Chapter CCXIX.[1]

BILLS RETURNED WITHOUT THE PRESIDENT'S APPROVAL.

1094. While it is the rule that a bill returned with the objections of the President shall be read and considered at once, it may not be laid before the House in the absence of a quorum.

On August 18, 1919,[2] Mr. Otis Wingo, of Arkansas, submitted a parliamentary inquiry as to when the message, returning with the President's objections the bill (H. R. 3854) providing for the repeal of the daylight saving act, and received on August 15, had been laid before the House.

The Speaker[3] explained that the bill had been received on the last legislative day on which the House was in session; that a point of no quorum was made before the message could be taken from the Speaker's table, and it having been ascertained that a quorum was not present, and adjournment being taken before a quorum appeared, the message could not be laid before the House on that day.

1095. Reconsideration of a bill returned with the objections of the President is by constitutional mandate and takes precedence of business in order on Calendar Wednesday.

On August 14, 1912,[4] the Speaker laid before the House a message from the President of the United States transmitting his objections to the bill (H. R. 18642) amending the tariff act.

The message having been read, Mr. Oscar W. Underwood, of Alabama, moved the passage of the bill, the objections of the President notwithstanding.

Mr. James R. Mann, of Illinois, made the point of order that the motion was not in order on this day, it being Calendar Wednesday.

The Speaker[5] overruled the point of order.

1096. A bill returned with the President's objections is privileged when reported by the committee to which referred.

On February 24, 1921,[6] Mr. Homer P. Snyder, of New York, from the Committee on Indian Affairs, reported back, as privileged, the bill (H. R. 517) to provide for

[1] Supplementary to Chapter XCIII.
[2] First session Sixty-sixth Congress, Record, p. 3954.
[3] Frederick H. Gillett, of Massachusetts, Speaker.
[4] Second session Sixty-second Congress, Journal, p. 1049; Record, p. 10936.
[5] Champ Clark, of Missouri, Speaker.
[6] Third session Sixty-sixth Congress, Record, p. 3791.

the drainage of certain Indian lands, which had been returned with the President's objections and referred to that committee.

Mr. Joseph Walsh, of Massachusetts, raised a question of order as to the privilege of the bill.

The Speaker [1] overruled the point of order.

1097. When a bill returned with the President's objections is called up the question of reconsideration is considered as pending and a motion to reconsider is not required.

On February 19, 1913,[2] Mr. John L. Burnett, of Alabama, as a question of privilege, called up the bill (S. 3175) to regulate immigration, which had been returned with the objections of the President, and moved that the House proceed to reconsider the bill.

Mr. James R. Mann, of Illinois, objected that the motion was not in proper form.

The Speaker [3] held that a motion was not required, as the question of reconsideration was considered as pending.

1098. On August 19, 1919,[4] a message from the President of the United States, returning without his approval the bill (H. R. 3854), "An act for the repeal of the daylight saving law," was taken up in the House. The message having been read, debate proceeded without motion to reconsider until Mr. John J. Esch, of Wisconsin, demanded the previous question, which was agreed to, yeas 225, nays 34.

1099. On June 4, 1920,[5] the Speaker laid before the House the message from the President giving his reasons for withholding his approval from the bill (H. R. 9783), the Budget bill.

No motion for the disposition of the bill being offered, the Speaker [1] recognized Mr. James W. Good, of Iowa, who, after debating the bill at length, moved the previous question.

1100. While bills returned with the President's objections are taken up for consideration on the day received, the time of the day of laying the message before the House is within the discretion of the Speaker.

When a vetoed bill is laid before the House the question of reconsideration is considered as pending, and a motion to reconsider is not required.

A veto message having been read, only three motions are in order: to lay on the table, to postpone to a day certain, or to refer, which motions take precedence in the order named.

On July 11, 1932,[6] a message was received from the President returning to the House without his approval the bill (H. R. 12445) to relieve destitution, to broaden

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[1] Frederick H. Gillett, of Massachusetts, Speaker.

[2] Third session Sixty-second Congress, Record, p. 3411.

