Editorials

Unless otherwise indicated, Editorials are attributable to the Managing Editor

This Issue

On the fly-leaf of a volume of essays on political philosophy, the noted Savoyard philosopher, Joseph de Maistre, inscribed the following words (as I have freely rendered them into English): "It is necessary for rulers to learn the utility of liberty and for the people to learn the utility of authority." In these words he has strikingly set forth the age-old problem of government, namely the nice adjustment of the balance between authority that is necessary in any human society and individual liberty which is necessary for human happiness. We in the United States have thought that the best way to obtain this neat adjustment was by means of a federal form of government, under which a central government should be empowered to deal with those matters concerning all and various local governments be charged with matters concerning the individuals in the locality. We have tried to avoid the pitfalls of both extremes, excessive individualism and overcentralization.

But, as Congressman Beck points out,

> Centuries are still before America; and who can safely say, if it becomes too centralized for efficient government, that one day there may not be a powerful movement toward disintegration, especially if there develop between the sections powerful economic conflicts of policy. . . . For more than a century the tendency of America has been to consolidate; but let us remember that, if the movement proceed too far, the tendency to disintegrate will begin.

And this dire possibility did not escape the discerning eye of Ambassador Child in far-off sunny Italy, where authority is rampant. He says that we can not escape the issue whether the best government is long-distance government or short-distance government and that centralization of government can not be stopped by political means unless behind it all there is the social force of our realization of where we are going and what we are willing to do in the way of fulfilling our community obligations. He points out that much of the centralization comes about through legislation by amend-

> No one is in favor of child labor, but those who opposed successfully the ratification of that amendment to the Constitution were made to appear as heartless men and women who wanted little children to be robbed of their childhood. What stuff and nonsense! The reason the child-labor amendment was not ratified was that it opened the door to a whole philosophy and practice of Federal interference. . . . It would have started us on a pathway leading to a hideous paternalism which might have regulated home, mother and hearth, what to wear, eat, say, do and think.

How much better it is "to make progress slowly," as Secretary Mellon puts it, "where the liberties and the very life of the people are concerned." He would "give economic forces freedom and help the country cure itself" of the ills from which it may be suffering. Although he has very great respect for the govern-

ment and its organization, he realizes that the success of the government "depends upon the understanding and cooperation which it receives from its own people."

All three of the writers just mentioned have emphasized the role of the individual in successful government, but Representative Beck goes a step farther when he makes a plea that the people themselves become interested in the constitutionality of laws before they are passed. In line with this thought, we present in this issue the article by Professor Rankin on the constitutional basis of martial law, a necessary part of the machinery of government in times of great stress.

We trust that the number of letrs from our readers which are inted in this issue will inspire ers to take that lively individual rest in what appears or what would like to see appear in their magazine by following the example set for them.

The Pocket Veto

Under this popular title is embraced a question of fundamental importance which the Supreme Court of the United States has under consideration concerning the relationship of the executive to the legislative power under the Constitution. Senate Bill No. 3185, 69th Congress, First Session, entitled "An Act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims", was passed by both houses of Congress, was properly authenticated, and on June 24, 1926, was presented to President Coolidge for his consideration. On July 3, 1926, just eight days thereafter, Sundays excepted, the House of Representatives "adjourned *sine die*" and the Senate "adjourned until 12:30 o'clock p. m., Wednesday, November 10, 1926."[1]

Article I, Section 7, Clause 2, of the Constitution reads 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, 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. 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.

It so happened that President Coolidge did not approve the bill so presented to him; he did not deposit it with the Secretary of State as a law; he did not return the bill with objections to that house where it originated within ten days or at all. The legislation was simply ignored, or

[1] *Congressional Record*, vol. 67, pt. 11, pp. 12885, 13009, 13100.

"pocket vetoed." And therefore the Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington, taking the position that the bill had thereby become a law, filed a petition in the Court of Claims in accordance with the terms of the bill. The United States demurred on the ground that the bill had never become a law. The court sustained the demurrer and dismissed the petition. A rehearing was denied, and on January 21, 1929, the Supreme Court granted a writ of certiorari.

The case became No. 565 on the docket of the Supreme Court for the October term, 1928, and the Hon. Hatton W. Sumners, a member of the Committee on the Judiciary of the U. S. House of Representatives, pursuant to a resolution of that Committee, presented a motion for leave to file a brief in the case as *amicus curiae*. The statement of the question and the arguments presented herewith are taken almost verbatim from the brief of the petitioners, the brief of the *amicus curiae* and the brief of the United States, respectively.

The Brief of the Petitioners

The petitioners, after conceding that, under the language of Article 1 quoted above, bills presented to the President within ten days of the *final* adjournment of the Congress do not become laws unless signed by the President, frame the question to be decided by the Supreme Court as being whether a temporary adjournment of the Congress, other than this final adjournment terminating the legislative existence of the Congress that passed the bill, existing at the expiration of the ten days allotted the President for his consideration thereof, prevents his return of the bill so that it then fails to become a law under the quoted language of the Constitution. The precise question therefore is whether the adjournment of the 69th Congress for customary summer recess on July 3, 1926—eight days after the bill, S. 3185, was presented to the President—prevented the President's return of the bill within ten days to the house in which it originated, within the meaning and intent of the language of the exception clause of the Constitution.

In construing the language of Article 1, the petitioners urge [illegible] points. First, each Congress is a single entity and its sessions have a practical entity. Bills referred to a ference at one session can be re to Congress at the next,[1] and where one house asks for a conference at one session, the other house can agree to it at the next session with no further action by the other branch.[2] Finally, bills enrolled and signed by the presiding officers of the two houses at the close of a session have been sent to the President and approved at the beginning of the next session.[3] A vetoed bill not acted on before adjournment of a session was acted on at the next session of the Congress.[4]

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[1] Hinds, *Precedents*, vol. V, secs. 6260-6262.

[2] *Id.*, vol. V, sec. 6286.

[3] *Id.*, vol. V, secs. 3487-3488.

[4] *Id.*, vol. IV, sec. 3522.

Secondly, the ten days limitation in the Constitution is susceptible of two constructions, i. e., ten calendar days or ten legislative days, but contemporary judicial construction of the similar words, as used in the Massachusetts constitution, from which the Federal provision was drafted, is found in the *Opinion of the Justices*,[5] holding that this language refers to days of active legislative sittings:

> If . . . such bill or resolve lays more than five days before the adjournment, and so many days of the court's sitting upon the adjournment, as will make up the full term of five days, without the Governor's returning the same, with his reasons for not approving it, we conceive such bill or resolve has the force of law; for all the days of the court's sitting are but one session, although an adjournment intervenes.

Thirdly, the final adjournment of the Congress may be a voluntary adjournment prior to March 3 of odd numbered years. The framers of the Constitution, by fixing the date for the assembling of the First Congress on the first Monday in December, merely fixed a tentative date for the meeting of subsequent Congresses. The Congress, should it so choose, may by enactment convene on the first Monday of March instead of December, in each year, and may adjourn *sine die* and finally dissolve at any date the two houses may fix prior to March 3 of odd numbered years. Hence, under the Constitution, the final adjournment of the Congress may be a voluntary action on its part, rather than the date of the expiration of the tenure of its members.

Fourthly, the distinction between all adjournments of the Congress other than final adjournment is one of duration and nomenclature only. After adjournment for the remainder of the day, or for a day, or for a longer period, as the Christmas recess, or for the summer recess between two sessions of the same Congress, the Congress resumes its business precisely where left off, without any difference occasioned by duration of the recess. During temporary adjournment each house has officers who represent it in purely clerical and administrative capacities, and during suspension of active legislative sittings, whether for the remainder of the day or for the summer recess, such officers can act for it in the reception, recording, filing and custody of its returned bills and accompanying objections which the President would return within any portion of the ten days falling in such recesses.

Fifthly, the exception is not "unless the Congress adjourn," or "unless that House adjourn" within the allotted ten days; the exception is "unless the Congress by their adjournment prevent its return." The modifying possessive adjective and verb are both in the plural, indicating that "the Congress" shall, as used, be understood in the plural sense as denoting the concurrent adjournment of the two houses of the national legislature. The word "adjournment" has not the exclusive meaning that attaches to the word "prorogation." Therefore consideration must be given here to the idea of an adjournment—not all adjournments—but

[5] 3 Mass., 567 (1791).

one that will "prevent its return." The only adjournment that will prevent the return of the bill with the President's objections, within the fair meaning and intent of the veto provision and the quoted exception clause, is such adjournment as wholly defeats the revisionary intent and purpose of the veto clause.

