

without amendment, and I ask unanimous consent that the bill may receive immediate consideration.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### RECLAMATION FUND.

Mr. BARD. I am directed by the Committee on Irrigation and Reclamation of Arid Lands, to whom was referred the bill (H. R. 18528) to provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund, to report it favorably without amendment, and I ask unanimous consent for its present consideration.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### YELLOWSTONE RIVER DAMS.

Mr. BARD. I am directed by the Committee on Irrigation and Reclamation of Arid Lands, to whom was referred the bill (H. R. 19118) to authorize the Secretary of the Interior to construct dams across the Yellowstone River, in Montana, in connection with irrigation work, to report it favorably without amendment. It is a very short bill, and it will take but a moment to dispose of it. I ask for its present consideration.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### PUBLIC BUILDING AT NATCHITOCHE, LA.

Mr. WARREN. I am directed by the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 7284) to authorize the Secretary of the Treasury to exchange the site for a public building at Natchitoches, La., to report it favorably without amendment. It is a very short bill, costs no money, and I ask for its present consideration.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendments, ordered to be engrossed for a third reading, read the third time, and passed.

#### LANDS IN TACOMA, WASH.

Mr. HANSBROUGH. I am directed by the Committee on Public Lands, to whom was referred the bill (H. R. 17019) granting certain lands to the city of Tacoma, in the State of Washington, for use as a public park, to report it favorably. It is a short bill, and I ask for its present consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### ISLAND IN BARTLETT LAKE, MINNESOTA.

Mr. NELSON. On behalf of the Committee on Public Lands I report back favorably and ask the present consideration of the bill (H. R. 11218) setting aside a certain island in Bartlett Lake, Minnesota, as a park and forest reserve.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### RESURVEY OF TOWNSHIPS IN NEBRASKA.

Mr. DIETRICH. From the Committee on Public Lands I report back without amendment the bill (H. R. 18752) for the resurvey of certain townships in the counties of Rock and Brown, in the State of Nebraska, and I ask for its immediate consideration.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### INVESTIGATION BY COMMITTEE ON FINANCE.

Mr. ALLISON, from the Committee on Finance, reported the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the Committee on Finance be, and they are hereby, authorized and directed, by subcommittee or otherwise, to make an investigation of internal-revenue, customs, currency, and coinage matters, and to report from time to time to the Senate the result thereof; and for this purpose they are authorized to sit, by subcommittee or otherwise, during the recess or sessions of the Senate, at such times and places as they may deem advisable, to send for persons and papers, to administer oaths, and to employ such stenographic, clerical, and other assistance as may be necessary, the expense of such investigation to be paid from the contingent fund of the Senate.

#### MAINTENANCE OF COMMERCIAL CHANNELS.

Mr. KEÁN. I am directed by the Committee to Audit and Control the Contingent Expenses of the Senate to report with an amendment the resolution submitted by the Senator from Alabama [Mr. MORGAN] yesterday, and I ask for its present consideration.

The Senate, by unanimous consent, proceeded to consider the resolution, as follows:

*Resolved by the Senate*, That a select committee of three Senators be appointed by the President pro tempore of the Senate, from States intersected by the Tennessee River, to examine into the navigation of the Tennessee River, etc., and to take into consideration the report of the Secretary of War on that subject made to the Senate at this session of Congress; and that said committee shall have leave to sit in the recess of the Senate at such places in the vicinity of said river as they may think necessary.

Said committee shall have power to send for persons and papers and to examine witnesses on oath, and may appoint a secretary and employ a stenographer. And the lawful expenses of such committee and its employees and of witnesses shall be paid, on the certificate of the chairman thereof, out of the contingent fund of the Senate.

The amendment of the Committee to Audit and Control the Contingent Expenses of the Senate was to insert at the end the words "not to exceed \$1,000."

The amendment was agreed to.

The resolution as amended was agreed to.

The PRESIDENT pro tempore appointed as the subcommittee Mr. MORGAN, Mr. CARMAK, and Mr. OVERMAN.

#### RECESS OF THE SENATE, ETC.

Mr. SPOONER, from the Committee on the Judiciary, who were instructed by a resolution of the Senate of December 11, 1903, to report what constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such cases, submitted the following report:

The Committee on the Judiciary, to whom was referred the following resolution (being Resolution No. 111, Fifty-eighth Congress, second session, submitted by Mr. TILLMAN December 11, 1903—

Whereas Article II, section 2, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;"

And further:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March fourth last to November ninth, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

*Resolved*, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such cases—

having considered the same, presents the following report:

The Senate has instructed this committee, by resolution, to report what in its opinion constitutes a recess of the Senate under the provisions of Article II, section 2, of the Constitution.

