

## Chapter XCIII.

### BILLS RETURNED WITHOUT THE PRESIDENT'S APPROVAL.

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1. Provision of the Constitution. Section 3520.
  2. Reception of veto message in House. Sections 3521–3523.
  3. Bills passed over the veto. Sections 3524–3529.
  4. Privilege of motions relating to a veto message. Sections 3530–3533.
  5. Consideration of veto messages in the House. Sections 3534–3552.<sup>1</sup>
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**3520. A bill which the President does not approve he returns with his objections to the House in which it originated.**

**The House to which a bill is returned with the objections of the President enters the objections on the Journal and proceeds to reconsider it.**

**If two-thirds of the House to which a bill is returned with the President's objections agree to pass it, and then two-thirds of the other House, it becomes a law.**

**On a vote on passing a bill returned with the objections of the President the yeas and nays are required to be entered on the Journal.**

**A bill not returned by the President within ten days (Sundays excepted) becomes a law as if signed, unless Congress by adjournment prevent its return.**

The Constitution of the United States in Section 7 of Article 1 provides:

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 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. 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.

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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<sup>1</sup>Question of consideration not in order as against. Sections 4969, 4970 of Vol. V.

**3521. A veto message may not be returned to the President of the United States.**—On August 15, 1876,<sup>1</sup> two messages from the President were laid before the Senate successively. Both were dated the same day. The first returned with objections the bill (S. 779) providing for the sale of certain Indian lands (Otoe and Sac and Fox); and the second stated that the President requested the return of the former message, as he was convinced that the bill should be signed.

Mr. George F. Edmunds, of Vermont, raised the question that, as the Constitution was explicit, the bill could not be returned to the President. The Senate must now act. This view was concurred in generally, and the question was taken on the passage of the bill. The bill was passed.

**3522. A veto message of the President may not be read in the absence of a quorum, even though the House be about to adjourn sine die.**

**A vetoed bill, not acted on before adjournment sine die, because of the failure of a quorum, was acted on at the next session of the same Congress.**

On August 3, 1854,<sup>2</sup> a message was received from the President of the United States transmitting his objections to the river and harbor appropriation bill. Before this message was read, a quorum failed, and when a demand was made for the reading of the message, the Speaker<sup>3</sup> overruled the demand on the ground that no quorum was present.

A quorum not appearing on the next day, a question arose as to the disposition of the message under the Constitutional requirements as to bills returned without the Executive approval. It was certain that no quorum would appear by the time fixed for adjournment sine die.

The Speaker<sup>3</sup> stated that the message would be spread on the Journal of the 3d. There was a quorum, according to his recollection, when the message was received. Soon afterwards the House found itself without a quorum, and no motion was made or action taken on the message. But the Chair thought that under the provision of the Constitution the message should go on the Journal.

So the message appears on the Journal.

On December 4, 1854, the first day of the next session, as soon as the House was ready for business the Speaker directed the message to be read. It was ordered printed, and on December 6 the question was taken as provided by the Constitution.

**3523. A motion to adjourn was held in order, although if carried the effect would have been to prevent for the session the consideration of a veto message of the President.**—On March 3, 1855,<sup>4</sup> in the closing hours of the session a message was received from the President transmitting his objections to the bill making appropriations for the transportation of the United States mails.

Pending consideration of this message, a motion was made by Mr. John Wheeler of New York, that the House adjourn.

Mr. Phillip Phillips, of Alabama, made the point of order that the House was

<sup>1</sup> First session Forty-fourth Congress, Record, p. 5664.

<sup>2</sup> First session Thirty-third Congress, Journal, p. 1340; Globe, pp. 2144, 2221. Second session, Journal, pp. 8, 49; Globe, p. 2.

<sup>3</sup> Linn Boyd, of Kentucky, Speaker.

<sup>4</sup> Second session Thirty-third Congress, Globe, p. 1157.

bound under the Constitution to consider a veto message, and that therefore a motion to adjourn on the last day of the session before consideration of the message was contrary to the Constitution.

The Speaker<sup>1</sup> said:

The Chair decides that it is competent for this House to adjourn if it chooses to do so, and no debate can arise on the proposition that the House do now adjourn.

The motion to adjourn was decided in the negative.<sup>2</sup>

**3524. A bill passed, notwithstanding the objections of the President, is sent by the presiding officer in the House which last acts on it to the Secretary of State for preservation.**—The statutes of the United States<sup>3</sup> provide that—

Whenever a bill, order, resolution, or vote is returned by the President with his objections and on being reconsidered is agreed to be passed and is approved by two-thirds of both Houses of Congress and thereby becomes a law or takes effect, it shall be received by the Secretary of State from the President of the Senate or Speaker of the House of Representatives, in whichever House it shall last have been approved, and he shall carefully preserve the originals.

**3525. Before the enactment of the statute the House directed the Clerk to take to the Secretary of State its bills passed over the President's veto.**—

On July 17, 1866,<sup>4</sup> a message from the Senate announced that they had passed over the veto of the President the bill (H. R. 613) to continue in force and amend an act to establish a bureau for the relief of freedmen and refugees, which had already been similarly passed by the House.