Sixthly, adjournment of "that House" is not an adjournment of the Congress, and is not within the exception of the quoted language. Even under the construction ten calendar days, Sundays excepted, return must still be made to "that House," although it alone may be temporarily adjourned for the remainder of the day, or a longer period, the Congress being yet in active legislative session and unadjourned. The adjournment referred to is not the adjournment of a particular house; it is an adjournment of "the Congress." If the President within ten days may communicate with "that House" while its active legislative operations are in a state of suspense from one day to another, or from one day to two or three, by returning and depositing the papers that the Constitution gives him the right to return within the ten days, with the responsible officers of "that House," such officers may receive and care for the same in like manner as the other records of "that House," to be taken up with its other unfinished business when that house again resumes its active legislative sittings. Consequently, recess or temporary adjournment of "that House" alone will not in any way mitigate against the operation of the ten-day rule declaring all bills to be laws at the expiration of ten days in the absence of return.

Seventhly, the President's power and duty with respect to the return requires that the bill be returned, if return can be made. The Executive, under the veto provisions, was simply made an instrumentality for the revision of hasty or ill-considered enactments. It was never the intention that the President's inaction should in any way defeat legislation entirely. It was to guard against that very abuse that the ten-day clause was inserted, and the single exception is limited to an act of the Congress itself defeating the revisionary purpose of the whole veto clause and any return of the bill and objections by a final adjournment of the Congress within the allotted ten days. The effect is to leave the bill not a law, but as unfinished business which dies with the final adjournment of the Congress. No act or situation of the President can prevent the bill becoming a law, if unreturned in ten days; no other obstacles imposed by the Congress, and no other act of the Congress or of "that House" in refusing to accept or in impeding such return can prevent the bill becoming a law in ten days if unreturned by the President, "unless the Congress by their adjournment prevent its return."

Eighthly, the object and purpose of the return of the bill is wholly defeated by the "pocket veto." It was the intention of those who framed and adopted the Constitution that all presidential vetoes should include the reasons for the refusal to sign, and

if the President fails to approve a bill he is required, by the plain language of the instrument, "to return it with his objections." The sole object and purpose of this return of the bill is to again place the legisaltion before the Congress for reconsideration, with the objections, in fulfillment of the revisionary intent and purpose of the veto clause. This object and purpose may reasonably be accomplished so long as the Congress continue to exist as a legislative body capable of reconsidering the bill and of passing upon the President's objections. Such action by Congress may be taken at any time before final adjournment.

Ninthly, the duty and ability to return the bill to "that House" is not changed by a concurrent recess of the Congress. If return may be made to "that House" during its temporary recess, then the same return may be made and the whole object and purpose of "the return" may still be accomplished though "the Congress" be in adjournment for a day, or over a holiday, or over the Christmas holidays, or for the summer recess. Temporary recess and suspension of active legislative sittings of the Congress before the expiration of the ten days can thus neither prevent a return nor defeat the intent and purpose of the veto provision, where return may be made in ten days to "that House" in its temporary recess.

Tenthly, the return of the bill is simply the act of the President in divesting himself of further custody and control of the bill and replacing it, with his objections, in the actual or constructive control of the Congress. The presentation of bills to the President and his return of the same for revision are simply a process in legislative procedure like the handling of bills in committee, or in conference, or by the separate houses. It is not necessary that each house be actually sitting in active legislative session during every hour or day that the other house sits, or while its committees function, or while the Executive considers its legislation. The requirement for the return may be fully satisfied by return and delivery of the bill and objections to a responsible officer of "that House," vested and clothed with the care and custody of its records and bills. Such return again accords the Congress, vested with sole legislative power, full potential power and control over the legislation that the President does not approve of and does not desire to become a law under the ten-day clause.

On the other hand, the petitioners allege that legalizing the application of a "pocket veto" to the legislation of an existing and continuing Congress during the temporary recess of its legislative sittings would be in violation of the Constitution in the following respects:

(1) It is an unwarranted interference with the exclusive legislative power of Congress.

(2) It prevents consideration by Congress of the reasons on account of which the legislation is objectionable to the Executive.

(3) It prevents such corrective modification of the legislation as may commend itself to the mind of Congress.

(4) It constitutes an absolute prohibition against such legislation by the Executive, who is denied that power by the Constitution.

(5) It deprives Congress of its constitutional right to pass such a bill over the President's objections by two-thirds vote of both Houses.

(6) It is antagonistic to and defeats the revisionary intent and purpose of the veto clause.

(7) It defeats the very intent and purpose of the ten-day clause to which it is attached, the purpose of which was to prevent any defeat of legislation by the non-action of the President, and, by the construction adopted, the precise abuse sought to be guarded against is permitted.

(8) It is in derogation of the reasonable exercise of the right of the Congress and of the Houses thereof to recess adjournments without jeopardizing or defeating their legislative acts.

(9) It ignores the plain meaning of the words; i. e., a prevention of return caused by adjournment.

(10) It unnecessarily defeats the clear intent that unreturned bills should become laws at the expiration of ten days, if it is reasonably possible for the President to return them to Congress.

(11) It thus unnecessarily and unreasonably obstructs and delays legislation.

(12) If legislation is to be enacted on the subject, it requires the Congress to again reenact the identical bill, without formal knowledge of the reasons why the President withheld his approval from the prior enactment; and though two thirds of each House reenact it, the second bill may be likewise "pocket vetoed" should the Congress for any reason recess on the tenth day.

The Brief of the Amicus Curiae

The friend of the court, Representative Sumners, filed an excellent brief supporting in the main the contentions of the petitioners. In his opinion, the construction in favor of a pocket veto is at variance with the general plan of the Constitution, which indicates the importance of the President's opinion upon proposed legislation, but lays more stress upon the importance of avoiding delay in legislation. Such a construction in effect would eliminate the word "prevent", whereas the words themselves, under the ordinary rules of construction, make definite that only an act of Congress and what act of Congress would prevent an unreturned bill from becoming law without regard to presidential approval.

Moreover, if Congress in the first instance can send bills to the President by messenger, as is done without question, and the President can receive such bills through an appropriate agent even when himself absent from his office, and if the President, though he may be away from the Capital, at the time returning the bill by messenger to the Congress, though the Constitution declares he, the President, shall return it, what is to prevent the house of origin from receiving these same bills through a proper agent if that house be engaged in other business or be temporarily absent from their chambers. Why, it may be asked, after the States, by a unanimous vote, had refused to vest the President with an absolute veto, should there be adopted a construction which would give the President, under certain circumstances, an absolute veto in effect?

The construction of this provision, therefore, which gives to the President's silence and inaction the power and effect of an absolute veto, is clearly out of harmony and at variance with the express terms of the provisions under construction, both

in letter and in spirit. The sole exception in the provision which prevents a bill from becoming law when the President refuses to take any action on it for ten days, is where the Congress prevents, that is to say renders impossible, its return by their adjournment. There is but one ad-adjournment, the final adjournment, which marks the death and dissolution of a Congress which can have that effect. It was the act of preventing delivery, of making delivery impossible, and its consequences, to which the Constitutional Convention gave consideration, and not the act of adjournment *per se*.

The construction insisted upon as sustaining the claim of right and power, vested in the President, to kill a bill by the pocket veto, introduces another anomaly into our system, not in harmony even with the provision sought to be construed, for it unnecessarily gives to the President a greater power during the life of a Congress over bills presented to him near the end of a session of Congress, or near temporary adjournment during a session, than at other times possessed. The right of possession by the President of bills being temporary, and given for a definite, specific purpose, any unnecessary retention of them is not in harmony with the intent and purpose of the Constitution. If the unnecessary detention of the bill be made deliberately for the purpose of denying to the Congress an opportunity to pass the bill, notwithstanding the President's objections, it is an abuse of the discretion with which the Constitution has entrusted him, amounting to usurpation of power.

The construction contended for by the Government supporting the pocket veto would make it possible for the delay and silence of the President to be more powerful in its effect upon legislation than his most energetic effort or forceful statement of reasons for disapproval of a bill returned by him to Congress, and that during the life of the Congress from which he had received the bill. Such a thing was never intended by the Constitution. The Constitution does recognize that the final adjournment of a Congress works a natural, unavoidable limitation upon the power to return bills to a Congress. That is all it does. That is all it could do without marring the symmetry of the Constitution. When the Congress ends, nothing further can be done about returning bills. They can not be returned and ought not to become law without further action. The Constitution, in the provision under consideration, makes that clear. That is the only construction permitted by the language of the Constitution and the general plan for legislative enactments which it established.

There is no inherent necessity for bills to die short of final adjournment, for when the Congress adjourns one day and reconvenes the next, it begins its work and all of its agencies and committees begin their work where they left off the preceding day. When Congress adjourns at the end of the first session, they

adjourn to a day certain, fixed in the Constitution. When they begin at the beginning of the second session, they begin exactly as if they had adjourned on the calendar day preceding; their committees and all their agencies begin exactly where they were at the end of the last day of the preceding session. All legislative business before them has exactly the same legislative status at the opening of the second or succeeding sessions as if the adjournment had been on the day preceding.

