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THE LEGISLATIVE PROCESS IN MARYLAND

By CARL N. EVERSTINE*

The process of enacting State laws in Maryland is a product of a long political evolution. Basically, it stems back to the bicameral legislature, the multiple readings required of each bill to avoid undue haste, and the executive veto, as these institutions and procedures developed in England. To them have been added the peculiarly American institutions of judicial review and the right of referendum, plus local State variations on scores of matters of detail. These matters now are variously covered in constitutional and statutory law, and in the rules of each House of the General Assembly, and all of them have been subject to the interpretation and development of the Court of Appeals of Maryland.

The net result is that a bill introduced into the Legislature must keep within a narrowly formalized path as it moves through the legislative branch of the State government, into the Executive Department for possible veto, and then perhaps before the voters in a referendum. Whenever there is an apparent straying from this procedural pathway the courts are likely to be asked for a decision, so that a considerable body of case law is already built up to regulate the legislative process.

I. THE GENERAL ASSEMBLY

The State Constitution provides that "the Legislature shall consist of two distinct branches—a Senate and a House

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of Delegates—and shall be styled the General Assembly of Maryland." Following traditional Anglo-American practice, also, it sets up the principle of the separation of powers among the three branches of government. Article 8 of the Declaration of Rights says that:

"The Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

The Court of Appeals in a number of instances has affirmed that the Legislature is the one and only law-making power in the State. Thus, in *Hammond v. Haines*, in 1866, it was said that:

"The Constitution wisely distributes the powers of government among several and distinct departments, and the limits of these cannot be extended, or an encroachment of one upon the other permitted, without a violation of the social compact and a derangement of the social order. The General Assembly, composed of the Senate and House of Delegates, is in this State the only law-making power."

This statement was cited with approval in *Bradshaw v. Lankford*, in 1891, and again in *Brawner v. Supervisors*, in 1922.

The same thought was implied in *Hamilton v. State*, in which one of the parties argued that a veto by the Governor had not been properly and effectively accomplished. In the course of the opinion it was said as to the general functions of the Legislature:

"They must pass the bill; they must seal the bill with the Great Seal of the State, and they must present

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1 Art. 3, Const., Sec. 1.
2 25 Md. 541, 90 Am. Dec. 77 (1866).
3 Ibid., 562.
5 141 Md. 586, 599 119 A. 250 (1922).
6 61 Md. 14 (1883).
the bill to the Governor, and when all this is done, and not till then, the duty of the Governor begins.\textsuperscript{5a}

Very recently the Court has said that the Legislature has all legislative power, except as restrained by the Constitutions of the State and of the United States.\textsuperscript{5b}

In proposing amendments to the Constitution the General Assembly has an even more exclusive power, as came out dramatically in Warfield \textit{v. Vandiver},\textsuperscript{6} in 1905.

The Legislature at its regular session in 1904 had passed two bills proposing amendments to the Constitution. One was to add a "grandfather clause" to the registration provisions in the State election law, and the other was known as the "good roads amendment". There was doubt as to whether Governor Warfield would sign the election bill, since he had said he thought it would place too much discretion in the election officials. Accordingly, legislative leaders determined not to send the two bills to the Governor. These two bills, therefore, were not signed by the Governor, nor were they printed in the session laws.\textsuperscript{6a}

In answer to a specific request, the Governor stated that he did not intend to have the two amendments published in advance of the election, as is required by the Constitution. Suit was brought against him, therefore, seeking by a writ of \textit{mandamus} to require him to publish the proposed amendments. Since by Article 14 of the Constitution it is the duty of the Governor to provide for such publication, the primary question in the case was as to the veto power, if any, over a proposed constitutional amendment.

The Court of Appeals ruled, with all its members concurring on this point, that a bill proposing an amendment to the Constitution does not have to be sent to the Governor for his approval, and that in any event he could not veto it. Article 14 of the Constitution, which specifies the procedure for amendments, says that "the General Assembly" may

\textsuperscript{5a} Ibid., 28. See also Nowell \textit{v. Harrington}, 122 Md. 487, 89 A. 1098 (1914).
\textsuperscript{5b} Hennegan \textit{v. Geartner}, 186 Md. 551, 47 A. 2d 166 (1946).
\textsuperscript{6} 101 Md. 78 (1905).
\textsuperscript{6a} The "grandfather clause" amendment to the election laws was Ch. 96 of the Acts of 1904. A copy of it may be found in \textit{The Sun Almanac}, 1905, 42.
propose amendments, by a three-fifths vote in each house. By referring to other parts of the Constitution, the Court established that the phrase "General Assembly" does not include the Governor. Also, it pointed out, the veto power of the Governor is only as to bills passed by the Legislature, which, if they are approved, will become law; here, even if the Governor signed the proposed amendment, it would not be law or a part of the Constitution until and unless approved by the people.\(^7\)

The Budget Bill also does not have to go to the Governor for approval, it being provided in the Budget Amendment that "such bill when and as passed by both houses shall be a law immediately without further action by the Governor." The Legislature's power is not here an exclusive one, however. The Budget is submitted to it by the Governor, and the Legislature has then only a limited power to amend what has been submitted.\(^8\)

Each house is authorized by the Constitution to "determine the rules of its own proceedings,"\(^9\) and each adopts a set of rules at the outset of every session, the general procedure being to adopt with little or no change the rules of the preceding session. Despite the constitutional sanction to the adoption of rules, however, the Court of Appeals will not enforce them. This came out in the Warehouse Company\(^9a\) case in 1912. The two houses passed a bill and sent it to the Governor, and then had it returned to them for amendment before it was signed. It was claimed by one of the parties to the case that when the Senate voted to reconsider the vote by which the bill originally had passed it did not observe its own rules for such reconsiderations. But, said the Court:

"The non-observance of such a rule, so far as we are able to discover, does in no way conflict with the constitutional provisions or requirements in relation to the passage of laws, and as we have previously said, in line with the authorities that we have quoted, no inquir

\(^7\) Supra, n. 6.
\(^8\) Const., Art. 3, Sec. 52.
\(^9\) Art. 3, Sec. 19.
\(^9a\) infra, n. 10.
should be made by the Court to ascertain whether the Senate, in the reconsideration of this bill, was acting in compliance with the rule above stated. The presumption is conclusive that it has done so.\textsuperscript{10}

One of the rules in each house lists the committees which are to be set up, showing the name and composition of each. Their function, of course, is to give to legislative bills a more detailed consideration than could possibly be given by an entire house. Since the rules under which they are appointed expire at the end of each session, the committees are never held to have permanent existence. An early case specifically said that "committees have no power to act as such during the recess of the Legislature, unless they are authorized specially to do so."\textsuperscript{11} Subsequently, in another case involving the same parties and facts, the Court held that where separate committees had been set up in each house and authorized to approve the bond of the State Librarian, they must act separately; approval by a joint committee, said the Court, would not conform to the terms of the act in question.\textsuperscript{12}

Since 1939 the Legislative Council has acted as a joint committee of the General Assembly, and practically all of its work is done between sessions.\textsuperscript{13} In 1949 the House of Delegates ordered its Education Committee to serve until the session of 1950 in order to study the University of Maryland, and a "permanent" sub-committee of the Ways and Means Committee was established to study the budget.\textsuperscript{13a}

It is stated specifically in the Constitution that "any bill may originate in either house of the General Assembly and may be altered, amended or rejected by the other." The only limitation upon the introduction of bills is that "no bill shall originate in either house during the last ten days

\textsuperscript{10} Baltimore Fidelity Warehouse Co. v. Canton Lumber Co., 118 Md. 135, 150, 84 A. 369 (1912).
\textsuperscript{11} Marshall v. Harwood, 7 Md. 466, 482 (1855).
\textsuperscript{12} Harwood v. Marshall, 9 Md. 83, 104 (1856).
\textsuperscript{13a} 1949 House Journal, pp. 803, 1474, 1524.
of the session, unless two-thirds of the members elected thereto shall so determine by yeas and nays."14

The only limitation upon the consideration of bills is that "neither house shall consider other appropriations until the Budget Bill has been finally acted upon by both houses. . . ."15 This does not prevent the introduction and referral to a committee of such other appropriation bill before the Budget Bill has been passed, but simply means that no other appropriation bill may be voted upon until the Budget Bill has been passed.16

A quorum of either house consists of a majority of the whole number of members elected to that house, but a smaller number may adjourn from day to day and compel the attendance of absent members.17

II. THREE READINGS

Every bill is required to have three readings as it moves through each branch of the Legislature, in order to avoid undue haste in passing it. This is a piece of legislative procedure now firmly rooted in the Anglo-American tradition. In Maryland it is fixed in the Constitution:

". . . nor shall any bill become a law until it be read on three different days of the session in each house, unless two-thirds of the members elected to the house where such bill is pending shall so determine by yeas and nays."18

This part of the Constitution has been concerned in only a few cases before the Court of Appeals. The Court indicated in 1875 that it would enforce this provision, in Berry v. Drum Point Railroad Co.19 That case involved the validity of a bill when the version as signed by the Governor differed from the version as passed by the Legislature. In referring generally to the need for following the mandates

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14 Const., Art. 3, Sec. 27.
15 Const., Art. 3, Sec. 52.
17 Const., Art. 3, Sec. 20.
18 Const., Art. 3, Sec. 27.
19 41 Md. 446, 20 Am. Rep. 69 (1875).
of the Constitution in the enactment of laws, Judge Alvey wrote in his opinion:

"Suppose, for instance, it could be plainly shown by competent evidence for the purpose, that a particular bill, alleged to have been passed by the Legislature, had never been put to final vote, or that it had been declared passed without previous readings, and in total disregard of the expressed mandatory requirements of the Constitution, as to the manner in which a bill can be enacted into a law, could it be successfully maintained that such alleged act should be enforced as law? . . . We suppose not."19a

In a recent case involving Chapter 356 of the Acts of 1937, there was a specific construction of the constitutional requirement for readings "on three different days of the session." That act originated as Senate Bill No. 292. After passing the Senate, it went to the House on the morning of April 5, 1937, while the House was still operating as of the legislative day of April 3. It was given first reading and referred to a committee. Later that day (though still on the legislative day of April 3), the rules were suspended, and the bill was given second reading. Still later the House adjourned to the legislative day of April 5, and the bill was then given a third reading. All three readings in the House were on the same calendar day, therefore, with first and second readings having been given on the legislative day of April 3 and third reading on the legislative day of April 5.20

Chief Judge Bond, in writing the opinion, said that:

"A distinction between legislative days as 'days of the session', and calendar days, has long been observed in parliamentary practice, before the adoption of the present Maryland Constitution, and ever since, and the Court is of the opinion that continuation of the practice must be presumed to have been contemplated by the draftsmen of the Constitution."21

19a Ibid., 462.
20 1937 H. J. 1686, 1702, 1703, 1873.
The House Journal for 1937 gives this entry preceding the second reading given to Senate Bill No. 292:

"On motion of Mr. Mulliken, and two-thirds of the members-elect voting in the affirmative, the rules were suspended by yeas and nays as follows for the purpose of permitting the Ways and Means Committee to report on Senate Bill No. 292."\(^{22}\)

The suspension of rules, it will be observed, was stated to be only for the report of the bill from the committee, and said nothing as to including also the purpose to pass the bill through second reading. This point was raised in the *Wyatt\(^{22a}\)* case, but the Court dismissed the difference as "one which may rest on clerical entries rather than on actual occurrences. . . . On so narrow a question, the presumption of adherence to the constitutional requirements should prevail over the mere form of the clerk's entry."\(^{23}\)

The adoption of a favorable report and the declaration that a bill has passed second reading are so nearly synonymous that the Court could hardly have held otherwise.

Another technical question might have been raised. The motion according to the Journal was to suspend the rules. Actually, it was not the rules of the House which needed to be suspended. What was needed was a motion to satisfy the requirements of Section 27 of Article 3 of the Constitution that no bill shall become a law unless read on three different days of the session, "unless two-thirds of the members elected to the house where the bill is pending shall so determine by yeas and nays." The Journal Clerks still use a form to suspend "the rules" in order to have two readings of a bill during one legislative day.\(^{24}\)

In *Manger v. Board of Examiners\(^{24a}\)* the Court of Appeals was holding that neither bad grammar nor inaccurate punctuation can be allowed to alter the obvious sense of a legislative enactment. To emphasize that punctuation is not of

\(^{22}\) 1937 H. J. 1702.

\(^{22a}\) *Supra*, n. 21.


\(^{24}\) H. R. 39 and S. R. 22 provide for a vote on the question of giving a bill two readings in one day, but the constitutional provision is, of course, the basic one to be met.