On July 18, by unanimous consent, Mr. Thomas D. Eliot, of Massachusetts, offered the following resolution, which was agreed to:

*Resolved*, That the Clerk of the House of Representatives be directed to present to the Secretary of State the act entitled "An act to continue in force and to amend an act for the relief of freedmen and refugees, and for other purposes," together with the certificates of the Clerk of the House of Representatives and Secretary of the Senate showing that the said act was passed by a vote of two-thirds of both Houses of Congress after the objections of the President thereto had been received and after the reconsideration of said act by both Houses, in accordance with the Constitution.

On the same day the Speaker laid before the House a letter from the Clerk informing the House that he did this day, in accordance with the resolution of the House, present to the Secretary of State the act, etc.

**3526.** On March 2, 1867,<sup>5</sup> a message from the Senate announced that that body had passed over the veto of the President the bill (H. R. 1143) to provide for the more efficient government of the rebel States.

Then, on motion of Mr. Thaddeus Stevens, of Pennsylvania,

*Resolved*, That the Clerk of the House be directed to present to the Secretary of State the bill entitled "An act to provide for the more efficient government of the rebel States," together with the

<sup>1</sup> Linn Boyd, of Kentucky, Speaker.

<sup>2</sup> In 1876 two bills returned to the House by the President of the United States without his approval were referred to a committee and not acted on further. A new bill on the subject of one of these bills was reported by the committee. (First session Forty-fourth Congress, bills H. R. 1922 and H. R. 4085. See history of bills in Journal and Record.)

<sup>3</sup> Second session Forty-third Congress, Laws, 18 Stat., p. 294.

<sup>4</sup> First session Thirty-ninth Congress, Journal, pp. 1030, 1039, 1050; Globe, p. 3905.

<sup>5</sup> Second session Thirty-ninth Congress, Journal, pp. 583, 604.

certificates of the Clerk of the House of Representatives and the Secretary of the Senate showing that the said act was pawed by a vote of two-thirds of both Houses of Congress after the same had been returned to the House of Representatives by the President with his objections and after the reconsideration of said act by both Houses of Congress, in accordance with the Constitution.

On the same day the Speaker laid before the House a letter from the Clerk stating that, according to the instruction of the House, he had presented the bill to the Secretary of State.

On March 7, 1867,<sup>1</sup> the Clerk transmitted to the House a letter from the Secretary of State acknowledging the receipt of the act and announcing his purpose to promulgate it.

**3527.** On March 25, 1867,<sup>2</sup> the House received a message from the Senate announcing that that body had passed over the veto of the President the bill (H. R. 33) supplemental to the act for the more efficient government of the rebel States, and on the same day the House, by resolution, directed the Clerk to present the bill to the Secretary of State. On March 26<sup>3</sup> the Clerk presented to the House the acknowledgment of the Secretary of State.

**3528. Since the enactment of the statute the House takes no special action in relation to transmitting to the Secretary of State bills passed over the President's veto.**—In 1876<sup>4</sup> several bills were passed over the veto of the President, and it does not appear that in the case of any one of them any resolution was adopted providing for filing them with the Secretary of State:

S. 779. (First session Forty-fourth Congress, Journal, p. 1511; Record, pp. 5664, 5696.)

S. 489. (Journal, p. 1014; Record, pp. 3229, 3347.)

H. R. 1337. (Journal, pp. 1345, 1361; Record, pp. 4940, 5011.)

**3529.** On February 28, 1878,<sup>5</sup> the President returned to the House with his disapproval the bill (H. R. 1093) to authorize the coinage of the standard silver dollar and to restore its legal-tender character. Upon reconsideration the House passed the bill, yeas 196, nays 73, and the bill was taken to the Senate. On March 1 a message from the Senate announced that the Senate had passed the bill, two-thirds of the Senate agreeing to the same. It does not appear that any further action was taken with a view to transmitting the bill to the Secretary of State.

**3530. Resolutions relating to the disposition of bills passed over the veto of the President have been treated as privileged.**—On June 23 and 26, 1868,<sup>6</sup> resolutions directing the Clerk to present to the Secretary of State acts passed over the veto of the President were presented and received in the House as privileged.

**3531. A bill returned with the President's objections is privileged, but the same is not true of a bill reported in lieu of it.**—On August 15, 1876,<sup>7</sup> Mr. George Willard, of Michigan, claiming the floor for a question of privilege,

<sup>1</sup> First session Fortieth Congress, Journal, p. 15.

<sup>2</sup> First session Fortieth Congress, Journal, pp. 106, 112.

<sup>3</sup> Journal, p. 119.

<sup>4</sup> See history of bills, Record and Journal, first session Forty-fourth Congress.

<sup>5</sup> Second session Forty-fifth Congress, Journal, pp. 550, 555; Record, pp. 1420, 1427.

<sup>6</sup> Second session Fortieth Congress, Journal, pp. 917, 933.

<sup>7</sup> First session Forty-fourth Congress, Record, p. 5689.

reported back the bill (H. R. 4085), which had been returned with the President's objections, from the Committee on the District of Columbia, with a new bill (H. R. 4108) in lieu thereof.

The Speaker pro tempore<sup>1</sup> said:

The Chair must state that this is not a privileged question. The gentleman has a right to report back the original bill so that the House may vote upon passing it over the veto of the President.