[3] Champ Clark, of Missouri, Speaker.

[4] First session Sixty-sixth Congress, Record, p. 3981.

[5] Second session Sixty-sixth Congress, Record, p. 8613.

[6] First session Seventy-second Congress, Record, p. 15040.

the lending power of the Reconstruction Finance Corporation, and to create employment by authorizing and expediting a public-works program and providing a method of financing such program.

Mr. Bertrand H. Snell, of New York, addressing an inquiry to the Chair, asked when the message would be laid before the House.

The Speaker [1] replied:

The Chair does not know. It has not yet been opened.

Subsequently on the same day, the Speaker pro tempore [2] laid the message before the House. Following the reading of the message, Mr. Henry T. Rainey, of Illinois, moved that the message and the bill be referred to the Committee on Ways and Means, and, after brief debate, demanded the previous question on the motion to refer.

Mr. Carl R. Chindblom, of Illinois, made the point of order that the motion to refer was not admissible; that it was the duty of the Speaker to put the question of reconsideration; and demanded recognition to move the previous question on the question of reconsideration.

Mr. Clarence Cannon, of Missouri, suggested:

Mr. Speaker, under the practice of the House, the question on a veto message is considered as pending, and there are three motions that are preferential. Any Member securing recognition for the purpose may move to postpone, or may move to refer, or may move to lay on the table.

Of course, a motion for the previous question is in order; but the gentleman would not be entitled to prior recognition over the Member in charge of the bill.

The gentleman from Illinois, Mr. Rainey, representing the Committee on Ways and Means, is entitled to prior recognition to move to refer, and on that motion he also is entitled to prior recognition to demand the previous question. The motion to refer is preferential; the motion has been made by the Member in charge, and the motion is therefore before the House.

The Speaker pro tempore ruled:

The Chair thinks the gentleman from Missouri has stated the matter correctly. The Chair thinks that under the rules of the House, the gentleman from Illinois has a right to make a preferential motion to refer to a committee. On that motion the gentleman has the right to control one hour of time or the right to move the previous question. The gentleman has been recognized and has now moved the previous question.

1101. The constitutional mandate that the House "shall proceed to reconsider" a vetoed bill has been held not to preclude a motion to postpone consideration to a day certain.

On August 18, 1919,[3] the President returned to the House, with his objections, the bill (H. R. 3854) for the repeal of the daylight saving law.

The message being read, Mr. Edward J. King, of Illinois, proposed to offer a motion to postpone consideration until the following Tuesday.

The Speaker [4] held that the motion was in order if the previous question was not ordered, but that the Member in charge of the bill was entitled to prior recognition to move the previous question.

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[1] John N. Garner, of Texas, Speaker.

[2] Clifton A. Woodrum, of Virginia, Speaker pro tempore.

[3] Record, p. 3954.

[4] Frederick R. Gillett, of Massachusetts, Speaker.

1102. While the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to commit it pending the demand for the previous question or after the previous question is ordered on the constitutional question of reconsideration.

On August 19, 1919,[1] the Speaker laid before the House the message of the President returning the bill of the House repealing the daylight-saving law.

On motion of Mr. John J. Esch, of Wisconsin, the previous question was ordered on the question of reconsideration.

Mr. Otis Wingo, of Arkansas, moved to refer the bill, with accompanying papers, to the Committee on Interstate and Foreign Commerce.

The Speaker[2] held that the motion, although otherwise admissible, was not in order after the previous question had been ordered.

On an appeal by Mr. Wingo, the decision of the Chair was sustained by a vote of yeas 214, nays 5.

1103. A veto message received from the President supersedes the regular order of business, but immediate consideration may be deferred, at the discretion of the Speaker, until later on the same day.

The reading only of a veto message is mandatory on the day on which received, and subsequent proceedings in reconsideration of the bill may be postponed by the House to a future day.

Consideration of a bill similar to one returned by the President without approval, but conforming to objections voiced by the President in the accompanying message, is not in order pending reconsideration of the vetoed bill.