It is asserted that the President can not make return of bills to which he is unable to agree, except to the members of Congress assembled in their respective houses as a Congress. The houses of Congress have officers and agents of great power and responsibility who act in their stead and who are constantly in their places, when the houses are in session and when they are not in session. From the organization of a Congress until the end of its existence, this is true. There is nothing in the Constitution which denies the right to the use of these agents in effecting the return of objected-to bills. Such a right is acknowledged, and is practiced everywhere in governments, in business and in all human relationships. Chief Justice Marshall in his opinion rendered in *McCulloch v. Maryland*[1] announced the law:

> The Government which has a right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception. . . . Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

The construction which would permit the President to deliver bills together with his objections to the house of origin through an appropriate agent, would of necessity permit the house to which delivery is made to receive such bills and objections through an appropriate agency. The language expressing this equality of right and similarity of duty makes up a subdivision of a single sentence of the clause under discussion. Under the rule of construction sought to be invoked in support of the pocket veto the rule laid down by Chief Justice Marshall is applied by the President in the receipt and return of bills up to the very point where necessities to support the claim of the powers of the pocket veto intervene. At that point it is abandoned. This abandonment is necessary in order to support the pocket veto. At this point the Court is being asked to abandon it and for the first time in our history deny to a department of the Government the right to use an appropriate agency in the discharge of its constitutional duty.

The Congress has authorized agents in contemplation of law capable of receiving returned bills. The Senate has its presiding officer, the

[1] 4 Wheaton, 316, 407, 409, 421.

Vice President, and its chief administrative officer, the Secretary of the Senate. The House has its presiding officer, the Speaker, and its chief administrative officer, the Clerk of the House. Aside from their other duties, they constitute the agencies through which the houses of Congress transact their business and maintain contact with the other departments and agencies of the Government.

For instance, when the President returns to the House of Representatives during its sessions a bill to which he has objected, it is not returned to the House directly. It is sent in an envelope addressed to the Speaker and delivered by a messenger of the President. The receipt by the Speaker is correctly regarded as receipt by the House, but only upon the theory that he is an appropriate agent of the House to receive it. The House has no information as to its contents, until the Speaker opens the envelope and lays the message before the House. If delivery to the Speaker when Congress is in session is delivery to the House, delivery to the Speaker when the House is in adjournment would be a delivery to the House. The difference in the length of time between the receipt of the President's message and presentation to the House in the two cases has no bearing upon the question of the power to receive the message for the House, which is the question involved.

Near the House chamber is the office of the Clerk who is custodian of the bills of the House from the time of their introduction until their final disposition. Upon an adjournment of Congress, committees, under a rule of the House, deliver all unfinished bills and other documents to the Clerk to be preserved by him for the House until the reconvening of the House. Can it be questioned that this high officer of the House from whose office the identical bill was enrolled and certified on behalf of the House before its dispatch to the President is an appropriate agency of the House for the receipt of the returned bill and objections?

The right of constructive delivery is necessary not only to facilitate legislative procedure, prevent delay, and to hold the President's powers within the limits imposed by the Constitution, but it is also necessary in order to hold the Congress within proper bounds by preventing bills to which the President may object from becoming law without reconsideration by the Congress. The adjournment of a house for not more than three days, without the consent of the other house, is not an adjournment of Congress. If the Senate be in executive session, refusing to be interrupted, on the last day of the period in which return may be made, that would not even be an adjournment of one house of the Congress; and yet return could not be made if constructive delivery is not permitted.

This actual return to the Senate in session is the only method, so it is claimed by the supporters of the pocket veto, permissible under the

Constitution. Necessity forces them to this contention, because once it is allowed that return may be made in any situation to an agent of the house of origin, no adjournment, other than the final adjournment of the Congress is sufficient to prevent the return. Their authority is not impaired by the fact that the Congress are not actually in their chambers. When that bill left the Congress it was entrusted to an agent of Congress. When it arrived at the White House it was entrusted to an agent of the President. When it was sent back to the Congress it was entrusted to an agent of the President with identically the same character of constitutional direction acting upon it in its entire round-trip journey from the custody of Congress back into the custody of Congress. Certainly that which can be delivered by an agent can be received by an agent.

The pocket veto as now exercised was unknown during the first half of the existence of the Government. The entire provision under consideration in the instant case was taken from the Constitution of the States of Massachusetts and New York, principally from the Constitution of Massachusetts.

In this connection, it is interesting to note a decision of the Massachusetts court, the *Opinion of the Justices,*[1] in construing at an early date the word "adjournment" in the provision engrafted in the Federal Constitution, as an example of construction, almost contemporary to the adoption of our Constituton.

It is also of interest and of persuasive effect that each of the decisions, discovered after careful examination, by the courts of last resort of States, construing identical or practically identical language in their respective State Constitutions to that of Article 1, Section 7, under discussion, have held to the same effect as in the Massachusetts determination.

1864 *Soldiers Voting Bill,* 45 N. H., 607.
1870 *Harpending v. Height,* 39 Calif., 189.
1875 *Corwin v. Comptroller,* 6 So. Car., 390.
1881 *Miller v. Murford,* 11 Nebr., 377.
1882 *Wolf v. McCaull,* 76 Va., 876.
1886 *Heyquembourgh v. Dunkirk,* 49 Hun. (N. Y.), 550.
1890 *Crawford v. Summerset,* 73 Md., 105.
1912 *State v. Joseph,* 175 Ala., 579.
1913 *Tuttle v. Boston,* 215 Mass., 57.
1916 *Johnson City v. Electric Co.,* 133 Tenn., 637.

In *State v. Joseph,* the Court said:

> The authorities are unanimous in holding that the adjournment of the Legislature contemplated in the quoted clause of the Constitution is a final adjournment.

The *amicus curiae* summarizes his conclusions very effectively as follows:

> The pocket veto violates the expressed purpose of the Constitution.
>
> The Constitution does not give to the President an absolute veto. The pocket veto does give to the President an absolute veto.
>
> The Constitution seeks to expedite legislation by the ten-day provision. The pocket veto delays legislation.
>
> The Constitution seeks to make the processes of legislation continuous and certain. The pocket veto makes possible the interruption of legislative processes short of their completion during the life of a Congress.
>
> The Constitution imposes on the President the duty of returning a bill to which he objects, and secures to the Congress which originates it the benefit of his objections

[1] Quoted above, p. 106.

upon the second consideration of the bill. The pocket veto relieves the President of this duty and deprives the Congress of the advantage of the reasons for the President's objections.

The Constitution demands that Congress shall enter the President's objections to legislation to which he objects upon their journal. The pocket veto makes this impossible.

The Constitution requires that the President's objections be made known to the Congress and the country. The pocket veto violates this mandate.

The Constitution demands that Congress be afforded opportunity to reconsider, and act upon the President's objections to legislation of which he does not approve, if they see fit to do so. The pocket veto denies them this opportunity.

The pocket veto gives to the President a power over legislation denied to the President by the Constitutional Convention.

Upon the basis of a memorandum of the Attorney General's office regarding bills presented to the President less than ten days before adjournment of Congress, Sundays excepted, and not approved, under date of October 10, 1928, and on December 22, 1928, submitted by the President to the Congress,[1] the *amicus curiae*, in an appendix to his brief, reviews those bills "pocket vetoed" or retained by the President at the close of a first or intermediate session of the Congress or during adjournment falling within such session. He finds that there were 129 bills subject to the pocket veto at the end of sessions other than final. Of these 11 were from Washington (1789) to the end of Lincoln's administration (1865), and the remaining 118 were from Lincoln's administration to the present. One President was responsible for nearly half of this number, or 53, while ten Presidents furnished not a single case. Ten out of the 129 were returned with objections to the house of origin, while of the remaining 119, through the passage of other subsequent legislation on the same subject, laches and non-user, limitations, and non-authorization, and the requirements of subsequent legislation only a few are of present force, and most of these are subject to further legislative action of the Congress.

As Appendix B, on the last page of his brief, the *amicus curiae* presents what he no doubt felt was the *solar plexus* blow to the Government's position. It is an extract from a letter of James Madison to Henry Clay, in June 1833, in reply to the latter's letter of May 28 of the same year requesting Madison's opinion on the retention of the land bill by the then President. This extract is worthy of quotation in full:[1]

It is obvious that the Constitution meant to allow the President an adequate time to consider the Bills &c presented to him, and to make his objections to them; and on the other hand that Cong. should have time to consider and overrule the objections. A disregard on either side of what it owes to the other, must be an abuse, for which it would be responsible under the forms of the Constitution. An abuse on the part of the President, with a view sufficiently manifest, in a case of sufficient magnitude to deprive Cong. of the opportunity of overruling objections to their bills, might doubtless be a ground for impeachment. But nothing short of the signature of the President, or a lapse of ten days without a return of his objections, or an overruling of the objections by two-thirds of each House of Cong., can give legal validity to a Bill. In order to qualify (in the French sense of the term)

[1] 70th Congress, 2d Session, House Document No. 493.

