In the Court of Claims of the United States; No. H. 121.
Okanogon, et al., Indians v. The United States.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.

1. Petition filed herein Mar. 28, 1927 alleges suit is brought under S.3185,69th Cong, Sess. 1, giving title of Act. Copy of Act appears in petition.
2. This Bill passed both Houses of Congress, Jun.24,1926, and was duly attested by the Presiding Officers of each House "as by law required" and on Jun. 24,1926 was presented to the President, and
3. that the "said bill not being returned by the President within 10 days after it was so presented to him, or at all, the same became and now is a law in like manner as if he had signed it."
4. Demurrer presents one question-whether S.3185 became a law.

5. Art. I,Sec.7,clause 2, of the Constitution of the United States is quoted.
6. Bill was presented to President Jun.24,1926. Jul.3,1926, (eight days thereafter, Sunday excepted) there was a final adjournment of the 1st. session of 69th. Congress.
7. President did not approve the bill. He did not make any return of it to either House. He did not deposit it with the Secretary of State as a Law. When the 69th Congress 2d Sess. convened, Dec.6,1926, no return was made of the bill or objections.

8. Plaintiff contends this made the bill a law. Defendant contends the contrary.
9. This question has not been decided by Federal Courts. Counsel have produced decisions of State Courts and historical precedents.

Analysis.

A. Facts stated by Court.

1. Plaintiffs jurisdictional allegations stated.

2. Legislative history of S.3185 is set forth.

3. Plaintiffs juriddictional averment is stated.

4. Issue at bar stated.

B. Amplified statement of facts.

5. Constitutional provision to be construed is set forth.

6. Facts set forth as to presentation of bill to President, and adjournment of session.

7. Of what the President's action on S. 3185 consisted.

C. Question in issue put.

8. Plaintiffs and Defendants contentions are stated.

9. Question is novel in Federal Courts. There are State decisions and historical precedents.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.

10. Only duty required of the President if he approve a bill is to sign it. (Gardner v. Collector, 6 Wall. 499).
11. If President does not return Bill in 10 days (Sundays excepted) after its presentation to him, it becomes law.
12. Two courses open to President to approve Bill. To sign it, or fail to return it in 10 days exclusive of Sundays. (Gardner v. Collector, supra). No evidence is necessary in latter case to show that President received or considered bill. (Gardner v. Collector, supra)
13. If President does not approve a bill he has 10 days, (Sundays excepted) to return it with his objections.
14. These provisions are not intended to make President Art. I, Sec. 1 of Constitution provides: "All legislative powers herein granted shall be vested in a Congress of the United States."
15. Does not confer peremptory veto, though veto is the term applied to the return of a bill by the President.
16. Story gives reasons why the President should have a qualified veto (Story, sec. 884) Kent says a qualified negat-

Analysis.

D. Constitutional provisions taken up.
(I) To have bill become law.
10. Requirment for Presidential approval stated.
11. Requirment for approval by Presidential inaction stated.
12. Requirment for Presidential approval by signing or by inaction as set forth by the Supreme Court.

D. Constitutional provisions taken up.
(II) To veto a bill.
13. Time within which veto may be returned is stated.

D. Constitutional provisions taken up.
(III) Powers not conferred on the President by these provisions.
14. President not part of law making power.
15. President has no peremptory veto.

