

BILL H.R. 9783

DATE Dec. 16, 1919

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ACTION Remarks

700, 702; United States v. Anderson, 9 Wall., 56, 70.) From the fact that other statutes concerning war activities contain each a specific provision for determining when it shall cease to be operative, and from the alleged absence of such a provision here, it is argued that the term "conclusion of the war" should not be given its ordinary legal meaning; that instead it should be construed as the time when actual hostilities ceased; or when the treaty of peace was signed at Versailles on June 28, 1919, by the American and German representatives, or, more generally, when the actual war emergencies ceased by reason of our complete victory and the disarmament of the enemy coupled with the demobilization of our Army and the closing of war activities; or when the declared purpose of the act of "conserving the man power of the Nation, and to increase efficiency in the production of arms, munitions, ships, food, and clothing for the Army and Navy" shall have been fully satisfied. But there is nothing in the words used to justify such a construction. "Conclusion of the war" clearly did not mean cessation of hostilities, because the act was approved 17 days after hostilities had ceased upon the signing of the armistice. Nor may we assume that Congress intended by the phrase to designate the date when the treaty of peace should be signed at Versailles or elsewhere by German and American representatives, since by the Constitution a treaty is only a proposal until approved by the Senate. Furthermore, to construe "conclusion of the war" as meaning the actual termination of war activities would leave wholly uncertain the date when the act would cease to be operative, whereas Congress evinced here, as in other war statutes, a clear purpose that the date of expiration should be definitely fixed. The reason why this was not directed to be done by a proclamation of peace is made clear by the use of the word "thereafter." It was expected that the "conclusion of the war" would precede the termination of demobilization. Congress therefore provided that the time when the act ceased to be operative should be fixed by the President's ascertaining and proclaiming the date when demobilization had terminated.

It is insisted that he has done so. The contention does violence to both the language and the evident purpose of the provision. The "date of which shall be determined and proclaimed by the President" is a phrase so definite as to leave no room for construction. This requirement can not be satisfied by passing references in messages to Congress nor by newspaper interviews with high officers of the Army or with officials of the War Department. When the President mentioned in his veto message the "demobilization of the Army and Navy" the words were doubtless used in a popular sense, just as he had declared to Congress on the occasion of the signing of the armistice: "The war thus comes to an end." If he had believed on October 28, 1919, that demobilization had, in an exact sense, terminated, he would doubtless have issued then a proclamation to that effect; for he had manifested a strong conviction that restriction upon the sale of liquor should end. Only by such proclamation could the purpose of Congress be attained; and the serious consequences attending uncertainty be obviated. But in fact demobilization had not terminated at the time of the veto of the act of October 28, 1919; or at the time these suits were begun; and, for aught that appears, it has not yet terminated. The report of the Secretary of War made to the President under date of November 11, 1919 (and transmitted to Congress on December 1), in describing the progress of demobilization, shows (p. 17) that during the preceding 10 days (Nov. 1-10) 2,018 officers and 10,266 enlisted men had been discharged, the rate of discharge being substantially the same as during the month of October, in which 8,690 officers and 33,000 enlisted men were discharged.

The war-time prohibition act being thus valid and still in force, the decree in No. 589 is reversed, and the case is remanded to the district court with directions to dismiss the bill, and the decree in No. 602 is affirmed.

No. 589. Reversed.

No. 602. Affirmed.

A true copy.

Test:

Clerk Supreme Court United States.

(Emergency shipping fund act of June 15, 1917, ch. 29, 40 Stat., 182, as amended by the act of Apr. 22, 1918, ch. 62, 40 Stat., 535, and by

the provisions fixing the date of expiration of the several war acts are as follows:

(Aircraft act being ch. 16 of the Army appropriation act of July 9, 1918, ch. 143, 40 Stat., 889.) "Within one year from the signing of a treaty of peace with the Imperial German Government."

(Departmental reorganization act of May 20, 1918, ch. 78, 40 Stat., 556.) "That this act shall remain in force during the continuance of the present war and for six months after the termination of the war by the proclamation of the treaty of peace.")

the act of Nov. 4, 1918, ch. 201, 40 Stat., 1020.) "All authority shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire."

(Charter rate and requisition act of July 18, 1918, ch. 157, 40 Stat., 913.) "All power and authority shall cease upon the proclamation of the final treaty of peace between the United States and the Imperial German Government."

(Railroad control act of Mar. 21, 1918, ch. 25, 40 Stat., 451, 458.) "Federal control shall continue for and during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation of the exchange of ratifications of the treaty of peace."

(Food control act of Aug. 10, 1917, ch. 53, 40 Stat., 276, 283.) "Sec. 24. That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President."

