

HENRY A. DU PONT.

MARCH 1, 1897.—Ordered to be printed.

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Mr. HOAR, from the Committee on Privileges and Elections, submitted the following

REPORT.

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, have considered the same and report:

Mr. Du Pont presented to the Senate, December 4, 1895, a petition for admission as Senator from the State of Delaware for what then remained unexpired of the term beginning March 4, 1895.

It appeared that at a joint convention of the two houses of the legislature of the State of Delaware, duly held on the 9th day of May, 1895, 15 votes were cast for Mr. Du Pont and 15 votes for other candidates. One of the votes cast for other candidates was the vote of the acting-governor of the State of Delaware, who had succeeded to the executive chair on the death of the governor. He was a senator and the speaker of the Delaware senate at the time of the alleged election, the term of office for which he had been elected for senator and speaker having not expired. If he were entitled to vote, Mr. Du Pont was not lawfully elected. If he were not so entitled, Mr. Du Pont had a majority of 1 vote. The question of his right to vote depended upon the question whether his accession to the executive chair by virtue of the constitution of the State should deprive him of his title to vote as a senator.

That question was the only one raised in the discussion of Mr. Du Pont's title to a seat in the Senate. The Committee on Privileges and Elections reported in his favor and there was a full discussion of the question.

On the 15th day of May, 1896, the Senate passed the following resolution by a majority of 1 vote:

*Resolved*, That Henry A. Du Pont is not entitled to a seat in the Senate from the State of Delaware for the full term commencing March 4, 1895.

Mr. Du Pont now prays to have this question reopened. The grounds of his application, as stated in his petition and by his eminent counsel in an argument addressed to the committee, are:

First. That there was a mistake in the pairs as announced when the vote on this resolution was taken, so that a Senator who was in favor

of Mr. Du Pont was paired against him. On investigation we find that no such mistake occurred, and that every Senator who desired to vote who was in favor of Mr. Du Pont either voted for him or was paired in his favor.

Second. That the petitioner expects to satisfy the Senate that it was wrong in its construction of the constitution of Delaware when it held that the vote of the acting governor for another candidate than Mr. Du Pont was lawful.

New Senators have entered the chamber since the resolution just cited was adopted. Nothing else has changed. The case then stated and acted upon is the case now stated. The simple question is: Whether the Senate, notwithstanding its decision of May 15, 1896, will now admit Mr. Du Pont to a seat?

The majority of your committee now, as then, are of the opinion that this decision of the Senate was wrong; but the Senate is made by the Constitution the judge of the elections, qualifications, and returns of its members, and its judgment is just as binding in law, in all constitutional vigor and potency when it is rendered by one majority as when it is unanimous.

It is clear that the word "judge" in the Constitution was used advisedly. The Senate in the case provided for is to declare a result depending upon the application of law to existing facts, and is not to be affected in its action by the desire of its members or by their opinions as to public policies or public interest. Its action determines great constitutional rights—the title of an individual citizen to a high office and the title of a sovereign State to be represented in the Senate by the person of its choice. We can not doubt that this declaration of the Senate is a judgment in the sense in which that word is used by judicial tribunals. We can conceive of no case which can arise in human affairs where it is more important that a judgment of any court should be respected and should stand unaffected by caprice or anything likely to excite passion or to tempt virtue. When the Senate decided the question it was sitting as a high constitutional court. In its action we think it ought to respect the principles, in giving effect to its own decision, which have been established in other judicial tribunals in like cases and which the experience of mankind has found safe and salutary.

We do not doubt that the Senate, like other courts, may review its own judgments where new evidence has been discovered, or where by reason of fraud or accident it appears that the judgment ought to be reviewed. The remedy which in other courts may be given by writs of review or error or bills of review may doubtless be given here by a simple vote reversing the first adjudication. We have no doubt that a legal doctrine involved in a former judgment of the Senate may be overruled in later cases. But there is no case known in other judicial tribunals in which a final judgment in the same case can be rescinded or reversed merely because the composition of the court has changed or because the members of the court who originally decided it have changed their mind as to the law or fact which is involved.

It seems to us very important to the preservation of constitutional government, very important to the dignity and authority of the Senate, very important to the peace of the country, that we should abide by this principle. There are few greater temptations which affect the conduct of men than the temptation to seize upon political power without regard to the obligation of law. To act upon the doctrine upon which this petition rests would expose the Senate to the temptation

to reverse its own judgments and to vacate or to award seats in this Chamber according as the changing majorities should make possible. If such practice should be admitted it would, in our opinion, go far to weaken the respect due to this body and the respect due to constitutional authority.

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