D. Constitutional provisions taken up.
(IV) Nature of veto power.
16. Reasons why President should have qualified veto given.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.	Analysis.
ive answers all the purposes of an absolute negative, (Kent, Comm, I, 255).	
17. Knott, J., discussed law making power in Neil's Case, (29 C. Cls., 523). The Court refers to discussion, without committing itself to the conclusions reached in the particular case. President's assent not necessary to enactment of law. His authority is advisory and revisory. If he does not approve he does not forbid. He does not veto in the Roman sense.	17. President's power is advisory and revisory, and not a veto power.
18. He returns a bill with reasons why it should not be a law, reasons which are not fiats. (Neil's Case, supra).	18. President's return of bill to Congress not a fiat.
19. He might have added that the President's assent is not necessary; that if two thirds of each House approve a bill it becomes a law without being again presented to the President.	19. President's assent not necessary to enactment of bill into a law. NOTE: There is no disagreement to the decision up to this point. CONCEDED: J.C.C.
	E. Plaintiffs contentions. (I) Their implications.
20. Plaintiffs contention would seem to imply that if any bill shall not be returned by the President within 10 days (Sundays excepted) after it is presented to him it shall be a law in like manner as if he had signed it, and that this is all that is said.	20. Plaintiff by implication seems to consider that 10 day period allowed President is only provision to be considered.
21. The contention disregards the following phrase: "unless the Congress by their adjournment prevent its return, in which case it shall not be a law."	21. Plaintiff disregards provision relating to adjournment. NOTE: Plaintiffs contention implied no such thing. This statement begs the question. J.C.C.
	E. Plaintiffs contentions. are (II) Discussion concerning.
22. Ten days are provided for the President's deliberation and the proper formulation of his objections.	22. Purpose of 10 days.
23. They are not needed where the President approves a bill or where by his inaction he is	23. When 10 days are not needed.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.	Analysis.
willing that the bill become law. In the latter case it is declared the bill shall be a law,	E. Plaintiffs contentions. (III) When bill shall not be law.
24. and in another category provided for it is just as emphatically declared that the bill shall not be a law, that being where Congress by their adjournment prevent its return.	24. Provision stated.
	E. Plaintiffs contentions. (IV) Adjournment of first session of Congress.
25. Contention is that bill became a law because the adjournment of the Congress which took place within the period of ten days, (Sunday excepted) was only an adjournment of the first session of the 69th Congress,	(a) 25. Contention stated.
26. and the President did not return the bill to the Congress in the next session or	(b) 26. Contention further stated.
27. in the meantime to officers or employees of the House or Senate who may have been in their places and kept it until the Congress was again in session.	NOTE: Incorrect statement. J.C.C.* (c) 27. Contention further stated. *To assert this one must assert that 10 days means 10 legislative days, which assertion is unsound.
	F. Plaintiffs contentions are considered. (1) As to return of bill.
28. Unless we ignore provision for return of bill within 10 days, (Sundays excepted) in case of Presidential objections, it is manifest that he should have lodged it with the officers or employees of Congress, if the contention have merit.	28. President should return bill to Congressional employees if Plaintiffs contention is sound. NOTE: He should, but did not, and thus bill became a law.
29. We look in vain for any requirment that the President return the bill after ten days, (Sundays excepted) shall have expired.	29. No requirement to return bill after ten days. NOTE: Correct.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.	Analysis.
30. Unless the concluding phrase 'in which case it shall not be a law' be ignored, there is no merit in the contention.	30. No merit to contention without ignoring concluding phrase. NOTE: Non seq. and begs the question at issue.
	F. Plaintiffs contentions are considered. (II) As to adjournment.
31. Transmitting a bill to either employees of Congress or to next session of Congress will not vitalize a bill that upon the adjournment the Constitution declares not to be a law.	31. Transmitting bill does not vitalize it upon adjournment. NOTE: Correct, but begs question, and is not applicable to issue here.
32. The attempted distinction between the adjournment of the one or the other session is unsound.	32. Distinction attempted between adjournment of Congress and session is unsound. NOTE: Why? Ipse dixit.
33. The first session of the 69th Congress adjourned several days before the expiration of the 10 day period provided for,	33. Facts in this case stated. NOTE: Correct. What of it?
34. and that was an adjournment of the Congress.	34. Adjournment of session is adjournment of Congress. NOTE: Why? Ipse dixit. This is a major issue of the case, and the Court dismisses it with a declarative sentence.
35. The Constitution does not limit the time of adjournment to the final adjournment at the second session, and the Courts have no right to limit it.	35. Construction of Constitution as to adjournment. NOTE: Constitution is silent as to meaning of word adjournment, which is to be construes according to usage, rules of Congress, precedents, and Court decisions, which is just what the Court has not done so far in this case.
	F. Plaintiffs contentions are considered. (III) The La Abra Case considered.
36. In the LaAbra Case (LaAbra Mining Co. v. U.S., 175 U.S., 423), it was held that a bill signed by the President during a recess of Congress, and within the period of 10 days (Sundays excepted) after it was presented to him became law.	36. President can sign bill during recess of Congress. NOTE: Not controlling in this case.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.	Analysis.
37. but the court pretermitted the the question whether he can sign a bill after the final adjournment of Congress for the session.	37. Court did not touch on the question of adjournment of session. NOTE: It did, but what of it?
38. LaAbra case stated (454) that: The Constitution places approval and disapproval of bills, as to their becoming laws, on a different basis. If the President does not approve a bill he is required within a named time to send it back for consideration. But if by its action, after the presentation of a bill to the President, during the time given him by the Constitution for examination of its provisions and for approving it	38. LaAbra case places approval and disapproval of bill on different bases. NOTE: Correct, What then?
39. Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls and does not become a law.	39. LaAbra case. Effect on bill if Congress puts it out of power of President to return it. NOTE: Does Congress by adjournment of session put it beyond power of President to return a bill? Beyond dogmatic statements in the affirmative the Court has not yet met and answered this question.
	G. Executive precedents.
40. That has been said accords with the early view taken of the effect of an adjournment.	40. Introductory.
41. Nov. 1812, President Madison sent a message to Congress informing them that 'the bill failed failed to become a law because it had been presented to him at an hour too near the close of the session to be returned for reconsideration.'	41. Pocket veto message of Madison. NOTE: This is only Madisons opinion of the Constitutional effect of the adjournment of the session. Congress, not the President should be the judge of its own rules, customs and procedure. A constitutional construction by Congress, long adhered to, will not be overthrown.
42. Jackson took a like course in 1832 with a bill passed at the first session of the Congress, when the Congress had adjourned within the lo day period.	42. Pocket veto message of Jackson. NOTE: Same objection applies as applies to Madisons opinion.

DIGEST AND ANALYSIS OF DECISION.

Digest of Decision.	Analysis.
43. Tyler informed Congress in 1842 that ttwo bills had failed to become laws because presented within the pwriod of ten days (Sundays excepted) but in the mean time the Congress had adjourned.	43. Pocket veto message of Tyler. NOTE: Same objection applies as to Madison and Jackson opinions, nor is it shown that these three opinions are represent the uniform and general opinion of all the Presidents, nor would it matter if that could be shown, as Congress should be the sole judge of matters which concern Congress.
44. As already said we do not find a provision requiring the President to call attention to the fact that the bill has failed to become a law, though in instances mentioned, and perhaps in others such a course has been pursued.	44. No constitutional requirment for pocket veto messages, though the course has been pursued. NOTE: What of it?
	H. Conclusion.
45. It is concluded that the bill in question never became a law, and therefore	45. Bill nver became law.
	I. Judgement.
46. the demurrer should be sustained and the petition dismissed.	46. Demurrer sustained, and Petition dismissed.