Form of motion to reconsider a bill returned by the President with objections.

A vetoed bill having been rejected by the House, the message was referred.

On June 29, 1918,[3] during the consideration of the joint resolution (H. J. Res. 303) extending time for Federal control of railroads, the Speaker[4] interrupted debate and laid before the House a message from the President returning with his veto the Post Office appropriation bill.

Mr. Joseph G. Cannon, of Illinois, asked if the message could be withheld temporarily until the pending resolution was disposed of.

The Speaker ruled that the message could be laid before the House at any time during the day on which received, within the discretion of the Speaker, and withdrew it pending disposition of the resolution.

In response to a parliamentary inquiry from Mr. Halvor Steenerson, of Minnesota, the Speaker further held that the only action mandatory under the Constitu-

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[1] First session Sixty-sixth Congress, Record, p. 3981.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

[3] Second session Sixty-fifth Congress, Record, p. 8515.

[4] Champ Clark, of Missouri, Speaker.

tion on the day received was the reading of the message, and further proceedings in reconsideration of the bill were at the pleasure of the House and could be had—

to-day, next week, or next year. It has been ruled over and over again. It does not mean you shall immediately take it up. The Chair has read that section of the Constitution until he knows it by heart, and has read all the decisions. It may lie on the Speaker's table if they want or go to the committee if they want. It need not be reported back if the committee does not want to do so.

Mr. Joseph Walsh, of Massachusetts, referring to a proposition to introduce and consider immediately a bill similar in all respects to the vetoed bill, with the exception that provisions objected to by the President had been modified to conform to his views, asked if such modified bill could be considered before the vote on reconsideration.

The Speaker held that some action must be taken with respect to the vetoed bill before a bill of similar tenor could be considered.

The pending resolution having been disposed of, the Speaker again laid the message before the House. Following its reading Mr. Steenerson offered this motion:

I move that the House on reconsideration do agree to pass the bill notwithstanding the objections of the President. And on that motion I demand the previous question.

The question being taken, and two-thirds failing to vote in the affirmative, the Speaker announced that the House, on reconsideration, determined not to pass the bill, the objections of the President to the contrary notwithstanding.

The following motion by Mr. John A. Moon, of Tennessee, was then agreed to:

Mr. Speaker, I move that the President's veto message be referred to the Committee on the Post Office and Post Roads.

1104. While the specific time at which a message shall be laid before the House is within the Speaker's discretion, it may not be deferred to a day subsequent except by order of the House.

On August 18, 1919,[1] Mr. Otis Wingo, of Arkansas, as a parliamentary inquiry, asked what disposition had been made of the message transmitting, with the President's objections, the bill (H. R. 3854) to repeal the daylight-saving act.

The Speaker[2] said:

It is on the Speaker's table. It has been thought wise not to take that up until to-morrow, and consequently the Chair thought it better not to lay it before the House at this time, so that the vote might be had upon it to-morrow.

Mr. Wingo made the point of order that reconsideration could not be postponed to a day subsequent except by order of the House.

The Speaker sustained the point of order, and on motion of Mr. John N. Garner, of Texas, by unanimous consent, reconsideration of the bill was postponed until the following legislative day.

1105. A veto message from the President is read before disposition is considered.

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[1] First session Sixty-Sixth Congress, Record, p. 3955.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

The constitutional mandate that the House "shall proceed to reconsider" a vetoed bill is complied with by laying it on the table, referring it to a committee, postponing consideration to a day certain, or immediately voting on reconsideration.

On January 29, 1917,[1] Mr. John L. Burnett, of Alabama, asked that the bill (H. R. 10384) to regulate immigration, received from the President with his objections, lie on the table until the following Thursday morning.

The Speaker[2] held that no proposal for disposition of the bill was in order until the message had been read.

The message having been read, Mr. William H. Stafford, of Wisconsin, raised a question of order against postponement.

