore prays that he may have leave to file an answer herein, setting forth his defense.

Col. Ferguson, on behalf of the "Liberals," objected to the intervention, as the merits of the contest could not be determined in this proceeding. The question here was to ascertain whether the board of canvassers should certify to the returns as they appeared on their face, or whether they could go farther and take evidence in the case.

Col. Stone also objected, claiming that this proceeding reached only to the Board of Canvassers on their duty under the law, and did not affect Mr. Rumel's interest directly.

Judge Zane—What is the fact which Mr. Rumel wishes to bring before the court?

Mr. Brown—That he is John H. Rumel and John H. Rumel Jr., there being merely a slight difference in the description; and also the fact that he is elected. Col. Page declares that he is elected, and Mr. Rumel desires to answer that by a counter claim.

Mr. Rawlins said that as the certificate was *prima facie* evidence of the right to the office, and Mr. Rumel was directly interested, he wanted it to be shown that it was a separation of tickets cast for him that was being sought by the other side.

Judge Zane examined the affidavit and said—Mr. Rumel merely asks leave to defend, and for that reason only I will admit him to intervene.

Mr. Brown presented a demurrer on behalf of the Board of Canvassers, as follows:

"Now come the Board of Canvassers of Utah Territory and demur to the alternative writ of mandamus in this cause for the reasons:

"1. That the same does not set forth facts sufficient to constitute a cause of action in mandamus.

"2. That it appears by the face of said alternative writ that the labors of the said Board of Canvassers had not yet been completed, and no result declared as for Salt Lake County; that until that result can be ascertained, and until this board have acted, with regard to the matters in controversy, this court has no jurisdiction to direct the board as to how they shall act, or what they shall do; or to enjoin this board, either by mandamus or injunction from opening the ballot boxes and declaring the result thereon."

Mr. Brown then read the writ of mandate, heretofore published. He argued that it was improper for a candidate to come in and ask the court to direct the canvassers to count the ballots for him, before they had arrived at any opinion of what action they would take. The purpose of a writ of mandate was to direct the officer to correct an action improperly taken, or to require the performance of a duty which the officer had refused to perform. In this case Mr. Brown argued that the application for a writ of mandate was premature. The canvass had not yet been completed. It was within the discretion of the board to say what they should do in canvassing the returns, and the court could not interfere, but when the board had acted then the court could review the proceedings and see that the law was complied with. The Board of Canvassers are the judges of what is an irregularity, and if they err, the court can direct them to proceed otherwise; but until they do determine and act upon this matter, it would be an unwarranted interference with the election machinery to direct their labors. This mandate is to prevent the opening of the ballot box, and the ascertainment of the true result at the polls, and is to command the board to issue a certificate without regard to the ballots cast.

Judge Zane—Do you understand the writ to say that the board had canvassed the returns, and that no discrepancy or irregularity appeared therein; I mean no discrepancy with regard to all the returns before the board?

Mr. Brown—It does not say that the returns have been canvassed, but it says there was no discrepancy in any one of the returns—not in all the returns before the board.

Judge Zane—I understand that the complaint was, in substance, that the votes in this particular poll 1, First precinct, had been canvassed, and no irregularity appeared therein; that it appeared that votes were cast for J. H. Rumel, Jr., J. H. Rumel, and H. Page. It does not show that there was no irregularity as compared with the other polls.

To this view both sides assented.

Col. Stone said that he proposed to call Chairman Sells to give evidence that the Board of Canvassers decided to go behind the returns.

Mr. Brown—We have no objection to taking evidence as to what was done.

Judge Zane—This matter must be confined to the questions that are strictly proper in this proceeding.

Mr. Brown then read the answer of the Board of Canvassers as published yesterday. He then made an argument, claiming that Col. Page had no right to complain, for the Board of Canvassers had not refused to count for him all the votes he had received. They were ready and anxious to do that. But Page asked them not to count for Rumel all the votes cast for him. The judges of election in the disputed polls had certified that the election was conducted "according to the rules of the Utah Commission," not "according to law." They made no return of the lists required by law, but had only sent in one abstract and one tally sheet, on which the names of Henry Page and J. H. Rumel appeared as candidates for recorder. The law also requires the judges of election to return the ballot box to the county canvassing board (though the Commission has appointed one board for the whole Territory). Instead of complying with the law, the Commissioner ordered the presiding judge to keep the ballot box, and to lock the poll lists in the ballot box, instead of forwarding it to the canvassing board. Under the "rules of the Utah Commission" the judges conformed to no law. They sent an abstract which is not authorized by law, but failed to send the list provided for by law. In the First precinct, in poll 1 from A to L, the votes for recorder were certified to be for H. Page and J. H. Rumel, and at poll 2, from M to Z, for Henry Page and John H. Rumel, Jr. This, Mr. Brown claimed, was of itself a sufficient discrepancy to justify the canvassers in going to the ballot boxes to ascertain the truth. If the votes for H. Page were to be counted for Henry Page, because he was known to be a candidate, for the same reason the votes for J. H. Rumel should be counted for John H. Rumel, Jr. Mr. Brown presented an extensive list of authorities in support of his proposition, and holding that "Jr." was merely a description for purposes of identification, and was no part of the name of the individual.

Judge Zane said he understood the situation to be this: That the petition for a writ of mandate set forth that the votes were cast for Jno. H. Rumel, Jr., J. H. Rumel and Henry Page for recorder; that the presumption is raised by the "Jr." that there is another J. H. Rumel; that to this petitioner adds the presumption that J. H. Rumel resides in the county and is a qualified voter, and that the ballots should be counted as for different persons. In the absence of proof of these facts, the judge had an impression that the presumptions noted might be overcome by presumptions arising from the fact that it was a matter of public notoriety that John H. Rumel, Jr., was the candidate for recorder; that all but three of forty-one polls in the county voted for him, without any votes for J. H. Rumel; and further, that where one First precinct poll, embracing the letters A to L, the votes were for J. H. Rumel, while at the other poll, M to Z agreed with thirty-seven other polls, and returned votes for John H. Rumel, Jr. On the point as to whether this was such a discrepancy as to authorize the board to go to the ballot box, he would express no opinion.

Mr. Brown said he had the judge of election here, who would testify that the omission of "Jr." after Mr. Rumel's name, was merely an omission, and that the votes were actually for J. H. Rumel, Jr.

Elijah Sells was the first witness wanted, but as he was not present Judge Judd was examined.

Mr. Brown—What Rumel do the returns from thirty-eight precincts show was voted for?

This question was strenuously objected to on different grounds, by counsel for the plaintiff. A pro-