\(^{24a}\) *Infra*, n. 25.
controlling effect in the interpretation of a bill, the Court pointed out that “in the legislative body, the bill is read; so that the ear, not the eye, takes cognizance of it.”

It is well settled, of course, that during the course of the readings being given to a bill it may be amended. This came out in the most extreme form in *Thrift v. Towers*, in which the amendment had been “to strike out all after the words ‘A Bill’” and to insert an entirely new bill. This practice, said the Court, is in accordance with universal legislative procedure.

In order to pass third reading in each house a bill must receive a constitutional majority, from the provision that “no bill shall become a law unless it be passed in each house by a majority of the whole number of members elected.” In *Temmick v. Owings* it was held that this requirement was not violated by a provision in a bill, referring to a prior act of the Legislature, that “said Act shall apply therein as heretofore.” This was simply a recognition of the existing policy of the district as to alcoholic beverages, said the Court, and not an attempt to reenact the prior act without a constitutional majority of the Legislature.

### III. Journals

The keeping and publication of a journal is another of the legislative procedures found generally in Anglo-American jurisdictions. In its most voluminous form it can be a Congressional Record, reporting not only the action on bills and amendments, but also the entire record of debates and the familiar “extensions of remarks.” The Maryland journals, however, are much less complete. They show the readings given to the bills as they move through the two houses, the text of any amendments, and the roll call vote by which the bills pass, but there are no debates recorded. It is mainly for this reason that legislative intent is frequently hard to establish in Maryland.

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25 Manger v. Board of Examiners, 90 Md. 659, 668, 45 A. 891 (1900).
26 127 Md. 54, 58, 95 A. 1064 (1915).
27 Const., Art. 3, Sec. 28.
28 70 Md. 246, 16 A. 719 (1889).
The Maryland Constitution has little to say as to what should be printed in the legislative journals. The main provision is that:

"Each house shall keep a Journal of its proceedings, and cause the same to be published. The yeas and nays of members on any question shall, at the call of any five of them in the House of Delegates, or one in the Senate, be entered on the Journal".\(^{29}\)

Perhaps because the Constitution says nothing specifically as to the conclusiveness of the journals in evidence, the Court of Appeals frequently has treated them as only one of the types of evidence to be considered by it. Thus, in the Fouke\(^{30}\) case in 1859, where the engrossed copy of a bill and the published copy of the law were identical, the Court refused to hold these two erroneous simply because the journals of the two houses gave other evidence as to what the correct version should have been.

The case of Berry v. Baltimore and Drum Point Railroad Company\(^{31}\) also concerned a conflict between the authenticated copy of an act and the journals. The Court said in that case that the journals of the two houses, in connection with other competent evidence, could be examined as a means of determining the action of the Legislature on any particular bill. This case was approved in Ridgely v. Baltimore City, with the further statement that "an authenticated statute cannot be impeached by the legislative journals alone, or by mere parol evidence".\(^{32}\)

One requirement as to the contents of the journals is that any five members of the House, and any single member of the Senate, may demand the yeas and nays of all the members on any question, which shall then be printed in the Journal.\(^{33}\) The Court of Appeals has held, in addition,
that the yeas and nays of the final vote on every bill also should be shown in the journals.

This latter point came up in the case of *Washington County v. Baker*,4 in 1922. A House Bill had been amended in the Senate. The House refused to concur in the Senate amendments, and a Conference Committee was appointed. The House thereafter adopted the Conference Committee's report and re-passed the bill, but the Senate Journal showed no record of such action on the part of the Senate. Not only was there no record of the final Senate vote in its Journal, but there was no record anywhere. This raised the question of the bill's validity under Section 28 of Article 3 of the Constitution, which requires that:

"No bill shall become a law unless it be passed in each house by a majority of the whole number of members elected, and on its final passage the yeas and nays be recorded; nor shall any resolution requiring the action of both houses be passed except in the same manner."

The Court held this provision for recording the yeas and nays was a mandatory one, and since it had not been observed the act was invalid. Then, combining the effect of Sections 22 and 28 of Article 3 of the Constitution, the one requiring that a journal be kept and published and the other requiring that the yeas and nays on final passage of a bill be recorded, the Court went on to hold that the recording of the yeas and nays should be in the journals. "It is true," it was said, that:

"Section 28 . . . does not in terms require the record of the yeas and nays to be made on the journals, but it does declare that no bill should become a law unless, on its final passage, the yeas and nays are recorded, and as Section 22 requires each house to keep a journal of its proceedings, and cause the same to be published, and further provides that the yeas and nays of members, on the call of any five of them in the House, or one in the Senate, shall be entered on the 'journal', the journals would seem to be the proper place to make the record required by Section 28."5

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4 141 Md. 623 119 A. 461 (1922).
5 Ibid., 636.
This much of the opinion is possibly dictum, since the case concerned a bill which not only did not have the yeas and nays recorded in the Senate Journal, but also did not have them recorded anywhere. In view of this pronouncement, however, and the undeniable logic of it, it seems well settled that the recording of yeas and nays on final passage is to be made in the journals.

The yeas and nays on the final passage of every supplementary appropriation bill are also to be recorded, again with no particular place specified.\(^5\)

The case of *Worman v. Hagan*\(^{36}\) involved an unusual point concerning the journals, being whether a proposed constitutional amendment should be printed therein in full. Section 1 of Article 14 of the Constitution provides that:

"The General Assembly may propose amendments to this Constitution; provided that each amendment shall be embraced in a separate bill, embodying the Article or Section, as the same will stand when amended and passed by three-fifths of all the members elected to each of the two houses, by yeas and nays, to be entered on the journals with the proposed amendment. . . ."

The case came up concerning a constitutional amendment which had been proposed by the Legislature in Chapter 255 of the Acts of 1890 and ratified by the voters in 1891. The appellant was claiming that the wording of the Constitution, given above, requires a proposed constitutional amendment to be set out verbatim in the journals. Certainly that is a possible interpretation of the words quoted.

The Court of Appeals held, however, that a proposed constitutional amendment can be described by its title alone in the journals, just as every other legislative bill is treated. For, said the Court:

"Each house had the bill in its possession when it passed it; and the bill was fully and clearly identified by its title. There would have been no greater certainty if every word of it had been recited. We must give a reasonable construction to the words of the Con-

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\(^{5}\) Const., Art. 3, Sec. 52.
\(^{36}\) 78 Md. 152, 27 A. 616, 21 L.R.A. 716 (1893).
stitution. There was but one bill with this title. The entries on the journals of the two houses that this bill had been passed by the yeas and nays which were stated, described their legislative action as distinctly as it could be expressed. The yeas and nays were associated as closely as possible with the enactment contained in the bill; that is to say, with the proposed amendment. It was not in the power of any person to mistake the meaning of the entry.\(^{36a}\)

Also, the Court pointed out, to adopt the appellant's contention would be to cast doubt upon the constitutionality of previous amendments to the Constitution of 1867, which amendments by then had been adopted and observed for a number of years.

It also has been held that the amendment to any ordinary bill need not be entered upon the journals. In *Ridgely v. Baltimore City*\(^{37}\) the question was whether a particular provision had been left in a bill when it finally passed. The authenticated copy of the act did not contain this provision, but the journals did not show any amendment as removing this provision from the original bill. The Court accepted the authenticated copy of the act as the correct version of it. "The Constitution requires the journal to contain certain definite things," said the Court, "but it does not require amendments, or proposed amendments to be entered upon the journal. Whatever the journal contains over and above those things required by the Constitution to be shown therein, are entered in obedience to the direction of each house."\(^{37a}\) As a matter of custom, however, the text of all amendments is printed in the journals.

Section 17 of Article 2 of the Constitution requires that when the Governor vetoes a bill "he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal . . ." Also, when the vote is taken for and against sustaining the veto, "the names of the persons voting for and against the bill shall be entered on the journal of each house respectively."

\(^{36a}\) *Ibid.*, 163.

\(^{37}\) 119 Md. 567, 87 A. 909 (1913).

\(^{37a}\) *Ibid.*, 587.
The Governor is empowered by statute to designate someone in his behalf to accept the official presentation of bills from the Legislature, "which designation shall be in writing addressed to the presiding officers of the two houses of the General Assembly, respectively, and the same, when so received, shall be entered at length upon the journal of each house."\textsuperscript{38}

Another statutory requirement for the journal concerns the time of presenting bills to the Governor. The Secretary of the Senate and Chief Clerk of the House are to make the presentation, and to make a memorandum on the back of each bill showing the day and the hour of presentation. Then, it is provided, each of these officers "shall make a corresponding entry upon the journal of the house in which the same originated."\textsuperscript{39} This law has not been observed for many years. It seems to have been followed only briefly following its enactment in 1884; the journals of 1890, for example, contain notations as to bills sent to the Governor, but within a few years such notations no longer appear in the journals.\textsuperscript{40} House Bill No. 329 of 1949 would have repealed this requirement as to the journal, but it died in committee.

IV. ENGROSSED BILLS

There have been a number of cases concerning the validity or correctness of engrossed bills, but since most bills have been printed for the past thirty years or more these problems are less important now than formerly.

Section 27 of Article 3 of the Constitution requires that "no bill shall be read a third time unless it shall have been actually engrossed or printed for a third reading." An engrossed bill is one written out in longhand, usually on large sheets of paper and frequently embellished with

\textsuperscript{38} Md. Code (1939) Art. 41, Sec. 42.
\textsuperscript{39} Ibid.
\textsuperscript{40} There may have been a bill passed by the Legislature in either 1935 or 1937 for which a notation was entered on the Journal as to the time of presentation to the Governor, the background being an effort by the Democratic Legislature to keep the Republican Governor from vetoing the bill. Ch. 45 and 46 of the Acts of 1937, originating as H. B. 266 and 267, became law without the signature of the Governor, but there is nothing in the journals as to the time of presentation of these particular bills.
classical penmanship. Some of those who followed the trade did so with more profit than skill, and the possibilities for errors and mistakes in such a system are obvious.

The requirement that bills be engrossed before third reading was first written into the Constitution of 1867, and the words "or printed" were added by a constitutional amendment ratified in 1913.

In one old case, which was decided while the Constitution of 1851 was still in effect, one of the points at issue was the time at which an act takes effect (there being then no veto power, and the signing of bills by the Governor being a mere ministerial duty). With one dissent, the Court held that an act is not "perfected" until it has been engrossed, since it would be "unjust" to require anyone to know of its existence as a law "while it is in its crude state previous to engrossment."41 This decision is now entirely outmoded.

Fouke v. Fleming42 was a case of some importance in settling the relative importance of engrossed bills and the legislative journals. In that case the text of an act as found in the engrossed bill and also in the published copy of the law did not correspond to the evidence furnished by the two journals, as to what the text of the law should be. The Court held it could not assume the engrossed bill and published act to be erroneous. For, said the Court,

"An engrossed bill, according to the practice of legislation in this State, is examined by a committee of the house in which it originated, then the bill, as engrossed, is assented to by both houses, then attested by the chief clerk of each house and signed by the Governor, with the seal of the State annexed. All this would seem to be better evidence of what a law is than the journals of the two branches of the Legislature, each journal being kept and attested only by the chief clerk of his particular branch."42a

Annapolis v. Harwood43 concerned a similar set of facts, as to an act passed in 1867 while the Constitution of 1864

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42 13 Md. 392 (1859).
42a Ibid., 413.
was still in effect. The appellants in that case claimed that the text of the act as officially recorded in the office of the Court of Appeals and as printed in the session laws differed from the text of the act as actually passed by the two houses of the Legislature. They submitted a copy of the act certified by the chief clerks of the two houses as the correct version of what actually passed. The appellants further offered to prove that the difference between the two versions of the act was caused by a mistake of the engrossing clerk, after the act had been finally passed by the Legislature and before it had been examined by the committee on engrossed bills, sealed with the Great Seal, signed by the Governor, and recorded with the Court of Appeals.

The Court of Appeals held in *Annapolis v. Harwood* that the act in question had been signed and handled with all the solemnities required by the Constitution, and that the Court could not go behind such evidence to question the contents of the act. The bill had been passed, sealed with the Great Seal, signed by the Governor in the presence of the two presiding officers, recorded with the Court of Appeals, and finally printed in the session laws. The object of all these careful provisions, said the Court, was to guard against controversy as to the contents of laws. As to that, it concluded, "we think that the Court cannot go behind the proof prescribed by the Constitution in inquiring into the contents of statutes."\(^{43a}\)

V. **Enrolled Bills**

A bill which has been either re-printed or re-engrossed by reason of having been amended in the house other than that in which it originally was introduced is known as an enrolled bill. In present practice, this distinguishes it from the "third reading file copy" which would have been printed for the third reading in the house in which it was introduced.