[1] GAILLARD HUNT, *Writings of James Madison* (New York, 1910), vol. IX, p. 515.

the retention of the Land bill by the President, the first inquiry is, whether a sufficient time was allowed him to decide on its merits; the next whether with a sufficient time to prepare his objections, he unnecessarily put it out of the power of Cong. to decide on them. How far an anticipated passage of the Bill ought to enter into the sufficiency of the time for Executive deliberation, is another point for consideration. A minor one may be whether a silent retention or an assignment to Cong. of the reasons for it, be the mode most suitable, to such occasions. . . .

THE BRIEF OF THE GOVERNMENT

The Government, through William D. Mitchell, then Solicitor General, and Robert P. Reeder, Attorney, filed a scholarly brief in support of the practice of the pocket veto, in which attention was directed to the proceedings of the Constitutional Convention, to the wording of the pertinent clauses of the Constitution, and to the practical construction which has been given to them. The clause in the Constitution was evidently taken from a similar provision then in the constitution of the state of New York. The only significant thing in the acton of the Constitutional Convention was that it deliberately omitted a provision then found in the New York constitution, to the effect that in case adjournment rendered the return of a bill impracticable it—

shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days.

In 1822 this provision of the New York constitution was stricken out by the constitutional convention meeting in that year and in its place was substituted a clause like that in the Constitution of the United States.

The words of Article I leave no doubt as to their meaning. The provision that if the bill is not returned within ten days, Sundays excepted, it shall be a law, means ten calendar, not legislative, days. The Constitution has not excepted days in which Congress is not in session. Its exception of Sundays shows that every other day is to be counted. The provision—

unless the Congress by their Adjournment prevent its Return,

means its return within ten days, and the return prevented by adjournment is a return within ten days, Sundays excepted. An adjournment would not prevent a return unless there was a time limit on the return. It would not prevent a return if the ten days were legislative days. There is no basis for limiting the application of the word "adjournment" to an adjournment at the end of a Congress. The Constitution itself uses the word "adjourn" in the broad sense. Congress loses its opportunity to pass a bill over the President's disapproval by not being in session on the tenth day following its presentation to the President, if he fails meanwhile to return it.

The construction contended for by the petitioners contemplates that a bill may be returned to the house in which it originates although Congress has adjourned. This requires that the return may be to some officer

of the adjourned house, to be retained in his custody until Congress reassembles. No act has ever been passed authorizing any officer of either house to so receive returned bills, and there is no rule of either house giving such authority. The return must be to the house and not to an officer. The word "House," as used in the Constitution, has always been held to mean the house in session.[1] No message from the President, or message from either house to the other, is received except by a house in session.[2]

The practical construction given to this clause in the Constitution is controlling. Since the organization of the government there have been 120 cases like this of so-called pocket vetoes, at *ad interim* adjournments.[3] In no case, prior to the action of the House of Representatives in the 69th Congress, has any action been taken by Presidents or Congress on the theory contended for by petitioners, and in none of the 120 cases referred to has any of the pocketed measures been placed upon the statute books or treated as a law. This is the first case we know of where it has been asserted in court that such a pocketed bill became a law.

The decisions of the state courts furnish little aid in the decision of this case. The Massachusetts constitution of 1780, upon which the petitioners alleged the clause in the United States Constitution was based, contained no exception clause; bills became laws if not "returned by the governor within five days." In the *Opinion of the Justices*,[1] construing this clause, the court does not appear to have had the benefit of argument before reaching its conclusion, and it does not support its conclusion with discussion. Moreover, the first amendment of the Massachusetts constitution, adopted in 1821, contained a provision similar to that in the United States Constitution according to the interpretation of the latter as contended by the government in the present case.

The pertinent cases in the state courts show such weight of authority in favor of the proposition that calendar rather than legislative days are meant in the provisions dealing with the return of unapproved bills that no doubt can be cast upon the long-established practice respecting federal legislation.

Some of the state courts have held that when a legislature is not in session a bill may be returned to officers of the legislature. (*The Soldiers' Voting Bill*, 45 N. H. 607, 610; *Corwin v. Comptroller General*, 6. S. C. 390, 398; *Johnson City v. Eastern Electric Co.*, 133 Tenn. 632, 644.)[1]

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[1] Curtis, *Constitutional History of the United States*, vol. I, p. 486.

[2] Hinds, *Precedents*, vol. V, chap. cxxxviii.

[3] See House Document No. 493, 70th Congress, 2d Session.

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[1] Quoted above, p. 106.

[1] See also *Harpending v. Haight*, 39 Cal. 189, 200; *Hequembourg v. City of Dunkirk*, 49 Hun (N. Y.) 550, 556.

Other courts have held that a bill may be returned only when the legislature is in session. (*People v. Hatch,* 33 Ill. 9, 135; *State v. South Norwalk,* 77 Conn. 257, 261; *State v. Joseph,* 175 Ala. 59.)[2]

Half of the government's brief is given over to an Appendix, in which the instances of practical construction are reviewed, beginning with the first relevant instance, when President Madison pocketed a bill relating to naturalization which was passed near the end of the first session of the 12th Congress. Concerning this bill he sent a message to Congress at the beginning of its next session, saying:

To the Senate and House of Representatives of the United States:

The bill, entitled "An Act supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization," which passed the two Houses at the last session of Congress, having appeared to me liable to abuse by aliens having no real purpose of effectuating a naturalization, and therefore not been signed; and having been presented at an hour too near the end of the session to be returned with objections for reconsideration, the bill failed to become a law. I also recommend that provision be now made in favor of aliens entitled to the contemplated benefit, under such regulations as will prevent advantage being taken of it for improper purposes.

J. MADISON.

November 5, 1812.

It will be observed that the term of Congress had not expired but that the second session was informed why a bill passed at the first session of that Congress had not become a law. The message was not in the form of a veto message. It was sent to both houses and not merely to the house in which the bill originated, and the bill was not returned for further consideration. So far as appears in the *Annals of Congress,* no member of Congress questioned the right of the President to pocket the bill which had passed both houses in the first session.

Not to mention all of the cases enumerated, the pocketing of two bills by President Johnson in 1867 led to the reporting by Senator Edmunds from the Judiciary Committee of "a bill regulating the presentation of bills to the President and the return of the same."[1] The bill provided—

that the ten days mentioned in section seven of article one of the Constitution, within which the President of the United States is required to return to the House in which it originated any bill not approved by him, shall be held and construed to be ten calendar days (Sundays excepted) next after the day of the presentation of any such bill to him; and the adjournment of Congress, which shall prevent the return of any such bill by the President to that House in which it originated, is to be held and construed to be the final adjournment of a session, and not an adjournment of either or both Houses of Congress, acting by themselves or with the consent of each other, as provided for in the Constitution, to a particular day. And if at any time within those ten days the President shall desire to return a bill to the House in which it originated, or to send a message to such House that he has signed the same, when such House is not sitting, it is to be lawful for him to return such bill or send such message to the office of the Secretary of the Senate or Clerk of the House of Representatives, as the case may be, and the Secretary or Clerk is to endorse thereon the

[2] See also *People v. Bowen,* 21 N. Y. 517, 523; 30 Barbour, 24, 30. Compare *United States v. Allen,* 36 Fed. 174, 176; *Tuttle v. Boston,* 215 Mass. 57.

[1] *Congressional Globe,* 40th Congress, 2d Session, pt. 2, p. 1204.

day on which the return shall be made or the message received, and make entry of the fact of such return or the receipt of such message in his Journal of the proceedings; and such return or sending of such message is to be deemed and taken to be a return of the bill to the House in which it originated, or a sending of the message to that House, to all intents and purposes. Every bill which, having passed both Houses of Congress and having been presented to the President as provided in the Constitution, shall not have been returned by the President with his objections thereto to that House in which it originated within the time herein defined and declared is to be a law, . . .[1]

The bill passed the Senate on March 24, 1868, was sent to the House and referred to the House Committee on the Judiciary, where it died.

During Cleveland's administration, the President pocketed a private pension bill during the Christmas recess of 1896. Since the case involved a widow who had not the money to test it, some of the senators were of the opinion that it was easier to have the bill passed over again, and this was done, not, however, without the expression of grave doubts on the part of the same senators as to the constitutionality of the President's pocketing.

The Importance of the Case

The importance of the decision of the Supreme Court is much greater than its mere application to the present case. Of more general interest is the effect of the decision upon Senate Resolution No. 46, 70th Congress, 1st Session, commonly called the Muscle Shoals, for dam No. 2 and steam nitrate plant for the manufacture and distribution of fertilizers, which was passed by the Congress last year. If the Indians are sustained in the present case, it is presumed that it will be mandatory upon the government to take over the operation of the Alabama plant as provided in that measure. Other measures of recent years which will be affected are Senate Bill No. 2999, providing for a parole commission for the District of Columbia; House Resolution No. 534, removing the charge of desertion from the record of Benjamin I. McHenry; House Resolution No. 6087, reinstating Joe Burton Coursney in the West Point Military Academy; House Resolution No. 5218, carrying into effect Article 12 of the treaty with the Shawnee Indians, all of the 69th Congress, 1st Session; House Resolution 238, granting veterans preference in civil service examinations; and House Resolution No. 13383, providing for a five-year program of construction and maintenance for the U. S. Bureau of Fisheries, of the 70th Congress, 1st Session.