The word "recess" is one of ordinary, not technical, signification, and it is evidently used in the constitutional provision in its common and popular sense. It means in Article II, above referred to, precisely what it means in Article III, in which it is again used. Conferring power upon the executive of a State to make temporary appointment of a Senator, it says:

"And if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

It means just what was meant by it in the Articles of Confederation, in which it is found in the following provision:

"The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated a committee of the States, and to consist of one delegate from each State."

It was evidently intended by the framers of the Constitution that it should mean something real, not something imaginary; something actual, not something fictitious. They used the word as the mass of mankind then understood it and now understand it. It means, in our judgment, in this connection the period of time when the Senate is not sitting in regular or extraordinary session as a branch of the Congress, or in extraordinary session for the discharge of executive functions; when its members owe no duty of attendance; when its Chamber is empty; when, because of its absence, it can not receive communications from the President or participate as a body in making appointments.

It is easy for a lawyer to comprehend the words "constructive appropriation," "constructive notice," "constructive fraud," "constructive contempt," "constructive damages," "constructive malice," but it would seem quite difficult for lawyer or layman to comprehend a "constructive recess" of Congress, or of the State legislature, or of the Senate. It would seem quite as natural that there should be a "constructive session" of Congress or of the Senate as a "constructive recess." We think there can not be any "constructive end" of a session or a "constructive beginning" of a session of Congress or of the Senate.

The Constitution clearly confers upon the President the power to nominate and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, "and all other officers of the United States whose

appointments are not herein otherwise provided for, and which shall be established by law." Congress in the same clause is empowered by law to "vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments."

"Human intention can not be made plainer by human language" than it is made clear by the Constitution that except as to the "inferior officers" referred to no Federal officer can be appointed save by and with the advice and consent of the Senate.

But it was obvious that without some provision for temporary appointments to fill up vacancies which might happen while the Senate was not in session to participate in making appointments grave inconvenience and harm to the public interest would ensue. To meet this difficulty it was by common consent provided that—

the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

This is essentially a proviso to the provision relative to appointments by and with the advice and consent of the Senate. It was carefully devised so as to accomplish the purpose in view, without in the slightest degree changing the policy of the Constitution, that such appointments are only to be made with the participation of the Senate. Its sole purpose was to render it certain that at all times there should be, whether the Senate was in session or not, an officer for every office, entitled to discharge the duties thereof.

It can not by any possibility be deemed within the intent of the Constitution that when the Senate is in position to receive a nomination by the President, and, therefore, to exercise its function of advice and consent, the President can issue, without such advice and consent, commissions which will be lawful warrant for the assumption of the duties of a Federal office.

The framers of the Constitution were providing against a real danger to the public interest, not an imaginary one. They had in mind a period of time during which it would be harmful if an office were not filled; not a constructive, inferred, or imputed recess, as opposed to an actual one.

They gave power to issue these commissions only where a vacancy (1) happened, (2) during a recess of the Senate, and they specifically provided that the commission shall expire at the end of the next session of the Senate.

The commissions granted during the recess prior to the convening of Congress in extraordinary session November 9, 1903, of course furnished lawful warrant for the assumption by the persons named therein of the duties of the offices to which they were, respectively, commissioned. Their names were regularly sent to the Senate thereafter. If confirmed, of course they would hold under appointment initiated by the nomination without any regard to the recess commission. If not confirmed, their right to hold under the recess commission absolutely ended at 12 o'clock meridian on the 7th of December, 1903, for at that hour the extraordinary session ended and the regular session of Congress began by operation of law. An extraordinary session and a regular session can not coexist, and the beginning of the regular session at 12 o'clock was the end of the extraordinary session; not a constructive end of it, but an actual end of it. At 12 o'clock December 7 the President pro tempore of the Senate said:

"Senators, the hour provided by law for the meeting of the first regular session of the Fifty-eighth Congress having arrived, I declare the extraordinary session adjourned without day."

Aside from the statement upon the record that the "hour had struck" which marked the ending of the one and the beginning of the other, the declaration of the President pro tempore was without efficacy. It did not operate to adjourn without day either the Congress or the Senate. Under the law the arrival of the hour did both.

The constitutional provision that the commission shall expire at the end of the next session is self-executing, and when the session expresses the right to hold under the commission expires with it. If there be no appreciable point of time between the end of one session and the beginning of another, since of necessity one ends and another begins, the tenure under the commission as absolutely terminates as if months of recess supervened.

There was no time during which the President might not, had he chosen, have sent nominations to the Senate. It was in session to receive any nomination or message he might communicate. There was no "recess" within the letter or spirit of the Constitution, and therefore there was no right to issue commissions and induct the officers commissioned into office.

The theory of "constructive recess" constitutes a heavy draft upon the imagination, for it involves a constructive ending of one session, a constructive beginning of another, and a constructive recess between the two.