The third reading file copy is required, as has been said, by the provision in Section 27 of Article 3 of the Constitution that "no bill shall be read a third time unless it shall

\(^{43a}\) Ibid., 478.
have been actually engrossed or printed for a third reading.” Every bill is ordered to be printed for third reading at the time it passes second reading, and in order to save time and eliminate extra printing it generally is required that a bill may not be amended on third reading in the house in which it originated. Senate Rule No. 26 specifically so states, and House Rule No. 42 accomplishes the same result in describing how the third readers of all House bills are to be prepared. Therefore, in order to amend a House Bill in the House or a Senate Bill in the Senate, on third reading, it would be necessary to suspend the rules and then have the bill re-printed. The usual procedure is simply to recommit the bill and subsequently to bring it out again on second reading, or else to arrange for the bill to be amended in the opposite house.

An enrolled bill is not prepared until after both houses have acted upon it. Thus, if a House Bill is amended in the Senate, it goes back to the House for concurrence in its original third reading file form, with the Senate amendments attached to it in typewritten form. If the House concurs in the Senate amendments the bill is then re-printed as an “enrolled” bill, in order to be sent to the Governor.

In *Dunn v. Brager*44 neither the third reading nor the engrossed bill was printed, the bill being engrossed by hand for third reading and then re-engrossed by hand as an enrolled bill. The original engrossed bill had in it the clause “...and in the counties every such building shall also be subject to a lien. . . .” When the re-engrossed or enrolled copy of the bill was prepared, a period and a capital letter had been inserted to make the original clause read “...and in the counties. Every such building shall also be subject to a lien. . . .”

The Court had to decide in this case whether to enforce the text of the original engrossed bill or the text of the enrolled bill, the latter having the faulty punctuation added. Its decision was made more difficult by the fact that after the enrolled bill was prepared and presented to the Gov-

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44 116 Md. 242, 81 A. 516 (1911).
ernor, but before it was signed, the Senate had recalled it for a slight amendment (not affecting the question in this case), and the House had then concurred in this Senate amendment. This meant that both houses had actually had the enrolled version of the bill before them and had passed it.

The Court held that the correct version of the bill was that of the original engrossed copy, without the faulty punctuation, on the rule that bad punctuation would not be allowed to alter the obvious intent and meaning of a statute. Beyond mentioning the fact, the Court took no account of the enrolled bill having actually been before both houses.

The *Warehouse Company* case in 1912 brought up a fine point of distinction between an engrossed and an enrolled bill. It concerned a House Bill which had passed both houses and then had been enrolled and sent to the Governor. Before signing it, and at the request of the House, the Governor returned the bill to the House for amendments. The House in turn sent it to the Senate, where it was amended. Subsequently, the House concurred in the amendments, and the bill was again enrolled and sent to the Governor.

When the Senate reconsidered the vote by which the bill had passed that body, it had before it the enrolled copy of the bill which had been sent to the Governor and returned by him to the Legislature. The appellant in the *Warehouse Company* case contended that when the Senate reconsidered the vote by which the bill had passed it should have had before it the bill as engrossed for third reading in the House, and that whatever amendments then were made to the bill should have been made to this engrossed copy, and not to the enrolled copy. The contention was, that is, that the Senate should have reconsidered the same physical version of the bill as had originally been passed in that house. The enrolled bill, said the appellant further, should have been regarded as a new bill and there-

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45 *Baltimore Fidelity Warehouse Co. v. Canton Lumber Co.*, 118 Md. 135, 84 A. 188 (1912).
fore subject to the requirement of being read on three different days for passage.

This contention, said the Court, was "indeed technical." Both the engrossed and the enrolled copies of the bill were introduced in evidence, it was pointed out, and except for the endorsements placed upon the enrolled bill the two were identical. So, it was concluded, the action of the Senate upon the enrolled bill was in effect a reconsideration of the vote upon the engrossed bill, and the enrolled bill was not a new bill appearing for the first time in the Senate.45a

VI. BILLS RETURNED BY THE GOVERNOR

Occasionally one or both houses of the General Assembly will request the Governor to return to them a bill which has been regularly passed and sent to him for signing. It has happened, for example, that the Attorney General has indicated a possible constitutional defect in the bill, or that the Governor has informally questioned some provision of the bill as a matter of policy. In such instances legislative leaders may determine to recall the bill in order to meet the objection. Nothing in the Constitution covers such a procedure, so that it has been contested in the Court of Appeals.

The act of the Legislature which was in question in Dunn v. Brager had been thus returned from the Governor, for the purpose of making minor amendments to the bill. This point evidently was not brought into issue, however, since the opinion of the Court simply mentioned the fact of the bill having been returned and said nothing further on the subject.46

In the Warehouse Company case a bill was returned to the General Assembly after it had passed both houses, and after it had been sealed with the Great Seal and presented to the Governor. The purpose of the return was to amend the title of the bill, the validity of which had been questioned by the Attorney General. The bill had originated in the House.

45a Ibid., 151.
46 Supra, n. 44, 249.
Two days after the bill had been sealed with the Great Seal and presented to the Governor, the Senate addressed a message to the House, asking for the return of the bill. On the same day the House sent a message to the Governor, asking for the "withdrawal" of the bill, in order to clear up the constitutional doubts which had been raised by the Attorney General. The Governor accordingly sent the bill to the House, which in turn sent it to the Senate for amendment. The bill then came back to the House, the amendments were concurred in, and the bill finally was sent once more to the Governor.

The appellant in this case was contending that the Legislature had no power to recall a bill from the Governor, that under the Constitution the Governor may return a bill to the Legislature only if he has vetoed it, and that once a bill has been sent to the Governor the Legislature may act upon it further only in the event of a veto.

The Court of Appeals held that the Senate message to the House and the House message to the Governor added up to a concurrent action of the two houses in requesting the return of the bill from the Governor. Furthermore, it said, there was nothing in the Constitution which would prevent the Governor's willing return of a bill after both houses had sought such return. Messages which go to the Governor now, seeking the return of a bill, always mention that the other house has consented to the request.

VII. SIGNING OF LEGISLATIVE ACTS

Once a bill has passed both houses of the Legislature, it must go to the Governor. At this point there are three ways in which a bill may become a law. "First, by being signed by the Governor; secondly, by being passed over his veto; and thirdly, by his failure to return the bill within six days after receiving it, unless by adjournment the General Assembly prevents its return."48

47 supra, n. 45, 147.
The signing of legislative acts is covered by these words of the Constitution:

"Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented to the Governor, who, if he approves it, shall sign the same in the presence of the presiding officers and chief clerks of the Senate and House of Delegates."\(^4\)

The Constitutional provisions have been supplemented by statute. One provision has been that the presentation need not be made personally to the Governor:

"... in case of the sickness or necessary absence of the Governor from the seat of government of the State, during the session of the General Assembly, it shall be lawful for the Governor to designate some person or persons to act for him in receiving bills presented for his approval; which designation shall be in writing addressed to the presiding officers of the two houses of the General Assembly, respectively, and the same, when so received, shall be entered at length upon the journal of each house; all bills passed by the General Assembly and sealed with the Great Seal which shall be presented as aforesaid to the person or persons so designated, shall be held and considered as presented to the Governor for his approval, within the meaning of the Constitution of the State,"\(^5\)

The question of the necessity for a personal presentation was raised in 1883, but being unnecessary to the decision of the case was not decided.\(^6\) It was probably in response to this case, however, that the Legislature in the following year enacted the provisions quoted above.\(^7\)

The first part of the same section of the Code was originally enacted by Chapter 131 of the Acts of 1853. After referring to the Great Seal of Maryland, and specifying that it is to be in the custody of the Secretary of State, the statute continues:

"... the Secretary of the Senate and the Chief Clerk of the House of Delegates, respectively, shall have un-
restricted access to and use of the Great Seal, for the purpose of affixing the same to bills which shall have passed the General Assembly as required by the Constitution, preparatory to presenting the same to the Governor for his approval; every bill, when passed by the General Assembly, shall be returned to the House in which the same originated, and shall, as soon thereafter as practicable, be sealed with the Great Seal by the Secretary of the Senate or Chief Clerk of the House of Delegates, as the case may be, and presented to the Governor for his approval; and in his presence such clerical officer having custody of the same shall make on the back of every such bill a memorandum in writing of the day and hour when the same was presented to the Governor for his approval; and such officer so presenting the same shall sign his name to such memorandum, and shall make a corresponding entry upon the journal of the house in which the same originated. . . .

From the wording of the statute the job of making the presentation of bills to the Governor would appear to be simply a ministerial function, with no particular discretion invested in the Chief Clerk of the House and the Secretary of the Senate unless discretion were inferred from the provision that the bills are to be sealed with the Great Seal and presented to the Governor as soon after passage “as practicable.” Actually, there has been a wide variation in the practice of the Secretary of the Senate and Chief Clerk of the House, with some bills being held by these officials for as much as two months or more before being dated and sealed for presentation to the Governor.

What has occurred is that a Governor who sees several hundred bills passed in the closing days of a legislative session has by informal agreement arranged to have the Chief Clerk and the Secretary send them upstairs in small lots, in order to allow the Governor time for analyzing them. And, in the case of a particularly controversial bill, the Chief Clerk or the Secretary might be asked to hold it for weeks after the session, to give the Governor an extended period for considering the bill and perhaps even

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33 Md. Code (1939), Art. 41, Sec. 42.
for holding hearings on it, all prior to the official presentation of the bill to the Governor. During some recent sessions, bills were not officially presented to the Governor until the last days of May, just in time to have them signed before the constitutional effective date of June 1.\textsuperscript{64}

There have been a number of cases construing the requirements for the presentation of bills. In Hamilton v. State\textsuperscript{65} a bill had been presented to the Governor without having been sealed with the Great Seal. The Court of Appeals held unanimously that this bill had not been presented as the Constitution requires. Citing Section 30 of Article 3 of the Constitution, the Court said:

"There are three things required by this section to be done in relation to bills before the duty of the General Assembly ends, and that of the Governor begins. They must pass the bill; they must seal the bill with the Great Seal of the State, and they must present the bill to the Governor, and when all this is done, and not till then, the duty of the Governor begins. All these are conditions precedent to be performed by the Legislature before his constitutional duties imperatively require the Governor to act."\textsuperscript{55}

The time of presentation first came before the Court of Appeals in Lankford v. Somerset County.\textsuperscript{65a} The act in question in that case had been endorsed by the Secretary of the Senate as having been presented to the Governor on March 31. The record kept by the Secretary of State, however, "as required by sec. 23 of Art. 2 of the Constitution," showed the date of presentation as April 4. The importance of the issue lay in the fact that the Governor signed the bill on April 8, so that if the Court had accepted the date of March 31 for the presentation of the bill it would not have been signed within the six-day limit. The Court held that the record kept by the Secretary of State would be accepted in evidence as the true record of the time of presentation. This record, said the Court "is re-
quired by the Constitution to be carefully kept and preserved, and it is competent evidence; it is entitled to the same degree of credit as that accorded to any other record of mere official acts.”

This point in the Lankford case led the Court to another and more important question, the power of the Governor to sign bills after the adjournment of the Legislature. Having decided that the bill in question had been presented to the Governor on April 4, this being after the adjournment of the Legislature, it then was necessary to decide the power of the Governor to sign bills after adjournment, before the act could be held valid.

Until the adoption of the Constitution of 1867, there was no issue over the power of the Governor to sign bills after adjournment. Until that time the Governor had no veto power, the only provision being that the Governor “shall” sign bills presented to him. When the veto power was written into the Constitution of 1867, however, it was in language which can be construed as meaning that the Governor has no power to veto bills after adjournment. Presumably this could also cover the signing of bills after adjournment.

The language granting the veto power is as follows:

“... Every bill which shall have passed the House of Delegates, and the Senate shall, before it becomes a law, be presented to the Governor of the State; if he approve it he shall sign it, but if not he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. ... If any bill shall not be returned by the Governor within six days (Sundays excepted), after it 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 adjournment, prevent its return, in which case it shall not be a law.”

When the veto power was considered by the Constitutional Convention of 1867, most of the recorded debates

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6 See Section VIII, below.
7 CONST., Art. 2, Sec. 17.
were on the question of whether to grant it, and comparatively little was said as to the interpretation of the power. Perlman's *Debates* seem to show only one instance in which the matter of the time for vetoing bills was mentioned. This was during a debate between Mr. Wickes, of Kent County, and Mr. Tarr, of Caroline County, when the latter said:

"The gentleman says that all legislation is deferred until the heel of the session. It is to prevent that very difficulty that this power is to be conferred. It will compel the Legislature to pass the laws and present them to the Governor in time, and for this very reason he was in favor of conferring this power. It will break up these night sessions, when one-half the members are asleep and the other half not in the house, and two or three members rush important bills through ad libitum."