**3532. A motion to discharge a committee from the consideration of a vetoed bill presents a question of constitutional privilege and is in order at any time.**—On July 29, 1886,<sup>2</sup> Mr. Julius C. Burrows, of Michigan, moved to discharge the Committee on Invalid Pensions from the further consideration of the bill (H. R. 4058) relating to Joel D. Monroe.

Mr. William M. Springer, of Illinois, made the point of order that it was not in order to move, as a privileged matter, to discharge a committee from the consideration of a bill. Although this bill was privileged, yet it was in the hands of the committee, and it was the duty of that committee to report it.

The Speaker<sup>3</sup> ruled:

The Constitution of the United States provides that when the President returns a bill to the House in which it originated, with his objections, that House shall proceed to reconsider it and determine whether the bill shall be again passed, the objection of the President to the contrary notwithstanding. The Constitution of the United States provides also that each House shall judge of the election, returns, and qualification of its own Members, and may make its own rules for the government of its proceedings; and yet it has been always held that under that provision of the Constitution, which does not in terms make it imperative upon the House to proceed to consider election cases, a motion to discharge the Committee on Elections from the further consideration of a contested case and bring the same before the House was privileged. The Chair so decided only a few days ago, when the gentleman from Georgia, Mr. Turner, moved to discharge the Committee on Elections from the further consideration of a contested case from the State of Rhode Island. The Chair think that the privilege in the present case is certainly equal to that in the case of a contested election.

**3533. The House has declined to give privilege to a motion to discharge a committee from the consideration of an ordinary matter of legislation.**—The motion to discharge a committee from the consideration of an ordinary legislative proposition has no privileged status, and consequently may not intrude on the order of business. On February 27, 1880,<sup>4</sup> during the revision of the rules, Mr. John F. House, of Tennessee, proposed a rule that when for fifty days a committee should fail to report a public bill or resolution it should be in order on any Monday to move to discharge the committee and place the bill or resolution on the Calendar. In the debate it was urged that the Commerce Committee was defying the wishes of the House by declining to report the bill to regulate interstate commerce. The Committee of the Whole disagreed to the proposed rule, ayes 61, noes 75.

On February 7, 1884,<sup>5</sup> Mr. Oscar Turner, of Kentucky, proposed a rule that whenever a committee should have failed or refused for forty days to report back a bill either favorably or adversely it should be in order for the Member who had

<sup>1</sup> Milton Saylor, of Ohio, Speaker pro tempore.

<sup>2</sup> First session Forty-ninth Congress, Record, p. 7699; Journal, p. 2397.

<sup>3</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>4</sup> Second session Forty-sixth Congress, Record, pp. 1199–1202.

<sup>5</sup> First session Forty-eighth Congress, Record, pp. 964–973.

introduced the bill to move on any Tuesday to discharge the committee, with the object of having the bill considered by the House. In opposition to this proposition Mr. Thomas B. Reed, of Maine, pointed out that the House could hardly act on more than 8 per cent of the bills referred; and while nonaction by a committee might be an evil, the House could not afford to put into the hands of the individual Member a privileged motion that would relate to nine-tenths of the business of the House and would result in much consumption of time. Mr. Samuel J. Randall, of Pennsylvania, following in the same line, urged that it would not be wise to provide that any bill which could not secure the recommendation of a committee should be precipitated upon the House for a final vote, yea or nay. The House disagreed to the rule, ayes 56, noes 15.

When the House desires to discharge a committee from a legislative proposition, it may be done by suspension of the rules or on a report from the Committee on Rules.

**3534. It is the usual but not invariable rule that a bill returned with the objections of the President shall be read and considered at once.**

**Form of putting the question on the passage of a bill returned with the objections of the President. (Footnote.)**

On June 29, 1842,<sup>1</sup> President Tyler transmitted to the House his veto of the bill of the House, "An act to extend for a limited period the present laws for laying and collecting duties on imports." The House proceeded to the reconsideration of the bill, and the question, that the House on reconsideration do agree to pass the same, the objections of the President to the contrary notwithstanding,<sup>2</sup> was stated. The question was debated from day to day, and on July 4 the House again resumed the reconsideration of the bill. The previous question was ordered, and the main question, "That the House on reconsideration do agree to pass the bill," was then determined in the mode prescribed by the Constitution of the United States, there being 114 yeas and 97 nays.

**3535.** On August 3, 1846,<sup>3</sup> the President returned with his objections the bill entitled "An act making appropriations for the improvement of certain harbors and rivers."

The message having been read,<sup>4</sup> Mr. George Ashmun, of Massachusetts, raised the point that according to the Constitution the message must be spread upon the Journal before the House could proceed to its reconsideration.

The Speaker<sup>5</sup> decided that by the rules of construction and the practice of the House the message was considered as already spread on the Journal.

<sup>1</sup> Second session Twenty-seventh Congress, Journal, pp. 1032, 1051; Globe, pp. 695, 717.

<sup>2</sup> The form now in use by the Speaker in putting the question is: "Will the House on reconsideration agree to pass the bill, the objections of the President to the contrary notwithstanding?" (Record, p. 1183, second session, Fifty-fourth Congress.)

<sup>3</sup> First session Twenty-ninth Congress, Journal, pp. 1209, 1214, 1218; Globe, p. 1183.