The Speaker said:

> The gentleman from Alabama asks unanimous consent that this bill and message lie on the Speaker's table. That is his request. And his notification to the House is that he is going to call it up next Thursday—I suppose just after the Journal is read. Of course, everybody understands that frequently it would be extremely inconvenient, if not impossible, to immediately consider a veto message; and the Constitution does not say "immediately," anyhow. The practice has been to dispose of it in one of three ways. The first one is to let it lie on the Speaker's table and call it up any time you get ready. The other one is to refer it to a committee. The gentleman asks that it lie on the table. Is there objection?

1106. A bill returned with the President's objections, when called up for reconsideration, may be read by unanimous consent only.

On April 7, 1908,[3] the President returned, with his objections, the bill of the House transferring Commander William Wilmot White from the retired to the active list of the Navy.

The message having been read, Mr. James R. Mann, of Illinois, asked that the vetoed bill be also read.

The Speaker[4] held that the bill could be read by unanimous consent, and submitted the question to the House.

1107. On February 21, 1913,[5] the Speaker,[2] addressing the House, and referring to a decision rendered on February 19,[6] said:

> The Chair desires to make a statement to the House about a ruling he made the other day. When the question was on passing the immigration bill over the President's veto the Chair ordered the Clerk to read the bill. The gentleman from Wisconsin, Mr. Lenroot, raised the point of order that it was not necessary to read the bill. The Chair overruled the point of order and had the bill read.
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> On mature reflection the Chair has concluded that his ruling was wrong, and he makes this statement now so that that ruling will not be taken as a precedent, either by the present occupant of the chair or by any of his successors in office. The Chair thinks the matter ought to be straightened out while it is fresh in the memory of the House.

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[1] Second session Sixty-fourth Congress, Record, p. 2213.

[2] Champ Clark, of Missouri, Speaker.

[3] First session Sixtieth Congress, Record, p. 4503.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Third session Sixty-second Congress, Record, p. 3622.

[6] Record, p. 3412.

1108. Accompanying documents, although referred to in a message from the President, are not read or entered on the Journal.

A motion to refer to a committee a bill returned with the objections of the President is in order under the practice of the House.

A committee to which was referred a veto message from the President made no report thereon.

On November 5, 1919,[1] the Speaker laid before the House the following message received from the President of the United States:

TO THE HOUSE OF REPRESENTATIVES:

I return herewith without my approval H. R. 8272, entitled "An act to restore Harry Graham, captain of Infantry, to his former position on lineal list of captains of Infantry." I am constrained to take this action for the reasons set forth in the accompanying letter from the Secretary of War.

WOODROW WILSON.

THE WHITE HOUSE,
5 November, 1919.

Mr. Otis Wingo, of Arkansas, requested the reading of the accompanying letter, referred to in the message.

The Speaker[2] said:

If the House wants it, of course, it will undoubtedly give unanimous consent to have the letter read. I think the gentleman will recall that very often documents are sent. Of course, the President could have made it a part of his veto if he wished, but he did not, and the Chair does not think it is a part of the message. That is a matter for the President to decide. The President in his message could have inserted the letter of the Secretary. The gentleman from Arkansas asks unanimous consent that the letter be read. Is there objection? [After a pause.] The Chair hears none.

In response to a further inquiry by Mr. Joseph Walsh, of Massachusetts, the Speaker held that the letter, not being a part of the message, would not be entered on the Journal of the House.

On motion of Mr. Julius Kahn, of California, the message, with accompanying documents, was referred to the Committee on Military Affairs, which made no report thereon.

1109. The House having adjourned after the reading of a veto message and before voting on reconsideration, the bill came up as unfinished business on the next legislative day.

A veto message received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business.

On January 3, 1921,[3] the Speaker laid before the House a message from the Senate transmitting, with the objections of the President, the joint resolution (S. J. Res. 212) for the relief of agriculture, and announcing its passage by the Senate on reconsideration.

Following the reading of the message, the House adjourned before a vote could be had on the question of reconsideration.

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[1] First session Sixty sixth Congress, Record, p. 7992.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

[3] Third session Sixth-sixth Congress, Record, p. 915.