The language in the Maryland Constitution covering the veto power is obviously copied from the Federal Constitution. It is interesting to note, therefore, that up to 1867, and for years after that time, the Federal Constitution was almost universally applied as meaning that all bills must be signed by the President before Congress adjourned, and that any and every bill not so signed would automatically die. Until comparatively recent years, the President of the United States always went to the Capitol on the day that Congress adjourned, in order to sign bills before the adjournment.

The question was raised a number of times during the nineteenth century, and each time legislative leaders in Washington felt that the President had no power to sign bills after adjournment. President Monroe once proposed to sign a bill after adjournment, but his Cabinet advised otherwise. President Lincoln once actually signed a bill after adjournment, but the Senate objected, and subsequently a new bill covering substantially the same matter was passed and signed during a session of Congress. President Taft wrote in 1916 that long practice made it clear

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59 Perlman, Debates on the Maryland Constitutional Convention of 1867 (1923) 188.
bills were not to be signed after adjournment. President Wilson was the first to break the custom purposely, on the advice of his Attorney General that it was all right to sign several bills after adjournment. His action was never contested.

The matter was not decided in Federal practice until 1932, when a case came before the Supreme Court involving a bill which President Hoover had signed after the adjournment of Congress. The Supreme Court decided unanimously that while in signing bills the President is acting in a legislative capacity, he is not a part of Congress, and while he must act on bills within the ten-day limit allowed in the Federal Constitution, he need not necessarily do so during the session of Congress.

Whatever may have been the intent of the Maryland Constitutional Convention of 1867, it was only a few years until the Governor was signing bills after the General Assembly had adjourned, and the Court of Appeals approved this practice in the Lankford case.

The Court held, first, that the six days given to the Governor to sign a bill were not to be changed by the action of the Legislature in adjourning during this period; the six-day period is to prevail in every instance. Next, said the Court, if a bill presented before adjournment can be signed after adjournment, why cannot also a bill be signed after adjournment which has been duly presented after adjournment by a proper officer of the Legislature. It is well known, wrote Chief Judge Alvey in his opinion, that the General Assembly enacts laws right up to its adjournment, and these bills are then left in the custody of the clerks of the two houses. All that the statute requires, it was added, is that the presentation be made as soon as practicable after adjournment, and these words are of a relative and dependent character, to be controlled more or less by the circumstances of the case.

10 Taft, Our Chief Magistrate and His Powers, 23-24.
42 Supra, n. 56, 109 f.
Finally, the Court of Appeals considered the Federal practice, pointing out that no case in the Supreme Court had ever construed the comparable sections of the Federal Constitution, but that on the contrary the Supreme Court had approved a similar wording in the veto clause of the Constitution of Illinois.

A similar set of facts was presented to the Court in *Johnson v. Luers*, in 1916. The case concerned a bill to incorporate the town of Bowie. The Legislature adjourned on April 3, the bill was presented to the Governor on April 14, and the Governor signed it on April 18. The then Attorney General testified at some length as to the informal working agreement between him and the Chief Clerk of the House, that bills were sent to the Attorney General in small lots, for his inspection, and that after he had read over and approved a number of the bills he would send them back to the Chief Clerk, by whom the bills then were presented officially to the Governor. On the authority of the *Lankford* and *Hamilton* cases, the Court of Appeals approved this procedure.

One of the practical dangers of holding bills for days or weeks after adjournment is that the bill may still be unsigned on the date it is to be effective. Thus, Chapter 678 of the Acts of 1941 incorporated the town of Berwyn, subject to a referendum to be held on the first Monday in May. The bill was not signed until May 26, however. Another such bill, in the same year, raised an issue which the Court of Appeals had a lot of trouble in deciding.

Chapter 209 of the Acts of 1941 imposed a license tax upon vending machines. Because the license year for such taxes traditionally begins on May 1, the Legislature put an emergency clause on the bill to make it effective as of May 1. The bill had passed the General Assembly on March 19 and was sent informally to the Governor for his examination. The Governor held a hearing on the bill on April 24, and was considering it at other times. Not until May 26 was the Great Seal attached to the bill, and on the same

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63 *Supra*, p. 55a.
day the Governor signed it. The Court of Appeals had to decide if the act was valid, and if so, its effective date.

The Court first held the act to be invalid, because of its not having been signed prior to May 1. To declare the Governor's approval valid, even though twenty-six days after the effective date of the act, it was pointed out, would have meant that the Governor's date, the 26th, would have been substituted for the date chosen by the Legislature, the 1st. The Governor's approval on the 26th had the same effect as a legislative amendment to the bill. So, the Court held, to hold such a "hybrid" act as this valid would have been to permit a "trespass" by the Governor upon the legislative field.

The Court subsequently granted a re-hearing on this point in the case, and held the act to be valid, as of the date of May 26, when it was signed. Chief Judge Marbury, writing the opinion, pointed out the effect of the Lankford and Johnson cases, in permitting over a long period of years the presentation of bills to the Governor at indefinite times following an adjournment of the Legislature. So, it was said, when the Legislature passed this particular bill with its effective date of May 1, it did so with knowledge that it need not be presented to the Governor by that date and might not be signed by him prior to that date. Therefore, it was concluded, the Legislature intended this bill to be effective as of May 1 or as soon thereafter as it might be signed. Chief Judge Marbury further said that if the act were held invalid, it would have the effect of permitting the Secretary of the Senate or the Chief Clerk of the House, for purposes which might even be corrupt, to defeat the effect of any bill simply by withholding it from the Governor until the time for it to become effective had passed. Speaking for the majority of the Court, therefore, he held the act to be effective, as of May 26.64

Early in the session of 1943 both the House and Senate amended their rules to require more prompt action in the presentation of bills to the Governor. The Chief Clerk of

64 Robey v. Broersma, supra, n. 48.
the House and the Secretary of the Senate now are to date, seal and deliver to the Governor within ten days of passage, every bill passed by the Legislature. Recognizing the large number of bills passed during the latter part of the session, the rule further provides that bills passed within the last ten days may be delivered after adjournment, at any time up to May 1. This latter provision has been followed since 1943, so that all bills have been either signed or vetoed by the end of the first week in May.

There is also a statutory requirement that the Chief Clerk of the House and the Secretary of the Senate shall make an entry upon the journal whenever a bill is officially presented to the Governor, showing the date and hour of presentation. This has not been observed for many years. House Bill No. 329 of 1949 would have repealed this requirement, but it died in committee.

An interesting question as to signing bills came up in *Strauss v. Heiss,* in 1878. There were two acts in question, which were passed at the same session and signed on the same day, but which in terms were totally inconsistent with and repugnant to each other. The chapter numbers were respectively 203 and 325. The Court held it to be a fair inference that No. 325 was signed after No. 203 and should therefore prevail. In addition, the testimony of the Governor was admitted, to the effect that No. 325 had been signed after No. 203.

The same point came up with more elaborate facts in *State v. Davis et al.* Here, Chapter 261 and Chapter 497 of the Acts of 1886 both amended the same section of the Code and were totally inconsistent. Both acts had been approved on the same day. In the absence of better evidence it was assumed by the Court that they were approved in numerical order. Chapter 497 therefore was held to be the latest expression of the legislative will. However, since it did not become effective until July 1, and since Chapter 261 was silent as to its effective date, the holding was that

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65 H. R. 45; S. R. 30.
66 Md. Code (1959), Art. 41, Sec. 42.
67 48 Md. 292, 295 (1878).
68 70 Md. 237, 16 A. 529 (1889).
Chapter 261 would become effective on June 1 and would remain effective for one month, until Chapter 497 came into effect.

The presumption that the bills were signed in the numerical order of their chapter numbers was at best only doubtful. Until 1945 chapter numbers were placed on bills before they were presented to the Governor, the actual work being done by clerks of the two houses, after the bills had passed the Legislature. Any bill which subsequently was vetoed still had a chapter number. Also, if any bill were held for several weeks, before either being signed or vetoed, the printing of the session laws was accordingly delayed. For these reasons, the General Assembly enacted in 1945 the provision that chapter numbers are to be assigned by the Secretary of State, or someone designated by him, after the Governor has signed bills. The later act in the numerical order of chapters now is the last expression of legislative will.

If the Governor has reason to suppose that there have been improper expenses paid or incurred for any bill presented to him for approval, he may require a "full, complete and detailed statement" of such expenses from any legislative agents (i.e., lobbyists) who were interested in the bill. The Governor is required by the Constitution to sign bills in the presence of the two presiding officers and also of the chief clerks of the House and Senate. Some thirty other states require their presiding officers to sign bills, but in every instance it is part of the legislative process, frequently with the bills being signed in the presence of the respective houses. Only one other state (Florida) requires its clerks also to sign the bills. It is a cumbersome requirement to bring together five officials for what really concerns only the Governor. At times when one or another of these officials has been ill, the entire group has signed bills in a Baltimore hospital and in a sickroom in Kent

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Md. Code Supp. (1947), Art. 41, Sec. 42A.
Md. Code (1939), Art. 40, Sec. 11.
Constr., Art. 3, Sec. 30.
County. At another recent time when the Chief Clerk of the House was to be absent when bills were to be signed, he went through the formality of resigning his position, in order that another Chief Clerk could be appointed for the day; the following day the substitute resigned, and the regular Chief Clerk again assumed his title. It makes an interesting query, too, to speculate on what would happen if either the president of the Senate or the Speaker of the House should die or resign after the Legislature had adjourned and while bills are still pending to be signed. These positions are elective ones, and it presumably would require that the Legislature be recalled into session in order to elect new presiding officers to be present at the ceremony of signing.

The case of Allegany County v. Warfield presented a novel question on the signing of bills. The Governor signed a bill, but immediately thereafter erased his name when he discovered that he was under a misapprehension as to what bill he was signing. The Court admitted the testimony of the Governor to relate these facts, and also to say that he had never mentally approved the bill in question. Accordingly, it was held that the placing of the signature on the bill was absolutely null and void, in so far as it afforded any evidence of the Governor’s approval of the bill.

VIII. THE VETO POWER

Maryland did not give a veto power to the Governor until 1867. Prior to that time it left the enactment of laws solely with the Legislature. Because of the widespread distrust of executive action stemming from colonial history and the Revolution, a number of American states had no veto power for decades. The trend has been to establish such a power, until now only the State of North Carolina remains without it.

The three early constitutions in Maryland took enough cognizance of executive power to require that the Governor sign bills, but it was clearly to be only a ministerial

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duty, with no power to veto. In the Constitution of 1776 it was said that “every bill passed by the General Assembly, when engrossed, shall be presented by the Speaker of the House of Delegates, in the Senate, to the Governor for the time being, who shall sign the same, and thereto affix the Great Seal, in the presence of the members of both houses. . . .” The Constitution of 1851 took the ceremony of signing away from the presence of both houses, and simply required it to be in the presence of the presiding officers and chief clerks of both houses; it retained, however, the provision that the Governor “shall” sign every bill. The same arrangement was continued in the Constitution of 1864.

The Constitutional Convention of 1867 voted to give a veto power to the Governor. The debates were dramatized by the current struggle for supremacy between the Congress and President Johnson, and by the latter’s use of his veto power, and these Federal problems were mentioned frequently in Maryland.

As has been said, the veto power in Maryland is modeled closely upon the provisions in the Federal Constitution. Its purpose is “to guard against hasty or partial legislation and encroachments of the Legislative Department upon the coordinate Executive and Judicial Departments.” If the Governor disapproves a bill “he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill.” It takes a three-fifths vote of the members elected to each house to override a veto, with the votes to be by yeas and nays and entered upon the journals.

There have been a number of cases construing the veto power, some of which already have been described. Thus, the Governor has no power to veto a proposed constitutional amendment. A bill signed under misapprehen-
hension and without being approved mentally, the signature having been immediately erased, is not effective, and in effect is vetoed.\textsuperscript{79}

The original version of the veto power gives the Governor an item veto over distinct items in appropriation bills, subject to being overruled by a three-fifths vote of both houses.\textsuperscript{80} However, this power now is outmoded because of the Budget Amendment, which allows the Governor to make up a proposed budget, restricts the Legislature in the changes it may make in the Budget Bill, and then makes the bill effective immediately upon passage, without even having to be signed.\textsuperscript{81}

In \textit{Nowell v. Harrington}\textsuperscript{82} there was \textit{dicta} to the effect that if the Governor attempts to sign a bill in part and to veto it in part, the entire bill is vetoed. The bill in question appropriated $175. to Nowell, for damages to his boat. The Governor wrote on the bill that he was approving it for a payment of $125. and disapproving it for the remaining $50. The Comptroller accordingly paid $125. to Nowell, who then sought by \textit{mandamus} to require the payment of the other $50.