<sup>4</sup> On June 15, 1880 (second session Forty-sixth Congress, Record, p. 4587), the Senate declined to have read a veto message just received from the President, and on the next day, June 16 (Record, p. 4612), the Senate by a vote of yeas 30, nays 17, voted to go to other business instead of having the message read. This was a message of President Hayes vetoing a bill relating to chief supervisors of elections. On June 16 the Congress adjourned sine die without hearing the message.

<sup>5</sup> John W. Davis, of Indiana, Speaker.

The House then proceeded to the reconsideration of the bill, and after some proposals for postponement, the previous question being ordered, the main question "Will the House, on reconsideration, agree to pass the bill" was determined in the mode prescribed by the Constitution of the United States; when it appeared, for passing, the bill 97 against it 91. And so the bill was not passed, two-thirds of the House, on reconsideration, not agreeing to pass the same.

**3536.** On February 17, 1855,<sup>1</sup> during the consideration of the bill (H. R. 595) making an appropriation for mail steamers, the main question having been ordered, and the yeas and nays having been ordered on a motion to reconsider the vote by which an amendment had been agreed to, a message was received transmitting the reasons of the President for not approving the bill for the ascertainment of certain French spoliation claims. Mr. Speaker Boyd raised a question as to whether the veto message should be laid before the House at once. After consultation, it was decided that the House should dispose of the pending bill before considering the message, and it was done in that way.

**3537. A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business.**

**The two-thirds vote required to pass a bill notwithstanding the objections of the President is "two-thirds of the members present."**

On July 8, 1856,<sup>2</sup> Mr. Solomon G. Haven, of New York, as a question of privilege, asked that the House proceed to the reconsideration of the bill of the Senate (S. 1) entitled "An act making an appropriation for deepening the channel over the St. Clair flats, in the State of Michigan."

Mr. Thomas L. Clingman, of North Carolina, objected, holding that there was nothing in the Constitution which made this a question of privilege. The Constitution provided that the House should consider again a vetoed bill, but did not say when it should do it.

The Speaker<sup>3</sup> said:

This message having been received from the Senate, with the accompanying message from the President of the United States, the Chair thinks that it is a matter which supersedes the ordinary business of the House, and must be considered at this time, subject to the rules of the House. The Chair places his decision upon the following grounds: If the bill had originated in the House, and had been returned by the President, with his objections, the language of the Constitution would have required the House to proceed at once to the consideration of the bill, with the objections of the President. The case before us, however, differs in this: The bill having originated in the Senate, it comes to us from that body, and in a different form. The duty of the House is prescribed in the seventh section of the Constitution, in this language: "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 considered." The Chair thinks that the proper interpretation of the word "likewise" is, "in like manner," as in the House where the bill originated.

The Speaker referred to the action of the House in 1845, on the bill S. No. 66, which came up under similar circumstances, and which the House at once considered.

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<sup>1</sup>Second session Thirty-third Congress, Globe, p. 797.

<sup>2</sup>First session Thirty-fourth Congress, Journal, pp. 1176, 1178; Globe, p. 1563.

<sup>3</sup>Nathaniel P. Banks, of Massachusetts, Speaker.

The question being put on reconsideration, there were yeas 139, nays 55. So it was—

*Resolved*, That the bill do pass, two-thirds of the Members present agreeing thereto.

In the same manner on the same day the bill of the Senate (S. 2), entitled “An act making an appropriation for deepening the channel over the flats of the St. Marys River, in the State of Michigan,” was passed by a vote of 136 yeas to 54 nays, two-thirds of those present.

**3538.** Again, on August 11, 1856,<sup>1</sup> the bill of the House (H. R. 12) entitled “An act for continuing the improvement of the Des Moines Rapids, in the Mississippi River,” was passed over the President’s veto by 130 yeas to 54 nays, two-thirds of those present.<sup>2</sup>

**3539. It is the practice for one House to inform the other by message of its decision that a bill returned with the President’s objections shall not pass.**—On February 3, 1815,<sup>3</sup> a message from the Senate informed the House that the Senate proceeded to the reconsideration of the bill, entitled “An act to incorporate the subscribers to the bank of the United States of America,” which was returned by the President of the United States on the 30th day of January, 1815, with objections; and have resolved that the said bill do not pass, two-thirds of the Senate not agreeing thereto.

**3540.** On May 31, 1830,<sup>4</sup> a message was received from the Senate informing the House that the bill “authorizing a subscription of stock in the Washington Turnpike Road Company,” which the President had that day returned to the Senate with his objections to the same, had not passed, two-thirds of the Senate not voting for the passage thereof, as required by the Constitution.

**3541.** On July 13, 1832,<sup>5</sup> a message from the Senate announced that in the Senate the bill to continue the incorporation of the bank of the United States, which had been returned with the objections of the President, had not passed, “two-thirds of the Senators present not agreeing thereto.”

**3542. The constitutional mandate that the House “shall proceed to reconsider” a vetoed bill has been held not to preclude a motion to postpone consideration to a day certain.**—On May 27, 1830,<sup>6</sup> President Jackson sent to the House his message vetoing the bill authorizing a subscription to the stock of the Maysville and Washington Turnpike Road Company in Kentucky.

The message being read, a motion was made by Mr. William W. Irvin, of Ohio, that the House do now proceed to reconsider the bill.