Conclusion

It is impossible, of course, to forecast what the decision of the Supreme Court will be or when it will be rendered. It may be history by the time these words appear in print, but since the case was argued just before the court's last adjournment, it is quite possible that it will not render its decision until well along in this sitting. Meanwhile, at the

[1] *Ibid.*, p. 1371.

risk of being charged with bad taste or with committing a breach of propriety, the writer, approaching the question with an open mind and after a careful perusal of the briefs which he has digested above, feels that perhaps the readers of the REVIEW will be interested to learn the conclusions at which he arrived, in order that they may check it with their own.

First, the ten-day clause seems to refer to calendar days, not legislative days; otherwise the clause would not have excepted only Sundays and would probably have specified legislative days.

Secondly, although adjournment by itself may mean *any* adjournment, the only conclusive way whereby the Congress could "by their adjournment prevent" the return of a bill is by their *final* adjournment, since the object of the return with the objections stated is the further consideration of the bill by the Congress and a final adjournment is the only adjournment which could absolutely prevent further consideration of the matter by that Congress. Any other construction would make the alleged right of pocket veto applicable to every adjournment of the Congress, even that for a few hours or days.

Thirdly, if the President's agent may receive the bill in his name and his messenger carry it back in his name, it seems reasonable that the agent of the houses of Congress may receive it upon its return, that is, the Secretary of the Senate or the Clerk of the House.

Fourthly, the pocket veto would relieve the President of his duty of returning a bill to which he objects with the reasons therefor for the benefit of the Congress and, after entry upon the journal of the proper house, for the benefit of the country at large. It would effect silence, where reasoned objections are called for.

Fifthly, the pocket veto would give the President an absolute veto on the legislation to which it is applied, whereas the President's constitutional power with regard to legislation is limited to suggesting matters requiring legislative attention and interposing a temporary check, which can only become permanent through the failure of the Congress to take the proper action.

Sixthly, the judiciary and not the executive is the organ to construe the Constitution, and therefore executive precedents, apart from the fact that they have been divided, are not the proper guide for solving this question.

Seventhly, and finally, the decisions of the state courts, as far as they are relevant, support the first, second and third conclusions mentioned above.

The only question remaining is whether, in spite of the fact that acquiescence does not give validity and in spite of the fact that the acquiescence has by no means been unanimous and in spite of the fact that no one up to the present has con-

sidered the point of sufficient personal importance to warrant the expense of litigation up to the Supreme Court—whether it would be advisable to resurrect 120 bills, pocketed, as was this one, at various dates since the adoption of the Constitution and place them on the statute books. And this is a question the extent of which can only be ascertained by a close examination of each individual bill thus vetoed. In the writer's opinion, however, it would be well worth while to submit to considerable inconvenient consequences of such a resurrection, if thereby there can be avoided that which even savors of an approach to an absolute veto.

Research in Law

The Institute for the Study of Law at the Johns Hopkins University is preparing with a view to publishing, a survey of all studies and research in or related to law now in progress or completed in 1928. The term "research in law" is to be interpreted in its broadest sense, so as to include all studies, writings, or investigations large or small. The object of this survey is to present a picture of the work of all groups whose studies are concerned directly or indirectly with any phase of law or involve the use of legal materials. It is believed that such a record of studies will serve to make them available to a greater number, and will help prevent duplication and overlapping of work in the future.

A questionnaire has been sent to faculties of the law schools, to faculties in economics, political science, sociology and psychology of the universities in the Association of American Universities, as well as to organized research bureaus, foundations and commissions. Those who have not received this questionnaire and are doing work which they believe should be included in this survey are requested to write to the Institute for the Study of Law of their work, and to suggest names of others whose work they believe should be included. As the report is to be completed in June an early reply is needed.

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In Ft. Smith Lumber Co. v. Arkansas, supra, the suit was to enforce an obligation of the corporation itself and not merely a claim for taxes against its land. The company in that case owned stock in two other Arkansas corporations and claimed it was entitled to omit such shares from the taxable value of its own stock. It defended on the ground that individuals are not taxed on such stock or subject to suits for back taxes. The court said: "If the state of Arkansas wished to discourage but not to forbid the holding of stock in one corporation by another and sought to attain the result by this tax, or if it simply saw fit to make corporations pay for the privilege, there would be nothing in the Constitution to hinder. * * * The same is true with regard to confining the recovery of back taxes to those due from corporations. It is to be presumed, until the contrary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the state."

This court assumed that the special burden was imposed in pursuit of a definite purpose on the part of the state in respect of incorporated owners of stock in Arkansas corporations. That decision rests upon the ground that the tax was peculiarly applicable to corporations. But a tax on land is not.

As the back taxes claimed are enforceable only against the land, there is no basis for the suggestion that there exists here any reason for more strenuous efforts to collect from corporations than from natural persons.

And there is no basis for an assumption like that made in the Ft. Smith Lumber Co. Case. The classification, at least when applied to land, is fanciful and capricious. Louis K. Liggett Co. v. Baldridge, 278 U. S. 105, 114, 49 S. Ct. 57, 73 L. Ed. —.

The decree should be reversed.

The CHIEF JUSTICE and Mr. Justice VAN DEVANTER concur in this opinion.

OKANOGAN, METHOW, SAN POELIS (or San Poil), NESPELEM, COLVILLE, AND LAKE INDIAN TRIBES OR BANDS OF STATE OF WASHINGTON v. UNITED STATES.

Argued March 11, 1929. Decided May 27, 1929.

No. 565.

1. Statutes ⇐34—Bill passed by both Houses and presented to President less than 10 days before adjournment of first regular session does not become law when neither signed nor returned; "within ten days (Sunday excepted)"; "adjournment"; "House"; "prevented" (Const. art. I, §§ 5, and 7, cl. 2).

Under Const. art. 1, § 7, cl. 2, bill which is passed by both Houses of Congress during first regular session of particular Congress and presented to President less than ten days (Sundays excepted) before adjournment of that session, but neither signed by President nor returned to House in which it originated, does not become law, since "within ten days (Sundays excepted)" means calendar days, not legislative days, "adjournment" is not limited to final adjournment under article 1, § 5; Standing Rules of Senate No. 22 and Rules of House of Representatives, Rule 26, "House" to which bill is returned is House in session, and President is "prevented" from returning bill if by reason of adjournment it is impossible to return it on last day of stipulated period.

[Ed. Note.—For other definitions, see Words and Phrases, First, Second, and Third Series, Adjourn; Adjournment; House; Prevent; Third Series, Within Ten Days.]

2. Constitutional law ⇐20—Long-established practice has great weight in interpreting constitutional provision as to President's veto (Const. art. I, § 7).

Long settled and established practice by Presidents in which Congress has acquiesced is consideration of great weight in proper interpretation of such constitutional provisions as Const. art. 1, § 7, relative to President's veto.

3. Statutes ⇐34—Bill authorizing certain Indian tribes to present claims to Court of Claims held not to become law because adjournment "prevented" President from returning bill (Const. art. I, § 7, cl. 2).

Senate Bill No. 3185 of Sixty-Ninth Congress, authorizing certain Indian tribes to present claims to Court of Claims, *held* not to have become law owing to fact that adjournment of first session of such Congress on July 3, 1926, prevented President, within meaning of Const. art. 1, § 7, cl. 2, from returning such bill within ten days, Sundays excepted, after it had been presented to him.

On Writ of Certiorari to the Court of Claims.

Action by the Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington against the United States. Judgment of the Court of Claims dismissing the petition [66 Ct. of Claims, —], and plaintiffs bring certiorari. Affirmed.

Messrs. Wm. S. Lewis, of Spokane, Wash., and A. L. Servan and John G. Carter, both of Washington, D. C., for petitioners.

Mr. W. D. Mitchell, Atty. Gen., for the United States.

Mr. Hatton W. Sumners, of Dallas, Tex., for Judiciary Committee of House of Representatives, as amicus curiæ, by special leave of Court.

Mr. Justice SANFORD delivered the opinion of the Court.

This case presents the question whether, under the second clause in section 7 of Article 1 of the Constitution of the United States, a bill which is passed by both Houses of Con-

gress during the first regular session of a particular Congress and presented to the President less than ten days (Sundays excepted) before the adjournment of that session, but is neither signed by the President nor returned by him to the house in which it originated, becomes a law in like manner as if he had signed it.

At the first session of the 69th Congress Senate Bill No. 3185, entitled "An Act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims," having been passed by both Houses of Congress and duly authenticated, was presented to the President on June 24, 1926. On July 3 the first session of the 69th Congress was adjourned, under a house concurrent resolution.[1] The Congress was not again in session until the commencement of the second session on the first Monday in December.[2] And neither House of Congress was in session on July 6—the tenth day after the bill had been presented to the President (Sundays excepted).