The Court of Appeals sustained the Comptroller’s demurrer to the petition, without giving a direct answer on the power of the Governor to give either a qualified approval or qualified veto of a bill. In the opinion, however, the Court quoted as follows from a Mississippi case:

"The bill in question is an entire thing, inseparable in its provisions, and to be approved or disapproved as such, and, not being signed as a whole, was not made law by the partial and qualified approval which it received. It cannot be law, for that would be to make law of what has not been concurred in by the Legislature and the Governor...."\textsuperscript{82a}

Nowell had been contending that the Governor could not approve a part of an item and disapprove another part. But, said the Court, after quoting from the Mississippi

\textsuperscript{78} Supra, n. 72.
\textsuperscript{79} Const., Art. 2, Sec. 17.
\textsuperscript{80} Const., Art. 3, Sec. 62.
\textsuperscript{81} 122 Md. 487 (1914).
\textsuperscript{82} State v. Holder, 76 Miss. 182.
case, if the appellant be correct in this contention, "about which we express no opinion, the result would be that the appellant was not entitled to any of the sum, and that he could not require payment of the residue. Inasmuch as he has received what the Governor was willing and intended to approve, he is certainly not in a position to complain. . . ."82b

As was explained in some detail in the preceding section, a good argument can be made that the Constitutional Convention of 1867 intended when giving a veto power to the Governor to require it to be used only while the Legislature was in session and would have a chance to vote on whether or not to sustain it. Similarly, it can be argued that it was intended to permit the Governor to sign bills only while the Legislature remained in session. By reason of long usage and several opinions of the Court of Appeals, it now is settled in Maryland that the Governor may sign bills after the session, and although there is no case on the point it follows that he also may veto bills after the session. The question is not important as to the veto power, for the Constitution makes it clear that once the General Assembly has adjourned a bill not signed is not to become law; when the Legislature has adjourned, it makes no practical difference whether a bill dies because of a veto or simply for want of being signed. In either event the bill is dead.

One of the most unusual episodes in the history of the veto power is that of the bills which were vetoed and subsequently, weeks later, signed by the Governor. Chapter 440 of the Acts of 1912 is an example; its title is printed on page 617 of the session laws for that year, with the notation "Vetoed". On page 1657 of the same volume, the act is printed in full, with the notation that the bill had been reconsidered and signed by the Governor on July 25, 1912. Chapters 536 and 542 of the Acts of 1912 are other instances of this practice; they are listed originally as having been vetoed, and then "reconsidered" and signed on July 11. Chapter 483 of the Acts of 1912 may be another example; it

82b Supra, n. 82, 492.
was either vetoed and then signed, or else signed on both April 8 and July 25.

IX. Recording and Publication

Every law which has been enacted by the General Assembly and approved by the Governor must be recorded with the Court of Appeals and published in the session laws, and some of them must be published also in newspapers.

The constitutional provision as to recording and publishing is as follows:

"Every law shall be recorded in the office of the Court of Appeals, and in due time be printed, published and certified under the Great Seal, to the several courts, in the same manner as has been heretofore usual in this State."\(^{83}\)

Following the provisions of this section, the official copies of all acts are filed with the Court of Appeals.

*Parkinson v. State*\(^{84}\) held that the printing and publishing of the laws, required by the constitutional provision quoted above, is not a necessary preliminary to the laws becoming effective. The act in question had become effective on April 1, before the session laws were printed. The Court held that this provision in the Constitution said nothing about the effective date of an act, and that the act was valid and effective as of April 1.\(^{84a}\)

There are statutory requirements for the publication of all public general laws which are declared to be emergency laws and of all public local laws which are to take effect before the first of June.\(^{85}\) These requirements cover generally the types of newspapers to be used and the number of publications necessary.

There has been one case construing the publication of local laws to be effective before June 1, in which the Court held this law to be directory only, and not mandatory. Judge Digges, in writing the opinion, said that:

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\(^{83}\) Md. Const., Art. 3, Sec. 30.

\(^{84}\) 14 Md. 184 (1859).

\(^{84a}\) Ibid., 189.

\(^{85}\) See generally, Md. Code (1939) Art. 76.
"It is clear from a reading of this section that its provisions cannot be considered mandatory and a condition precedent to the act's taking effect. To interpret this section to be more than directory would postpone the effectiveness of any public local law for at least three weeks after its passage, and this no matter how great the emergency to meet which the act might have been passed. And, again, if compliance with its provisions should be held to be a condition precedent to the act's taking effect, the county commissioners of any county might, through inadvertence, negligence, refusal or disagreement as to the papers in which it is to be published, postpone the date at which such legislation would take effect, thereby frustrating the legislative purpose... It was for the purpose of giving this information by publication as soon as possible after the passage of legislation taking effect before the first of June that the section now under consideration was passed.""86

There is a constitutional requirement for publication which has been construed as mandatory, however, and not as simply directory. It relates to the power of counties in the State to contract debts:

"No county of this State shall contract any debt, or obligation, in the construction of any railroad, canal, or other work of internal improvement nor give, or loan its credit to or in aid of any association, or corporation, unless authorized by an act of the General Assembly, which shall be published for two months before the next election for members of the House of Delegates..."87

This section was construed as to an act which was published on September 6 and 9, prior to an election held on November 4. It was held that the "months" referred to were calendar and not lunar months, and that as a matter of fact, therefore, the act had not been published two months before the election. Furthermore, said the Court, to hold these provisions to be directory, and not mandatory, would be to introduce a "lax rule of construction of the

87 Const., Art. 3, Sec. 54.
Constitution. . . . For if the constitutional requirement be held to be directory only, the publication might be for half the time prescribed, or it might be omitted altogether, and yet the power would be effective. This was never the design of the constitutional provision; and therefore all the conditions prescribed should be strictly observed; they are all equally essential to the authority attempted to be conferred.\textsuperscript{88}

There are two other provisions in the Constitution as to the publication of particular types of acts. First, as to proposed constitutional amendments:

"The bill or bills proposing amendment or amendments shall be published by order of the Governor, in at least two newspapers, in each county where so many may be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, once a week for four weeks immediately preceding the next ensuing general election, at which the proposed amendment or amendments shall be submitted. . . ."\textsuperscript{89}

Similarly, the referendum amendment in Article 16 of the Constitution says that:

"The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article 14 of the Constitution for the publication of proposed constitutional amendments."\textsuperscript{90}

No special provisions have been enacted for the publication of laws to be submitted to referendum, so such publication is as required for constitutional amendments.

X. AUTHENTICATED ACTS

Once a bill has been signed by the Governor, and the law has been duly filed with the Court of Appeals and pub-

\textsuperscript{88} Baltimore & Drum Point Railroad Co. v. Pumphrey, 74 Md. 86, 112; 21 A. 559 (1891).
\textsuperscript{89} Const., Art. 14, Sec. 1.
\textsuperscript{90} Const., Art. 16, Sec. 5.
lished in the bound volume of session laws, there sometimes arises a question as to whether the bill met all the proper formalities in its passage through the Legislature. The courts must then decide whether to accept as law an act which has all the apparent indicia of validity or whether to invalidate it by reason of some evidence of procedural defects in its passage. A number of cases have come up on this point, some of which already have been discussed.

In *Fouke v. Fleming* the law at issue contained a provision dispensing with the requirement for an affidavit, this provision being in the engrossed version of the bill and also in the act as published. Both the House and Senate journals showed, however, that this provision had been removed from the bill by amendment. The Court of Appeals held that it did not feel authorized to assume the engrossed and published versions of the law to be erroneous. The engrossed bill had been examined by a legislative committee, attested by the chief clerk of the house in which it originated, sealed with the Great Seal, and signed by the Governor. So, it was concluded, “all this would seem to be better evidence of what a law is than the journals of the two branches of the Legislature, each journal being kept and attested only by the chief clerk of his particular branch”.

A similar question arose later in *Annapolis v. Harwood*. In this case the printed copy of the law and the copy filed with the Court of Appeals were identical, but the chief clerks of the two houses had certified to another and different copy of the bill as being the true version of what actually passed through the General Assembly. The Court upheld the wording of the law as printed and as filed with the Court of Appeals. It referred to the constitutional requirements that bills must be sealed with the Great Seal, signed by the Governor in the presence of the presiding officers and the chief clerks, filed with the Court of Appeals, and published. “The object of these careful provisions”, it

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1 13 Md. 392 (1859).
3 *Supra*, n. 43.
said, "was to guard against controversy in respect to the contents of laws. . . . We cannot perceive on what principle the Court would be justified in going behind evidence so fully presented by the Constitution, and inquiring, on extrinsic proof, into the verity of the contents of an Act of Assembly so attested". 92a

One of the most important of this line of cases is *Berry v. Baltimore and Drum Point Railway Co.* 93 The company had been incorporated in 1868, with the provision that if it did not commence the building of its railroad within six years and if it did not finish the railroad within four years from the time of beginning it, the charter would be null and void. In 1874, the Legislature passed an act to extend the time for completing the railroad, the engrossed bill requiring that the charter be forfeited only if the railroad were not completed within five years after January 1, 1875. However, when the act was re-copied for the Governor to sign, it was made to read that the railroad must be completed within five years after January 1, 1870. The act as signed by the Governor and as printed in the session laws, therefore, contained the date of "1870", while the original engrossed bill had the date "1875", and there was no record in the journals that this latter date had been changed by the Legislature. The cases of *Fouke v. Fleming* and *Annapolis v. Harwood* were both cited in opposing the right of the Court to consider the journals and the original engrossed bill in order to ascertain the true version of the act.

In the *Berry* case the Court modified the doctrine of the two earlier cases. Here, it said, "it is plainly shown by the most unquestionable evidence" that the bill as signed by the Governor and subsequently published differed from the version which had passed the Legislature. Therefore, the strong presumption arising from the due authentication of a statute is overcome. Unquestionably, it was continued:

"This presumption exists until the contrary is clearly made to appear. But when it can be made
clearly to appear, as in this case it has been, that the particular bill or section of a bill, although it may have all the forms of authentication, has never in fact received the legislative assent, we think the court is bound to look not only behind the printed statute book, but beyond the forms of authentication of the bill as recorded in the office of this Court, and if the evidence be clear and entirely satisfactory to the mind of the Court, to decide accordingly."  

The Berry case was affirmed in *Legg. v. Annapolis* and in the Warehouse Company case.  

It also was affirmed in *Ridgely v. Baltimore City*, in which there was mere parol evidence that an amendment had been adopted; here the Court said that it would seem to be settled definitely in this State that an authenticated statute cannot be impeached by the legislative journals alone, or by mere parol evidence. The *Ridgely* case concerned parol evidence by an engrossing clerk that after the bill was engrossed he drew a line through some of its provisions, though neither of the journals showed any authority for such action. The same act was in question in *Jessup v. Baltimore City*. Again in the latter case the Court held that the parol testimony of the engrossing clerk could not be permitted to contradict a duly authenticated act of the General Assembly.

Most of the cases involving authenticated acts concern a question of the language of an act, the issue being whether the bill signed by the Governor and duly recorded and published contains exactly the same text as the bill which passed the Legislature. In one case, however, the issue was as to whether a duly authenticated act had ever passed the Legislature.

This point came up in *Washington County v. Baker*, relating to a bill which had gone to a conference committee when the two houses disagreed as to its terms. The House

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98 *ibid.*, 462.
94 42 Md. 203 (1875).
95 *Supra*, n. 45.
99 119 Md. 567, 585, 87 A. 909 (1913).
97 121 Md. 562, 89 A. 103 (1913).
96 141 Md. 623, 634, 119 A. 461 (1922).
Journal showed that the report of the conference committee had been adopted in that house, but the last reference to the bill in the Senate Journal showed that the bill was being referred to a conference committee; there was no record in the Senate Journal that the report of this committee was adopted and the bill as finally amended, passed.

In the *Baker* case the Court referred to the split among the states on the "enrolled bill rule" and the "journal entry rule", explaining that the states following the enrolled bill rule declared the authenticated act to be conclusive evidence that the statute was legally passed, while the states following the journal entry rule permitted the courts to go behind the authenticated act to see if it was passed agreeably to the mandates of the Constitution. In this instance, the Court of Appeals pointed out that the Maryland Constitution requires that the yeas and nays be recorded in the journals when a bill is being passed, and that this is a mandatory and not a directory provision. The Court could find no instance in which the enrolled bill rule had been followed where this mandatory requirement could not be shown to have been observed. Accordingly, the Court did not accept the authenticated act, and declared it never to have been constitutionally passed.