A motion was made by Mr. Henry Daniel, of Kentucky, that the reconsideration of the bill be postponed until to-morrow.

<sup>1</sup>First session Thirty-fourth Congress, Journal, p. 1420; Globe, p. 2036.

<sup>2</sup>The principle that two-thirds of those present are sufficient was established on March 3, 1945 (second session Twenty-eighth Congress, Journal, p. 567; Globe, p. 396), when the House passed a Senate bill over a veto by a vote of yeas 127, nays 30, a yea vote considerably less than two-thirds of the entire membership. Mr. Speaker Jones declared “that the bill was passed by the constitutional majority of two-thirds.” On July 7, 1856 (first session Thirty-fourth Congress, Senate Journal, p. 419; Globe, pp. 1544–1550) President pro tempore Bright made in the Senate a formal ruling based on this House practice, and after learned debate was sustained on appeal, yeas 34, nays 7.

<sup>3</sup>Third session Thirteenth Congress, Journal, p. 705 (Gales and Seaton ed.); Annals, p. 1120.

<sup>4</sup>First session Twenty-first Congress, Journal, p. 812.

<sup>5</sup>First session Twenty-second Congress, Journal, p. 1162.

<sup>6</sup>First session Twenty-first Congress, Journal, p. 742; Debates, p. 1138.

Mr. Charles A. Wickliffe, of Kentucky, then made the following motion: That this House will at 12 o'clock meridian, to-morrow, proceed to the reconsideration of the said bill.

Mr. Daniel accepted this as a modification of his motion.

This motion as modified was agreed to after a futile effort by Mr. Philip Doddridge, of Virginia, to strike out "12 o'clock."

The record of the debates says:

When the reading was concluded there arose a hurried and anxious debate, involving no principle of the bill, but merely the question whether the bill should be reconsidered instanter or whether the reconsideration should be postponed until to-morrow. During the whole of the proceeding there was a tendency to debate the main question and an effort on the part of the Chair to confine the debate to the question of postponement. In this Messrs. Irving of Ohio, Daniel, Vance, Ingersoll, Brown, Potter, P. P. Barbour, Wickliffe, Polk, Bell, Coleman, Letcher, Burges, Yancey, and Barringer participated. Finally, as by common consent, it was agreed that the consideration could be postponed until to-morrow, by which time it was supposed the message would be printed and in the hands of every Member.

**3543.** On February 21, 1811,<sup>1</sup> the President returned to the House without his approval the bill "incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia."

Discussion having arisen as to the procedure required by the Constitution, Mr. Nathaniel Macon, of North Carolina, moved that the consideration of the bill be postponed until to-morrow, justifying the motion by a precedent of April 5, 1792,<sup>2</sup> when the House having heard read the objections of President Washington to the bill making apportionment of Representatives came to this resolution:

*Resolved*, That to-morrow be assigned for the reconsideration of said bill, according to the Constitution of the United States.

Mr. Macon therefore offered his motion in the same terms, and it was agreed to by the House.

**3544.** On June 11, 1844,<sup>3</sup> President Tyler returned to the House, with his objections, the bill entitled "An act making appropriations for the improvement of certain harbors and rivers."

The message having been read, a motion was made by Mr. David L. Seymour, of New York, that it be entered on the Journal and printed, and that the message and bill be made a special order for Thursday next.

Mr. Seymour moved the previous question, which was seconded; and the main question was now ordered to be put.

The Speaker<sup>4</sup> decided that the motion to postpone and print had been set aside by the ordering of the previous question;<sup>5</sup> and the main question would be, "Will the House, on reconsideration, agree to pass the bill?"

A motion was made by Mr. Hannibal Hamlin, of Maine, that the vote by which the House had ordered the main question to be now put, be reconsidered; which was decided in the negative.

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<sup>1</sup>Third session Eleventh Congress, Journal, p. 567 (Gales and Seaton ed.); Annals, pp. 983, 985.

<sup>2</sup>First session Second Congress, Journal, pp. 563, 564 (Gales and Seaton ed.).

<sup>3</sup>First session Twenty-eighth Congress, Journal, pp. 1081, 1084, 1085; Globe, p. 663.

<sup>4</sup>John W. Jones, of Virginia, Speaker.

<sup>5</sup>This was formerly the operation of the previous question.

The House then proceeded to the reconsideration of the bill.

The question was then put and determined in the mode prescribed by the Constitution of the United States, when there appeared 104 yeas and 84 nays, so the bill was not passed, two-thirds of the House, on reconsideration, not agreeing thereto.

**3645.** On December 4, 1854,<sup>1</sup> the Speaker having announced, as the business first in order, the message of the President of the United States returning, with his objections, the bill of the House (No. 392) entitled "An act making appropriations for the repair, preservation, and completion of certain public works heretofore commenced under the authority of law," which was received on the eve of the adjournment of the last session.

The same was read; when, on motion of Mr. Thomas L. Clingman, of North Carolina, the further consideration of the bill, with the objections of the President thereto, was postponed until Wednesday next.

**3546.** On March 2, 1895,<sup>2</sup> Mr. Hugh A. Dinsmore, of Arkansas, moved that the Committee on Indian Affairs be discharged from the consideration of the bill (H. R. 8681) authorizing the Arkansas Northwestern Railway Company to construct and operate a railway through Indian Territory, and for other purposes, returned to the House by the President, with his objections, thereto, and that the House proceed to its reconsideration.

