Justifies His Course in Discharging Soldiers Engaged in Brownsville Riots.

POWERS ARE AMPLE.

Senator Foraker Takes Issue With Him, Declaring His Power is Derived From Congress.

Washington, Jan. 7 .- President Roosevelt's dismissal of the negro troops was again the subject of contention in the senate today, and indications point to protracted debate before any of the pending resolutions on the subject are

Senator Lodge developed a new phase of the question by presenting a resoof the question by presenting a test-lution providing for an investigation of the "affray" at Brownsville, and conceding the authority of the presi-dent to take the action he did. This section was supported by Mr. Lodge in an address and was opposed by Mr. Foraker, who followed and spoke until 5:30 o'clock, giving notice then that he would conclude tomorrow.

6.30 o'clock, giving notice then that he would conclude tomorrow.

Previously to this debate the senate listened to a two-hours' address on the Japanese question by Senator Gearin, who argued for a resolution directing the opening of negotiations with Japan for a revision of our treaty with that nation.

Preliminary to his discussion of the Brownsville incident in the senate today, Senator Lodge presented a subresolution, prepared by Senator Knox, confining the propose senate inquiry to the "affray" at Brownsville, and eliminating any review of the president's action. He accepted Senator Culberson's amendment authorizing the committee to visit Brownsville if it desired.

SENATOR LODGE'S SPEECH.

Mr. Lodge said: "Two questions are here involved. A Mr. Lodge said:
 "Two questions are here involved. A question of fact and a question of law. They are entirely distinct; they ought to be settled separately, and neither should be permitted to cloud or obscure the other in the public mind. The question of fact may be stated in this way. There was shooting in the streets of Brownsville on the night of Aug. 13, 1906, houses were fired into, one man was killed and the lieutenant of the police had his horse shot from under him and was so seriously wounded in the arm that amputation was necessary. These facts are admitted and are not disputed by anyone. This shooting was done by someone. It was done either by United States soldiers from Fort Brown or by inhabitants of the town of Brownsville. There was no one else and it is not pretended that there is any one else who could have done it.

SOLDIERS DID SHOOTING.

The president, the secretary of war and the army officers detailed to in-quire into the affair have decided that the shooting was done by the soldlers, and furnish testimony to sustain their opinion. The Constitution league, representing the soldiers, deny that the shooting was done by them and assert that it was done by citizens of Brownston. that it was done by citizens of Brownsville disguised in cast-off uniforms of
the troops and provided with exploded
shells from the government ranges, who
committed this outrage for the purpose of casting odium on the troops of
Fort Brown. One of these propositions
must be proved, for general negations
are of no use here. It will be the duty
of the committee under the resolution
to take all testimony possible and decide whether this shooting was done by
the soldiers or by citizens of Brownsville. Whether the soldiers or the inhabitants did the shooting is the question of fact, and on that I have no
opinion to express. I have heard and
examined all possible testimony. examined all possible testimony.

A QUESTION OF LAW.

"The question of law is whether the in dismissing these companies without honor exceeded his powers under the law and the Consti-tution. This question can be settled by the senate just as well now and I think better than at any other time, without the least regard for the committee's decision as to the question of fact. It is purely a question of law.

COMMANDER-IN-CHIEF'S POWER. "The Constitution makes the president "The Constitution makes the president commander-in-chief of the army and navy of the United States, and Congress is given authority "to make rules for the government and regulation of the land and naval forces." In the fifth amendment of the Constitution, the land and naval forces are excepted from the rights guaranteed to all persons who are held to answer for a captable or otherwise infamous crime. It ital or otherwise infamous crime. It appears, therefore, that soldiers and sailors were recognized as being sub-dect to a law different from that administered in the civil courts. In making the president commander-up-chief, the Constitution conferred up-n him all the power and authority ordinarily exercised by the commander-in-thief under the military law of the times. That military law had been slowly forming through many years,

MODERN RULES.

"Broadly speaking, the power of the commander-in-chief was originally ab-

"Broadly speaking, the power of the commander-in-chief was originally absolute and wars were conducted under ordinances or rules laid down by the king himself. Modern rules and articles of war may be said to date from those established by Gustavus Adolphus, and among English-speaking people, from Prince Rupert's code, which was practically used by both sides in England's civil wars. After the resolution which placed William of Orange on the throne, there was passed the famous mutiny act, which not only recognized the army and the military law under which it was governed, but provided for the trial of mutineers and deserters by court-martial.

"This act, which had be renewed every year, has kept the control of the military forces of England in the hands of parliament. The principles of the mutiny act and the articles of war adopted by England, were in the main the same as adopted by us at the time of the revolution, and which may be found embodied in the articles of war which are now a statute of the United States. The commander-in-chief has, as such, the right to punish or discharge except so far as it is limited or regulated by the law-making power which has enacted the articles of war. On this point of punishment or discharge the articles of war are perfectly applicable. Article 4 provides that "no enlisted man, duly sworn shall be discharged from the service without a discharge shall be given to any enlisted man before his term has expired, except by order of the president, the secretary of war, the commanding officer of the regiment to which he belongs or by the commanding officer of a department or by sentence of a general court-martial."