**XI. EMERGENCY ACTS**

Acts passed by the General Assembly normally go into effect on the first day of June following their passage, but there are two provisions in the Constitution which allow for the substitution of another date. First,

"No law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein."¹⁰⁹

The second provision was added in 1915, as part of the Referendum Amendment:

"No law enacted by the General Assembly shall take effect until the first day of June next after the

¹⁰⁹ Const., Art. 3, Sec. 31.
session at which it may be passed, unless it contains a section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two houses of the General Assembly. . . . No measure creating or abolishing any office, or changing the salary, term or duty of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be enacted as an emergency law. 1

When the Referendum Amendment had been adopted by the voters the question arose as to whether there was any conflict between these two provisions regarding bills to take effect before June 1. This point first came up in Beall v. State,101 in 1917. A special session of the Legislature had convened at Annapolis on June 12, 1917, and had passed among others an act to prohibit the manufacture and disposal of alcoholic beverages in Prince George's County. The act contained a section declaring that it was to go into effect from the date of its passage, and it was approved by the Governor on June 28, 1917.

The Court held that Article 16 did not supersede Section 31 of Article 3 of the Constitution. It pointed out that when Article 16 was adopted it was as a "new" article in the Constitution, with no mention being made of the repeal of any other part of the Constitution, and that unless there was some reason to the contrary no part of the Constitution should be regarded as inoperative. For this reason, and also because the prohibition of alcoholic beverages is one of the subjects to which Article 16 does not apply, this act was held valid under Section 31 of Article 3.

In Culp v. Chestertown102 there was involved a bond bill for roads and sewers in Chestertown. One section of the act declared it to be an emergency measure, but this could not be effective because of the general holding by the Court that Article 16 does not apply to acts of a municipal cor-

100 Const., Art. 16, Sec. 2.
101 131 Md. 669, 103 A. 99 (1917).
102 154 Md. 620, 141 A. 410 (1928).
poration (except Baltimore City). Therefore, said the Court, the emergency clause in the Chestertown act is surplusage and should be rejected, "leaving intact that portion of section 7 of the act which declares that the same shall take effect from the date of its passage."

The Court went on to say in the Culp case that:

"If the class of legislation enacted is not embraced in and covered by the provisions of Article 16 of the Constitution, the Legislature has the undoubted right to fix the date of its taking effect, without declaring it to be an emergency law, and without the necessity of its passage by a vote of three-fifths of the membership of both houses; and if the legislation does come within the provisions of Article 16 of the Constitution, in that event the question of whether or not an emergency in fact exists is a question for the Legislature, and its determination is final and not subject to review by the courts."

In sum, then, the dating provisions in Article 16 are to be applied to those acts which may properly be passed under that Article (and this subject is covered below). The dating provisions of Section 31 of Article 3 are to be applied to those acts which cannot properly be passed under Article 16. Note also the very important statement that the courts will not question the Legislature's declaration of an "emergency".

There was an interesting application of this finding of a condition of "emergency" in Norris v. Baltimore City. The Legislature had passed Chapter 94 of the Acts of 1937, to direct the purchase and use of voting machines in Baltimore City, and had made the act effective as an emergency law. This legislative finding of "emergency", said the Court, is entitled to great weight in determining whether Baltimore City might use its emergency powers to borrow money in order to acquire the voting machines. Ordinarily the City must have a proposed loan authorized by both the Legislature and the Mayor and City Council, after which it

102a Ibid., 622. See also Strange v. Levy, 134 Md. 645, 107 A. 549 (1919).
103 Supra, n. 102, 623.
must go on the ballot to be approved by the voters, but they have a further provision for emergency borrowing without these restrictions.105

In Bowman v. Harford County106 the Court held that a reduction in the statutory amount alloted to the Sheriff of Harford County for furnishing supplies and provisions to the county jail was not a measure changing the Sheriff's salary. The act making the change had in it an emergency clause making it effective upon passage, and this provision was held valid. If the Sheriff's "salary, term or duty" had been concerned in the act, according to Section 2 of Article 16 of the Constitution, it could not have had an emergency clause.

Chapter 720 of the Acts of 1939 attempted to reduce the salary of certain justices of the peace, from $75. to $50. per month. The act was effective June 1, 1939, and it was contended that it was valid since it was not in conflict with Article 16 of the Constitution, the latter providing that no change of salary of any officer can be enacted as an emergency law. The fact of there being no conflict was true, the Court said, but it was pointed out that Article 16 had not changed the provisions of Section 35 of Article 3 of the Constitution, there being here a requirement that no public officer's salary may be increased or diminished during his term of office.107

In a recent case,108 the Court held that an act of the Legislature permitting veterans under twenty-one years of age to participate in advantages conferred by the Federal Servicemen's Readjustment Act did not confer a "special privilege" whereby it could not be enacted as an emergency law. Laws applying only to a given class of citizens are not "special privileges" in this sense, if the special class has not been set up arbitrarily.

When emergency clauses are drafted they are framed almost invariably to follow the wording of the Constitu-

105 CONST., Art. 11, Sec. 7.
tion, the language being that the act is an emergency one and "necessary for the immediate preservation of the public health and safety, and being passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two houses of the General Assembly. . . ." In Norris v. Baltimore City108a there was another wording used, but the Court after some consideration declared it to be valid.

The Norris case concerned Chapter 94 of the Acts of 1937, which directed the purchase and use of voting machines in Baltimore City. The final section of this act read as follows:

"This act is hereby declared to be an emergency law within the scope and meaning of Chapter 5 of the Laws of Maryland, Special Session 1936, and necessary as a police measure for the immediate regulation of elections in Baltimore City; and having been passed by a yea and nay vote, supported by three-fifths of all the members elected to each of the two houses of the General Assembly, the same shall take effect from the date of its passage."

Chapter 5 of the Acts of the Special Session of 1936 had added to the City's general grants of power, one to allow it to make emergency loans.

The Court held that the emergency wording quoted above was sufficient to satisfy the Constitutional requirements, even though it did not exactly follow the language of the Constitution. By declaring this law necessary as a "police measure", said the Court, the Legislature was saying in effect that the regulation of elections was a police measure necessary to protect the safety of the inhabitants of the City. While the language used does not follow the wording of the Constitution, it was concluded, it has in it every essential element required for the passage of emergency laws.109

108a Supra, n. 104.
XII. Acts Effective June 1

The Constitution provides, as has been said, that "no law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein."\(^{110}\) Also, there is the somewhat similar provision that acts are not to take effect until June 1 unless they are declared to be of an emergency nature, "necessary for the preservation of the public health or safety" and passed by the three-fifths vote.\(^{111}\)

The power of the Legislature to fix a day other than June 1 as the effective date of law has been upheld in a number of cases, as in *Parkinson v. State*,\(^{112}\) *Beall v. State*,\(^{113}\) *Strange v. Levy*,\(^{114}\) *Richardson v. Blackstone*,\(^{115}\) *Taggart v. Mills*,\(^{116}\) and *Wilkinson v. McGill*.\(^{110a}\)

One of the important decisions concerning the effective date of an act is that if the act specified no date it is automatically to become effective on the first day of June following passage.\(^{117}\)

There was an unusual application of this point in *State v. Davis*.\(^{118}\) Chapters 261 and 497 of the Acts of 1886 were totally inconsistent, the question being as to which should be enforced. The Court made a presumptive finding that Chapter 497 had been signed later than the other act, and was to be enforced as the latest expression of the legislative will. However, since Chapter 497 by its terms was not to become effective until July 1, and since Chapter 261 was silent as to its time of effect, the Court held that Chapter 261 would automatically come into effect upon June 1, and would prevail until July 1, when it would be superseded by Chapter 497.

\(^{110}\) Const., Art. 3, Sec. 31.
\(^{111}\) Const., Art. 16, Sec. 2.
\(^{113}\) 131 Md. 669, 103 A. 99 (1917).
\(^{114}\) 134 Md. 645, 107 A. 549 (1919).
\(^{115}\) 135 Md. 580, 109 A. 440 (1920).
\(^{116}\) 180 Md. 302, 23 A. 2d 832 (1942).
\(^{117}\) 64 A. 2d 266 (Md. 1949).
\(^{118}\) 70 Md. 287, 241, 16 A. 520 (1889).
There was a comparable set of facts in *Baltimore v. German American Fire Insurance Company.*\(^{110}\) Two acts amending the same section of the Code were passed. One of them, Chapter 197, was signed by the Governor on April 3, and by its terms was to go into effect on June 1. The other, Chapter 528, was approved on April 13 and was to be effective immediately. It was argued that because Chapter 528 became effective immediately it repealed Chapter 197, and that the latter never would come into effect. The Court held, however, that since there was nothing irreconcilable in the two acts, both would take effect according to their own terms.

In *Ireland v. Shipley*\(^{120}\) the Court was dealing with a workmen's compensation act which took effect on June 1. The act had been approved on April 17. There was an "intimation," said the Court, that the time during which the appellant was permitted by the act to apply for a reopening of his case should date from April 17, when the act was approved, rather than from June 1, when the act became effective. But, it was added, "the point was not stressed and may be disregarded."\(^{120a}\)

The case of *Read Drug Company v. Claypoole*\(^{121}\) concerned an act to impose additional license fees upon chain stores. The act was effective on June 1, but the license year under the prior schedule of fees had already begun on May 1. The Court had to inquire whether after June 1 a licensee who had as of May 1 already been licensed for one year would have to pay an additional fee for the remaining eleven months of the license year. The holding was that the license already secured as of May 1 would be good for one year, and that the increased fees for such a previous licensee would not become effective until the following May 1. For this type of licensee, therefore, the actual effect of the law was delayed eleven months after the date of June 1 in the act.

\(^{110}\) 132 Md. 380, 386, 103 A. 980 (1918).

\(^{120}\) 165 Md. 90, 166 A. 593 (1933).

\(^{120a}\) Ibid., 103.

\(^{121}\) 165 Md. 250, 166 A. 742 (1933).
The three or four bills which were originally vetoed in 1912, and later "reconsidered" and signed (on July 11 and 25), pose a question as to the right to approve a once-vetoed bill; since they were to take effect from the date of passage they raise no question under the June 1 rule.

XIII. THE REFERENDUM

There are two possibilities for a referendum vote on acts passed by the General Assembly and signed by the Governor. The first is the provision for a referendum which the Legislature itself frequently writes into a local bill, for the express purpose of giving the electorate the final decision on the bill. The second is the possibility for a referendum by petition, which was added to the Constitution in 1915.

A. Referendum by legislative action

The Legislature often puts into local bills a requirement that before the act shall become effective it is to be submitted to the voters in a referendum vote, or the provision may be that the bill is to become effective at once subject to being abrogated if a majority of the voters are against it at a subsequent referendum. Controversial bills, especially those having to do with alcoholic beverages or Sunday observance, are in many instances passed with provision for a referendum.

The earliest case involving the referendum power in Maryland seems to have been Burgess v. Pue, decided in 1844. An act of 1825 had established a general system of primary schools, the act containing these further provisions:

At the next election of delegates to the General Assembly, every voter when he offers to vote, shall be required by the judges of election, to state whether he is for or against the establishment of primary schools, and the said judges shall record the number of votes for and against primary schools, and make return thereof to the Legislature, during the first week of the session, and if a majority of the said votes in any

\[122\] Gill. 11 (1844).
county shall be in favor of the establishment of primary schools as is therein provided for, then and in that case the said act shall be valid for such county or counties, otherwise of no effect whatever.

If a majority of the votes of any county in this State, shall be against the establishment of primary schools, as established by this Act, then and in that case the said Act shall be void as to that county.

Here, said the Court of Appeals, there is nothing "which can be construed as in the slightest degree impairing the responsibility of the law-making power to their constituents, for the due and faithful execution of the trust confided to them, because if deemed to be unwise or inexpedient, an expression of the popular will to that effect was all that was necessary to procure its repeal."\textsuperscript{122a}

The next case involving a referendum was \textit{Hammond v. Haines},\textsuperscript{123} decided in 1866. Chapter 348 of the Acts of 1864 gave to the voters of the town of North East, in Cecil County, the privilege of deciding annually whether any licenses would be issued for the sale of alcoholic beverages during the succeeding year. The vote was to be taken during April each year, to determine the policy for the license year beginning May 1.