The President neither signed the bill nor returned it to the Senate. And it was not published as a law.

Taking the position that the bill had become a law without the signature of the President, the Okanogan and other Indian tribes residing in the State of Washington in March, 1927, filed a petition in the Court of Claims setting up certain claims in accordance with the terms of the bill. The United States demurred to the petition. The court sustained the demurrer and dismissed the petition, on the ground that under the provisions of the Constitution the bill had not become a law. 66 C. Cl. —.

In view of the public importance of the question presented we granted the petitioners a writ of certiorari. 278 U. S. —, 49 S. Ct. 186, 73 L. Ed. —. And for like reason, at the request of the Committee on the Judiciary of the House of Representatives, we granted Mr. Sumners, a member of that Committee, leave to appear as amicus curiæ. He has aided us by a comprehensive and forcible presentation of arguments against the conclusion of the court below.

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.*"[3]

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 ten 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. This is unquestioned.

In support of the position that the adjournment did not prevent the President from returning the bill within the prescribed time, counsel for the petitioners and the amicus curiæ urge that the only "adjournment" which prevents the President from returning a bill within the prescribed time is the final adjournment of the Congress, terminating its legislative existence and making it impossible for the President to return the bill for its reconsideration; and that an adjournment of the first session of the Congress does not prevent the President from returning the bill within the prescribed time since the legislative existence of the Congress is not terminated, and he may within that time return the bill to the House in which it originated, although not then in session, by delivering it, with his objections, to the Secretary, Clerk, or other appropriate agent of that House, to be held by such agent and presented to the House when the Congress resumes its sitting at the next session—thereby enabling the Congress to proceed with the reconsideration

[1] 67 Cong. Rec. pt. 11, pp. 12770, 12885, 13009, 13018, 13100. By the terms of this resolution the House of Representatives adjourned sine die; and the Senate adjourned to November 10—this being the date to which, sitting as a court of impeachment, it had previously adjourned for the trial of certain articles of impeachment. 67 Cong. Rec. pt. 8, pp. 8725, 8733. And on that date the Senate, sitting as a court of impeachment, met and adjourned sine die. 68 Cong. Rec. pt. 1, pp. 3, 4.

That the adjournment on July 3 was in effect an adjournment of the first session of the Congress is not questioned.

[2] 68 Cong. Rec. pt. 1, p. 7; Constitution, Art. 1, Sec. 4, Cl. 2.

[3] The third clause reads as follows: "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

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of the bill as a part of the unfinished legislative business carried over from the first session. And it is also said, by counsel for the petitioners, that the "ten days" allowed for the return of the bill, may be construed as meaning "legislative days," that is, days on which the Congress is in legislative session, and not calendar days, thereby enabling the President to return the bill within ten days, Sundays excepted, exclusive of all days on which the Congress was not in legislative session, even although, by reason of an adjournment, this period does not expire until after the Congress has resumed its legislative sittings at the second session.

In support of the position that Congress by the adjournment on July 3 prevented the President from returning the bill within the prescribed time, the Attorney General maintains that the word "adjournment" includes an interim adjournment as well as the final adjournment at the end of a Congress; that the words "ten days" mean calendar days, and not legislative days; that the President cannot return a bill with his objections to the House in which it originated except by returning it to the House while in session; that if, by reason of an adjournment taken by Congress within the prescribed time, the House in which the bill originated be not in session on the last of such days and the bill cannot be thus returned, the President is thereby prevented from returning the bill within the prescribed time; and that this view is supported by the practical construction given to the constitutional provision by the President through a long course of years, in which Congress has acquiesced.

No light is thrown on the meaning of the constitutional provision in the proceedings and debates of the Constitutional Convention; and there has been no decision of this Court dealing directly with its meaning and effect in respect to the precise question here involved. And while we have been cited to various decisions of state courts construing similar provisions in state constitutions, an examination of them discloses such a conflict of opinion—due in some part to differences in phraseology or their application to the procedure of the state legislatures—that, viewed as a whole, they furnish no substantial aid in the determination of the question here presented and a detailed consideration of them here would not be helpful. For that reason we shall cite in this opinion only some that seem most apposite and persuasive in their reasoning.

[1] 1. It is earnestly insisted by counsel for the petitioners and by the amicus curiæ, as the underlying basis of their contentions, that since clause 2 gives the President merely a qualified negative over legislation and requires him, if he disapproves a bill, to return it with his objections to the House in which it originated so that Congress may have an opportunity to reconsider it in the light of such objections and pass it by a two-thirds vote of each House, the provision as to the return of a bill within a specified time is to be construed in a manner that will give effect to the reciprocal rights and duties of the President and of Congress and not enable him to defeat a bill of which he disapproves by a silent and "absolute veto," that is, a so-called "pocket veto," which neither discloses his objections nor gives Congress an opportunity to pass the bill over them. This argument involves a misconception of the reciprocal rights and duties of the President and of Congress and of the situation resulting from an adjournment of Congress which prevents the President from returning a bill with his objections within the specified time. This is illustrated in the use of the term "pocket veto," which does not accurately describe the situation, and 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—entrusts 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. See La Abra Silver Mining Co. v. United States, 175 U. S. 423, 455, 20 S. Ct. 168, 44 L. Ed. 223.[4]

[4] Compare People v. Bowen, 30 Barb. (N. Y.) 24, 32, 34; Lankford v. County Commrs. of Somerset County, 73 Md. 105, 110, 111, 20 A. 1017, 22 A. 412, 11 L. R. A. 491; Tuttle v. Boston, 215 Mass. 57, 58, 60, 102 N. E. 350; and People v. Hatch, 33 Ill. 9, 129, 135, 136, in which it was aptly said, in a concurring opinion: "The convention which framed our Constitution designed to provide for the enactment and enforcement of salutary laws in the mode best calculated to promote the general welfare. They supposed, as one of the means of best attaining this end that the executive of the State should not only be intrusted with the enforcement of all laws, but should also be vested with a voice in their adoption. In distributing the powers of government, they could, if they had chosen to do so, have authorized the general assembly to adopt laws independent of all executive action. But to prevent the evils of hasty, illy considered legislation, they conferred upon the governor the power to arrest

The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly.[5] 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 re-pass 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, 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 cannot 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. Thus, in La Abra Silver Mining Co. v. United States, supra, 454 of 175 U. S. (20 S. Ct. 179), this Court said that "if by its action, after the presentation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, 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, and does not become a law." [6]

2. There is plainly no warrant for adopting the suggestion of counsel for the petitioners—which is not urged by the amicus curiæ—that the phrase "within ten 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, Martin v. Hunter's Lessee, 1 Wheat. 304, 326, 4 L. Ed. 97, and are to be given the meaning they have in common use unless there are very strong reasons to the contrary. Tennessee v. Whitworth, 117 U. S. 139, 147, 6 S. Ct. 649, 29 L. Ed. 833. 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 provision, 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 ten "legislative days" in which to consider and return a bill, or proceeded upon that theory.

3. 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 1, 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" (No. XXII); and the Rules of the House of Representatives, to an "adjournment" at the end of one session (No. XXVI).[7]

the passage of a bill until his objections could be heard, and the bill be again considered and adopted. As the best means of accomplishing this, and of preventing the adoption of injurious measures, they gave to the governor ten days, exclusive of Sundays, in which to bestow that careful examination and consideration, so essentially necessary to determine the effects and consequences likely to flow from the adoption of a new measure. This is the duty imposed, and it is one that must be performed. And the time allowed for the purpose cannot be abridged, or the provision thwarted, by either accident or design. The use of the whole time given to the governor must be allowed. The Constitution has spoken and it must be obeyed."

[5] Compare Tuttle v. Boston, supra, 60 of 215 Mass. (102 N. E. 350); People v. Hatch, supra, 136 of 33 Ill.

[6] And if Congress so desires the same bill may be re-introduced and passed when Congress resumes its session, and after receiving the due consideration of the President, if returned with his objections, may be then passed by the requisite vote in both Houses.

[7] The view that the "adjournment" contemplated in the constitutional provision is the final adjournment of Congress, and not an interim adjournment, appears to have been expressed in behalf of Congress, for the first and only time, in a report made by the Judiciary Committee of the House of Representatives in 1927 (H. Rep't No. 2054, 69th Cong., 2d Sess.). This was followed by the Chairman of the Committee of the Whole in overruling a point of order made against a provision in an appropriation bill that presented this question; and no appeal was taken from this ruling. 68 Cong. Rec., pt. 5, pp. 4932–4937.