(Trading with the enemy act of Oct. 6, 1917, ch. 106, 40 Stat., 411, 412.) "The words 'end of the war' as used herein shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall by proclamation declare a prior date, in which case the date so proclaimed shall be deemed to be the end of the war within the meaning of this act."

(Soldiers' and sailors' civil relief act of Mar. 8, 1918, ch. 20, 40 Stat., 440, at 441 and 449.) "(5) The term 'termination of the war' as used in this act shall mean the termination of the present war by the treaty of peace as proclaimed by the President. Sec. 603. That this act shall remain in force until the termination of the war and for six months thereafter."

(Saulsbury resolution of May 31, 1918, ch. 90, 40 Stat., 593.) "That until a treaty of peace shall have been definitely concluded between the United States and the Imperial German Government, unless in the meantime otherwise provided by Congress"

(Wheat price guarantee act of Mar. 4, 1919, ch. 125, sec. 11, 40 Stat., 1348, 1353.) "That the provisions of this act shall cease to be in effect whenever the President shall find that the emergency growing out of the war with Germany has passed, and that the further execution of the provisions of this act is no longer necessary for its purposes, the date of which termination shall be ascertained and proclaimed by the President, but the date when this act shall cease to be in effect shall not be later than the 1st day of June, 1920."

NATIONAL BUDGET SYSTEM.

Mr. FERNALD. Mr. President, I have just read a very interesting article in a magazine by the Senator from Illinois [Mr. McCormick]. I ask unanimous consent that it may be printed in the Record.

The VICE PRESIDENT. Without objection, it is so ordered. The matter referred to is as follows:

CALLS FOR DRASTIC MEASURES TO REMEDY BUDGET EVILS—SENATOR MCCORMICK WOULD MAKE EACH BRANCH OF THE GOVERNMENT INESCAPABLY RESPONSIBLE FOR ESTIMATES OF EXPENDITURES AND APPROPRIATIONS GRANTED—DECLARES EFFORTS TO CURE THE DISORDER OF OUR METHODS SINCE 1870 HAVE BEEN "TIMID AND HOMEOPATHIC."

[By MEDILL MCCORMICK, United States Senator from Illinois.]

"The business men of the country are crying out for a national budget. The American taxpayer for the first time in our history is acutely conscious of the cost of the Federal administration. His purse tells him there is a Government situated on the Potomac. He has reason to believe that not only has his Government become costly but that it is inefficient and wasteful. He is uncertain as to the exact increase in the cost of his Federal enterprise, and he is not precise about the details of the reform to which he is entitled and which has made 'budget' and 'administrative efficiency' current in the political vernacular. But he is very certain that there has got to be a grand house cleaning.

"The third and last session of the last Congress appropriated for one year about \$7,000,000,000, or ten times the aggregate appropriations of both sessions of the Fifty-sixth Congress, 20 years ago. For the next several years Government will cost about ten times as much annually as it did five years ago. There has been a tremendous acceleration in the rate of increase in taxation and public expenditure. Roughly speaking, Government cost 30 per cent more at the end of the 10 years 1901-1911 than it did at the beginning of that decade. Then a convention at Baltimore denounced Republican waste and extravagance, nominated Woodrow Wilson, and rode into office. The increase for the five years 1913-1917 was 60 per cent, or twice what it was during the 10 years which preceded the assembling of the denunciatory convention at Baltimore.

"I have written so much by way of preface because men do not often realize how sudden and how vast was the growth of governmental expenditure even during the years which immediately preceded the war. More than that, let me recall that the annual cost of the municipal administration of New York to-day is approximately equal to the annual cost of the Government of the United States during the last years of the nineteenth century. When we began the agitation for budget reform in Illinois, I startled taxpayers by pointing out that the cost of the State government was increasing at the rate of 200 per cent every 10 years.

DIVIDED RESPONSIBILITY.

"During my last term in the legislature I had written and persuaded a colleague to introduce a budget bill, lest if I

fathered it some people might regard it as a measure of impolitic reform. I was not able long to conceal the actual paternity of the bill and so enjoyed for the balance of the legislative session the affectionate derision of some of my colleagues. Nevertheless, like Horace's farmer, who planted trees he would not live to see bear fruit, I had sponsored a bill the principle of which was to become law in Illinois the year I came to Washington. The circumstances which environed the enactment of budget legislation in Illinois exist to-day in Washington.

"The bill written by Prof. Willoughby, and which bears the name of Congressman Good, is not a budget bill. It does not create a budget system. It postpones the day when a true budget system may be established. It has the virtue that it does promise the future establishment of a budget, yet even then not by law but by Executive ukase.