Per Campbell, C.J., Moss, J., Graham, J., and Booth J., concur. Green J., took no part in decision of case.

Opinion rendered: April 16, 1928.

Plaintiffs Contention:

Meaning of Art. I, Sec. 7, clause 2, of the Constitution.

If the President approves a bill he shall sign it, within ten calendar days, exclusive of Sundays, after the same has been presented to him, and after signing it shall send it to the Secretary of State to be recorded by him.

If the President disapprove a bill he may return it within ten days, exclusive of Sundays, to the House in which the bill originated, a with a statement of his objections thereto, and said House will spread said objections at large upon their journal, and proceed to reconsider the bill so returned.

STATEMENT OF ISSUES INVOLVED.

Plaintiffs Contention (concluded):

If the President does not sign a bill presented to him, and does not return it to the House in which it originated with his objections thereto, within ten calendar days, Sundays excepted, then the bill becomes a law, the same as if he had signed it,

Unless before the expiration of ten days, exclusive of Sundays, Congress prevent the return of the bill to them by their adjournment, which means by the adjournment of the Congress itself, and not a recess, or an adjournment of a session of the Congress.

In event that the ten days, exclusive of Sundays, expires while Congress is in recess, or in the interim between sessions of the Congress, or should it not be possible to present the message to the House to which sent because engaged in Executive Session, or sitting as a Court of impeachment, or for other resons, then delivery of the returned bill and message to the Secretary of the House to which it is sent is a suffieient return.

The words the House shall enter the objections at large on their journal and proceed to reconsider do not import immediate action by the House, but action in the normal and orderly course of the procedure of the House.

In the case at issue, the President did not approve the bill, and did not return it with his objections to the House of its origin, nor did he have it deposited with the Secretary of State as by law required, nor did he, after adjournment of the first session of the Congress, but before the expiration of the ten days period, return the bill to Congress with his objections by depositing the bill and objections with the Secretary of the House in which the bill originated.

The constitutional provision in question requires two concurrent acts, before the exception in the provision can become operative, the Congress must prevent the return of the bill to the House of its origin, but this is not enough, it must prevent its return by their adjournment, that is to say the joint adjournment of both Houses of the Congress.

Only the final adjournment of the Congress would prevent the return of the bill, under the rules, usages and customs of Congress, and under the understanding and construction placed by Congress upon the Consitutional provision involved, from the beginning of the Government.

The Court in its decision has ignored the authority of Congress to be the judge, within constitutional limits, of its own rules, and has not given proper consideration to the weight to be given to the construction of the constitution and laws by Congress in matters which are within the proper sphere of its activity.

The Court has given too much weight to Executive opinions with

STATEMENT OF ISSUES INVOLVED.

Plaintiffs Contentions (concluded):

regard to matters of construction which are not in the province of the Executive, but are matters for Congress to determine.

Congress is the judge as to whether a recess adjournment is a rising of the two Houses, or a dissolution of the two Houses. Congress has consistently held that adjournment of the session is not a dissolution of the Congress, for on the next session business is resumed as it was layed down at the end of the previous session. Between sessions Congress is existent, but quiescent. At the end of the last session of the Congress, Congress becomes non existent. There is no longer any such political body as Congress.

Therefore between sessions, there is such a political body as Congress in existence, and the agents, servants and employees of such Congress, acting under authority of the Congress are in their places, and can transact as representatives of that politcal body their respective duties.

To such agents, servants and employees, between the sessions, the President can return a bill with his objections thereto, which can be spread on the journal of the House to which it is returned, and reconsidered at the next sitting of such House.

The Consitutional provisions in question do not operate do destroy in this case the principal and agent. There is no Constitutional mandate that the President shall receive in person all bills sent to him by the Congress, nor is it customary for him to do so. There is no mandate that he shall return in person to the House of its origin his objections, nor has such been the custom. There is no mandate that the House to which a bill is return shall personally receive the bill, the House in actual session. While this has been the customary procedure in the past, there is nothing in the Constitution to indicate that the House is compelled to receive the Presidents message while in actual session, and that the Clerk of either House could not properly receive the message and present it to the House at its next session. The only constitutional duty before the House is to spread the message on its journal and proceed to reconsider it, but there is nothing in the Constitution to indicate that the House must do so immediately. Only reference to time in provision is the 10 day limit.

Defendants contention:

That the adjournment of the session of a Congress is an adjournment within the meaning of Art. I, Sec. 7, clause 2 of the Constitution, and as such does prevent the return by the President of the bill and his objections thereon to the House in which such bill originated.

The provision under consideration uses the word adjournment, without any other qualification, and the word adjournment, without any qualification or limitation is applied to the ending of a

STATEMENT OF THE ISSUES INVOLVED.

session of the Congress. The provision requires that when a bill is disapproved by the President, he shall return it with his objections thereto to the House in which it shall have originated, who shall spread the objections at large upon their journal and proceed to reconsider it. The House cannot spread the message upon their journal and proceed to reconsider if the House is not in session. The House therefore cannot take such action between the sessions of the Congress. While it is true that no limitation as to time is placed upon the House as to when they shall enter the objections upon their journal and proceed to reconsider, yet the Congress by its own rules, usages and customs has always taken the attitude that the veto message should be received by the House in Session, and the objections of the President spread at large upon the journal when the message is received. The Congresshas also held that reconsideration of a bill consists in any proper parliamentary procedure with reference to such returned bill and message, under the rules, usages and customs of the House, such as to refer the bill tand objections to a Committee, to table, or to entertain a motion to postpone consideration to a day certain. But it has been the invariable custom to take some action on the bill and objections at once.

