

14241


No. _____

Supreme Court of Illinois

People

vs.

Harless

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The People ex rel

Thomas Harless

vs

O. M. Hatch

Supreme Court.

November Term 1843.

It is submitted that an attorney will ought not to be awarded in this case for the following reasons.

I. The 21st ~~section~~ of Article 4. of the constitution provides that if any bill shall "not be returned by the Governor within ten days (Sundays excepted) after the same shall have been presented to him the same shall be a law in like manner as if he had signed it, unless the general assembly shall by their adjournment prevent its return; in which case, the said bill shall be returned on the first day of the meeting of the general assembly after the expiration of said ten days or be a law."

The petition alleges that the bill for an Act to incorporate the Wabash Railway Company passed the ^{two} houses of the legislature and was presented to the Governor on 12th day of June 1843. The petition further alleges that the Governor did not return the bill to the House in which it originated within ten days ^{Sundays excepted} after it was presented to him and that the general assembly did not by their adjournment prevent its return.

Now suppose all this to be true, the question arises in what manner shall the bill become a law -

It is submitted the bill could only become a law, in the manner prescribed by the Statute or ~~in accordance with the~~ of the State or in accordance with a proper authentication under an order of the ^{two} houses of the legislature.

In case the Governor ~~signs~~ approves a bill he is required to sign it and deposit the same in the office of the Secretary of State.

Rev Stat Chap 90. Sec 7. p 492.

People v Hatch 19 Ill 287.

If the Governor does not approve of a bill, he is required to return it or return it to the House in which it originated within ten days, ~~or~~ (Sundays excepted) after the same is presented to him, he ^{still} is required to return the bill to the Secretary of State -

~~Law Courts take judicial~~ Under the old constitution, the law provided that ~~in the~~ "every bill which shall have passed both houses of the General Assembly and shall not be returned by the council of revision within ten days, having thereby become a law, shall be authenticated by the Governor, causing the fact to be certified thereof by the Secretary of State in the following form: This bill having remained with the council of revision ten days (Sundays excepted) and the General Assembly being in session it has become a law this day of " " W A Secretary of State "

And the 1st section of the schedule to the new constitution, provides that all laws then in force not inconsistent therewith shall continue in force.

It will be perceived that ~~a duty~~ under the old constitution a duty was imposed on the Governor to ~~cause the law to be~~ ^{to be} authenticated authenticate the bill as a law by causing the facts to be endorsed thereof by the Secretary of State, and the same

duty on the ^{of the Governor} part, is continued under the new constitution

The object of the law was to provide an authentic record so that the people of the State might know what bills had become laws at all times thereafter.

It is settled in this State, that the Governor cannot be coerced to return bills to the Secretary of State nor to cause them to be authenticated, and the question then arises whether courts will take judicial notice of bills which have become laws and ~~which~~ not returned which should become laws.

It is submitted that considerations of public policy require that such bills should not become laws until they are properly returned and authenticated

- 1st Such bills might prescribe a rule of conduct which the people could have no means of ascertaining.
- 2^o Courts ought not to be called upon to administer laws, which they have no power to inspect, & to ~~inform themselves of their contents~~, the contents of which they are unable to ascertain
- 3^o The lives and liberties of ~~the~~ citizens might be ~~destroyed~~ ^{destroyed} ~~by~~ ~~the~~ ~~laws~~ under ~~such~~ laws, ~~without~~ and no man know whether they were in existence or not.
4. Public and private rights ~~would~~ ^{would} have to ~~be~~ ^{be} ~~adjudged~~ ^{adjudged} adjudicated upon without ~~a~~ ~~knowledge~~ any knowledge or means of knowledge of the laws regulating them -

It may be said that the Governor ought not to have it in his power to defeat the will of the Legislature by refusing to return a bill properly authenticated; but I reply ^{1st} that he can only be coerced in the performance of his duties by the People ~~by~~ ^{by} ~~impediment~~ and secondly that the two houses have the power to authenticate the

bill as a law, without any execution act.