"The Good bill seeks to establish a divided responsibility in public finance, the vice of which far outweighs any virtue that the bill contains. It would create a budget bureau, so called, in the office of the President. It substitutes this budget bureau for the Department of the Treasury as the place where the financial estimates of the several other departments shall be assembled. The Good bill thus confers no powers or duties on the budget bureau which are not already devolved by law upon the Treasury. It would make of the President a finance minister, if by his authority and his attention to the labors of the budget bureau he should vitalize its activity. It would add this unbearable burden to the most overburdened political Executive in the world.

TOO MANY COMMITTEES.

"As far back as Col. Roosevelt's time, under the most energetic and vigorous Executive of our day, the annual cost of government amounted to one-tenth of what it will be during the next several years. Since that time not only has the cost of government tremendously multiplied but so also have the many responsibilities of the President. During Mr. Taft's administration it was indisputable that the business of the Executive Office was often in arrears, while during the present administration the business has been done because the President denied himself the privilege of seeing many persons who sought him upon the public business or political errands.

"The taxpayer now suffers because there are too many appropriating committees in the Senate and the House of Representatives. It is painful to think that we may follow our accursed political practice of dividing responsibility and further inult the taxpayer because academic budget writers shrink from vesting in the American Treasury powers comparable with those of a foreign minister of finance. If we adopt the principle embodied in the Good bill we shall not dignify—we shall belittle—the Secretaryship of the Treasury; we shall make it more difficult instead of more easy to get big men to fill the place.

"Even if the first director of the budget were to be a man of parts, we know from our experience with Government commissions and special bureaus that his successor would be a political hack or a professional theorist. But, worse than that, since the President would have no time to discharge the duties of a finance minister, the detailed administration of the budget bureau inevitably would fall into obscurity. Its chief would not be a conspicuous member of the administration, and so responsible for its financial policy before Congress and the bar of public opinion. Like every other officer in the history of the Government whose power to spend money exceeds his legal, moral, and political authority, the director of the budget would become the prey of every searcher for pork.

SUBJECTION TO THE PRESIDENT.

"It is objected by certain academic reformers that to vest in the Treasury true budget-making powers, to coordinate, to revise, and to reduce estimates, would exalt the Secretary of the Treasury at the expense of his Cabinet colleagues. That would depend upon the caliber of the Secretary of the Treasury and upon the caliber of his colleagues. I recognize that it is difficult to adapt foreign budget systems to the American Constitution and the American practice. The foreign democracies which have developed modern systems of public finance are subject to administration by a cabinet composed of members of the legislature and responsible to it. In a sense the finance minister is at one and the same time secretary of the treasury and chairman of the ways and means committee.

"Since the finance minister is a member of Parliament that system in a very real way is more immediately democratic than ours, but, on the other hand, I can not hold with Henry L. Stimson or Elihu Root that we should vest one independent Executive with the power to make and to submit to the legislature estimates which the legislature may not decrease or

increase in its own discretion. That would result in the complete subjection of the legislature to the President. He could dole out or withhold appropriations for camps and cantonments, harbor improvements, quarantine guards, agricultural extension station, etc., in exact accordance to the subservience or independence of a Senator or Congressman.

"Mr. Taft punished certain Senators and Representatives for insurgency by withdrawing their 'patronage' from them. It is now reported that this punishment has been visited upon a certain Democratic Senator. We do not want to make the budget a means of further emasculating Congress. We want to energize and make more efficient both branches of our Government. Two years ago in Washington a venerable member of the British Parliament, who shall be nameless, said of our National Legislature that 'it was no parliament, or even a congress such as the framers of the Constitution contemplated, but a mere Prussian Diet, in which were registered the projects of law drafted by mediocre ministers responsible to an elected autocrat.' That was pretty terrible from a friendly critic whose parliamentary experience has been contemporaneous with two generations of men.

"We dare not adopt the budget scheme put forward by certain university professors and which the New York voters overwhelmingly rejected.

SUMMARY OF PROPOSED LAW.

"The Senate bill which I shall introduce, although it bears my name, is certainly not the handiwork of any one man. Two skilled draftsmen are chiefly responsible for its actual text. The views of the strongest congressional authority, ex-Congressman Fitzgerald, and of Secretary Glass are largely embodied in its terms. In part it is the fruit of our experience in Illinois; and, finally, in so far as our American Constitution permits, it follows the budget patterns of other countries. Without taxing the reader with the details of the bill, I venture to summarize its most important elements.