Mr. Albert J. Hopkins, of Illinois, moved that the further consideration of the motion of Mr. Dinsmore be postponed until 11.30 a.m. (calendar day), March 4, 1895.

Mr. Dennis T. Flynn, of Oklahoma, made the point that the consideration of the bill returned by the President, with his objections, presented a question of the highest privilege, and that a motion to postpone its consideration was therefore not in order.

The Speaker<sup>3</sup> overruled the point made by Mr. Flynn, holding as follows:

The Constitution provides that when the President shall return a bill without his sanction the House shall proceed to reconsider it, and it has been held that the question of consideration can not be raised against the proceeding. But it has also been held that a motion to postpone may be entertained. A motion to postpone the consideration of a measure to a given day is in itself consideration, and under the rulings heretofore made is now in order. When a veto message is received from the President, it does not follow that the House must immediately proceed to vote upon the question. It has been expressly ruled that the House may postpone the consideration of the subject to a future day. In a ruling made in the Twenty-first Congress, found in the Journal of the Twenty-first Congress on page 742, it was held that the motion to postpone a veto message, or a bill vetoed, to a future day was in order.

**3547.** On March 2, 1897,<sup>4</sup> a message was received from the President, who returned without his approval the bill (H. R. 7864) "to amend the immigration laws of the United States."

After the message had been read, Mr. Richard Bartholdt, of Missouri, moved that its consideration be postponed until 1 o'clock the following day.

A question of order being suggested as to the admissibility of the motion at the time, the Speaker<sup>5</sup> said:

<sup>1</sup> Second-session Thirty-third Congress, Journal, p. 8; Globe, p. 2. The message was received as soon as the formalities of assembling were over.

<sup>2</sup> Third session Fifty-third Congress, Journal, p. 190.

<sup>3</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>4</sup> Second session Fifty-fourth Congress, Record, pp. 2667-2668.

<sup>5</sup> Thomas B. Reed, of Maine, Speaker.

It is quite true that a veto message is always a question of privilege. At the same time the House very often refers such a message to a committee. There does not appear to the Chair any reason why the House may not fix a time for the consideration of such a message.

**3548. It is not in order to move to postpone indefinitely the consideration of a veto message of the President.**—On February 21, 1811,<sup>1</sup> the President returned to the House without his approval the bill “incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia.”

The message having been read, Mr. John Randolph, of Virginia, asked if a motion to postpone indefinitely would be in order.

The article of the Constitution having been read, the Speaker<sup>2</sup> expressed the opinion that the motion would not be in order.

**3549. A bill returned with the objections of the President may be laid on the table.**—On April 9, 1866,<sup>3</sup> a message of the President of the United States giving his reasons for withholding his approval from the bill (S. 61) “to protect all persons in the United States in their civil rights and furnish the means of their vindication” was laid before the House.

Mr. William E. Niblack, of Indiana, proposed to make a motion to lay on the table.

Mr. Robert C. Schenck, of Ohio, raised a question of order that the motion was not in order.

The Speaker<sup>4</sup> said.

The Chair overrules the point of order, and will state the grounds for overruling it. As the Chair first stated to the House, the Constitution seems to indicate that the House shall immediately vote upon the passage or rejection of the bill, but upon an examination of the precedents he finds that the Congress has acted so as to enlarge this construction very considerably. In the Twenty-first Congress the vote upon a vetoed bill was postponed for a long time. In another Congress a motion was made and entertained to recommit a bill that had been vetoed by the committee from which it originated. But perhaps the decision most applicable to this case is to be found on page 10 of Barclay's Digest, which has been adopted as the parliamentary law of this House, which binds both the Members and the Speaker. It is as follows:

“A veto message and bill may be referred, or the message alone or the bill may be laid on the table.”

The Chair finds in the Journal of the Twenty-seventh Congress, second session, page 1256, when Hon. John White, of Kentucky, occupied the chair, the following precedent: [Here is quoted the precedent so far as the ruling of the Chair was concerned.] The bill was then laid on the table by a vote of 97 to 73; and among those who voted to lay on the table were two gentlemen who have taken the oath under the Constitution as President of the United States, John Quincy Adams and Millard Fillmore. Mr. William Pitt Fessenden, Mr. Joshua R. Giddings, and other gentlemen of distinction at that day, whose names the Chair need not repeat, also voted to lay the bill on the table.

The Chair is now bound by this decision of a Speaker of the House, which was sustained by the House on an appeal. That decision enters into the parliamentary law of the House and has been incorporated into the Digest which we have adopted as our parliamentary law. As the House had on several occasions enlarged what the Speaker would deem to be the strict construction of this provision of the Constitution by a variety of motions apart from the question of passing or rejecting the bill, the Chair thinks the motion to lay this bill on the table is in order.

There is still an additional reason. If two-thirds of the House desire to pass the bill over the Presidential veto, it is evident that they will reject the motion to lay the bill on the table. If they

<sup>1</sup>Third session Eleventh Congress, Annals, p. 983.

<sup>2</sup>Joseph B. Varnum, of Massachusetts, Speaker.