4. We think that under the constitutional provision the determinative question in reference to an "adjournment" is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that "prevents" the President from returning the bill to the House in which it originated within the time allowed. It is clear, and, as we understand, is not questioned, that since the President may return a bill at any time within the allotted period, he is prevented from returning it, within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period. It is also conceded, as we understand, that the President is necessarily prevented from returning a bill by a final adjournment of the Congress, since such adjournment terminates the legislative existence of the Congress and makes it impossible to return the bill to either House. And the crucial question here presented is whether an interim adjournment of Congress at the end of the first session, as the result of which, although the legislative existence of the House in which the bill originated has not been terminated, it is not in session on the last day of the period allowed the President for returning the bill, likewise prevents him from returning it to such House. This brings us to the specific question whether, in order to return the bill to the House in which it originated, within the meaning of the constitutional provision, it is necessary, as the Attorney General insists, that it be returned to the House itself while it is in session, or whether, as urged by counsel for the petitioners and by the amicus curiæ, it may be returned to the House, although not in session, by delivering it to an officer or agent of the House, to be held by him and delivered to the House when it resumes its sittings at the next session.

Clause 2 specifically provides that if the President does not approve a bill "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." That is, it provides in the same phrase and with no change in definition, that the "House" to which the bill is to be returned is that which is to enter the objections on its journal and proceed to reconsider the bill.

From a consideration of the entire clause we think that the "House" to which the bill is to be returned, is the House in session. In Missouri Pac. Ry. Co. v. Kansas, 248 U. S. 276, 280, 281, 283, 39 S. Ct. 93, 63 L. Ed. 239, 2 A. L. R. 1589), this Court, in holding that the provision in this clause requiring a vote of two-thirds of each House to pass a bill over the President's objections, means two-thirds of a quorum of each House and not two-thirds of all its members, said arguendo, that "the context leaves no doubt that the provision was dealing with the two Houses as organized and entitled to exert legislative power," that is, the legislative bodies "organized conformably to law for the purpose of enacting legislation"; and, after stating that the identity between this provision and that in Article 5 of the Constitution, giving "two-thirds of both Houses" the power to submit amendments, makes the practice as to one applicable to the other, quoted with approval the "settled rule * * * clearly and aptly stated" by the Speaker, Mr. Reed, in the House, on the passage of the amendment to the Constitution providing for the election of Senators by the vote of the people, as follows: "What constitutes a House? A quorum of the membership, a majority, one-half and one more. That is all that is necessary to constitute a House to do all the business that comes before the House. Among the business that comes before the House is the reconsideration of a bill which has been vetoed by the President; another is a proposed amendment to the Constitution; and the practice is uniform in both cases that if a quorum of the House is present the House is constituted and two-thirds of those voting are sufficient in order to accomplish the object. * * *"

Since the bill is to be returned to the same "House," and none other, that is to enter the President's objections on its journal[8] and proceed to reconsider the bill—there being only one and the same reference to such House—it follows, in our opinion, that under the constitutional mandate it is to be returned to the "House" when sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill; and that no return can be made to the House when it is not in session as a collective body and its members are dispersed. This is the view expressed in 1 Curtis' Constitutional History of the United States, 486, n. 1, in which it is said: "This expression, a 'house', or 'each house,' is several times employed in the Constitution with reference to the faculties and powers of the two chambers respectively, and it always means, when so used, the constitutional quorum, assembled for the transaction of business, and capable of transacting business. This same expression was employed by the committee when they provided for the mode in which a bill, once rejected by the president, should be again brought before the legislative bodies. They directed it to be returned '*to that House in which it shall have originated*'—that is to say, to a constitutional quorum, a majority of which passed it in the first instance. * * *"

[8] The journal is the record that each House is required to keep of its own proceedings. Const., Art. I, sec. 5, cl. 3.

This accords with the long established practice of both Houses of Congress to receive messages from the President while they are in session. See Senate Standing Rule XXVIII, cl. 1; House Rule XL; 5 Hind's Precedents of the House of Representatives, ch. CXXXVIII, especially sec. 6591, p. 812.

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 nunc pro tunc 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.

Thus Attorney General Devens in a memorandum to President Hayes, said: "All these provisions indicate that in order to enable the President to return a bill the Houses should be in session; and if by their own act they see fit to adjourn and deprive him of the opportunity to return the bill, with his objections, and are not present themselves to receive and record these objections and to act thereon, the bill cannot become a law unless ten days shall have expired during which the President will have had the opportunity thus to return it. There is no suggestion that he may return it to the Speaker, or Clerk, or any officer of the House; but the return must be made to the House as an organized body."[9]

It is significant that only one attempt has ever been made in Congress to authorize the President to return a bill when the House in which it originated was not in session; and that this failed. In 1868 a bill was reported by the Senate Judiciary Committee for regulating the return of bills by the President.[10] While this specifically declared that the constitutional provision allowed the President ten calendar days (Sundays excepted) in which to return a bill not approved by him, and that the return of a bill would be prevented by "the final adjournment of a session" of Congress, although not by an adjournment to a particular day, it provided that if at any time within such ten days the President desired to return the bill to the house in which it originated when such house was not sitting, he might return it to the office of the Secretary of the Senate or Clerk of the House of Representatives, as the case might be, who should endorse thereon the day on which such return was made, and make an entry of the fact of such return in his journal of the proceedings, and that such return should be deemed a return of the bill to all intents and purposes. In the debate in the Senate strong opposition was expressed to this feature of the bill on constitutional grounds;[11] and al-

[9] Quoted in an opinion of Attorney General Miller, 20 Op. Attys. Gen. 503, 506.

[10] S. 366, 40 Cong., 2d sess.

[11] In the debate in the Senate the constitutional objections to the provision authorizing the President to return a bill to an officer of the Senate or the House of Representatives when they were not sitting, were clearly and, as we think, convincingly expressed.

Thus Senator Davis said: "(The) Constitution requires that if the President does not approve a bill he shall return it with his objections to the House in which it originated; this bill provides a different mode of disposing of that bill in case Congress has temporarily taken a recess or an adjournment. It dispenses with the requisition of the

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though it passed the Senate by a majority vote, it was never reported from the Judiciary Committee of the House of Representatives, to which it was referred, and thus failed to pass the Congress. It does not appear that this suggestion has ever been renewed in Congress.

[2] 5. The views which we have expressed as to the construction and effect of the constitutional provision here in question are confirmed by the practical construction that has been given to it by the Presidents through a long course of years, in which Congress has acquiesced. Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional pro-

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Constitution that the bill shall be returned to the House, and directs that it be returned to the officer of the House, if the body is not in session. I do not believe it is competent for Congress to make any such change as that. * * * Of course, if (the President) is to return the bill to the House, the House must be in session, because it is not a House unless in session in the sense in which the Constitution requires the bill to be returned to the House by the President with his objections. * * * I think it is the duty of the President, in the plain language of the Constitution, to return the bill, not to the Secretary or Clerk of either House, but to the House itself. That is the unambiguous and plain language of the Constitution. * * * It is returning it to the Senate or the House of Representatives in session, because when it is returned it is to be at once considered again. The Constitution contemplates that simultaneously with the return of the bill to the House in which it originated the House may take up the matter for consideration. * * * I take the position that to return the bill to the Clerk of the House of Representatives, if it originated there, or to the Secretary of the Senate, if it originated in the Senate, when those bodies are not in session, is not a return of the bill to the House in which it originated. It is the duty and the right of the President to communicate to the House and not to a ministerial officer of the House. To enable him to communicate to the House it must necessarily be in session, because he cannot communicate with either House when it is in any other situation than in actual session. It must be assembled and in actual session. * * * I think, sir, that the Executive may not only claim it as a right, but the House in which a bill originates may claim it as the performance of a duty by him to that House, and the people of the country may claim it as the performance of a duty by him, that he shall return the bill with his objections, not, in vacation, to the Clerk or to the Secretary of the Senate or House of Representatives, but to the body itself, and to enable him to perform that duty that body must necessarily be in session." Cong. Globe, 40th Cong., 2d Sess., Pt. 2, pp. 1372, 1374, 1405.

Senator Bayard said: "But, Mr. President, there is an additional objection which to my mind is all powerful. The committee propose * * * that if Congress is not in session during the ten days or at the end of the ten days the President may send the bill to the office of the Secretary of the Senate or the Clerk of the House of Representatives, according to the House in which the bill may have originated. There is no such provision in the Constitution; and the settled usage of this Government, without a single exception from its foundation, is that no communication is made by the Executive to either House except to the House in session, and that usage ought to have a controlling influence to exclude the idea which is contained in the provision of the bill that I am now referring to. * * * But further, the very object of the clause looks to the fact that the bill should be returned during the session of the House in which it originated. It looks, if I may so speak, to immediate action on the part of Congress—at all events it looks to giving to Congress the right of immediate action as soon as the objections of the President are received. The Houses are to proceed to consider the objections; they are to spread them at large on the Journal; there is to be a reconsideration of the measure formerly under debate. The whole clause looks to speedy action, at all events, upon objections made by the President, and the language employed providing for a return to the House does not imply filing a document with the Clerk or the Secretary when the House is not in session, whether it be the Senate or the House of Representatives. * * * Here the usage of the Government of the United States, from its origin to the present day, is, that in no single case has a President of the United States, on the return of a bill to the Senate or House of Representatives, ever undertaken to file his message with the Clerk of the one or the Secretary of the other; but the action of the Executive has uniformly been by message sent to the House when in session. That is the settled usage; and when you look to the language of the Constitution, that the bill is to be returned to the House, it is certainly forcing language to say that a return to the House means filing a paper with the Secretary or Clerk when the House is not in session." Cong. Globe, 40th Cong., 2d Sess., Pt. 2, pp. 1941, 1942.