"First, it requires of the Secretary of the Treasury that he shall submit to the President for recommendation to Congress a coordinated and revised budget of estimates of public expenditure, together with any appropriate recommendations for the increase or the diminution of the public revenues, so that they may conform to the estimates of expenditure. The bill provides a budget bureau under a director responsible to the Secretary of the Treasury. It provides that this bureau through the subordinates of the director, shall keep in touch with the budget or estimating officer in each of the departments. Here we shall check at once the current practice under which department subordinates seek appropriations for Government services which actually duplicate and compete with one another. If the department budget officer and the director of the budget can not agree, the Secretary or other chief of department may join the issue directly with the Secretary of the Treasury, and finally can exercise the right of appeal to the President himself.

"This machinery is not created by the bill in fulfillment of any academic theory. Unlike some peoples less practical in self-government, we Americans prefer to embody in our public administration the results of experience rather than experimental theory. Where we have been guided either by theory or by experience too little tried we have suffered. That has been true in every branch of our Government, and more particularly in the municipal and State governments, which have manifested far greater abuses of corruption and waste than the Federal Government at Washington. The bill contemplates that the members of the Cabinet under the President shall have a collective political and financial policy. It is sheer nonsense to imagine that a budget can be a nonpartisan or nonpolitical instrument. There are no nonpartisan Presidents; there have been none in our time nor are there likely to be any. There is no reader of these lines who has not lived long enough to remember the appalling degeneration of important administrative tribunals, because, under political influence, first-rate men have given way to cranks or political lame ducks.

PROVISION FOR REVISION.

"The estimates submitted to Congress must include not only sums for the routine administration of government but also the development of certain policies to which the President has been committed by his party platform. Under the Senate bill to be introduced the President and his advisers must determine how much or how little they will expend in the aggregate, and how much they will allot to each of the branches of the administration. That having been done, after preliminary conference and discussion in the Cabinet, it remains to carry out this financial and political program. It must not be presumed that it will not require revision. The first estimates upon which the President and his Cabinet have agreed will require amendment before they are sent to Congress. The

Secretary of Agriculture, let us say, will be pressed by his subordinates in certain bureaus for larger sums than he originally purposed to give them. If his department, let us say, is carrying out a great agricultural policy to increase farm production or to hold the youngsters on the farm through improvement in rural living the elaboration of the program may demand much more than he originally estimated.

"The director of the budget and the Secretary of Agriculture may not agree; the Secretary of Agriculture may not be able to agree with the Secretary of the Treasury. Then an appeal must be taken to the President, who, in conference with his Cabinet, will determine whether the administration wishes (a) to increase the sum intended to be asked of Congress, (b) to curtail the great agricultural program, or (c) to curtail expenditure by other departments in order to make possible the development of agriculture and rural life contemplated by the political convention and the administration. Thus the administration collectively and the President personally will be responsible to the country for the aggregate sum to be asked of Congress, and so for the total sum of taxation to be imposed upon the people.

"It will be for the Members of Congress, individually and collectively, whether as partisans of the administration or as Members of the House of Representatives or the Senate, to decide (a) if they wish to appropriate more than the administration wants, and so add to the burden of the taxpayer; (b) if they care to appropriate less than the administration asks and diminish the public services in the interest of economy; or (c) accept in substance, if not in detail, the estimates recommended by the President.

PLACING RESPONSIBILITY.

"What have we done? We have made each branch of the Government publicly, definitely, and inescapably responsible, the one for the estimates of expenditure and taxation recommended and the other for the appropriations granted and taxes levied. Of course, I would not stop there. I would reduce the appropriating committees from 14 in the House and 14 in the Senate to 1 in each Chamber, and I would amend the rules to defer consideration of private appropriation bills. We ought to reform not only the method of assembling and revising the estimates at the western end of Pennsylvania Avenue but at the eastern end, on Capitol Hill; we ought to reform the disintegrated committee system under which appropriation bills are now considered without relation to one another.

"The reader who has studied the budget problem doubtless will complain that I have not developed a plan for an independent audit of expenditure. There are perhaps two score statutes bearing upon Government accounting and auditing, and, although I lean very strongly to the view that we ought to create the office of an independent and powerful Auditor and Controller General, who shall have intimate relations to a no less important joint committee on audit and expenditure (in place of the atrophied little committees on expenditure which now exist in both houses), I no less strongly incline to the opinion that Congress should undertake or should authorize the codification of the existing statutes before it creates the office of Auditor General.

"Looking back over 35 years, and looking back again to the period when, under Hamilton, we had a true budget system and Hamilton himself was a great minister of finance, the student of governmental expenditure in America will conclude that the Senate committee for the consideration of a budget ought to do not a hurried and incomplete job but a thorough one. We owe our present distressing condition partly to the repeal of that first statute under which Hamilton directed the financial policy of this Government and partly to the vicious and vindictive action of the Democratic majority in visiting its resentment on Mr. Randall in 1835.