<sup>3</sup>First session Thirty-ninth Congress, Globe, p. 1860.

<sup>4</sup>Schuyler Colfax, of Indiana, Speaker.

desire to have the bill laid upon the table, the Chair can not, upon reflection, see why they should not have that privilege. If they wish to refer it to a committee, as was done with a veto in the last Congress, they should have the right to do it. This is a matter coming back to the House with the objections of the President, and by the precedents quoted the House can do as they see fit with it. And if two-thirds of the House are in favor of passing the bill it is certainly evident that a majority will vote against laying the bill on the table.

Mr. Schenck proposed an appeal, but withdrew it, and the House acquiesced in the decision.

**3550. A motion to refer a vetoed bill, either with or without the message, has been held allowable within the constitutional mandate that the House "shall proceed to reconsider."**

**Not only have vetoed bills been referred to committees, but in practice those committees have often neglected to report. (Footnote.)**

**A vetoed bill when laid on the table is still highly privileged, and thus justifies a motion to take it from the table and action thereon by majority vote. (Footnote.)**

**It is the duty of the Speaker to put a motion in order under the rules and practice without passing on its constitutional effect.**

On August 10, 1842,<sup>1</sup> the House proceeded to the reconsideration of the bill (No. 472) entitled "An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes," which had been presented to the President of the United States on the 6th instant and returned by him with objections.

A motion was made by Mr. John Quincy Adams, of Massachusetts, that the message of the President returning the bill, together with the bill, be referred to a select committee, to consist of thirteen Members, with instructions to report thereon.<sup>2</sup>

Mr. Thomas F. Foster, of Georgia, submitted the following question of order:

The motion to refer is not in order, on the ground that by the Constitution of the United States (which declares that "if the President approve a bill, 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") it is not in order to refer the said bill, but that the only question for the consideration of the House is, Does the House, on reconsideration, agree to pass the said bill?

In the debate, Mr. Caleb Cushing, of Massachusetts, took the ground that the message, having been entered on the Journal as the Constitution specifies, was not before the House. While the question on the passage of the bill was pending it was not in order to take up the message and refer it to a committee. The question was on the bill, the message being not in possession of the House except as a matter of history.

Mr. Joseph R. Underwood, of Kentucky, contended that a message might contain statement of facts which a committee should examine. This one contained reasons and matters of opinion. It was therefore proper to refer it.

Mr. Henry A. Wise, of Virginia, said that a majority of the committee might refuse to report, thereby indefinitely postponing consideration, a thing which the

<sup>1</sup> Second session Twenty-seventh Congress, Journal, pp. 1253-1257; Globe, pp. 873, 875, 905.

<sup>2</sup> It is a common practice in such cases now for the House to refer bill and message together. (See Congressional Record, first session Fifty-fourth Congress, pp. 5535, 5918.)

House had no power to do.<sup>1</sup> A committee could not reform or amend the bill in any way, but could only recommend to the House whether or not to reconsider. He did not believe that the Constitution contemplated a reference to a committee.

The Speaker<sup>2</sup> referred to a bill passed in 1832 which had not received the assent of the President, but was returned to the House at the commencement of the succeeding session, accompanied by the President's reasons for withholding his assent. The bill and message were referred to a committee and never came back to the House.

Mr. Wise, in reply, declared that in the spring of 1832, within less than ten days of the adjournment of Congress, a bill for the improvement of certain rivers and harbors was sent to General Jackson. He did not sign it, and it failed thereby to become a law. At the next session the President sent a message informing Congress that the bill had not become a law. This message, which was not a veto message, was referred to a committee.<sup>3</sup>

The Speaker stated that there was no question of order involved; that it was a matter for the House to decide, and not the Chair. It was his duty to entertain any motion not forbidden by the rules of the House and the course of parliamentary proceedings; and he conceived it to be his duty to entertain the motion to refer.

From this decision Mr. Foster appealed to the House. The appeal was laid on the table by a vote of 107 to 9, and so the decision of the Speaker was sustained.

The question recurred on the motion, made by Mr. Adams, that the message and bill be referred to a select committee; when Mr. Adams modified his motion so that the message alone should be referred to a committee, without the bill.

It was objected that it was not in order to refer the message without the bill.

The Speaker decided the motion to be in order.

From this decision Mr. Henry A. Wise, of Virginia, appealed to the House; which appeal was, on motion of Mr. Millard Fillmore, of New York, laid upon the table; and the decision of the Speaker was sustained.

The question again recurred on the motion of Mr. Adams, that the message be referred to a select committee.

This passed in the affirmative, and the committee were appointed, with Mr. Adams chairman.

The question was then propounded, that the House, on reconsideration, do agree to pass the bill to provide revenue from imports, etc., when a motion was made by Mr. James Cooper, of Pennsylvania, that the bill do lie on the table.

Mr. William Cost Johnson of Maryland, objected to this motion as not in order, because, according to the Constitution, the House must proceed to the reconsideration of the bill.

The Speaker decided that the motion to lay on the table was in order. From this decision Mr. William Cost Johnson appealed to the House; which appeal was, on motion of Mr. Fillmore, ordered to lie on the table.