If plaintiffs contentions are good, then in the interim between sessions the bill and objections would be returned by the President and lodged with the Secretary of the House of its origin, there to await the next session of Congress, which might be a matter of days, weeks or months. Such delay in consideration of a returned bill and objections thereon does not accord with the interpretation given the Constitution by the Presidents or by the Congress itself. While the Constitution says nothing about immediate consideration of the returned bill with objections, yet the Congress itself has assumed in the past that the message and bill must be received in session, and that some sort of parliamentary action must be taken upon its reception.

The only other theory that plaintiff can go upon, is that the ten days referred to in the provision mean ten legislative days, and not ten calendar days. The effect of such a theory would be to interpret the Consitutional provision as meaning "ten legislative days, exclusive of Sundays, even though Sundays be legislative days, and thus the time would run against the Presidentsreturn of the message with his objections, only when there were legislative days of Congress, and the time would not run against the President when the Congress was adjourned between thes sessions. The application of this theory would mean that in the instant case that if Congress adjourned, say, three legislative days before the time had run against the Presidents return of the bill, with objections, then upon Congress reconvening for the second session, the President would have three legislative days to return the bill with objections to Congress, exclusive of course of Sundays, and regardless of whether a legislative day fell on Sunday.

This construction of the constitutional provision will not hold. Words in the Constitution are to be taken at their ordinary and everyday import and meaning. Legislative day is an entirely

STATEMENT OF ISSUES INVOLVED.

technical word. A legislative day is an artificial period of time, in no way related to a calendar day, but determined as to length by adjournments of a House of Congress, the intermediate periods in such a day being broken up into periodic recesses. Thus Congress might meet December 3, recess the night of December 3, and the meeting held December 4 after the recess would still be the legislative day of December 3, and such legislative day may continue for two or more calendar days. Such days are referred to customarily, not by the name of the week day, but by the calendar date. While the legislative day of December 3 may be the calendar day of December 4, 5 or 6, there is no such thing as the legislative day of Monday, being the calendar day of Tuesday. The word Sundays excepted also indicates that the provision in question referes to calendar days, and the further fact that the provision in question uses the word days, without further restriction or limitation, which the provision would necessarily have to add, if days were meant in an artificial or restricted sense.

If therefore, the Congress has always held to the custom that the bill and objections of the President are to be received by the House to which it is returned while in session, and both the Presidents and the Congress have for a long time agreed that such is the meaning of the mandate shall return with his objections thereto to the House in which the bill shall have originated, ~~it necessarily follows that if the House to which the bill and objections are returned~~ the Court should give the greatest possible weight to such a prectice, on the ground that a construction of the Constitution by Congress, long adhered to, and never questiones, shall not be overthrown.

If the House is not sitting, by reason of having adjourned for the session, the House cannot receive the returned bill and objections, cannot upon receipt enter such objections at large upon its journal, and cannot proceed to take action on the bill and message either by referring them, tabling or postponment to a day certain, and if such House, by reason of its adjournment cannot receive, enter upon its Journal, and proceed to reconsideration, it certainly by its adjournment prevents the return of the bill and objections within the meaning of the Constitutional mandate.

Adjournment of the Congress for the session therefore does prevent the return of the bill with objections of the President within the meaning of the constitutional provision under discussion, and the word adjournment in the provision, qualifiying or restrictive wordds giving it a special or technical sense being absent, must mean adjournment in the ordinay and every day sense of the word~~s~~ as is commonly understood both by the Executive and the Congress, and the Court.

Plaintiffs contention contra.

The bill can be returned with the Presidents objections thereto to the House in which it originated, within the ten day period, exclusive of Sundays, and such return can be properly made even

STATEMENT OF ISSUES INVOLVED.

though the House to which the bill and message are returned is not actually sitting or actually in session. It can therefore be returned in the interim between one session of the Congress and the suceeding session, and should be so returned by the President within the period prescribed, unless he wishes the bill to become law within the constitutional provision controlling.

It is true that rules, usages and customs long adhered to, and involving a construction by Congress of the Constitution should not be overthrown by the Court.

This does not apply to customs which are outside of the constitutional mandate and provisions here involved. Some customs may be essential, but other customs are non essential to the proper execution of the a constitutional mandate by Congress.

The provision under discussion required that when Congress has passed a bill, it shall be presented to the President for his consideration. The word present, used in its ordinary sense, means to bring to his attention personally. The president upon having the bill presented to him, then considers whether or not he will sign it, return it with his objections, or do nothing about it, either by way of signing it or returning it. But if the President objects to the enactment of a bill he shall return it to the House in which it shall have originated with his objections thereon. The word return, as ordinarily used in our language means either to take back in person, or send back by the hands of another. It has a broader meaning than the word present. But the President has only ten days exclusive of Sundays in which to make such return, and this is one limitation on the return. The other is that the bill does not become a law if Congress by its adjournment within the above described time prevent its return.

This brings us to the question, must the House to which the returned bill with objections is sent be in actual session to receive it. We look in vain for any Consititutional mandate requiring the House to receive it in such a manner. The provision only required that the bill and objecteions be returned to the House of its origin. It is held that while it is customary for the House to receive such bill and message in session, such a custom is not essential to the carrying out of the Constitutional mandate in the provision. The bill and objections could be received by the House of its origin when not in session through its Clerk.