On January 4, immediately after the approval of the Journal, the Speaker[1] announced:

The unfinished business when the House adjourned yesterday was the reconsideration of Senate joint resolution 212 notwithstanding the objections of the President. The question before the House is, Will the House on reconsideration pass the joint resolution the objections of the President to the contrary notwithstanding?

1110. The Constitution provides that the vote on reconsideration of a bill returned with the President's objections shall be determined by yeas and nays.

On October 27, 1919,[2] the House proceeded to the reconsideration of the bill (H. R. 6810), the prohibition enforcement bill, returned without the President's approval.

The previous question having been ordered, the Speaker[1] announced that the Constitution required a vote by yeas and nays, and directed the Clerk to call the roll.

1111. The two-thirds vote required to pass a bill notwithstanding the objections of the President is two-thirds of the Members voting and not two-thirds of those present.

An instance in which the Speaker asked unanimous consent to elaborate on an opinion previously rendered.

On August 13, 1912,[3] the question being put on reconsideration of the bill (H. R. 22195) reducing duties on wool, which had been returned with the President's objections, there were yeas 174, nays 80, answering present 10.

Mr. Augustus P. Gardner, of Massachusetts, made the point of order that 264 Members had voted, and, as the 174 Members voting in the affirmative did not constitute two-thirds, the bill was not passed.

The Speaker[4] held that the 10 Members answering present had not voted and were not to be counted, and the number voting was, therefore, 254 and not 264, and 174 constituting two-thirds of the Members voting the House had determined on reconsideration to pass the bill, the objections of the President to the contrary notwithstanding.

On the following day,[5] the Speaker submitted the following request for unanimous consent:

The Speaker is not certain whether he should ask unanimous consent to read a carefully prepared opinion on a parliamentary question on a day subsequent to rendering a brief opinion on that question, but, to be on the safe side, he will do so.

The Chair has a precedent for that. Mr. Speaker Cannon did it once. Is there objection?

There being no objection, the Speaker said:

The Chair thinks that the question which was decided yesterday is of such far-reaching importance that he owes it to himself, as well as to the House and to future Speakers, to restate his opinion after an examination of the authorities. The parliamentary question in issue was

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[1] Frederick H. Gillett, of Massachusetts, Speaker.

[2] First session Sixty-sixth Congress, Record, p. 7610.

[3] Second session Sixty-second Congress, Record, p. 10834.

[4] Champ Clark, of Missouri, Speaker.

[5] Record, p. 10943.

this: On a roll call on passing a bill over the President's veto, in determining whether two-thirds have voted for it, should those answering "present" be taken into consideration or excluded therefrom?

The importance of the question demanded and has received closest examination. The situation is this: Touching the passage of a bill over the President's veto or the attempt to pass it, the constitutional provision is as follows:

"Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approves, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated"—

In this case the House of Representatives—"who shall enter the objections at large on their Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively."

The first point in the excerpt from the Constitution which attracts attention in this case is "if after reconsideration two-thirds of that House," and so forth. There have been all sorts of contentions about what constitutes "the House." Some gentlemen of eminent ability have contended it means all the Members elect and qualified; others have contended it means simply a quorum, and several decisions, not on this particular question of passing bills over the President's vetoes, but on questions practically involving the same question as to the count, have been rendered, but finally it has come to be accepted that "the House" does not mean all the Members elected and qualified, but only a quorum. The full membership of the present House is 394, a quorum of which is 198; but there are four vacancies, reducing the membership to 390, of which 196 constitutes a quorum. That is proposition No. 1.

The second constitutional proposition is stated in these words:

"But in all such cases the votes of both Houses shall be determined by the yeas and nays"—

That is, in veto cases—

"And the names of the persons voting for and against the bill shall be entered on the Journal of each House, respectively."