Cushing ~~says~~, in speaking of bills which have been considered and passed by ~~the~~ ^a requisite ~~and~~ majority, after their vote says, "there seems to be no good reason why a bill which has been passed in this manner should not be authenticated by a certificate thereof of the proceedings with relation to the same in each branch, signed by the proper authenticating officers thereof, respectively, and deposited at once without the intervention of the executive, in the place or custody appropriated for the keeping of the laws. But in our case it was thought necessary by Congress to pass a joint resolution, that the Secretary of the Senate be directed to forward to the Secretary of State, the bill in question with certified extracts from the journals of the Senate and House showing the proceedings in the two houses of Congress respectively on the same bill, after the same had been returned to the Senate by the President with his objections thereon."

Cushing § 925

It will be noticed that the legislation must be in session at the expiration of the ten days, or the Governor has the right to retain the bill until the first day of the meeting of the general Assembly after the expiration of the ten days. - If then, on the expiration of the ten days, or after the first day of the meeting of the general Assembly, after said ten days, the Governor does not return a bill to the Secretary of State, the two houses may cause the same to be properly authenticated and deposited as a law.

There is therefore no necessity for holding, that a bill is law before it is properly authenticated and deposited.

III. The petition alleges, that the bill was presented to the Governor ~~for~~ on the 12th day of June 1843. It is in the computation of time the day on which the bill was presented is to be excluded, and the ten days, which ~~the Governor was~~ allowed the Governor in which to exercise his veto power expired on the 24th day of June. The Governor was entitled to the whole of that day in which to consider the bill, and the legislature having adjourned ~~at 10 AM~~ ^{so called} legislators having adjourned at 10 AM on that day, he was not required the bill did not become law and the Governor was not bound to authenticate it as having become a law.

III. Was there such a disagreement between the ^{two} houses as is contemplated by the constitution

1. Notice to the House of the new concurrence of the Senate was not necessary to constitute a disagreement. Such notices are usually matters of courtesy

Cushing § 2292

1 Black Com 133.

2 The House could not ask for a committee of conference as the resolution was not in its possession

Cushing 328. 329

3. Neither house can ask for a conference until a disagreement has taken place, and the object of a conference is to put an end to such disagreement. The same facts are requisite to give a right to ask for a conference as are necessary to create the state of things required by the Constitution

Cushing 328 with

4. After the Senate had refused to concur in the amendment of the House it was entirely in the discretion of the Senate whether it would ask for a conference or not or whether such conference should be proceeded with or not. Each house is the sole judge of the order of its own proceedings

Cushing 329. 342. § 857 § 858 § 2292

5. No communication to the Governor was necessary to create a disagreement. The journals of the two houses are made open to the inspection of all citizens

Cushing 291 § 736

And they are published from day to day under authority of law which publications are evidence

Rev Stat of 1845 p 422

Lawson's Young.

The Governor may satisfy himself as to the fact of a disagreement in the same manner as any other citizen may do so, and

the constitution does not require any notification of disagreement -
It only requires the fact to exist

(c). The resolution of the House, stating that it desired to reconsider its action in amending the resolution of the Senate, did not put an end to the disagreement between the two houses. - If the resolution had been returned to the House it could have taken such action thereon as it thought proper, and was not obliged to concur with the Senate, or in any manner further consider the resolution. The Senate ~~might~~ was under no legal obligation to return the resolution to the House, although it might have done so as a matter of courtesy. - The mistake of the messengers of the House in announcing the House resolution to the Senate cannot alter the resolution itself -

IV. In this country an adjournment without day is used to denote the conclusion of the session. - The question is when did the session close - Cushing 200.

1. According to parliamentary law no question could be put without a quorum. The House could not adjourn from day to day. Cushing 147. 325 § 817

^{a less than a quorum of}
The only way in which a body governed by parliamentary rules, can
continue ~~itself~~ ^{the body} in session is for the Speaker or Clerk to declare the body
adjourned until the next legislative day without putting the question
and the only evidence of its continuance in session is its journal.
The journal is like the record of a court and from it alone the
question is to be determined whether the body was in session
or not.

2. In this state power is granted to ^{less than a quorum of} each house to adjourn from
day to day on questions and to send for absentees, and this
is the only power they have to continue the session of the two houses.