If this is so, how then is the mandate to be carried out that the House shall spread the objections at large upon their journal and proceed to reconsider. There is nothing in the context here to indicate a mandate on the House to wich such retrun is made to proceed immediately to spread the objections on their journal and proceed to reconsider the bill thus returned. The only time limit in the provision under discussion is the ten day limit. Where no words, such as immediately, at once, or words indicative of action to be taken within a certain time are used in this

STATEMENT OF ISSUES INVOLVED.

provision, and where on the other hand, a time limit was placed in the same provision, in regard to the ten day period allowed the President, we are justified in concluding that the words shall spread the objections at large upon their journal and proceed to reconsider, only place the duty on the House to which the bill and message is returned to spread the objections on their journal and proceed to reconsider, not at once, but in the due and orderly course of the transaction of their business. If therefore the return is made between sessions, the bill and message shall be taken up when the succeeding session convenes, and then spread upon the journal and be taken up for reconsideration by the House. Meanwhile, the Clerk of the House to which return is made is the proper custodian as agent for the House, to keep the bill and objections until the House reconvenes for session.

It is to be noted that the mandate in the provision relating to the return of the bill placed no restrictions as to the manner of the return, or the manner of reception by the House to which return is to be made. Plaintiff contends that where a session adjourns, the ten day period ~~////////////~~ not having elapsed, that such period continues to run for its unexpired term during the interim of the sessions, that during such interim the House of Congress to which return should be made while quiescent, is existent, and that, unless the President wisheds a bill to become law without his signature under the Constitutional provision, he must in such interim between sessions send the bill, with objections, back to the Clerk of the House in which it has originated.

Some usages of the House are essential, others unessential. No one would contend that if Court opened without the summons of the crier, that proceeding held during that session, all other matters being valid, would thereby become void. Or that removal of the snuff boxes from the Senate, or the quill pens from the Supreme Court would in any way effect the validity of proceedings in these two bodies. The custom thereofre of the Congress, of having the House receive the Presidents objections with returned bill, in actual session, is a usage, but not an essential one to be considered in the Construction of the constitutional provision under consideration.

It is essential however, to consider the laws, rules, usages and customs relating to the effect upon Congress of a session adjournment, and whether such session adjournment in the view of Congress so terminates the session as to prevent the retirn of the bill and objections. As stated before a session adjournemnt, according to the rules, usages and customs of Congress is nothing but a prolonged recess. During such time there is all the mahinery present and in active operation necessary to receive for Congress such matters in which Congress is interested. All bills are alive, all officers of the Congress in the interim between sessions have authority to act for the Congress.

It is a far different situation on final adjournment. All bill die. All committees cease. The Speaker and President Pro Tempore, and other officers, than those who hold office by statute, go out of offi ce.

STATEMENT OF ISSUES INVOLVED.

There is no longer any such political entity as Congress. Again while one session of the Congress may bind a succeeding session, one Congress cannot bind a succeeding Congress. There is no relation or affinity between say the 69 and 70 Congress, But there is between the 70 Congress 1 session and 70 Congress 2 session.

ISSUE. In the instant case, did Congress by its adjournment July 3, 1926, prevent the return by the President to the House in which it originated, with His objections, S. 3185, the ten day period exclusive of Sundays, not expiring before July 5. In other words did the adjournment of Congress prevent the Presidents return, such adjournment being an adjournment of the first session of the Congress.

DECISION; The digest and analysis heretofre given, sets forth the decision of the Court. In this the Court seemed to hold, ipse dixit, and on the strength of the action of three Presidents, but without considering the provisions of the Constitution as a whole, the rules usages and construction placed upon the Constitution by Congress, or the destructive effect of such a construction upon other important provisions of the constitution, that the adjournment of the session of a Congress was an adjournment such as would prevent the return of the legislation within the meaning of the Constitutional provision under consideration.

FROM SUCH DECISION; The Plaintiffs on June 9, 1928, filed a motion for new trial, rehearing and review, a digest of which Motion follows:

(SEE NEXT PAGE)

SUMMARY OF MOTION FOR NEW TRIAL.

I.

But three member of the Court heard and considered this case, and four members of the Court joined in the rendition of the decision and judgment complained of.

II.

The constitutional question involved herein is of sufficient importance to justify a rehearing of the case en banc by the entire Court.

III.

The Court erred in failing to give due consideration to the fact that the veto power in Federal Constitution is derived from existing State Constitutions.

IV.

The Court erred in failing to give due consideration to the fact that in the absence of decisions on the identical question by Federal Courts weight should be given to the decisions of State Supreme Courts cited by petitionars, on the same question.

V.

The Court erred in failing to give consideration to the true purpose of the veto provision in the Constitution, which is revisionary, and not intended to give President the power to defeat legislation.

VI.

The Court erred in failing to give consideration to the true purpose of the ten.day limitation provision, which is solely to insure prompt revision and to prevent the defeat of legislation by the neglect of the President to return bill submitted to him.

VII.

The Court erred in failing to give consideration to the true purpose of the exception clause "unless the Congress by their adjournment prevent its return, in which case it shall not be a law," which purpose is solely to prevent a defeat of the President's desired revision or consideration of the legislation by final sine die adjournment of the Congress as an existing legislative body.

VIII.

The Court erred in failing to give consideration to the object and purpose of the return of the bill, which is the reconsideration of the legislation with the President's specific objections thereto.

IX.

The Court erred in failing to give consideration to, and full force and effect to, the intent of the language of the Constitution which is "prevent its return" and reconsideration.