The Chair answered the inquiry of the gentleman from Illinois, Mr. Cannon, inadvisedly, that the names of those present ought to be in the Journal. The Constitution does not require any such thing. The Chair has investigated that matter since, and it is entirely immaterial whether the names of the 10 gentlemen who answered "present" go in the Journal or not. The Constitution does not provide for a Member voting "present," but the rules of the House, in order to eke out a quorum, have provided that they can vote "present." They have to answer "aye" or "nay" on the roll call in order to be counted on passing a bill over the President's veto. That is the requirement of the Constitution, and if the contention were on a proposition which required only a majority it would be the same way. In fact, that is one unvarying rule of procedure whenever the roll is called on any proposition. The Chair announces: "So many 'ayes,' so many 'nays,' so many 'present'; the 'ayes'—or 'nays,' as the case may be—have it." Those voting "present" are disregarded, except for the sole purpose of making a quorum.

In this case 174 Members voted "aye," 80 voted "no," and 10 answered "present"; 174 plus 80 equal 254, a quorum, without counting the 10 who answered "present." One hundred and seventy-four is more than two-thirds of 254.

These 10 gentlemen were here simply for the purpose of making a quorum. It is clear that to count them on this vote would be to count them in the negative, and the Chair does not believe that any such contention as that is tenable. The Chair holds that, if there is a quorum present on a roll call to determine whether the House will agree to pass a bill over the President's veto. and two-thirds of those voting vote "yea," that is sufficient and is a compliance with the constitutional requirement.

To show that the view expressed by the Chair is correct, there is a fact dehors the record which tends to clarify the situation. Of the 10 Members who answered "present," 7 were Democrats and 3 Republicans. Of course, every one of the 7 Democrats, if not paired, would have voted "aye"; so that to have counted in the 7 Democrats who answered "present" in determining the two-thirds would have put them down as voting "no," precisely opposite to the way they would have voted, which amounts to a reductio ad absurdum.

In conclusion, the Speaker referred to a similar decision [1] by Mr. Speaker Reed, and cited the opinion of the Supreme Court of the United States in the case of United States *v.* Ballin.[2]

1112. Reconsideration of a bill returned with the President's objections may be postponed to a day certain by a majority vote.

On October 27, 1919,[3] the Speaker laid before the House the message of the President returning without approval the bill (H. R. 6810) to prohibit the manufacture and sale of intoxicating beverages.

Following the reading of the message, Mr. Andrew J. Volstead, of Minnesota, moved that reconsideration of the bill be postponed until the next Thursday.

The question being taken, it was decided in the negative, yeas 83, nays 136.

1113. On May 15, 1924,[4] the message vetoing the bill (H. R. 7959) to provide adjusted compensation for veterans of the World War was read, when Mr. Nicholas Longworth, of Ohio, moved that reconsideration of the bill be postponed until the following Monday.

Mr. Thomas L. Blanton, of Texas, raised a question of order as to the admissibility of the motion.

The Speaker [5] said:

The situation seems clear to the Chair. The gentleman from Ohio has made a motion to postpone to a day certain action on the President's veto. Now, the Constitution provides that "the House shall proceed to consider it." If that meant that the House should proceed immediately to vote upon it, then the action of the House for a great many years has been entirely wrong, because the House has repeatedly entertained and voted on, motions to refer it to a committee and to postpone. It seems to the Chair that the language "the House shall proceed to consider it" means that the House shall immediately proceed to consider it under the rules of the House, and that the ordinary motions under the rules of the House—to refer, to commit, or to postpone to a day certain—are in order. One gentleman suggested that such a construction put in the hands of one gentleman to determine what the House shall do; but on the contrary, it leaves it entirely in the hands of the House. If the House does not like the motion that is made, it can vote it down and the House can have its will. It seems to the Chair that is an exact compliance with the Constitution and is also the action which allows the House entire freedom of action. So the Chair overrules the point of order.

1114. A motion to refer a vetoed bill is allowable within the constitutional mandate that the House "shall proceed to reconsider."

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[1] Section 7027 of Hinds' Precedents.

[2] 144 U. S., p. 1.

[3] First session Sixty-sixth Congress, Record, p. 7607.

[4] First session Sixty-eighth Congress, Record, p. 8663.

[5] Frederick H. Gillett, of Massachusetts, Speaker.

Instance wherein the committee to which a vetoed bill was referred made no report thereon.