If the ~~for~~ only power of continuing the session of
the houses is not exercised ~~they~~ they of necessity ~~of~~ cease and
close and when we look at the journals we find that the power
was not exercised -

Considerations of public policy require that ~~the~~ session should be
held to close when the ~~house~~ journal shows that the body entirely
stopped transacting business without manifesting an intention
to renew it.

1. No bill can be presented to the Governor when the legislature is not
in session. Cushing 919. It is important therefore that the Governor
should know by an authentic record whether the legislature is in session
or not when a bill is presented to him.

2. The Governor is allowed two days, Sundays excepted to consider of the
provisions of bill presented to him for his approval if the legislature

is in session and if not until the first day of the meeting of the general Assembly after said ten days. It is therefore important that he should be able to ascertain whether the legislature is in session or not. He looks at the record for ten days and finds no session, and then to his astonishment he and the people of the state are told that by prescription the houses were in session and that a bill has become a law ~~also~~ because he did not take notice of a fact which did not exist and of which there was no evidence.

3^d. All public laws take effect sixty days after the close of the session unless otherwise specially provided, and courts ought to be able to ascertain from some record when such laws take effect.

The record of the existence of the session ceases, and months ~~very~~ elapse. In the interim time ~~unseen and~~ criminals are hung or imprisoned private and public rights are adjudicated upon and determined by such adjudications, and then it is said that the wandering members (or few) can get together and establish a presumption that they have been in session all the ~~the~~ while and thus overturn ~~and~~ ~~annual acts~~ and annual acts done under the law. How are courts to know whether the members will come back sometime within the next two years or not?

4. Each house has power to imprison for contempt, but ~~such~~ imprisonment there is no authority to hold a person thus imprisoned after the close of the session. No power can compel either house to enter a formal adjournment on its journal; and can ~~the~~ either house disperse without a

making an entry of a formal adjournment on its journal and keep a person imprisoned in jail until the close of the legislative term of the members upon the ~~principle~~ presumption that the house is ~~it~~ still in session

6. Every member of the house is privileged from arrest, except for treason, felony or breach of the peace during the session of the general assembly, and it has been suggested that it would be ~~safe~~ ^{safer} for some of the members never to have a formal adjournment entered on the journals, as thereby the ~~session~~ ^{session} would general assembly would be presumed to continue in session and ~~they could~~ the members could draw their ^{little} pro diem and be privileged from arrest during their legislative term -

7. The Secretary of State, Public Printer and other officers are required to perform duties within limited times after the close of each session and it would be desirable for them know ~~within what times~~ ^{when} such duties are to be performed.

V. The two houses might have insisted that they had not disagreed and then the question as to whether there had been a disagreement would have arisen, but after the assumption of a disagreement on the part of the Governor, and an acquiescence in such assumption the question cannot legally arise - The two houses could admit that there was a constitutional disagreement and their acquiescence in the act of the Governor, was an admission of the legality of the act.

VI. When the only evidence of a fact is a record, there can be no presumption of the fact when the record is silent, and has not been lost or destroyed -

2. The presumption sought to be established is one of fact, and ^{would} be liable to be rebutted by part evidence - It would reduce the law of the land to a glorious uncertainty to call in witnesses to ascertain whether a public law ~~was~~ ^{is} in force. It would be new mode ~~to~~ taking judicial notice of acts of the legislature, and of the commencement and close of ~~the~~ its sessions - *The King v. Milder 12 Bro 296*

VII. Courts will not issue a Mandamus to require a negotiating act. - If the law is a public one - of which courts will take judicial notice they grant a Mandamus to get evidence for which there is no necessity - The Secretary was required to certify that the bill was a law, but how could he know whether he withdrew a law or just if not properly certified they did not ask him for a copy of the paper, but to certify that the paper was a law -

Wm. R. Smith
Of Counsel for President.

Paper on Mand [15]

Brief

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The People of Illinois

vs ml

Thomas Hartless

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~~8/15~~
12/24/11

Filed Nov. 11.

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N. Selvester CM