X.

The Court erred in failing to give consideration to what adjournments of the Congress have the effect of wholly preventing subsequent reception of Presidents objections to legislation and reconsideration by Congress of such objections, thereby thwarting the revisionary intent of the provision, and preventing return of legislation within the true meaning and intent of those who framed the Constitution.

XI.

The Court erred in failing to consider theprovisions of the Constitution as a whole, and in not determining the meaning and intent of its framers, and in not making a construcyion of the Constitution in harmony with the meaning and intent of the Constitution as a whole.

XII.

The Courts decision is repugnant to the true meaning and intent of the Constitution for it defeats the general putpose of the veto clause, which is the revision of hasty legislation.

XIII.

The Courts decision is repugnant to the true meaning and intent of the Constitution forit was the intent of the Constitiution that no absolute veto power be conferred on the President.

XIV.

The Courts decision is repugnant to the true meaning and intent of the Constitution for it gives to the Presidents silence and inaction greater force and power than the Constitution confers by his written objections to legislation. passed by a majority of Congress, while such Congress still exists as an organized, existing and functioning legislative body.

XV.

The Courts decision is repugnant to the true meaning and intent of the Constitution for it deprives the Congress which passed the legislation of the right to know the Presidents specific objections to such legislation, duly passed by a majority of the Congress, while such Congress still exists as an organized, existing and functioning legilative body.

XVI.

The Courts decision is repugnant to the true meaning and intent of the Constitution for it deprives the Congress of their right to

reconsider the bill and the Presidents objections, and to revise the legislation in confomity with the objections or pass it over the same.

XVII.

The Courts decision is repugnant to the true meaning of the Constitution for it is in derogation of and repugnant to the Constitutional right of the House which passed the legislation, and the Congress, to reasonable temporary adjournments and recesses during its continued existence as an organized legislative body, and before final adjournment of the Congress.

XVIII.

The Court erred in holding that the Presidents act in considering approving and disapproving legislation was not a legislative power and act. The act is a legislative act.

XIX.

The Court erred in holding that presentation and receipt of the bill by the President and return and receipt of the bill and objections by Congress must be made directly by and to Congress and the President, without use of intervening and duly authorized agents, when the Constitution places no such restrictions upon either the President or Congress.

XX.

The Court erred in holding in effect that return to "that House in which the bill originated" can only be made direct to that House in active legislative session, and that temporary recess or adjournment of that House, or both Houses for the session is an adjournment of Congress within the meaning of the Consitutional mandate.

XXI.

The Court erred in holding to a unilateral construction of the consitutional provision considered, giving only the construction of a few Presidents, not concurred in by others, and ignoring the construction of Congress, or the intent and meaning of the provision of the Constitution itself.

Motion is presented on original briefs and authorities therein cited, to be supplemented by oral argument of counsel on filing and presentation of motion.

William S. Lewis,
Attorney for Petitioners.

Abram R. Serven and
John G. Carter,
Of Counsel.

OUTLINE OF BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL AND REHEARING.

INTRODUCTORY:

A new trial, rehearing and review of this case should be granted;

I.

ONE MEMBER OF THE COURT JOINED IN THE RENDITION OF THE DECISION WHO DID NOT HEAR THE CASE ARGUED.

II.

CONSTITUTIONAL QUESTION INVOLVED IS OF SUCH PUBLIC IMPORTANCE THAT A HEARING BY THE COURT EN BANC SHOULD BE HAD.

III.

THE COURT DID NOT CONSIDER THAT THE VETO PROVISION IN THE CONSTITUTION IS DERIVED FROM STATE CONSTITUTIONS.

IV.

THE COURT DID NOT GIVE DUE WEIGHT AND CONSIDERATION TO THE DECISIONS OF STATE COURTS IN IDENTICAL CASES.

V.

THE COURT DID NOT CONSIDER THE TRUE PURPOSE OF THE VETO PROVISION WHICH IS ONLY REVISIONARY, NOT ABSOLUTE.

VI.

THE COURT DID NOT CONSIDER THE PURPOSE OF THE TEN DAY LIMITATION WHICH IS SOLELY TO INSURE PROMPT REVISION.

VII.

THE COURT DID NOT CONSIDER THE TRUE MEAINING OF THE ADJOURNMENT PROVISION WHICH IS SOLELY TO PREVENT DEFEAT OF PRESIDENT'S DESIRED REVISION OF LEGISLATION.

VIII.

THE COURT DID NOT CONSIDER THE PURPOSE OF THE RETURN OF LEGISLATION, WHICH IS RECONSIDERATION OF BILL BY CONGRESS.

IX.

THE COURT DID NOT CONSIDER THE FULL FORCE AND EEFECT OF THE WORDS PREVENT ITS RETURN AND RECONSIDERATION.

X.

THE COURT DID NOT CONSIDER WHAT ADJOURNMENTS OF THE CONGRESS DID PREVENT THE RETURN OF LEGISLATION.

XI.

XI.

THE COURT DID NOT CONSIDER THE PROVISIONS OF THE CONSTITUTION AS A WHOLE AND THE INTENT OF ITS FRAMERS.

XII.

THE COURTS DECISION DEFEATS THE GENERAL PURPOSE OF THE VETO CLAUSE WHICH IS REVISION OF LEGISLATION.

XIII.

THE COURTS DECISION CONFERS AN ABSOLUTE VETO POWER ON THE PRESIDENT, NOT CONFERRED BY THE CONSTITUTION.

XIV.