The House having referred a vetoed bill, a new bill, identical in all respects with the exception of a provision objected to by the President, was introduced and passed under suspension of the rules.

On August 18, 1916,[1] when a message from the President returning, with objections, the bill (H.R. 16460), the Army appropriation bill, was read, Mr. James Hay, of Virginia, moved that the message be referred to the Committee on Military Affairs.

The motion was agreed to, and the Committee made no report thereon.

On August 22,[2] on motion of Mr. Hay, the rules were suspended and the same bill, with the provision objected to by the President omitted, was passed as H.R. 17498.

1115. The pocket-veto case decided by the Supreme Court in 1929.

A bill passed by both Houses during an interim session and presented to the President less than 10 days before adjournment of the session, but neither signed by the President nor returned without his signature, does not become a law.

The phrase "within 10 days" in the constitutional provision fixing the time within which bills shall be returned by the President, refers not to legislative days but to calendar days.

The term "adjournment" as used in the constitutional provision does not refer exclusively to the final adjournment of the Congress, but includes the adjournment of an intermediate session as well.

The "House" to which a bill is to be returned by the President is a House in session with authority to receive the return and enter the President's objections on its Journal and no return can be received when the House is not in session.

No officer or agent of either House has authority to receive returned bills or messages from the President for delivery at the next session.

On June 23, 1926,[3] the bill (S. 3185) authorizing certain Indian tribes to present their claims to the Court of Claims was transmitted to the President for his approval.

The President failed to sign the bill or to return it to the Senate without his signature prior to the adjournment of the session on July 3, 1926.

The House took the view[4] that the term "adjournment "in the constitutional provision referred exclusively to the adjournment of the final session of Congress and

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[1] First session Sixty-fourth Congress, Record, p. 12844.

[2] Record, p. 12983.

[3] First session Sixty-ninth Congress, Record, p. 11930.

[4] Second session Sixty-ninth Congress, House Report No. 2054; Record, p. 4937; first session Seventieth Congress, Record, p. 395.

not to the close of the first session, and therefore that the bill had become a law through the failure of the President to return it within 10 days.

The Court of Claims, however, dismissed a petition filed under the proposed law, on the ground that the bill passed by Congress, upon which jurisdiction was dependent, had not become a law, and the case was taken to the Supreme Court under a writ of certiorari.

At the October term of 1928,[1] Mr. Justice Sanford delivered the opinion of the court.

The question presented to the court is set out in the opinion as follows:

The clause of the Constitution here in question reads as follows:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. . . . *If any bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law*."

The specific question here presented is whether, within the meaning of the last sentence which we have italicized Congress by the adjournment on July 3 prevented the President from returning the bill within 10 days, Sundays excepted, after it had been presented to him. If the adjournment did not prevent him from returning the bill within the prescribed time, it became a law without his signature; but if the adjournment prevented him from so doing, it did not become a law.

The court finds that a bill so retained by the President does not become a law.

The use of the term "pocket veto" is misleading in its implications in that it suggests that the failure of the bill in such case is necessarily due to the disapproval of the President and the intentional withholding of the bill from reconsideration. The Constitution in giving the President a qualified negative over legislation—commonly called a veto—intrusts him with an authority and imposes upon him an obligation that are of the highest importance, in the execution of which it is made his duty not only to sign bills that he approves in order that they may become law, but to return bills that he disapproves, with his objections, in order that they may be reconsidered by Congress. The faithful and effective exercise of this momentous duty necessarily requires time in which the President may carefully examine and consider a bill and determine, after due deliberation, whether he should approve or disapprove it, and, if he disapproves it, formulate his objections for the consideration of Congress. To that end a specified time is given, after the bill has been presented to him, in which he may examine its provisions and either approve it or return it, not approved, for reconsideration. The power thus conferred upon the President can not be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly. And it is just as essential a part of the constitutional provisions, guarding against ill-considered and unwise legislation that the President, on his part, should have the full time allowed him for determining whether he should approve or disapprove a bill and, if disapproved, for adequately formulating the objections that should be considered by Congress as it is that Congress, on its part, should have an opportunity to repass the bill over his objections.

