fied sheet and should not be considered as indicating a discrepancy. It is only when a discrepaucy exists in the certified sheets that the canvassers can go to the ballot box.

Mr. Riter—Whatever the figures are on the abstract, there can be no discrepancy. This must arise between two sheets.

Judge Stone—It must be between two authenticated papers. The fact that they came in the same envelope is no legal evidence that they are the proper papers.

Mr. Brown—How do they know the abstract is authenticated?

Judge Stone—They must take judicial notice of that. Our position is that this board cannot recognize a discrepancy between the tally sheets and the certified abstract, or on the tally sheet. The certified sheet is the sworn return.

Col. Ferguson followed for the "Liberals" in the same line as Judge Stone's argument. He claimed that no contingency could arise in which the board could go to the ballot box.

Judge Judd—The statute provides for it.

Col. Ferguson—But not in such a contingency as this.

Judge Judd—Suppose the judges should make a return, and a candidate should claim it to be wrong, could not the board go to the ballots?

Col. Ferguson—No. If the judges certified to false returns, this board could not go the to ballot box to correct the wrong.

Col. Ferguson continued his argument to show that the board could not take cognizance of the discrepancy on the tally sheet.

Judge Judd—Can the board judge what is a legal return?

Col. Ferguson—No, sir.

Judge Judd—Don't they have to determine it?

Col. Ferguson—Well, after a form I suppose they do.

Judge Judd—Then if there were two returns from one precinct, by two sets of judges, how about that?

Col. Ferguson—They must ascertain which are the legal judges.

Judge Judd—You say they can take no evidence?

Col. Ferguson—The question is not fair. The evidence is not on the returns, but who send them.

Mr. Riter—Suppose the judges certify differently?

Col. Ferguson—That is a discrepancy to be determined by reference to the ballot box.

Judge Powers came next on the Box Elder returns, and on cases where he thought the judges could go to the ballot box, as was suggested in a contest from Weber County. On the second proposition he argued that the returns of the judges of election were binding and conclusive on the board of canvassers, and no reference could be had to the ballot box to verify or correct it. It is claimed that in one poll in this county (Bingham No. 3) the list is largely made up of repeaters. This makes no difference, as the canvassers cannot take that into consideration. Boards of canvassers are usually partisan, and it is the purpose of the law to restrict them to strictly ministerial duties. Whatever paper the judges of election certify to is the one the board must accept, and they can consider no other.

In reference to the Weber County contest, Judge Powers claimed that the board could not take cognizance of the claim that the votes for county clerk there had been counted wrongfully. The certificate of the judges closed the door against such a proceeding.

Referring to Box Elder precinct, Judge Powers said he had never heard of a similar case. He believed it could be determined only by the courts, and the board of canvassers could not touch the precinct at all.

Judge Judd—Are you not broadening that question too much? Is not our duty only to determine which set of judges were the authorized ones, and those whose return we could accept?

Judge Powers—You must consider *de facto* judges as well as *de jure* and would have to determine the conditions there. You have a knowledge that the *de facto* officers operated for a time, and then the *de jure* officers came in.

Mr. Brown—Is not a delay in opening the polls a mere irregularity?

Judge Powers—Yes, that is all. But at Box Elder there are other questions.

Judge Judd—Cannot this board determine which are the proper returns, and in that determine who are the judges of election?

Judge Powers—Yes; but here there were two sets of judges, both authorized for a time.

Judge Judd—This board does not know that.

Mr. Riter—Suppose you see that the figures on the abstract differ from the marks on the tally sheet, and there is a manifest error, what is that?

Judge Powers—It is a discrepancy.

Mr. Riter—Is not this exactly the case?

Judge Powers—No, sir; the tally sheet is not certified to.

Mr. Riter—Is it not a part of the list?

Judge Powers—It is merely a sheet where they computed their figures.

At this point an adjournment was taken till August 21st.

At a session of the Board of Canvassers, held Aug. 21, Arthur Brown made an argument on the question before the board. He remarked that a great deal had been said about the duties of the canvassers being ministerial only. His view was that where the law defined their duties, they must strictly follow the law. That gave them a measure of judicial power. It gave to them the authority to determiue what were the returns from the precinct. Judge Powers had said that the board could not take sworn testimony as to this matter, and at the same time Mr. Powers made a statement about the Box Elder returns, which he asked the board to accept without further inquiry. Mr. Brown said that on the same hypothesis he might make a statement about Poll 3, Bingham, and the board would be equally bound to receive it. But that was not the law. The board should ascertain the facts, and act on that basis. Here there was a proposition that at Poll 1, First Precinct, the judges had returned a vote for J. H. Rumel, for Recorder, and it was urged that the count could not be made for J. H. Rumel, Jr. In this poll the judges had returned votes for C. E. Allen, for County Clerk, and on the same line of reasoning those votes could not be counted for Clarence E. Allen. In that poll the Judges had given the initials only of all the candidates, when in fact it was known that the ballots had the full names of candidates. Yet it was urged that the board could not ascertain for whom those votes were cast. In other words, that failure, ignorance or other cause on the part of judges was to change the intention of the elector. Such a proposition was a direct violation of the statute. In the case of Mr. Rumel, the termination of "Jr." was no part of his name, and to say that, because his name was used in some of the returns, and in others there was an addition to distinguish him, the votes cast for him should not be counted for him, was an absurdity. If this board can consider the question of the intention of the voter, they can say whether the votes shall all be counted for J. H. Rumel, Jr., and J. H. Rumel, or Henry Page and H. Page. If they cannot consider the intention, then they must separate the votes for H. Page and Henry Page, and J. H. Rumel and J. H. Rumel, Jr. It is known to the board that the votes were actually cast for J. H. Rumel, Jr., and that the omission of the "Jr." was merely an error of the judge of election in copying. Mr. Brown quoted at length from authorities sustaining his position that the board should count the votes for the person whom the electors intended to vote for. The records in this case show that there was but one J. H. Rumel who was a candidate for the office of recorder.

Judge Judd—Is not this an irregularity that we can go to the ballot box with, and ascertain whether the votes certified for J. H. Rumel were not actually cast for John H. Rumel, Jr.?

Mr. Brown—I think so. The common sense view of your duties is that you ascertain the truth, and be not blinded by this "ministerial" cry that is being raised here. There is not a doubt in the minds of any one on this board that these votes were cast for John H. Rumel, Jr., and it is only a question as to whether this board will be blinded into committing a wrong.

Mr. Brown continued his argument by citing attention to the fact that the statute in Utah was different to that in the States where decisions had been read from by the "Liberal" advocates. The board was bound by the law of Utah, and not by that of Wisconsin, or any other State. The Utah statute not only authorized the board to re-count the ballots, but to call witnesses to take testimo-