"It will be observed that the power of the president, the secretary of war, the commanding officer of the department to discharge an enlisted man is expressly recognized.

AS TO DISCHARGES.

martial. The honorable discharge can, of course, be given by the commanding officer, but there is another discharage now described as the "discharage now described as the "discharge without honor," which is not limited to the action of a court-martial and which comes within the discretion of the president, the secretary of war and the commanding officer. The regulation as to the discharge without honor shows as explicitly as language can, the large power of the commander-in-chief to order such discharges. In some form this power of summary discharage by the commander-in-chief has always existed and been exercised.

OUR MILITARY LAW.

"Our military law, as I have said, is taken from the military law of Eng-land and our practise has remained practically the same as English prac-tise. The English authority code says on this point: 'Though an engagement is made for a term certain the crown is under no obligations to retain the soldier, either in pay or in arms for that period, but may discharage him at any time. The safety of the realm may depend in some measure on the immediate discharage or dismissal of any man or regiment in arms and, equally, that the cause of such dismissal should not at the time be disclosed by the responsible ministers of the crown." point: 'Though an engagement the crown.

the crown."

"There can be no doubt whatever, that the power of summaray dismissal was inherent in the office of commander-in-chief when the president was invested by the Constitution with that office. Enlistment is a contract and has been so held by the supreme court of the United States and it is a contract terminable at will by the government. This is all that is done when a soldier is discharaged without honor.

THE PRECEDENTS.

THE PRECEDENTS.

"The precedents are gathered together in the report of the judge advocate general and it appears that no less than 352 enlisted men were discharged without henor from the army of the United States during the past year. It makes no difference whatever in principle whether one man or 10, or 160, or an entire regiment are discharged in this way. The power of summaray dismissal must rest where it has always rested, with the highest military authority in the country. It is impossible to conceive of maintaining an army on any other principle. If a soldier can not be separated from the service except by being convicted of crime, on evidence which would satisfy a jury in a civil case, there is no possibility of maintaining military dscipline.

"The power to dismiss or terminate the contract of enlistment is absolutely essential to the maintenance of any army. In fact, the principle runs through all business and society, Civil society could not go on if the power of dismissal or removal without the necessity of evidence to convict before a jury was not universal. The theory that the president's power of removal would be limited was debated from the foundation of the government until under Andrew Johnson, the tenure of office act was passed. It was found impossible to conduct the government under such limitations and the act was modified under Grant and repealed under Cleveland. I believe it to have been unconstitutional, but that it was impracticable was demonstrated and the president's power remained as it must remain, absolute.

RIGHT TO END CONTRACT.

"What is true of civil life is true with tenfold force of the army. If the commander-in-chief is unable to dismiss from the army the soldiers whom he regards as dangerous to the service and to military discipline without furnishing proof that would convict before a jury, military discipline would be at an end and the army of the United States would become a menace to the people of the country. The law, the Constitution, the statutes and the uniform practise are so clear as to the right of the president to terminate the contract of enlistment and discharging of soldiers at pleasure that it seems a waste of words to any one who has read the statutes to argue it at all."

Mr. Foraker denied that the power of the president was deduced from what was the power of the commander-in-chief of the British army. It must be deduced from the Constitution of the United States. The power the president derived from Congress was his legal power. It was not necessary, he said, to go to British precedent to ascertain

NO AUTHORITY.

"There is no autocracy in this country," said Mr. Foraker; "not even in the commander-in-chief of the army. All power is derived from the Constitution."

Mr. Foraker insisted that if Congress had spoken on any subject relative to army regulations, there was no room for the exercise of any power to the contrary on the part of the president. On matters of regulation on which Congress had not spoken, the Constitution gave the president power to make necessary regulations. As to the contract of enlistment, which Mr. Lodge said could be terminated at the pleasure said could be terminated at the pleasure of the government, Mr. Foraker said it contained a provision that its effect should be governed by the articles of war and rules and regulations of the service.

QUESTION OF ESTOPPEL.

Mr. Foraker maintained that the officials of the war department and department of justice had estopped themselves from denying that the affray at Brownsville was a case covered by the articles of war by the order that was given to the commander of the department of Texas to prefer charges and specifications against 13 members of the companies involved. While he disclaimed any intention to discuss the affray at the time, Mr. Foraker remarked he would say, in passing, "that if what is contended for here be true, that there was such a conspiracy, and such consummation of it, and that the number of accessories before and after number of accessories before and after the fact necessary to carry it out, were as charged, it is a thing which has nev-er happened in all the history of our criminal jurisprudence."

criminal jurisprudence."

