

DELEGATING RATE MAKING POWER.

Senator Foraker Doubts if Congress Has Constitutional Right to do it.

TILLMAN AFTER ROOSEVELT.

Stalls Should be Stopped Even if President Has Loaned Prestige of His Name to Existing Conditions.

Washington, Dec. 11.—With spirited debates on the subject of railroad rate legislation, arising through the introduction of a bill by Mr. Tillman to authorize the interstate commerce commission to fix maximum rates, and the Panama canal, due to a controversy over the reference of the emergency appropriation bill to a committee, today's session of the senate continuously proved interesting for more than four hours.

An adjournment was taken without a motion of the late Senator Mitchell, Oregon, and so for the first time the death of a senator was permitted to pass unnoticed by the senate. The assurance of Mr. Mitchell's name from the senate followed. Chairman Hall recalled the situation to mind in his prayer at referring potentially to corruption and death and by praying that members of the senate be given strength to bear each other's burdens.

The debate on the Tillman bill was engaged in by a number of senators. Mr. Foraker declared that this bill proved that its author believed the present laws were sufficient to correct all alleged transportation evils except excessive rates, and that there was ample provision for the punishment of rebate giving. Mr. Tillman responded that he had thought the law sufficient until the investigation begun by Messrs. Judson and Harmon into the Santa Fe case had terminated in a pitiable fiasco.

Mr. Foraker asserted that the law could not be blamed if "some persons fell short in their duty." Mr. Foraker terminated in his discussion that there would be some extended controversies before the railroad rate bill was disposed of this session.

After more than a score of senators had discussed the Panama bill it was referred to the appropriations committee by a vote of 40 to 22.

When the senate convened a message was received from the house transmitting the emergency bill appropriating \$11,600,000 to aid in the construction of the Panama canal. It was withheld by the vice president until the conclusion of the house morning session.

During the introduction of bills there were numerous conferences on the floor to determine whether the measures should be referred to the committee on appropriations or the interstate commerce committee.

Mr. Tillman introduced his railroad rate bill and would give power to explain it to the senate. It amends the law to regulate interstate commerce, giving to the interstate commerce commission authority to fix "a maximum reasonable rate," when it determines that the existing rate is unjust or unreasonable, and the rate so fixed shall be the only legal rate charged. The bill was referred to the committee on interstate commerce.

Mr. Foraker said he believed the bill



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is the best yet offered. If the government is to go into the rate-making business, it would do the least possible harm.

"In saying that, however," he added, "I minimize the necessity of any legislation of that character, because the bill is directed solely at excessive rates."

Mr. Foraker took the position that Mr. Tillman's bill recognizes the fact that the regulation of the executive branch reaches and everything but discrediting charges.

"I had supposed that the law was sufficient to correct all alleged evils," said Mr. Tillman, "but since the investigation of rebates begun by Mr. Judson and Mr. Harmon, and the investigation begun by Messrs. Judson and Harmon into the Santa Fe case had terminated in a pitiable fiasco."

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though public utilities were privately owned, and they would have had the right to fix rates whether they were given to them by Congress or not.

Mr. Knox, the former attorney-general, asked Mr. Foraker if the supreme court, in the case of *Piedmont* against *Clark*, had decided that Congress can lay down a certain rule and then authorize a commission to apply this rule to specific cases and whether this would not apply.

Mr. Foraker said that in that case the president was directed to act by proclamation in an administrative way whenever he assumed that certain facts existed and that it did not amount to a delegation of legislative powers.

The vice president then laid before the senate the Panama canal appropriation bill. Mr. Allison asked that it be referred to the committee on appropriations as a deficiency bill, but on request of Mr. Kittredge the bill was read.

Mr. Hopkins urged the bill be referred to the committee on inter-oceanic canals as it was an emergency bill not a deficiency measure.

Mr. Allison said he would frankly state that the sundry civil appropriation bill should in the future carry the regular canal appropriations unless the resolutions should be amended.

"It is good old Anglo-Saxon stealing and not graft," asserted Mr. Tillman, "to pay such salaries as are paid to canal officials."

He mentioned particularly the salary of \$10,000 to the auditor.

Mr. Allison declared all these salaries should be fixed by statute. This was not the function of the appropriations committee, he added, but it was over such legislation as this that the other great committees had jurisdiction.

Mr. Henryway asserted that the committee on inter-oceanic canals could meet tomorrow if it desired and explain just what salaries should be paid canal officials to regulate canal rates.

Mr. Tillman said: "There should be legislation and the stalls stopped even if the president had loaned the prestige of his great name to the existing condition of affairs."

Mr. Teller took the position that the president had been authorized to create the offices and fix their salaries and Congress should not do them. There should be a law fixing the salaries.

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BOAT CAPTAIN ARRESTED.
San Francisco, Dec. 11.—Henry Weber and James M. Spencer, the captain and the engineer of the oil tank steamer *Dispatch*, were arrested this afternoon, but each was released on cash bail.

The *Dispatch*, which was last Friday when four young boys were inside its boilers scaling rust, and one of them, Jimmy Mitchell, was killed. Today warrants were sworn out against the engineer and the master supposed to be responsible for the hiring of minors for the dangerous duty in violation of sections 27 and 28 of the penal code. There were six warrants against Engineer Spencer, and one against Captain Weber. They deposited \$100 cash for each charge.

ARGUMENT IN NEW YORK BALLOT-BOX CASE.
Albany, N. Y., Dec. 11.—Argument was begun in the court of appeals today in the so-called New York ballot-box case. There was a very large attendance of lawyers and spectators.

The contest represents the contention of W. H. Hearst, John Ford and J. G. Phelps Stokes, Municipal Ownership candidates, that at the election of November they were rightfully elected respectively to the offices of mayor, comptroller and president of the board of aldermen of Greater New York, and that this will be shown by a recount of the votes.

Judge Parker, representing the claims of Mayor McClellan and his Democratic colleagues, declared there is nothing to be found in the election law which in terms authorizes the court to direct either a recount or a canvass of the vote. A recount cannot be ordered through discrepancy of the tally between the tally sheet and the ballot clerks' returns. He held that the law requires that the court shall be finally made by the inspectors of the election and that if an actual mistake was made it was the duty of the inspectors then and there to make a recount.

If the failure to recount as provided may be enforced by mandamus after the ballots have been placed in the box and it is looked and sealed, he asked, why may not every act of omission be enforced by mandamus? He asked that the statute does not authorize mandamus in other omissions made by the inspectors of the election, and cited another case to show that the court cannot take jurisdiction not accorded to it by the statutes.

If a recount is permitted, he continued, then every close election in this state, whether it involves the election of a mayor or a presidential elector will

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