

of persons, or rebellion against the authority of the government of the United States, it shall become impracticable, in the judgment of the President of the United States, to enforce by the ordinary course of judicial proceedings, the laws of the United States, within any state or territory of the United States, it shall be lawful for the President of the United States to call forth the militia of any or all of the states of the Union, and to employ such parts of the land and naval forces of the United States as he may deem necessary, to enforce the faithful execution of the laws of the United States, or to suppress such rebellion in whatever state or territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

"Whenever in the judgment of the President it may be necessary to use the military force hereby directed to be employed and called forth by him, the President shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes, within a limited time."

Under this act the President may of his own accord proceed with military power to enforce the laws of the United States, without waiting for a request from any one.

Until 1878 the military was considered a part of the bystanders, and could be legally called upon by United States marshals or their deputies to assist in the execution of the process of United States courts. This was construed to be authorized in the judicial act of September 24th, 1789: "The marshal shall have power to command all necessary assistance in the execution of his duty." And this authority to call out the military was frequently resorted to. Military commanders received detailed instructions as to their conduct. It was held that the secretary of war had authority under this act to order troops to assist internal revenue collectors in their duties when hindered by unlawful obstructions; but since the posse comitatus act of 1878, no such authority seems to exist, and the order for troops would probably originate with the President as in other cases.

The civil rights bill, entitled, "An act to protect all persons in the United States in their civil rights and furnish the means of their vindication," passed April 9th, 1866, over the President's veto, provides for the calling out of the military by subordinate civil officers. The circuit and superior territorial courts are commanded to increase the number of their commissioners, and these commissioners have authority to appoint under their own hands, suitable persons from time to time, and these suitable persons have authority to summon and call to their aid such portion of the land and naval forces of the United States as may be necessary to the performance of their duty in conformity with the act. This gives a greater scope than any other law, for the use of troops in a civil capacity. The persons authorized to call out the troops are simply designated "suitable persons." They are appointed without limit and without question by commissioners who are also without limit.

Section 9 of the act also makes it lawful for the President, or such person as he may empower for that purpose, to employ the army, navy and militia to prevent violation of the act, and enforce

the execution of it. Thus the military are authorized to take the initiative when and where the President may designate, without regard to the civil authorities.

The Ku Klux bill followed five years later, April 20th, 1871. It was directed against certain lawless, armed and disguised parties and their sympathizers, and is intended to enforce the provisions of the Fourteenth Amendment to the Constitution. It provides for a liberal use of troops, and differs somewhat from the other laws on the subject, in that it not only makes it lawful for the President to call out the military, but it is his duty to do so, and to employ them to enforce the act. In General Orders No. 48, A. G. O. 1871, the President directs that the regular forces stationed in the vicinity of any locality where this law is violated, be used by their commanders for the purpose. Thus, again the local military commanders are authorized and commanded to act without waiting for the civil authorities.

By the act of June 18th, 1878, it was intended to materially restrict the use of troops in civil affairs. "It shall not be lawful to employ any part of the army of the United States as a posse comitatus or otherwise, for the purpose of executing the laws, except in such cases, and under such circumstances, as such employment of said force may be expressly authorized by the Constitution, or by act of Congress." The penalty is fixed not to exceed ten thousand dollars and two years imprisonment. It becomes necessary under this law to ascertain what provisions of the Constitution and what acts of Congress expressly authorize these uses of troops.

There is no legal authority for the use of troops as a posse comitatus, because neither the Constitution nor any act of Congress, expressly authorizes it. But these are acts of Congress which expressly authorize the use of troops in executing the laws. The provisions of the Constitution authorizing such use of troops have been mentioned. In addition to the acts of Congress above referred to may be mentioned:

Sections 2150-51-52, to enforce the Indian trade and intercourse laws;

Section 2460, to protect public timber in Florida;

Section 4792, to enforce quarantine regulations;

Section 5275, to aid in the transportation and safe keeping of extradited persons;

Sections 5286 87 88, to enforce neutrality laws;

Section 5577, to protect the rights of discoverers of guano lands;

Act of March 3rd, 1807, to protect public lands;

Section 2002, to keep the peace at election.

There are no other cases in which troops as an armed force may be employed to act in executing the laws.

Paragraph 585, Army Regulations, sets forth the following rule of action: "If time will admit, applications for the use of troops for such purposes must be forwarded, with a statement of all material facts, for the consideration and action of the President, but, in cases of sudden and unexpected invasion, insurrection, or riot, endangering the public property of the United States; or in cases of attempted or threatened robbery or interruption of the United States mails, or other equivalent emer-

gencies, officers of the army may, if they think a necessity exists, take such action before the receipt of instructions from the seat of government, as the circumstances and law under which they are acting may justify, and will promptly report their action and reason therefor to the adjutant general for the information of the President."

This paragraph confers great powers and responsibilities upon army officers, but I do not believe it authorizes an officer, under any circumstances whatever, to furnish troops to a state in case of "domestic violence" within the state. The application for troops in such a case must be acted upon by the President.

Individual members of the army may be legally required to perform civil duty, and as acting Indian agent, in taking the census, topographical work of the coast survey, and in other ways, but these are not duties of armed bodies.

The act to enforce the quarantine regulations dates back to 1799, and is unique in that it directs all officers who command in any port on the seacoast to aid in executing the quarantine regulations, under direction of the secretary of the treasury. But the law is not construed as placing the military forts under the civil authorities. The secretary of war, replying to the mayor of New York in reference to the posts in the harbor in 1871 said: "To place these posts in any manner under the direction of the board of health, would deprive the military authorities of that complete control over its officers and property which this department should always maintain, and would be subversive of military discipline."

Thus it appears that notwithstanding the law is plain and positive, troops will assist in maintaining the quarantine only upon orders from superior military authority.

The act of February 25th, 1865, makes it unlawful for any person in the military or naval service to order, bring, keep, or have under his authority or control any troops or armed men at the place of election, unless it shall be to repel the armed enemies of the United States, or to keep the peace at the polls. Neither may any officer or soldier interfere in any manner with an election. Unless the emergency is very great and can be covered by paragraph 585, the order for keeping the peace at the polls would originate with the President.

The authority for use of troops in civil affairs is thus well defined. The question of the manner of their use, the laws governing their action, and their responsibility under the common law of the land, opens up a wide field for discussion.

The military, when acting to suppress insurrection or riots, cannot conform to the mild methods of the civil authorities. Prompt application of force must be expected. If the municipal authority is sufficient, why call the military? It is claimed that there is danger that the military will commit acts that are not usual in times of profound peace. But it should be remembered that profound peace does not exist when the military arm is invoked. Martial power must be exercised, and individual rights disregarded if the military is to be effective. But such power can not be exercised in an irresponsible manner. No official is so high, or citizen so low, as to be beyond the power or protection of the law. In case of internal disturbance,