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<sup>1</sup>In the Fiftieth Congress there were 200 or more vetoes in the first session, so that the disposal of them by yea-and-nay votes became a serious problem. In this condition of affairs some of the messages referred to the Invalid Pensions Committee were not reported back. (See Record, first session Fiftieth Congress, "Index of bills," H. R. 9106, 10563, 9372, 1233, etc.) In the Fifty-ninth Congress all the veto messages were referred to committees, and were not reported thence.

<sup>2</sup>John White, of Kentucky, Speaker.

<sup>3</sup>Second session Twenty-second Congress, Journal, p. 24.

The question was then put, that the bill do lie on the table, and it passed in the affirmative, 97 to 73.<sup>1</sup>

On April 5, 1882,<sup>2</sup> in the Senate President pro tempore David Davis, of Illinois, decided that a motion to refer a veto message and bill was in order.

**3551. While the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to commit it pending the demand for the previous question or after it is ordered on the constitutional question of reconsideration.**—On August 2, 1882,<sup>3</sup> Mr. Horace F. Page, of California, as a privileged question, called up the message of the President returning the bill of the House relating to rivers and harbors without his approval.

Mr. Page moved that the House proceed to consider the bill, on which motion he moved the previous question.

Mr. John A. Kasson, of Iowa, moved to refer the message and bill to the Committee on Commerce, with instructions; which motion he subsequently modified by withdrawing the instructions.

Mr. Page made the point of order that the motion was not now in order.

The Speaker<sup>4</sup> held that the motion to refer would be in order but for the pendency of the motion for the previous question on the first motion submitted by Mr. Page.

Mr. Kasson made the point of order that the motion to refer was in order under the practice of the House, and particularly under clause 1 of Rule XVII,<sup>5</sup> which permitted a motion to refer with or without instructions pending the demand for or after the previous question shall have been ordered.

After debate on the point of order, the Speaker overruled the same, saying:

Since the inquiry was first made whether it would be in order to move to refer, and since the motion which the gentleman from Iowa [Mr. Kasson] proposed to make was sent to the Clerk, the Chair understands the gentleman from Iowa to have withdrawn that part of his motion which included instructions to the committee. Clearly that would be out of order. The House could not instruct the committee to report the bill back with amendments, as it is a bill which the House itself could not amend when it was being considered. What the House can not do itself it can not instruct a committee to do.

This bill comes back to the House by reason of the veto message of the President of the United States, and under the Constitution, paragraph 2, section 7, article 2, the House must proceed to reconsider it. That does not necessarily mean that the House may debate it. Reconsidering may be voting on it; and perhaps that was all that was intended by the language of the Constitution. The Chair would not intimate that if the House desires, it may not debate; but reconsideration might be had by simply voting on the bill.

It is settled, the Chair thinks, by the practice, that a motion to refer—a simple motion to refer—to a committee may be entertained. But the Chair thinks that that motion to refer must come in at the proper time. It is the first duty of the House, under the Constitution, as the Chair interprets its language, to reconsider and proceed to vote upon the vetoed bill. If the House chooses, by ordering the previous

<sup>1</sup>In response to an inquiry as to whether a vote of two-thirds would be required to take the bill from the table, the Speaker replied that a majority vote would be sufficient (*Globe*, p. 875), thus indicating that the bill was not finally and adversely disposed of by this vote. Indeed, on August 17 (*Journal*, p. 1327), the House voted to proceed to reconsider the bill, 126 yeas, 76 nays. The motion was held to be privileged (*Globe*, p. 905).

<sup>2</sup>First session Forty-seventh Congress, *Record*, pp. 2607, 2608.

<sup>3</sup>First session Forty-seventh Congress, *Journal*, p. 1792; *Record*, p. 6803.

<sup>4</sup>J. Warren Keifer, of Ohio, Speaker.

<sup>5</sup>See section 6790 of Vol. V. of this work for this rule.

question, to cutoff debate upon this matter of reconsideration, that is within the power of the House. If the House does not order the previous question, the Chair would hold that a motion to refer would be in order. It is claimed that under Rule XVII of the House the motion to refer being, as the Chair holds, equivalent to a motion to commit, is in order. The Chair does not think so. Rule XVII speaks entirely of proceedings governing the ordinary passage of the bill. If the whole rule is read it will appear that a motion for the previous question is made, first, upon the engrossment and third reading of the bill. Then, that having exhausted itself upon the third reading of the bill, the second step is a motion for the previous question upon the passage of the same bill, such a bill as the House has ordered to be engrossed and read a third time. This rule refers to the passage of a bill in the ordinary sense. The bill before us is at a different stage. It is a reconsideration of a bill which the House and the Senate have already passed, and for the purpose of determining whether the House will by a two-thirds vote pass the bill, notwithstanding the President's veto, as provided by the Constitution.

The Chair feels bound to hold that the demand for the previous question having been made first, must be first submitted to the House. If that be voted down, the Chair will entertain a motion to refer the bill.

**3552. A vetoed bill having been rejected by the House, the message was referred.**—On May 29, 1879,<sup>1</sup> the House, after it had refused, on reconsideration, to pass over the President's veto the legislative appropriation bill, referred the veto message to the Committee on the Judiciary, with leave to report thereon at any time by bill or otherwise.

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<sup>1</sup>First session Forty-sixth Congress, Journal, p. 415; Record, p. 1712.