

not regard it as of any great importance, and I shall not object to the bill passing.

Mr. SPENCER. I hope the bill will pass.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the bill? The Chair hears no objection.

By unanimous consent, the bill was read three times, and passed.

TELEGRAPHIC COMMUNICATION WITH ASIA.

The PRESIDENT *pro tempore* laid before the Senate amendments of the House of Representatives to the bill (S. No. 892) to encourage and promote telegraphic communication between America and Asia, which was returned from the House of Representatives with amendments.

The first amendment was to insert as section 3 the following:

SEC. 3. That nothing in this act shall be construed to limit the United States in granting to other persons or companies similar provisions herein contained.

The next amendment was to change section 3 to section 4.

Mr. SARGENT. I move to concur in the amendments.

The amendments were concurred in.

OTOE AND MISSOURIA RESERVATION—VETO MESSAGE.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States, which was read:

To the Senate of the United States:

For the reasons stated in the accompanying communication submitted to me by the Acting Secretary of the Interior, I have the honor to return herewith without my approval Senate bill No. 779, entitled "An act to provide for the sale of a portion of the reservation of the confederated Otoe and Missouria and the Sacs and Foxes of the Missouri tribes of Indians in the States of Kansas and Nebraska."

U. S. GRANT.

EXECUTIVE MANSION, August 15, 1876.

To the Senate of the United States:

Upon further investigation I am convinced that my message of this date withholding my signature from Senate bill No. 779, entitled "An act to provide for the sale of a portion of the reservation of the confederated Otoe and Missouria and the Sacs and Foxes of the Missouri tribes of Indians, in the States of Kansas and Nebraska," was premature; and I request, therefore, that the bill may be returned, in order that I may affix my signature to it.

U. S. GRANT.

EXECUTIVE MANSION, August 15, 1876.

Mr. EDMUNDS. I should be glad to have somebody who is older and wiser than I am tell us whether under the Constitution, the President having returned a bill to this body with his veto and the Constitution saying we shall then proceed to vote upon it, we can on the request of the President or anybody else transmit it to him again? The Constitution seems to be perfectly explicit upon that subject, but it may be that there is some way of getting around it that I do not see.

Mr. SPENCER. I move to take up the resolution I offered yesterday to appoint a committee.

The PRESIDENT *pro tempore*. The message is before the Senate. The President has requested leave to withdraw his message vetoing a certain bill.

Mr. EDMUNDS. I move that that message be referred to the Committee on Privileges and Elections.

Mr. PADDOCK. I hope that motion will not prevail. It certainly is an unkind motion for my friend to make. This is a matter of very great interest in a local sense to my State, and I hope he will not insist on his motion. If there is any parliamentary objection to the withdrawal of the bill as suggested by the President, I hope my friend will make it in order that we may pass the bill over the President's veto.

Mr. EDMUNDS. It is not a parliamentary objection, if there be any objection at all. It is one which the Constitution in perfectly plain terms makes for itself. Our duty with a bill that is returned to us is fixed by the Constitution, if it is fixed at all. The Constitution says we shall proceed to do a certain thing with that bill. That is the inquiry that I put to the Senate; and in order that that may be considered, as it is the first instance I remember of this kind, I thought it proper to refer it to an appropriate committee for consideration. If the Senate does not choose to do that, of course it can act either by agreeing to this request of the President or declining to agree to it.

Mr. SARGENT. I do not think there is the slightest doubt that the Senator from Vermont is entirely correct. It is a new question, and yet it is one of that class that almost on its presentation carries its answer. The President has no more right to recall a bill after having vetoed it than he has, as is well suggested in this neighborhood, to tear a leaf out of the statute-book and thereby assume thus to repeal the statute that he tears from the book. I think the subject ought to go to the Committee on Privileges and Elections or the Committee on the Judiciary, and let us settle this matter, for fear that it may be a precedent for what would be an improper practice. Of course the President has no intention of entering upon any improper practice or proceeding, but I think it would be well for us to be careful that we do not innocently fall into a bad precedent.

Mr. PADDOCK. The President having recorded his judgment, after more mature reflection, that this bill should become a law, I move that the bill do become a law, the President's veto to the contrary notwithstanding.

The PRESIDENT *pro tempore*. The Senator from Vermont has moved to refer the bill with the messages to the Committee on Privileges and Elections.