It will frequently happen—especially when many bills are presented to the President near the close of a session, some of which are complicated or deal with questions of great moment—that when Congress adjourns before the time allowed for his consideration and action has expired,

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[1] Okanogan Indian Tribes *v.* United States, 279 U.S. 655.

he will not have been able to determine whether some of them should be approved or disapproved, or, if disapproved, to formulate adequately the objections which should receive the consideration of Congress. And it is plain that when the adjournment of Congress prevents the return of a bill within the allotted time, the failure of the bill to become a law can not properly be ascribed to the disapproval of the President—who presumably would have returned it before the adjournment if there had been sufficient time in which to complete his consideration and take such action—but is attributable solely to the action of Congress in adjourning before the time allowed the President for returning the bill had expired.

The term "adjournment" is construed to admit adjournment of intermediate sessions as well as final adjournment.

Nor can we agree with the argument that the word "adjournment" as used in the constitutional provision refers only to the final adjournment of the Congress. The word "adjournment" is not qualified by the word "final"; and there is nothing in the context which warrants the insertion of such a limitation. On the contrary, the fact that the word "adjournment" as used in the Constitution is not limited to a final adjournment is shown by the first clause in section 5 of Article I, which provides that a smaller number than a majority of each House may "adjourn" from day to day, and by the fourth clause of the same article, which provides that neither House, during the session of Congress, shall, without the consent of the other, "adjourn" for more than three days. And the Standing Rules of the Senate refer specifically to motions to adjourn "to a day certain" and the Rules of the House of Representatives to an "adjournment" at the end of one session.

The phrase "within 10 days" is interpreted as referring to calendar days and not legislative days.

There is plainly no warrant for adopting the suggestion of counsel for the petitioners that the phrase "within 10 days (Sundays excepted)" may be construed as meaning not calendar days but "legislative days"; that is, days during which Congress is in legislative session; thereby excluding all calendar days which are not also legislative days from the computation of the period allowed the President for returning a bill. The words used in the Constitution are to be taken in their natural and obvious sense and are to be given the meaning they have in common use unless there are very strong reasons to the contrary. The word "days," when not qualified, means in ordinary and common usage calendar days. This is obviously the meaning in which it is used in the constitutional provisions and is emphasized by the fact that "Sundays" are excepted. There is nothing whatever to justify changing this meaning by inserting the word "legislative" as a qualifying adjective. And no President or Congress has ever suggested that the President has 10 "legislative days" in which to consider and return a bill, or proceeded upon that theory.

The contention that a message could be received by the Congress during recess through the agency of an official of one of the Houses is overruled.

We find no substantial basis for the suggestion that although the House in which the bill originated is not in session the bill may nevertheless be returned, consistently with the constitutional mandate, by delivering it, with the President's objections, to an officer or agent of the House, for subsequent delivery to the House when it resumes its sittings at the next session, with the same force and effect as if the bill had been returned to the House on the day when it was delivered to such officer or agent. Aside from the fact that Congress has never enacted any statute authorizing any officer or agent of either House to receive for it bills returned by the President during its adjournment, and that there is no rule to that effect in either House, the delivery of the bill to such officer or agent, even if authorized by Congress itself, would not comply with the constitutional mandate. The House, not having been in session when the bill was delivered to the officer or agent, could neither have received the bill and objections at that time, nor have entered the objections upon its journal, nor have proceeded to reconsider the bill, as the Constitution requires; and there is nothing in the Constitution which authorizes either House

to make a nune pro tune record of the return of a bill as of a date on which it had not, in fact, been returned. Manifestly it was not intended that, instead of returning the bill to the House itself, as required by the constitutional provision, the President should be authorized to deliver it, during an adjournment of the House, to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks, or perhaps months, not only leaving open possible questions as to the date on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration, which the Constitution evidently intended to avoid. In short, it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the Journal of the House itself, giving public, certain, and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself and not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return of the bill to the House had expired.