

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