The Court of Appeals held this referendum provision to be valid. To the objection that the law permitted a portion of the people periodically to suspend or repeal the operation of a State law within this prescribed area, the Court pointed out that it would not be questioned that the Legislature might have given the town an ordinance-making power to accomplish the same result, and that here the same authority had instead been given to the qualified voters of the town. In addition:

"The law as it passed the Legislature is complete in itself, requiring no other sanction. We are not, therefore, to pass upon a law which submits to the people, in the largest, broadest sense, the passage of the law, or requires from them legislative action before it can have the force of law."\textsuperscript{123a}

\textsuperscript{122a} \textit{Ibid.}, 19. See also 2 Gill. 254.
\textsuperscript{123} 25 Md. 541, 90 Am. Dec. 77 (1866).
\textsuperscript{123a} \textit{Ibid.}, 558.
As authority for its decision the Court cited the unreported case of *Lancaster v. State*\(^{12b}\) decided in 1850. In that case the Legislature, by Chapter 172 of the Acts of 1846, had passed an act declaring it would be unlawful to issue a license for the sale of alcoholic beverages within two miles of St. James School in Washington County, unless after the representations of respectable citizens in the neighborhood one of the judges of the Circuit Court should grant that such license might be issued. This law, it was said, was comparable to the law involved in the present case. In both instances the effect of a law could be cut off, in one case by the judge and in the other case by the voters of the town of North East. The earlier *Lancaster* case, therefore, was held to decide the *North East* case. The Court added this general word of caution:

"In deciding this law to be constitutional, this Court is not to be understood as embracing within its views the character of a law which would, in a broader or more enlarged sense, submit its passage or existence to the popular vote. . . . The Constitution wisely distributes the powers of government among several and distinct departments, and the limits of these cannot be extended, or an encroachment of one upon the other permitted, without a violation of the social compact and a derangement of the social order. The General Assembly, composed of the Senate and the House of Delegates, is in this State the only law-making power. The popular will is not to be disregarded, but that, always in theory and generally in practice, is reflected by the representatives of the people in the legislative department of the government. With them is lodged the power of making laws for the government of the people, and the due responsibility of the representative to his constituents is best maintained, and stable and wholesome legislation secured, by avoiding judicial refinements by which this power is extended to any whom the Constitution has not invested with legislative action."\(^{12c}\)

The decision and the opinion in *Hammond v. Haines* forecast the now well established rule in Maryland that

\(^{12b}\) Cited in Rawlings v. State, 1 Md. 128 (1851).

\(^{12c}\) *Supra*, n. 123, 562.
although the Legislature may add a referendum provision to a local bill, any attempt to do so on a State-wide bill amounts to a delegation of legislative power.

In *Fell v. State* the Court had to construe an act giving to the voters of four counties, and by separate election districts, the right to decide by referendum whether alcoholic beverages would be sold in such election districts. A majority of the Court held the act to be valid, with Chief Judge Bartol writing the majority opinion. All the voters are called upon to do, he said, is by their ballots to express their opinion or sentiment as to the subject matter to which the law relates. They declare no consequences, prescribe no penalties, and exercise no legislative functions. The act was perfect and complete after it left the Governor. The Legislature has simply provided that the act shall not take effect until after the contingency of a future vote. On this reasoning, and on the strength of the *Burgess* and *Hammond* cases, the majority held the act to be valid. Judge Bowie dissented, writing a detailed commentary upon the several Maryland cases discussed above and upon the general principles of the delegation of legislative power.

Another act giving to the voters of separate election districts a right of referendum was construed in *Bradshaw v. Lankford*. This time it was an act referring to the voters of several election districts of Somerset County, the question whether oysters might be dredged from the waters of Somerset County. The decision was that there had been an unconstitutional delegation of legislative power. The Court cited the holdings in the *Hammond* and *Fell* cases, and then said:

"We shall not stop to consider the reasons on which these cases are based; whatever may be the reasons, the decisions were made upon full consideration, and are binding upon us. In all these cases, however, the several statutes considered by the Court were local in their operation, and affected the people only to whom they were referred for their approval or rejec-

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124a Ibid., 85.
125 Ibid., 91-117.
tion. But the Act of 1890 now before us can in no sense be considered a local law affecting only the people of the several districts to whom it was submitted for their decision. On the contrary, if a majority of the voters of these districts should be in favor of the prohibition, the Act makes it unlawful for any person in the State to take oysters by scoop or dredge in the waters of Somerset County. It thus deprives the people of the entire State of the common right which they enjoyed. . . . We have no disposition to extend the exceptions to the general maxim which wisely forbids the delegation of legislative power, beyond the cases to which we have referred, and the principles on which they are based. 126a

A similar decision followed in Levering v. Board of Supervisors, 127 construing an act to permit Sunday movies in Baltimore City. The act amended the general laws of the State as to Sunday observance, and had in it a referendum provision for the voters of Baltimore City. The Court held it to be a general and not a local law, since it was "to affect the counties not less than Baltimore City, but in a different manner." The Court stated very firmly the principle that for the Legislature to submit a State-wide or general bill to a referendum would be a delegation of legislative power, together with the already well established rule in Maryland that submitting a local bill to referendum is not construed as a delegation of power.

One of the most important cases on delegation ever to come before the Court of Appeals was Brawner v. Supervisors, 128 in which it was held that the Soldiers' Bonus Act of 1922 was invalid because its effectiveness was made subject to a State-wide referendum.

The Soldiers' Bonus Act was enacted as Chapter 448 of the Acts of 1922. It provided for a State bond issue of $9,000,000. for paying a bonus to veterans of the First World War. The act provided that at the general election of 1922 it was to be submitted to the qualified voters of the State for their approval or rejection.

126a Ibid., 431. See also Ness v. Dunis, 162 Md. 529, 160 A. 8 (1932).
127 137 Md. 281, 112 A. 301 (1920).
128 141 Md. 586, 119 A. 250 (1922).
The Court reviewed at some length the cases from Maryland and other states, on the general question of delegation of legislative power by way of the referendum, and held that:

"The Legislature has not the power to submit the act in question to the qualified voters of the State for their approval or disapproval, and we rest our conclusion on two grounds, one, that the people of Maryland, having delegated to the Legislature of Maryland the power of making its laws, that body could not legally or validly redelegate the power and the authority thus conferred upon it to the people themselves; and two, that the people of the State, from whom the Legislature itself derives its powers, having prescribed in the Constitution of the State the manner in which its laws shall be enacted, it is not competent for the Legislature to prescribe any other or different way in which its laws may be enacted."^{128a}

The Court referred also to the line of Maryland cases permitting local laws to be submitted to referendum. These cases cannot be questioned, it was said, but the principle governing them is not applicable to legislation affecting the whole State. Continuing,

"The reason usually given, in cases which support the right of the Legislature to refer local legislation to the people of the localities affected, is the power which the Legislature, the law making agency of the State, has over its 'derivative creations,' . . . and which is unlimited except by the State and Federal constitutions. That reason, however, has no application to a statute which affects, not a creation of the State, but the entire State and every part thereof."^{129}

Following this decision, the Constitution was amended specifically to permit the General Assembly to pass a soldiers' bonus measure and to make it subject to a statewide referendum.^{130}

In Crouse v. State^{131} a local option law for Prince George's County was held valid. The main contention here

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^{128a} Ibid., 595.
^{129} Ibid., 594.
^{130} Const., Art. 3, Sec. 34.
^{131} 57 Md. 327 (1881). See also Slymer v. State, 62 Md. 237 (1884).
was not on the fact of holding the referendum, but on the use of the election returns and the proclamation of the Clerk of Court as evidence of the referendum, and on certain alleged irregularities in the referendum itself. The Court held the referendum and the evidences of it submitted to the Court to be valid.

Montgomery County v. Henderson\textsuperscript{132} construed a statute authorizing the County Commissioners to issue bonds for road improvements, having first submitted the question to a referendum of the voters in the election district concerned. The statute went on to set up requirements for giving notice to the voters and to specify the hours for any such referendum. This did not actually concern a referendum on an act of the Legislature, but the holding of the Court was that failure to comply with such requirements was a fatal defect, and that an injunction would lie to restrain the holding of such an election.

In Graf v. Hiser\textsuperscript{133} an act creating a special tax district was submitted to a referendum of the qualified voters of the district. The notice of the election, however, stated that the creation of the tax district was to depend upon the ratification of the act by "a majority of the resident taxpayers." The Court held that such deviation from the statute had probably a decisive effect upon the result of the referendum, and that the election was therefore a nullity.

Hamilton v. Carroll\textsuperscript{134} posed a fine question of logic regarding a referendum. After the destruction by fire of the Court house in Port Tobacco, Charles County, it was determined to move the county seat. An act was passed "to provide for the removal of the county seat of Charles County from Port Tobacco to La Plata or Chapel Point, if the legal and qualified voters of said county shall so determine, and to provide for the erection of a court house and jail at such place as shall be determined on. . . ." By the act itself, however, the question submitted to the voters was whether the county seat should be located at La Plata or Chapel Point, and the direct question was not submitted

\textsuperscript{132} 122 Md. 533, 89 A. 858 (1914).

\textsuperscript{133} 144 Md. 418, 125 A. 151 (1924).

\textsuperscript{134} 82 Md. 326, 33 A. 648 (1896).
whether the county seat should be removed from Port Tobacco. The Court held that the question as submitted also provided for the removal of the county seat from Port Tobacco. And, it was said, the act was not invalid as a delegation of legislative power, since the location of a county seat is a matter of merely local concern which the Legislature has a right to submit to the determination of the people directly interested.

Another question of construction arose concerning Chapter 340 of the Acts of 1916, the title of which said it provided "for the creation by popular vote of anti-saloon territory within Carroll County." From the wording of the title and some parts of the act, it could appear that individual sections of the county were to vote separately on the local option question, whereas the actual question submitted was to the entire county as a unit. Construing the statute as a whole, the Court held the referendum to be valid.\(^{135}\)

A separate provision in the Constitution requires the General Assembly to provide for a referendum when county lines are being changed:

"Whenever a new county shall be proposed to be formed out of portions of two or more counties, the consent of a majority of the legal voters of such part of each of said counties, respectively, shall be required; nor shall the lines of any county or of Baltimore City be changed without the consent of a majority of the legal voters residing within the district, which, under said proposed change, would form a part of a county or of Baltimore City different from that to which it belonged prior to said change."\(^{136}\)

An amendment to this section proposed by Chapter 618 of the Acts of 1947 made it applicable to Baltimore City, and the amendment was passed by the voters in November, 1948.

This section of the Constitution was construed in Daly v. Morgan,\(^{137}\) concerning the power of the Legislature to

\(^{135}\) Crouse v. State, 130 Md. 364, 100 A. 361 (1917).
\(^{136}\) CONST., Art. 13, Sec. 1.
\(^{137}\) 69 Md. 460, 16 A. 287, 1 L. R. A. 757 (1888).
increase the size of Baltimore City by adding to it parts of Baltimore County. That power was upheld, this being the annexation of 1888, and the fact of having the referendum vote, so that "the people were not to be denied the privilege of living under county governments of their own choice," was one factor in arriving at this decision. The Daly case was affirmed in McGraw v. Merryman, this case concerning the annexation of 1918; there was no referendum attached to this act, however.

B. Referendum by petition

The General Assembly of 1914 proposed to add to the Constitution a provision for securing a referendum by petition, and the voters approved the amendment in 1915. It was during this general period, of course, when many states were adding the referendum to their constitutions, and some of them went further than Maryland in also adding possibilities for initiative and recall.

In Maryland, the basic part of the Referendum Amendment reads as follows:

"The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor."