THE COURTS DECISION GIVES THE PRESIDENT'S SILENCE AND INACTION GREATER WEIGHT THAN HIS WRITTEN OBJECTIONS.

XV.

THE COURTS DECISION DEPRIVES THE CONGRESS WHICH ENACTED LEGISLATION OF THE RIGHT TO KNOW THE PRESIDENTS OBJECTIONSNS.

XVI.

THE COURTS DECISION DEPRIVES THE CONGRESS OF THEIR RIGHT TO RECONSIDER A BILL AND THE PRESIDENTS OBJECTIONS THERETO.

XVII.

THE COURTS DECISION IS IN DEROGATION OF THE CONSTITUTIONAL RIGHT OF THE HOUSE WHICH PASSED THE LEGISLATION TO TEMPORARY ADJ ADJOURNMENTS AND RECESSES.

XVIII.

THE PRESIDENTS ACT IN APPROVING OR DISAPPORVING LEGISLATION IS A LEGISLATIVE ACT.

XIX.

RECEIPT OF BILL BY CONGRESS, OR RETURN OF BILL AND OBJECTIONS TO CONGRESS NEED NO BE MADE DIRECTLY.

XX.

BILL NEED NO BE RETURNED WITH OBJECTIONS TO HOUSE OF ORIGIN DIRECTLY TO THAT HOUSE IN ACTUAL SESSION.

XXI.

THE CONSTRUCTION PLACED BY CONGRESS UPON THE CONSITUTIONAL PROVISIONS INVOLVED, BEING WITH IN THEIR PROPER SPHERE, AND LONG ADHERED TO SHOULD NOT BE OVERTHROWN BY THE OPINIONS OF A FEW PRESIDENTS, NOT CONCURRED IN BY OTHER PRESIDENTS.

CONCLUSION.

Analysis of Decision of Court of Claims

Okanogan et al, Indians v. United States.

H. 121.

Digest of Decision

A. Facts.

Petition filed herein Mar. 28, 1927, alleges that suit is brought under S. 3185, 69th Cong. 1st Sess. Title of act given. A copy of Act appears in petition.

This bill passed both Houses of Congress June 23, 1926, and duly attested by presiding officers of each House "as by law required" and on June 24, 1926 was presented to President and that "the said bill not being returned by the President within 10 days after it was so presented to him, or at all, the same became and now is a law in like manner as if he had signed it."

Decision presents one question whether S. 3185 became law.

B. Amplified Statement

Art. I, Sec. 7, Clause 2, Constitution of United States is quoted.

Bill presented to President June 24, 1926. July 3, 1926 (eight days thereafter, Sunday excepted), there was a final adjournment of 1st Session of 69th Congress. President did not approve the bill. He did not make any return of it to either House. He did not deposit with the Secretary of State as a law. When the 69th Cong. 2nd Sess. convened in 1926 no return was made

Analysis

A. Facts.

1. Jurisdictional allegations set up. S. 3185.

2. Legislative history of S. 3185 given.

3. Allegation by which validity of S. 3185 as a law is stated.

4. Question stated.

B. Amplified Statement

5. Constitutional provision to be construed is set forth.

6. Presidents action on S. 3185 stated.

7. As to what the President's action consisted.

Digest of Decision	Analysis
of the bill or objections.	
C Question	C. Question
8 Plaintiffs contends this made the bill a law. Defendants contends the contrary.	8. Question put.
9. This question has not been decided by the Federal courts. Parties have produced historical precedents and decisions by state courts.	9. Is a novel question in Federal courts. There are historical precedents and state decisions.
E.	E.
Const. provision taken up. I To have bill become a law.	Constitut. provision considered. I To have bill become a law.
10 Only duty required of President if he approve a bill is to sign it. 6 Wall. 499.	10. Presidents duty if he approve a bill is stated on auth of Gardner v. Collector 6 Wall 499.
11. If President does not return bill in 10 day (Sundays excepted) after presentation it becomes law.	11. Constitutional provision regarding bill becoming law if President does not return it - stated.
12. Two courses open to President to approve a bill. Sign it, or fail to return it in 10 days, exclusive of Sundays. Gardner v. Collector. No evidence necessary in either case to show president received bill. Gardner v. Collector.	12. Gardner v. Collector quoted as to two courses by which president can have a bill become law which not necessary to show President actually received or considered bill.
II To veto a bill	II To veto a bill.
13. If President does not approve a bill he has 10 days (Sundays excepted) to return it with his objections.	13. Time limit within which veto may be returned stated.

Digest of Decisions	Analysis
D III	D III
Powers not conferred on President by these provisions	Powers not conferred on President by these provisions
14 These provisions not intended to make President part of law making power. Art 1 sec 1 Constit provides "all legislative powers herein granted shall be vested ie a Congress of the United States."	14. He is not part of law making power. Legislative power in Congress. Art 1 sec 1 Const. quoted. 1 Burton v. U.S. 202 U.S. 344-367.
15 Does not confer peremptory veto, though veto is term applied to return of a bill by President	15. Has no peremptory veto.
D IV Nature of veto power	D IV Nature of veto power,
16. Story gives reasons why President should have qualified veto. Kent says a qualified negative answers all the purposes of an absolute one.	16. Reasons President should possess qualified veto stated. Story sec 884. Kent Comm, 1- 255, Nott J. in Weils case 29 C.Cl. 523.
17. Knott J. discusses law making power in Weils case which court refers to without committing itself to its conclusions reached in particular case. President's assent not necessary to enactment of law. His authority is advisory and revisory. He does not approve he does not forbid. He does not veto in the Roman sense.	17. President's power is advisory and revisory. It is not a veto power.
18 He returns a bill with reasons why it should not be law, reasons which are not fiats. Weils case.	18 President's return of bill to Congress an appeal to reason of Congress not a fiat.
19	19