"I have not yet learned why the first budget law was repealed, but I do know that since 1870 Congress has been trying to cure the disorder in our methods of preparing estimates. The remedies have been timid, homeopathic, and prescribed without adequate diagnosis. The condition of the taxpayer and of the Treasury in a very real sense is graver than it has been since the Civil War. We have the information, the experience, and the occasion for applying drastic remedies as did Hamilton. Let us do nothing less."

AMENDMENT OF FEDERAL RESERVE ACT—CONFERENCE REPORT.

The VICE PRESIDENT. The morning business is closed. Mr. McLEAN. I move that the Senate proceed to the consideration of the conference report on the disagreeing votes of the two Houses on the amendments of the House to Senate bill 2472.

The motion was agreed to; and the Senate proceeded to consider the report of the committee of conference on the disagree-

ing votes of the two Houses on the bill (S. 2472) to amend the act approved December 23, 1913, known as the Federal reserve act.

The VICE PRESIDENT. The question is on agreeing to the conference report.

Mr. JOHNSON of South Dakota. Mr. President, on the 21 of December I offered a resolution asking for information with regard to the profits of the coal operators. On the 11th of December I offered an additional resolution touching the same matter. On December 6 the Senator from Georgia [Mr. HARRIS] submitted a resolution covering the same subject. It will be satisfactory to me to have the resolution of the Senator from Georgia substituted for both the resolutions which I have offered; and, if that may be done, I ask the Senator from Georgia if it would be satisfactory to him to have his resolution now considered?

Mr. HARRIS. I desire to state that I should like to have the resolution now considered, and I offer the resolution submitted by me as a substitute for the resolutions of the Senator from South Dakota.

The VICE PRESIDENT. The conference report is before the Senate on a vote of the Senate to proceed with its consideration. The question is on agreeing to the conference report.

Mr. GRONNA. Mr. President, may I ask if the conference report has been read?

The VICE PRESIDENT. It has been read and has been printed in the Record.

Mr. GRONNA. Mr. President, I happened to be absent at the convening of this session of Congress. I am very sorry that I should have been the cause of any delay in the passage of the bill embodied in the conference report. I appreciate very greatly the courtesy which has been extended to me by my fellow Senators in the postponement of its consideration until my return.

I think, however, that there has been considerable misapprehension as to my attitude with reference to the entire bill. I think it must be conceded by everyone that when this bill was introduced in the Senate and referred to the Committee on Banking and Currency it was not given sufficient consideration. I have before me the hearings on Senate bill No. 2472, which hearings consist of 28 pages, a large portion of which is taken up by the printing of a letter from the chairman of the Federal Reserve Board.

The only members of the Committee on Banking and Currency who participated in the discussion, so far as is disclosed by the printed hearings, were the Senator from New Jersey [Mr. Edge] and the Senator from Oklahoma [Mr. Owen], the Senator from Oklahoma being the principal participant.

The bill as introduced and as reported from the Committee on Banking and Currency was not only a crude bill of proposed legislation but it was an exceedingly dangerous one, as I think even the friends of the bill will now admit. It may be, Mr. President, that since the recent World War human nature has been changed; it may be that those who in times past and just before the war devoted all of their energies and all of their time to the making of millions of dollars have now changed, and that their only effort and desire in the future will be to look after the welfare of the people of the devastated countries of Europe and of the people of America. If that is the case, then it was safe to pass the Edge bill as it was reported from the Committee on Banking and Currency; but if that is not true, it was nothing but a "blue-sky" proposition; it was a proposal giving men who are engaged in high finance an opportunity to fasten their hands upon the throats of the people of Europe and America and to control them for all time; to give them control of not only the finance of the country but also of the politics of this country and of all the world.

Mr. President, I trust that no Senator will for a moment contend that this is an exchange bill. That question is merely incidental. I trust that not even a backwoods financier will have the audacity to say that the bill is a bill to regulate foreign exchange.

Mr. McCORMICK. Mr. President, what is the bill? I apprehend the Senator from North Dakota has a little light on the subject, and I should like to

Mr. GRONNA. It is customary when a sort is asked to say "I will come to that I will say, however, to the Senator from Illinois, that, as I understand the bill, it is to tion of corporations with a capital of up to deal in securities; to issue debentures upon the securities purchased; to issue or without the indorsement or guarantee of the running the proposed institutions.

Of course it is the intention to issue bonds to the public at 1 per cent but with the German mark at