

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1896.—Ordered to be printed.

Mr. MITCHELL, of Oregon, from the Committee on Privileges and Elections, submitted the following

REPORT:

[To accompany S. Res. 133.]

The Committee on Privileges and Elections, to whom was referred the petition of Henry A. Du Pont, of the State of Delaware, claiming a seat in the Senate from that State in virtue of an election by the legislature thereof on May 9, 1895, having had the same under consideration, beg leave to submit the following report:

STATEMENT OF FACTS.

There is in this case no material contention as to the facts. It is conceded the petitioner, Henry A. Du Pont, was, at the date of his alleged election, a citizen of the United States and an inhabitant of the State of Delaware, over 30 years of age, and in all respects qualified to become a Senator.

The legislature of the State of Delaware consists of a senate, composed of 9 senators, 3 of whom are elected from each of the three counties of the State, and a house of representatives of 21 members, 7 of whom are elected from each of the three counties of the State. When there are no vacancies in the membership, and all are present in joint assembly of the two houses for the purpose of electing a United States Senator, such joint assembly is composed of 30 members, thus requiring the votes of 16 members to elect.

In the event of one vacancy caused either by death, resignation, inability to act, or for any other reason, then the joint assembly, all others being present, would be composed of 29 members, in which event the votes of 15 members would be sufficient to elect.

At the meeting of the joint assembly of the legislature of Delaware on the 9th day of May, 1895, which assembly, it is conceded, was in all respects regularly called and held in pursuance of law, the final vote was as follows:

Joint meeting proceeded to another ballot, which resulted as follows:

Mr. Alrichs, of the senate, voted for .....	H. A. DuPont.
Mr. Fenimore .....	Ed. Ridgley.
Mr. Hanby .....	J. Edward Addicks.
Mr. Harrington .....	Ed. Ridgley.
Mr. Moore .....	H. A. DuPont.
Mr. Pierce .....	H. A. DuPont.
Mr. Pyle .....	Ed. Ridgley.
Mr. Records .....	Ed. Ridgley.
Mr. Speaker .....	Ed. Ridgley.
Mr. Ball, of the house, voted for .....	J. Edward Addicks.
Mr. Brown .....	H. A. DuPont.
Mr. Burton .....	H. A. DuPont.
Mr. Daly .....	Ed. Ridgley.
Mr. Davis .....	Ed. Ridgley.
Mr. Fleming .....	H. A. DuPont.
Mr. Jolls .....	H. A. DuPont.
Mr. Killen .....	Ed. Ridgley.

Mr. Money .....	H. A. DuPont.
Mr. Moore .....	John Edward Addicks.
Mr. Morgan .....	H. A. DuPont.
Mr. Mustard .....	Ebe W. Tunnell.
Mr. Pyle .....	H. A. DuPont.
Mr. Reybold .....	H. A. DuPont.
Mr. Robbins .....	J. Edward Addicks.
Mr. Sypherd .....	Edward Ridgley.
Mr. Townsend .....	H. A. DuPont.
Mr. Walker .....	H. A. DuPont.
Mr. Watson .....	Ed. Ridgley.
Mr. Wilson .....	H. A. DuPont.
Mr. Speaker .....	H. A. DuPont.

The vote as above ascertained having been announced, as follows:

	Votes.
H. A. DuPont had .....	15
Ed. Ridgley had .....	10
J. Edward Addicks had .....	4
Ebe W. Tunnell had .....	1

There being present in such joint assembly, and each casting a vote, 30 persons, each claiming to be a member of the legislature of the State of Delaware and entitled to vote for United States Senator.

It is conceded by Mr. DuPont, and by your committee, that if this contention is true; that is, if each of the 30 persons so present in such joint assembly, and each of whom cast a vote for Senator, was a duly qualified member of the legislature of the State of Delaware, and under no disability, as such, which would deprive him of his right to a seat in such assembly, and to cast a vote for Senator, then Mr. DuPont was *not* elected Senator, and is not entitled to a seat in the Senate.

It is admitted upon the part of Mr. DuPont, and such is the fact, that of the 30 persons so present and claiming a right to vote as aforesaid, 29 of them were so qualified. It is contended, however, that 1 of the 30, namely, William T. Watson, claiming to be a senator from the county of Kent, and claiming to be the speaker of the senate, and claiming the right, as such senator, to be present and participate in the proceedings of such joint assembly, and to cast his vote for senator, was *not* entitled, under the constitution of the State of Delaware and the laws of the land, to be present in such joint assembly, had no right to be counted therein in making up the number present, and had no right to cast his vote in such assembly for any person for senator.

If this contention upon the part of Mr. DuPont is correct, then it is conceded, provided the right to inquire into Watson's qualifications to vote in such assembly now exists, that, inasmuch as in that event there were but 29 members of the legislature of the State of Delaware present entitled to vote, and as it is conceded Mr. DuPont received the votes of 15 of such members, no one of which was that of Mr. Watson, thus receiving a clear majority of all the votes cast, entitled to be cast, he was duly elected Senator, and is entitled to his seat.

The whole question involved, then, in this case is as to the right of Watson to be present in such joint assembly, and to be counted therein in making up the number present, so as to require the votes of 16 members to make an election.