Digest of Decisions	Analysis
19. He might have added that president's assent is not necessary that if two thirds of each House approve bill it becomes a law without being again presented to president.	19. Presidents assent not necessary to enactment of bill into law.
E	II E
Discussion Plaintiffs Contentions	Discussion Plaintiffs Contentions
20 Plaintiffs contentions would seem to imply that if any bill shall not be returned by the president within 10 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. is all that is said	20. Seem to imply that if president does not return bill in 10 days (exclusive of Sunday) it becomes law — is all that is said.
21 Contention disregards following phrase 'unless the congress by their adjournment prevents its return, in which case it shall not be a law.'	21 Plaintiff disregards words following which court gives
E D II	E D 21
Purpose of ten days	Purpose of ten days
22 Ten days provided for Presidents deliberation's proper formulation of his objections	22 For deliberation
23 Not needed where he approves a bill or where by his inaction he is willing that bill become law,	23 When not needed,

Digest of Decision	Analysis.
In the latter case it is declared the bill shall be a law	
E IV	E IV
When a bill shall not be a law	When a bill shall not be a law.
24 and in another category provided for it is just as emphatically declared that the bill shall not be a law, that being where congress by their adjournment prevent its return.	24 Provision stated
F IV	F IV
Adjournment only of 1st Session	Adjournment only of 1st Session
25 a Contention [illegible] bill became a law because the adjournment of the congress which took place within the period of ten days (Sunday excepted) was only an adjournment of the 1st Session of the 6th Congress	25 a Contention stated.
26 b and the president did not return the bill to the congress in its next session or	26 b Contention further stated
27 c in the meantime to officers or employees of the House or Senate who may have been in their places and kept it until the congress was again in session	27 c Contention further stated

Digest of Decision	Analysis
F.	F.
Plaintiffs contentions considered	Plaintiffs contentions considered
5 Unless we ignore provision for return of bill within [illegible] days (Sundays excepted) in case of presidential objection, it is manifest that he should have to get it with those officers of employees of contention have merit	28 President should have returned bill to Congressional employees if Plaintiffs contention is sound.
9 We look in vain for any requirement that President return bill after 10 days (Sundays excepted) shall have expired.	29 No requirement to return bill after 10 days.
0 Unless the concluding phrase in which case it shall not be a law be ignored, there is no merit in the contention.	30 No merit to contention without ignoring other phrase.
F. 1 Adjournment	F. 1 Adjournment
31 Transmitting bill to either employee or to the [illegible] will not vitalize a bill that that upon the adjournment the [illegible] declares not to be a law.	31 Transmission of bill does not vitalize it on adjournment.
2. The attempted distinction between adjournment of one or the other session is unsound.	32 Distinction between adjournment of Congress [illegible] unsound.
33 The first session of 69th Congress adjourned several days before the expiration of the 10 day period	33 Facts in instant case stated.

Digest of Decision	Analysis
provided for,	
34 and that was an adjournment of the Congress.	34 Statement. adjournment of Sessions is adjournment of Congress
35 The constitution does not limit the time of adjournment to the final adjournment at the second session, and the courts have no right to limit it.	35 Construction of constitution as to adjournment
36 In La Abra case it was held that a bill signed by the President during a recess of the Congress within the period of 10 days (Sundays excepted) after it was presented to him becomes law.	36 But President can sign a bill during recess (La Abra v. U.S. 175 U.S. 423)
37 but the court determined the question whether he can sign a bill after the final adjournment of Congress for the session.	37 La Abra case distinguished - it did not consider adjournment.
38 La Abra opinion stated (454) The constitution places approval and disapproval of bills, as to their becoming laws on a different basis. If President does not approve a bill he is required within a named time to send it back for consideration. But if by its action, after the presentation of a bill to the president, during the time given him by Constitution for	38 La Abra case places approval & disapproval by President on different basis

Digest of Decision	Analysis
Examination of its provisions & for	
39 approving it, congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill fails & does not become a law.	39 Tallahassee – Effect on bill if congress puts it out of power of president to return it.
Pt.	Pt.
Presidential precedents	Presidential precedents
40 What we have said accords with early view taken of the effect of an adjournment.	40 Introductory.
41 Nov. 1812, President Madison sent message to Congress informing them that the bill failed to become a law because it had been presented to him at an hour to wear the close of the session to be returned for re-consideration.	41 Madison pocket veto stated.
42 Jackson took a like course in 1832 with a bill passed at 1st session, Congress had adjourned within 10 day period.	42 Jackson pocket veto stated.
43 Tyler informed Congress in 1842 that two bills had failed to become laws because presented within the period of ten days (Sundays	43 Tyler pocket veto stated.

Digest of Decision	Analysis
excepted) but in the meantime the Congress had adjourned.	
44 As already said we do not find a provisional finding the president to call attention to the fact that the bill has failed to become a law, though in instances mentioned & perhaps in others such course was pursued.	44. No constitutional requirement for pocket veto message, though course has been pursued.
45 Concluded that bill in question never became a law and therefore	45 Conclusion.
46 the demurrers should be sustained & petition dismissed.	46 Judgement.

per Campbell C. J.
Mors J. Graham J and Booth J Concur.
Gren J took no part in decision of case.