Senate Document No. 147, Fifty-eighth Congress, second session, is a letter from the Hon. Elihu Root, then Secretary of War, which makes clear the embarrassments of the situation, and presents both views of the constitutional question we are considering, the Secretary of War, confessedly one of the ablest lawyers of the country, frankly stating the strong inclination of his mind to the view which we adopt, that the Constitution means a real recess, not a constructive one.

The President, evidently acting under the advice of the Secretary of War, pursued the course which would be adapted to whichever view might ultimately be held by the accounting officers of the Treasury and the courts to be the correct one.

Senator NELSON dissents from so much of the foregoing report as relates to the matter of commissions granted during the recess prior to the convening of Congress in extraordinary session November 9, 1903, as not called for by the resolution.

#### BILLS INTRODUCED.

Mr. SIMMONS introduced a bill (S. 7288) for the relief of the heirs of Joseph H. Etheridge and William D. Etheridge; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. PENROSE (for Mr. KNOX) introduced a bill (S. 7289) for the relief of Snowdon & Mason; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

He also introduced a bill (S. 7290) granting an increase of pension to Charles C. Jones; which was read twice by its title, and referred to the Committee on Pensions.

Mr. MORGAN introduced a bill (S. 7291) for the relief of the heirs of Richard R. Mosley; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

He also introduced a bill (S. 7292) for the relief of Cora B. Thomas; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. FORAKER introduced a bill (S. 7293) for the relief of O. P. Cobb and others; which was read twice by its title, and referred to the Committee on Claims.

Mr. McLAURIN introduced a bill (S. 7294) for the relief of the heirs and assignees of Thomas Whaley and wife; which was read twice by its title, and referred to the Committee on Private Land Claims.

#### AMENDMENT TO DEFICIENCY APPROPRIATION BILL.

Mr. NELSON submitted an amendment proposing to appropriate \$700.63 for survey of wagon road from Valdez to Fort Egbert, Alaska, and also proposing to appropriate \$431.15 for survey of the military trail from the Yukon River at Coldfoot, Alaska, intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

#### HANNA & BUDLONG.

Mr. LODGE submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the sum of \$18.12 be paid from the contingent fund of the Senate to Hanna & Budlong for work in reporting stenographically the proceedings of the Philippine Committee on February 23, 1905, making fourteen and a half pages at \$1.25 a page.

#### LABOR TROUBLES IN COLORADO.

Mr. PATTERSON. I offer a resolution, and I ask for its present consideration.

The resolution was read, as follows:

*Resolved*, That the Public Printer be, and he is hereby, authorized and directed to print as many additional copies of Senate Document No. 122 as may come within a cost of \$500, for the use of the Senate.

Mr. KEAN. What is the document?

Mr. PATTERSON. It relates to the report communicated to the Senate by the President several weeks ago. It is the official report on the labor troubles in Colorado. There is a very general interest in the report.

Mr. KEAN. In Colorado?

Mr. PATTERSON. And throughout all the West. Some Senators, at least, are constantly receiving requests for copies of the report and there are none with which to meet the demand.

Mr. KEAN. I do not object to the resolution. Senators have objected to requests that I made; that is all.

Mr. PATTERSON. I certainly did not.

Mr. KEAN. I have no objection to the resolution.

The resolution was considered by unanimous consent and agreed to.

#### LEAVE OF ABSENCE.

Mr. PENROSE. On behalf of my colleague [Mr. KNOX], who has been ordered to Florida by his physician on account of a relapse in his recent sickness, I ask that leave of absence be granted to him for the remainder of the session.

The PRESIDENT pro tempore. The Chair hears no objection, and leave is granted.

#### SALARIES OF POSTMASTERS IN COLORADO.

Mr. TELLER submitted the following resolution; which was considered by unanimous consent, and agreed to:

*Resolved by the Senate*, That the Postmaster-General be, and hereby is, directed to report to the Senate at the next session of Congress the amount of salary required to be paid to each of the postmasters in the State of Colorado named on the memorandum schedule hereto attached, or to their heirs, for services as postmasters in each biennial term specified on such memorandum schedule, in order to make effective sections 473, 474, and 475 of the postal regulations of 1866, and the act of June 12, 1866, section 8, and the act of March 3, 1883, as construed by Postmaster-General Gresham in an order dated June 9, 1883, addressed to Hon. Frank Hatton, First Assistant Postmaster-General, and in a declaration as to the intent, meaning, and requirement of said statutes furnished for publication to the press through Chief Clerk Walker on February 16, 1884, and printed as Exhibit A, Senate Executive Document No. 146, Forty-ninth Congress, first session.

#### STATEHOOD BILL.

The PRESIDENT pro tempore. The Chair lays before the Senate a resolution coming over from a previous day, which will be read.

The Secretary read the resolution submitted yesterday by Mr. BAILEY, as follows:

*Resolved*, That the order heretofore made by the Senate insisting on its amendments to the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State,