The ground upon which it is claimed upon the part of Mr. DuPont that Mr. Watson was ineligible to a seat in such joint assembly, and should not have been counted therein in making up the number constituting the same, is based on the fact that, although he had been duly elected a senator from the county of Kent, and from the commencement of the session in January, 1895, until April 9, of that year, had held and occupied a seat in the senate, and had been elected speaker thereof, and served in that capacity, he had, on the 9th day of April, 1895, the

governor of the State of Delaware, Joshua H. Marvil, having died the day previous, succeeded to the governorship of the State in virtue of a provision of the constitution of that State, and from that date until the 9th day of May following had continued to exercise the functions and duties of executive of the State, and has ever since and still continues to exercise the office of governor of said State, and that, therefore, on that date, May 9, 1895, he, then holding the office of and being the governor of the State of Delaware, was ineligible to a seat in said joint assembly, and had no right whatever, under the provisions of the constitution of the State and of the laws of the land, to be present, either to participate by his vote or otherwise, or to be counted therein.

Your committee hold that this contention on the part of Mr. DuPont is well founded.

The clause in the Delaware constitution, in pursuance of which Mr. Watson, as speaker of the senate, became governor on April 9, 1895, and which will be commented on later in this report, is found in section 14 of Article III, and is as follows:

Upon any vacancy happening in the office of governor by his death, removal, resignation, or inability, the speaker of the senate shall exercise the office until a governor elected by the people shall be duly qualified.

It is conceded a vacancy in the office of governor occurred on April 8, 1895, by the death of the then governor of the State, Joshua H. Marvil; also that Senator Watson was then and on April 9, 1895, speaker of the senate, and that on this latter date he took the required oaths, was inaugurated, and entered upon the exercise of the office of governor, and has continued to hold and exercise such office ever since.

#### PROCEEDINGS OF THE LEGISLATURE.

The legislature of the State of Delaware met in biennial session on the first Tuesday of January, 1895, and on that day organized by the election of speakers and other officers for the senate and house of representatives. There were at that time 9 members of the Senate and 21 members of the house of representatives, 3 senators and 7 representatives having been chosen from each of the three counties in the State. At the organization of the senate William T. Watson was duly elected speaker and continued in the discharge of his official duties as speaker of the senate, save during occasional absences, until the 9th day of April, 1895, the day following that on which Joshua H. Marvil, governor of the State of Delaware, died.

This legislature being charged with the duty of electing a Senator of the United States for the constitutional term of six years commencing on the 4th day of March, 1895, and having failed to elect such Senator on the second Tuesday after the meeting and organization of such legislature, convened in joint assembly on the next day, being the 16th day of January, pursuant to the provisions of the act of Congress entitled "An act to regulate the times and manner of holding elections for Senators in Congress," approved July 25, 1866, and proceeded to vote for a United States Senator.

No one having been elected to that office on that day, the legislature, pursuant to the provisions of said act, convened in joint assembly on the following and succeeding days, Sundays excepted, until and including Thursday, the 9th day of May, 1895. No one was elected United States Senator prior to the day last named. On the 9th day of April aforesaid, immediately after the joint assembly of the two houses had separated, Senator William T. Watson, who at the time of the death of Governor Marvil, which occurred on the preceding day, had been

speaker of the senate, took the official oaths prescribed for the governor of the State of Delaware, and forthwith entered upon the exercise of that office.

It is conceded that from the commencement of the voting for a United States Senator until and including the 9th day of April, Senator William T. Watson took part in such voting except during occasional absences.

Furthermore it is a conceded fact, and if not conceded, fully borne out by the journal entries and other testimony, that from the time he took the oaths of office and assumed the functions of governor in the exercise of such office until the final joint assembly of the two houses on the 9th day of May, Governor Watson did *not* upon any occasion take any part either in the proceedings of the Senate or of the joint assembly.

And, further, it is clear to your committee from the record and other evidence submitted that from the hour of his inauguration as governor, by taking the constitutional oaths required of a governor, his name was dropped from the roll call of the senate and was never once called, either as of speaker or as of a senator, on any roll call had on any bill, resolution, or motion until the final adjournment of the senate. Senator Alrichs, in his affidavit of date January 28, 1896 (Doc. 9, part 6, p. 1), shows this conclusively, and it is not contradicted by any affidavit filed in the case. The following is Senator Alrichs's affidavit in full:

AFFIDAVIT OF SAMUEL ALRICHS.

STATE OF DELAWARE,

*Newcastle County, ss:*

On this 28th day of January, A. D. 1896, before me, Edward G. Cook, a notary public for the State of Delaware in and for Newcastle County, personally comes Samuel Alrichs, who, being by me first duly sworn according to law, deposes and says:

That he is a member of the senate of the State of Delaware, as stated by him in a previous affidavit made in the above matter; that he took his seat in said senate on the 1st day of January, A. D. 1895, for a term of four years; that, *after William T. Watson took the oath of office as governor of the State of Delaware upon the death of Governor Marvil, to wit, on the 9th day of April, A. D. 1895, to the expiration of the last session of the senate on the 9th day of May of said year, the clerk of the senate did not call the name of William T. Watson as a member of the senate. He was neither on the call of the roll at the assembling of any session, nor upon the taking of any roll call upon bill, resolution, or other motion. He was not reported by the clerk as either present or absent; neither was his name called or recorded upon the taking of any yea or nay vote as being present or absent. William T. Watson's name was thus dropped from the rolls after he became governor by reason of no special order, or action, or motion, or otherwise, taken in respect thereto by the senate. It must have been done by the order of the speaker pro tempore. It was, however, in accordance with the general understanding of the members of the senate that William T. Watson was no longer a member of that body.*

SAMUEL ALRICHS.

Sworn to and subscribed before me the day and year first above written, as witness my hand and official seal.

[SEAL.]

EDWARD J. COOK, *Notary Public.*