Senator Buckalew said: "I should like to know how the Secretary can make entries and make up a Journal when the Senate is not in session. I can understand that when the Senate reconvenes the Clerk may hand to the President of the Senate, just as any member might or any outsider might, the particular paper, and it may then be presented to the Senate, and it may be entered in the Journal. But this bill contemplates that our Secretary shall make and keep a Journal when the Senate is not here at all, when there can be no Journal of its proceedings. * * * (The) Constitution provides that the Senate shall keep a Journal of its proceedings, of what it does itself. In another clause it is provided that when the President returns a bill with his objections that message thus containing his objections shall be entered upon the Journal of the Senate. The fact of receiving such a message and the entry of that message upon the Journal must, in the very nature of the case, be when the Senate itself is in session. * * * The Journal is to be kept by the Senate, and it is to be a Journal of what it does, a Journal of its proceedings. * * * The reception of a message from the President of the United States is a proceeding by the Senate; it is an act by the Senate itself. * * * I think, therefore, it is manifest that under the Constitution of the United States this Journal and the entries upon the Journal are matters which relate to a session of the Senate, an actual session, the personal presence of the body, and that it is not competent for the Senate to commit to one of its own officers, or to any officer of the Government, or to any citizen, the performance of a duty which is by the Constitution charged upon itself and to be performed by itself. * * * Now, one objection which applies to the bill * * * is that it is against the practice of the Government. From the time that Congress first convened together in 1789 down to this time it has been held, and held uniformly, that if the two Houses of Congress adjourned by a concurrent resolution before the expiration of ten days from the presentation of a bill to the President a bill which should then be left in his hands would fail. * * * They have failed upon repeated occasions, not only during recent years, but far back in former times. * * * This bill proposes, in the absence of both Houses of Congress to provide a substitute for the House to which the bill is to be returned. Instead of being returned to the House in which it originated,

visions of this character. Compare Missouri Pac. Ry. Co. v. Kansas, supra, 284 of 248 U. S. (39 S. Ct. 93); Myers v. United States, 272 U. S. 52, 119, 136, 47 S. Ct. 21, 71 L.-Ed. 160; and State v. South Norwalk, 77 Conn. 257, 264, 58 A. 759, 761, in which the court said that a practice of at least twenty years duration "on the part of the executive department, acquiesced in by the legislative department, while not absolutely binding on the judicial department, is entitled to great regard in determining the true construction of a constitutional provision the phraseology of which is in any respect of doubtful meaning."

A memorandum prepared in the office of the Attorney General showing the results of an exhaustive research of governmental archives for the purpose of disclosing the practical construction placed upon the constitutional provision here involved in reference to so-called "pocket vetoes," was transmitted by the President to Congress in December 1928.[12] This memorandum—the accuracy of which is not questioned—cites more than 400 bills and resolutions which were passed by Congress and submitted to the President less than ten days before a final or interim adjournment of Congress, which were not signed by the President nor returned with his disapproval. Of these, 119 were instances in which the adjournment was that at the end of a session of Congress, as distinguished from the final adjournment of the Congress. None of these bills or resolutions were placed upon the statute books or treated as having become a law; nor does it appear that there was any attempt to enforce them in the courts until the present suit was brought. Of these instances 11 occurred before the end of President Lincoln's administration, and the remainder from the end of that administration to the present time. They arose under the administration of all the Presidents except ten. These 119 bills and resolutions are thus classified in the brief of the amicus curiæ: Private relief bills, 36; pension bills, 19; obsolete purposes, 10; relating to District of Columbia, 9; relating to personal status, 8; right of way over Indian and government land, 8; river and harbor bills, 7; disposition of war stores and government property, 5; reduction of national debts, 3; and general legislation, 14. It does not appear that in any of these instances either House of Congress in any official manner questioned the validity and effect of the President's action in not returning the bill after the adjournment of the session, or proceeded on the theory that it had become a law, although neither signed nor returned, until the action was taken in the House Committee of the Whole in 1927 to which we have referred.[13] And in some instances new bills were introduced in place of those that had not been returned. Without analyzing these 119 instances in detail, we think they show that for a long series of years, commencing with President Madison's administration and continuing until the action of the House Committee of the Whole in 1927, all the Presidents who have had occasion to deal with this question have adopted and carried into effect the construction of the constitutional provision that they were prevented from returning the bill to the House in which it originated by the adjournment of the session of Congress; and that this construction has been acquiesced in by both Houses of Congress until 1927.

[3] 6. For these reasons we conclude that the adjournment of the first session of the 69th Congress on July 3, 1926, prevented the President, within the meaning of the constitutional provision, from returning Senate Bill No. 3185 within ten days, Sundays excepted, after it had been presented to him, and that it did not become a law.

The judgment of the Court of Claims is Affirmed.

as the Constitution says, this bill proposes to enact that it shall be returned to the Secretary here alone * * * and that upon the paper * * * being given to that particular person it shall be considered that it has been returned to the House in which it originated. * * * Can anything more flatly contradict common sense, deny the plain fact? Can we constitute our Secretary into the Senate, and can we make the Clerk of the House of Representatives the House for the purpose of doing any official act whatever? You propose that he shall receive the communication from the President as if he were the Senate or the House; that he, sitting anywhere, responsible to nobody, with no check upon him, shall make up a Journal as if he were the Senate or the House for the occasion." Cong. Rec., 40th Cong., 2d. Sess., Pt. 3, pp. 2076, 2077.

And Senator Morton said: "The Constitution * * * contemplates that the bill shall pass from the custody of the House in which it shall have originated; and we have no power, in my judgment, to say that it shall be sufficient to return it to the President of the Senate or the Speaker of the House or to the Secretary or Clerk. * * * What has become of the bill? The Constitution does not contemplate such a condition of things. * * * It would be just as good for the private Secretary of the President to retain a bill as for the Secretary of the Senate; just as much a compliance with the provision of the Constitution; and it would be just as satisfactory to my mind for the President to retain it during the odd days as for the Secretary of the Senate to do so." Cong. Globe, 40th Cong., 2d Sess., Pt. 3, pp. 2077, 2078.

[12] Ho. Doc. No. 493, 70 Cong., 2d sess.

[13] Note 7, supra.

SINCLAIR et al. v. UNITED

Argued and Submitted April 22, 2
cided June 3, 1929.

No. 748.

**1. Contempt ⇐60(3)—Evidence
spected one defendant insufficie
charge of contempt.**

Evidence in proceeding for
court *held*, as respected one of th
insufficient to support charge.

**2. Contempt ⇐14—Improper su
jurors does not, in order to co
tempt, require showing actual co
operatives and jurors or juror
of being observed (Jud. Code, § 2
§ 385]; Cr. Code § 135 [18 USC**

Obstruction of administratio
within Judicial Code, § 268 (28 U
and Criminal Code, § 135 (18 USC
reason of improper surveillance a
tion of jurors in criminal trial, do
der to constitute contempt of cour
legation or showing of actual con
operatives of detective agency ar
that any juror had knowledge of be
reasonable tendency of acts done
criterion, regardless of actual eff
on juror's mind or his consciousn
neous influence.

**3. Contempt ⇐60(3)—Evidence h
tain defendants to support ch
tempt by reason of improper su
jurors in criminal trial.**

Evidence, in prosecution for
court by reason of improper sur
investigation of jurors in crimin
as to certain defendants sufficient
charge, in that acts disclosed tende
honest and fair administration o

**4. Contempt ⇐14—Acts of oper
tective agency in investigating
sufficiently near court to constitu**

Acts of operatives of detecti
investigating jurors in criminal tr
ciently near court to constitute
that most of them were within cou
door of courthouse, or within city

**5. Contempt ⇐60(2)—Evidence
ment of Justice caused officers
jurors was properly excluded in c
ceeding based on improper inv
jurors.**

In prosecution for contempt of
son of improper surveillance and
of jurors in criminal trial, evide
practice of Department of Justice
officers to shadow jurors *held* pro
ed, since Department is not lawma
takes or violations of law by it gi
for wrongful conduct by others.

**6. Contempt ⇐60(2)—Refusal to
dence offered in mitigation of pu
contempt, without limitation to
knowledge or belief or mental st
erroneous.**

Where defendants in contemp
based on improper surveillance

⇐For other cases see same topi