

the government must condone anarchy or else invoke the strong arm of the military, not as a threat, but to bear down opposition and restore the majesty of the law, sacrificing temporarily certain civil rights.

The right to use military force against mobs carries with it the right to take life, destroy property, and make arrests; in fact to do all things necessary to accomplish its purpose. A show of force is frequently sufficient, and violence should not be resorted to except when necessary. But this does not mean that troops are expected to charge up and down through a mob of howling insurrectionists who give way in front only to crowd upon the planks and rear. If such methods succeed it is well, but the law does not require such dangerous tolerance with a mob bent on mischief.

It is held that interference need not wait for any actual outbreak or movement of the assembly sufficient to constitute an actual riot. Whatever force is necessary to accomplish the object of dispersing the unlawful assembly may and ought to be used.

The difference between a riot and an unlawful assembly is this: "If the parties assemble in a tumultuous manner, and actually execute their purpose with violence, it is a riot; but if they merely meet upon a purpose, which, if executed, would make them rioters, and having done nothing, they separate without carrying their purpose into effect, it is an unlawful assembly. Nor is it a necessary element of unlawful assembly or riot that the object desired be unlawful; the object may be lawful, but the meeting may be held under such circumstances of place and time, or the object to be sought in such a valiant and turbulent manner, to the terror of the people, as to constitute the offense."

After warning to depart, and especially after efforts by less violent means to disperse the assembly, those who remain are guilty of participation. The death of any such is justifiable homicide.

The law is further quoted as follows: "It may be presumed generally that where persons have authority to arrest, or imprison, or otherwise execute the public justice, and using proper means for that purpose, are resisted in so doing, and the party resisting is killed in the struggle, such homicide is justifiable." And again: "The rule is not confined to the instant the officer is on the spot, for he is under the same protection going to, remaining at, or returning from the same."

The instruction issued by the war department for the government of the armies of the United States in the field declares that "armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States and is therefore treason."

Some of the state laws are very plain on this subject, as for instance, in Connecticut there is this provision: "If any person or persons resisting the laws of the state, or unlawfully or riotously assembled shall be injured or killed by any of the military force called out under the provisions of this act, such force shall be discharged from all civil or criminal liability therefor."

The question of the duties of subordinate officers with reference to their orders from superior military authority,

and their own limit of discretion when acting under orders, may be considered.

Whiting, in his "War Powers," says: "Whatever military man obeys the order of his superior officer is justified by law in doing so. Obedience to orders is a part of the law of the land. Acts done in obedience to military orders will not subject the agent to civil or criminal liability in courts of law. But on the other hand, any abuse of military authority subjects the offender to civil liability for such abuse, and he who authorized the wrong is responsible for it."

A legal order must be obeyed. This is an article of our creed, but the civil as well as the military authorities go still further, and say that an order that is not clearly illegal "at first blush" shall also be obeyed, "except in a plain case of excess of authority where at first blush it is apparent and palpable to the commonest understanding that the order is illegal, I cannot but think that the law should excuse the military subordinate when acting in obedience to the orders of his commander. * * * The habit of discipline and obedience in a soldier is, I believe, more essential to the wellbeing of the state than the possibility of his now and then executing an illegal order is injurious to it."

In the same case it was said that it was not necessary to the ends of justice that the subordinate, or soldier, should be responsible for the illegal order of a superior. The decisions point to the officer giving the order and he will generally be held to account, in times of disturbance. But this subject, giving orders, has also had judicial attention. The rules of official responsibility are applicable under martial law as elsewhere. The commander cannot evade a just liability for his acts. Whiting says: "Our safeguards against abuse of military power are found, not in the denial of its existence, not in depriving ourselves of its protection in time of public danger, but in the civil responsibility of officers for acts not justified by martial law." The rule is that so long as the officer does not transcend the limits of his jurisdiction in the exercise of discretionary authority, he cannot be rendered liable unless it be shown that he maliciously abused the power confided to him. The Supreme Court has said: "While an officer acts within the limits of that discretion the same law which gives it to him will protect him in the exercise of it; but for acts beyond his jurisdiction, or attended by circumstances of excessive severity, arising from ill will, or depraved disposition, or vindictive feelings, he can claim no exemption, and should be allowed none under color of his office, however elevated or however humble the victim."

Lieutenant Young says: "The principle that a wide discretion be given to military officers in circumstances of danger, is based upon facts that action must be prompt and decisive, and that information is often meagre and misleading. The soldier who acts amid the noise and danger, the uncertainties and perplexities of the field of action, must not be judged by facts as they appear in the calm judicial atmosphere of the forum."

The Supreme Court of the United States also declares that they "knew of no case in England or this country where it was held otherwise than that a

public officer acting from a sense of duty, in a matter where he is required to exercise discretion, is not liable to an action for an error of judgment."

The question whether a military officer's duties in time of riot are discretionary is decided in *Donneckervs. Solomon*: "If an officer is ordered by the President in time of war to arrest a certain person as a spy he would act in making the arrest merely as a ministerial officer, and if by mistake he arrested the wrong man he would be liable to an action. But if his orders were general to go with a military force into an insurrectionary district and quell the insurrection, he would be clothed with authority discretionary, and in its nature judicial."

In the well known case wherein Captain Wilkes, a naval officer, inflicted corporal punishment upon a sailor, and the sailor afterwards brought suit against the officer, the Supreme Court said: "A public officer invested with certain discretionary power never has been and never should be made answerable for any injury, when acting within the scope of his authority and not influenced by malice, corruption, or cruelty. And in such a critical position his reasons for action one way or another are often the fruits of his own observation, and not susceptible of technical proof, on his part. No review of his decision, if within his jurisdiction, is conferred by law, either on courts, on juries or subordinates."

Some decisions even go further and declare "that where powers are discretionary, the officer is exempt from all responsibility, by action, for the motive's which influenced him. If corrupt he may be indicted, but the law will not tolerate an action * * however malicious his motive."

Should a civil officer, in sympathy with the mob, or from being wrongly advised, attempt to interfere with a military commander, it should be remembered that it is a general rule of public policy that persons in the public service shall be exempt from arrest upon civil process while in the performance of their duties, and is applicable to military officers.

Martial law may be declared by any military commander if circumstances justify it, and it may exist without formal declaration. In time of actual conflict with rioters, martial law does exist, and everything must give way to the will of the commander, in order that opposition to the laws may be swept away, and the civil authority, triumphant in its own temporary suspension, becomes what it should be, superior to the military.

WASHINGTON, July 8.—John W. Foster arrived in Washington from China and made a statement in which he said there was good reason to expect permanent peace between Japan and China as the result of the treaty of Shimonoseki. The terms demanded by Japan may, he said, under the circumstances, be regarded as reasonable, and the peace concluded is not likely to be broken on account of the shortcomings of China.

GRAND RAPIDS, Mich., July 9.—Mrs. Levi Pierce, aged 60, who lived at Berlin, Ottawa county, was murdered yesterday. Her daughter, May Pierce, aged 13, and grandson, George Keesbro, aged 13, are in jail at Grand Haven, awaiting examination.