Mr. BOUTWELL. It does not seem to me that there is any necessity for a reference of this bill.

Mr. EDMUNDS. I only moved, if I correctly stated myself, to refer the last message.

Mr. BOUTWELL. Very well; I see no occasion for a reference for the purpose of getting the judgment of a committee upon the question raised by the two messages of the President. When the second message is properly construed it can mean only this: That the President was in error when he wrote and signed the first message. It is a matter of information; that is all. It has no legal value except that. I think that is the effect that the second message has, no legal or constitutional value whatever. Therefore the veto message remains precisely as it existed when it was laid upon the table of the Senate, in its full force and effect. Nevertheless, the second message is information to us that the President after more full consideration entertains the same opinion that was entertained by the House and the Senate when the bill was passed, and I think all we have to do is to pass upon the bill and see whether it can be passed by a two-thirds vote. The second message has no legal value whatsoever. It is merely information to us that the President has come to the conclusion that his first opinion was an erroneous opinion. There is no legal question that need trouble any committee.

Mr. FRELINGHUYSEN. It seems to me that there is no question. I certainly concur with the opinions which have been expressed here. The President has no more power to take back his veto and so make that bill a law or remove that obstruction to its being a law, than one House of Congress has.

Mr. BOUTWELL. I certainly do not think the President can take the veto back.

Mr. FRELINGHUYSEN. So then it is a mere expression of opinion on his part, which may influence us in our vote whether we shall sustain his veto or not.

Mr. EDMUNDS. I hope the Chair will state that my motion is to refer merely the message.

The PRESIDENT *pro tempore*. The Chair understood the Senator from Vermont to move that the messages be referred to the Committee on Privileges and Elections, which will leave the bill before the Senate on its passage.

Mr. INCALLS. I feel a very strong interest in the passage of this bill and shall be glad if any course is adopted by which it can become a law; but so far as the action of the President is concerned in his attempt to recall his veto message, I am persuaded it is entirely nugatory and without effect; that he can no more, when he has once performed that act and notice of it has been communicated to the Senate, recall it than he could recall his acts of the session before this or in any preceding year, or, as is suggested by the Senator from California, [Mr. SARGENT,] than he could recall a bill after it had been signed by him and approved and that fact had been communicated to the Senate. Having discharged his duty he is *functus officio*, and has no more right to recall that bill from the Senate than he has to perform any other act not confided to him by the Constitution. I therefore agree with the Senator from Massachusetts in believing that the sole duty of the Senate is under the Constitution to say whether they will now pass the bill, the objections of the President to the contrary notwithstanding; and inasmuch as the President has himself indicated to us that no objections exist to the passage of the bill I trust that action may be taken and that the bill will receive a constitutional majority.

Mr. CONKLING. I agree with the Senator from Kansas except in one remark he makes. He says the President became *functus officio*. If he means *functus officio* for one particular purpose, namely, to withdraw the bill itself in any form, or the message which attended the bill itself, I agree with him. But the distinction between that meaning and a broader one is very important, it seems to me. The President by the Constitution has a right at all times to communicate with one House, or the other, or both Houses of Congress. That right is just as continuing as the right of petition which resides by the Constitution in every citizen. Now the President sends a message which informs the Senate that he finds himself unable to approve with his signature a bill, and therefore he returns it without his approval. Manifestly, stopping there, it is the duty of the House receiving that message to proceed to consider whether the bill shall become a law, the objections of the President to the contrary notwithstanding.

Now, how is the question affected by the subsequent message which has been sent here? Proceeding under a power which is not dead, which has not been expended, in respect of which he is not *functus officio*, but always alive and always summoned to his feet to exercise it whenever he thinks he has any information which ought to be communicated to one House or the other or both, proceeding under that continuing power and duty he sends what is called a message. It is a communication addressed to the Senate to apprise the Senate of the fact that, being better advised touching the qualities of the bill which he vetoed, he has changed his mind and that had he known at the moment when he was called upon to act what he has come to know now, that veto would not have been interposed, but the bill would have been approved. The President exists and subsists at all times to give the Senate such information as that, and he has given it. The two Houses have acted upon the bill. They have approved it. If the veto stood it would require two-thirds to say that notwithstanding the refusal of the President to sign it that act should be