The referendum petition on a State-wide act must contain 10,000 signatures, of whom not more than half may be residents of Baltimore City or of any county. For an act affecting only Baltimore City or any one county, the petition must contain the signatures of at least 10% of the registered voters. The petition is to be presented before June 1, except that if half the signatures have been obtained by that time, the petitioners have the month of June to get the others. The presentation of the petition

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137a Ibid., n. 472.  
138 133 Md. 247, 104 A. 540 (1918).  
139 CONST., Art. 16, Sec. 1.
suspends the operation of the act until thirty days after it has been voted upon at the next ensuing election for the House of Representatives, if the act is approved at that time. If the act had an emergency clause and has already become effective, the petition does not suspend the operation; the act then continues in effect and will stand repealed if it gets an adverse vote at the polls.\textsuperscript{140}

Judge Burke wrote at some length in \textit{Beall v. State},\textsuperscript{141} as to the historical background of Article 16:

\begin{quote}
"Until the adoption of this Article its people had lived under a well recognized form of representative self-government. This principle of representation had its beginning in the early legal institutions of England, and was brought to America by the colonists. \ldots It was for many years looked upon as one of the great principles of popular government, and as necessary and indispensable for the preservation of civil order and popular liberty. After the close of the Civil War great abuses began to creep into legislation and into the administration of the National and State governments. \ldots It was charged that the government, in all its departments, was prostituted to corrupt and selfish purposes. \ldots The Referendum, broadly speaking, is the reservation by the people of a state, or local subdivision thereof, of the right to have submitted for their approval or rejection, under certain prescribed conditions, any law or part of a law passed by the law making body. It was designed as a modification of, or as a supplement to the principle of representation with which we had long been familiar, and it was claimed for it that it would prevent the reoccurrence of many of the abuses to which we have referred."\textsuperscript{141a}
\end{quote}

There is a provision in Article 16 that:

\begin{quote}
"No law or constitutional amendment licensing, regulating, prohibiting or submitting to local option the manufacture or sale of malt or spirituous liquors shall be referred or repealed under any Act of the provisions of this Article."\textsuperscript{142}
\end{quote}

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\textsuperscript{140} \textit{Ibid.}, Secs. 2, 3.
\textsuperscript{141} \textit{Supra}, n. 101.
\textsuperscript{141a} \textit{Ibid.}, 677.
\textsuperscript{142} \textit{CONST.}, Art. 16, Sec. 6.
\end{flushright}
This restriction was at issue in *Poisel v. Cash*. The Legislature had passed a local option law for Carroll County and had put a referendum clause on it. The contention was that the provision quoted above would not permit such a bill to go to a referendum vote. The Court held, however, that while the "manifest" purpose of this section was to deny a referendum by petition on acts having to do with alcoholic beverages, it had not limited the power of the General Assembly to submit such questions to a popular vote.  

The same provision of Article 16 was at issue in *Berlin v. Shockley*. In Chapters 175 and 301 of the Acts of 1937, the Legislature had changed the manner of distributing the profits of the dispensary operated by the Liquor Control Board of Worcester County. Both acts, in addition, had repeated the whole law respecting the dispensary in that county. The Court followed the ruling in *Poisel v. Cash* in holding that as some distribution of profits is necessary to a system of sales of liquor through a public dispensary, these acts regulated the sale of liquor within the terms of Article 16. Therefore, they were ruled not to be the type of acts which could be submitted to referendum by petition. Furthermore, although Article 16 speaks of referring both acts and parts of acts, a part of an excepted law is not referable to referendum.

*Strange v. Levy* held that the Referendum Amendment applies only to those local laws affecting either Baltimore City or a county; it does not apply to local bills for municipalities other than Baltimore City. The reason is that Section 3 of Article 16 provides for referring only local laws "for any one county or the City of Baltimore . . . to the people of said county or City of Baltimore, upon referendum petition of ten per cent. of the qualified voters of said county or City of Baltimore as the case may be. . ." Bills affecting municipal corporations may have

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143 130 Md. 373, 100 A. 364 (1917).
144 Ibid., 375.
144 174 Md. 442, 199 A. 590 (1938).
146 Ibid., 647. See also Richardson v. Blackstone, 135 Md. 530, 109 A. 440 (1920).
a referendum clause attached by the Legislature, therefore, but they cannot be submitted to referendum by petition.

A further case on the applicability of Article 16 was Dinneen v. Rider,\(^{146}\) construing the act which established the Metropolitan District of Baltimore County. The act contained a recital of a finding of emergency and having been passed by a 3/5 vote was to become effective from the date of its passage. The contention was, however, that since it would have changed the powers and duties of the Commissioners of Baltimore County it came under the provisions in Article 16 that no bill changing the salary or duty of an officer may be enacted as an emergency act. The Court pointed out, however, that Article 16 permitted a referendum by petition only in the entire State, in Baltimore City, or in an entire county; it makes no provision for referenda by petition in a part of a county, as the Metropolitan District was. Therefore, the act in question was held to be not within Article 16, and it followed that Section 31 of Article 3 authorized the Legislature to make it effective on the date of its passage.\(^{146}\)

In Sun Cab Company v. Cloud\(^{147}\) the Court of Appeals held that a court of equity could issue an injunction against the holding of a referendum, on the ground that the signatures on the petitions did not comply with the constitutional requirements. As a corollary to the case, it also was held that if an equity court anywhere in the State obtained jurisdiction over the Secretary of State, an injunction could issue therein, for performance in Anne Arundel County.

A petition for referendum requires, as has been said, the signatures of at least 10,000 voters, of whom not more than half may be residents of Baltimore City or of any one county. Also, Article 16 provides that if more than one-half the required number of signatures be filed with the Secretary of State before June 1, the effectiveness of the

\(^{146}\) 152 Md. 343, 136 A. 754 (1927).

\(^{146}\) Ibid., 357. See also Culp v. Chestertown, supra, n. 102. See also Wilkinson v. McGill, supra, n. 116a.

\(^{147}\) 162 Md. 419, 159 A. 922 (1932).
act will be deferred for the month of June pending the securing of additional signatures. In *Phifer v. Diehl* the Court combined these two provisions. The act in question was Chapter 306 of the Acts of 1937, which was intended to regulate the practice of dentistry in Maryland. Prior to the first day of June, when the act was to become effective, a petition was presented signed by over 7,000 persons, and the contention was that this was sufficient to stay the effect of the act for the month of June, while additional signatures were being secured. However, most of the 7,000 signers resided in Baltimore City, and fewer than 2,500 of them lived in the counties. Therefore, said the Court, the petition was invalid and nugatory.

One of the sharpest conflicts in the interpretation of the referendum power has been the limitation that:

“No law making any appropriation for maintaining the State government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase or any part thereof specified in the petition, may be referred to a vote of the people upon petition.”

The provisions here are that while (1) appropriation bills generally are not subject to a referendum, (2) any part of the amount by which any specific appropriation for a public institution exceeds the next previous appropriation shall be subject to a referendum by petition. The main contention has been as to the meaning of the word “appropriation.”

Chapter 118 of the Acts of 1927 increased the gasoline tax by one and one-half cents per gallon. The proceeds were to go into a “lateral road gasoline tax fund” and to be expended mainly for the construction of lateral roads in the counties. A petition was presented to place the act before a referendum of the people, and upon the refusal

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148 175 Md. 364, 1 A. 2d 617 (1938).
149 Const., Art. 16, Sec. 2.
of the Secretary of State to accept the petition, a writ of mandamus was sought against him.

The Court of Appeals held that the gasoline tax bill was an appropriation act:

"Indeed, except that it was passed before the Legislature had disposed of the budget bill, it fulfills in itself all the requirements of a supplemental appropriation act authorized by the budget amendment. Whether the requirement as to the time of consideration of such supplemental appropriation bill is mandatory or directory only, we shall not stop to consider. Assuming that it is not sufficient in itself to authorize the withdrawal from the Treasury of the State of the money collected under its provisions, it was at least a direction to the Governor to make the disbursement in the Budget to be prepared by him; and the Governor accepted it as such. That act and the budget act are in pari materia, and must be construed together as though they constituted one act."\(^{150}\)

Secondly, ruled the Court:

"The appropriation was for maintaining the State government. . . . It is apparent that the purpose was to provide against the possibility of the government being embarrassed in the performance of its various functions. Surely, in that view, 'appropriations for maintaining the government' include more than those which merely provide for overhead expenses, such as salaries and expenses incident to keeping the government afloat as a going concern. 'The government' includes all its agencies, of which the State Roads Commission is one of the most important. And maintaining the government means providing money to enable it to perform the duties which it is required by law to perform. In his able and well considered opinion, the learned trial judge concedes this, and does not accept the narrower view of appellants. But he distinguishes between functions existing at the time the appropriation is made and new functions created by the act making the appropriation. The question thus raised is not free from serious difficulty. Certainly an act would not be within this exception merely because it carried an appropriation to an agency of the govern-

ment, if it created an entirely new function not there-
tofofore recognized as coming within the sphere of
governmental activity. But 'the establishment, con-
struction and maintenance of public roads is a primary
function of government'. . . .”101

Accordingly, the petition to have the gasoline tax act sub-
mitted to referendum was denied.

The question again came up for review in *Bickel v.
Nice.*152 Chapter 368 of the Acts of 1937 had authorized the
issuance of State bonds for the construction of the State
Office Building at Annapolis, and an effort was made to sub-
mit it to a referendum by petition. Again the Court denied
the petition, holding that the act was an appropriation for
housing State offices and within the exception in Article
16 as to appropriation acts. The Court went on to make
this further statement concerning referenda over increases
in appropriations:

"It is clear, besides, that the mere fact of an in-
crease in an appropriation for maintaining one of the
functions of government over ordinary amounts would
not omit it from the excepting clause, leaving it sub-
ject to the referendum, because that clause makes
referable only those increases in appropriations which
are for public institutions. Selection of these is tanta-
mount to exclusion of a referendum on increases for
maintaining the government."1052a

*Dorsey v. Petrott*153 involved the act which established
the Tidewater Fisheries Commission, and an attempt to
have it submitted to referendum. The Court held that the
conservation of the fisheries was a concern of government,
but that this act was not a "law making an appropriation"
within the meaning of Article 16; consequently, this act
was not within the exception and could be submitted to a
referendum by petition.

During the course of the opinion Judge Parke discussed
at some length the whole matter of "appropriations," as

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101 Ibid., 568.
152 173 Md. 1, 192 A. 777 (1937).
1052a Ibid., 10.
153 178 Md. 230, 13 A. 2d 630 (1940).
that term is used in Article 16, and as it has been used throughout the history of the State. He reached the general conclusion that "the budget bill is to be implemented by the passage of such money bills or revenue measures as shall produce and supply the moneys necessary for the Treasury to meet the appropriations made by the Budget Bill.... It follows that revenue measures to raise the public funds to pay the appropriations of the Budget Bill are excepted from the operation of the Referendum Amendment, although the revenue thus procured is disbursed by the Treasury through the provisions of the Budget without any express authorization in the money bill for its disbursement." So, he continued, "as a result of this review of the constitutional provisions and the decisions noted, it it concluded that an appropriation of public funds is made by a constitutional mandate or a lawful legislative act whose primary object is to authorize the withdrawal from the State Treasury of a certain sum of money for a specified public object or purpose to which such sum is to be applied. It follows that, although an act of the General Assembly may be passed for the purpose of maintaining the State government, the act is nevertheless subject to the Referendum, unless it be an act so appropriating public funds for that purpose."\(^{153a}\)

In this particular case, the Court went on to hold that the act creating the Tidewater Fisheries Commission was subject to a referendum; it was held not to be an appropriation act simply because of its provisions relating to fines for violating the conservation laws and to fees for the inspection of oysters; incidental provisions for the appropriation of public funds, said the Court, do not convert an act to an "appropriation act" within the meaning of Article 16.

The term "appropriation" in the Referendum Amendment was construed most recently in a case involving the Sales Tax Act of 1947. A petition was presented to the Secretary of State to require this act to be submitted to a referendum, and upon his refusal to accept the petition a writ of *mandamus* was sought against him in the Circuit

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Court for Anne Arundel County, before Judge McWilliams. The Court followed the decisions of the Court of Appeals and denied the writ of mandamus, saying in the course of the opinion that:

"It must be apparent to all literate people that any State government has two basic functions—to raise money and to spend it for the common good. Since the money can't be spent until it is collected, these two functions are for all practical purposes inseparable. It must be admitted that the stricter meaning of the term 'appropriation' is the allotment of funds in hand, or to be collected, to some specific purpose. But it cannot be supposed that the framers of the Referendum Amendment intended a situation which would clothe the legislative act allotting funds to some specific purpose with a halo of sanctity and a garment of immunity and leave its alter ego, the legislative act providing the funds which give life and effect to the act of allotment, to the tender mercies of any group of disgruntled taxpayers with enough energy and initiative to prepare and circulate a petition. Indeed, it is difficult to imagine a more effective method of sabotaging the State government than to deprive it of its anticipated revenues. It cannot be doubted that this is the very thing the exception was designed to prevent."

This decision was not appealed to the Court of Appeals.

XIV. JUDICIAL REVIEW

The final hurdle in the legislative process is the power of the Courts to declare acts of the Legislature invalid and unconstitutional. Although there is no specific provision in the Constitution conferring such power, it now is firmly established in Maryland by case law, as in other American jurisdictions.

Chief Judge Marbury covered the point in a recent case, saying that "construction of constitutional provisions has been too often and too frequently held to be within the province of the judicial branch of the Government, for there to be any doubt about it now. We entertain none.

It is the province and the duty of the courts to interpret the Constitution when questions involving its interpretation are properly before them. 3

A legislative act which has been declared constitutional and as having been enacted with the proper formalities, and which has survived a possible referendum, is firmly established. Thereafter it can be amended or repealed only by another act which has gone through the same legislative process.

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