Speaking of the president's position, Mr. Foraker said it might be said by him: "I know what was the power of the commander-to-chief in the British army and in the American army under Washington, and I have that power."

"He may be right" continued Mr. Foraker. "He has doubtless studied this question. Others have doubtless studied it and are in accord with him, as the senator from Massachusetts is, and therefore I may be entirely wrong. But I am simple-minded enough to think it makes a great deal of differ-

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ence whether or not there are facts

PRESIDENT NOT ABOVE LAW. "I think the senate would be in a ri-"I think the senate would be in a ridiculous attitude if it should adopt a resolution that could be interpreted to estop us when we come to consider this case on the facts which are to be developed, as to whether or riot the president acted within his constitutional or legal authority.
"Is the president of the United States above and over the law? Can he ignore it?" he asked.

Senator Foraker said it to be the birthright of every American citizen to be allowed trial when charged with crime.

These men, he added, were charged

These men, he added, were charged with murder and conspiracy. Because there was no evidence to sustain the charges the men were turned out of service. He quoted the supreme court on the question of the right to suspend law to meet an emergency as, saying: "Such a doctrine leads directly to aurorly."

MEN'S RIGHTS.

He said the president had been care-He said the president had been careful to point out that he had not discharged these troops as organizations, but as individuals, each being discharged by name. "Each individual," he said, "had a right to a board of inquiry. It was the duty of his superior officer to know his rights, to advise and to protect him in them. But it was not so," Discussing the Sixtleth Ohio, which has been cited as a precedent in the Discussing the Sixtleth Ohio, which has been cited as a precedent in the Brownsville action, Mr. Foraker maintained that it had been honorably discharged. He read a number of letters to show that the regiment was disorganized while under parole and held in the service after its term had expired.

Just as Mr. Foraker.

Just as Mr. Foraker was concluding. because of the lateness of the hour, saying he should endeavor to finish his speech in a brief time tomorrow, Mr. Tillman said he would like to hear from the senator just why it was that the Sixtleth Ohlo had "been picked out." "Mr. President," responded Mr. For-aker, "I am not obliged to tell the senator everything I know, and I know the senator knows why."

QUESTION BY TILLMAN.

Mr. Tillman, persisting, asked whether Mr. Foraker was not a member of the regiment. Mr. Foraker explained that it had been erroneously stated that he was, but that in reality the Eighty-ninth Ohlo was the only regiment to which he had ever belonged.

which he had ever belonged.

No effort was made to get action on the resolution, as Mr. Foraker said he would continue tomorrow,

At the conclusion of the debate it was agreed by the leaders that a settlement of the controversy between Senators Foraker and Lodge was not in sight. Prior to Mr. Lodge's speech it had been Mr. Foraker's intention to offer a substitute for his own resolution, asking the committee on military affairs to conduct an investigation into all the matters pertaining to the Brownsville matters pertaining to the Brownsville affray. This, it is said, would have permitted an inquiry into the constitu-tional questions. Senators who sought to end the controversy assumed that the military affairs committee would have considered that the constitutional and legal questions involved were for the deliberation of the judiciary com-

OPPOSE LODGE.

Mr. Foraker said he cared little for he phraseology, but he did object to dr. Lodge's interpretation of the substitute prepared by Mr. Knox and of-fered by the Massachusetts senator. This caused him to oppose the Lodge substitute, but it is expected he will tomorrow offer a substitute of his own.

FOREST CITY CO. LOSES CASE IN SUPREME COURT.

Washington, Jan. 7.-The supreme nounced its decision in the stubbornly fought contest over street car privileges in Cleveland, O. The opinion presented by Justice Peckham affirmed the de-cision of the United States circuit cision of the United States circuit court for the Northern district of Ohio. The dispute involved the right to operate a street car line on Central avenue, Cleveland, for which both the old company, the Cleveland Electric and the new, the Forest City, contended, the former, under a franchise which it was urged was perpetual or, at least, good until 1913, and the latter under a city ordinance passed in 1904 granting to it a "renewal" of the right to operate a line on Central avenue.

city ordinance passed in 1904 granting to it a "renewal" of the right to operate a line on Central avenue.

The city authorities were behind the Forest City line, and the old company asked in its original petition, which was made to the United States circuit court for the Eastern district of Ohio for injunctions against both the city and the new company. This prayer was granted by the circuit court but at the same time it held that the franchise of the old company had expired March 22, 1905. At the same time the city was problicated from putting the Forest City company in possession of the other company's track under the ordinance of 1904 because of its invalidity and the Forest City company was for the same reason enjoined from asserting any reason enjoined from asserting any reason enjoined from asserting any the finding was unsatisfactory to all parties and all appealed to the supreme state of th

court but the decision of the supreme court leaves the case unchanged.

During the progress of the case the court granted a temporary restraining order against the city, prohibiting it from interfering with the old company's tracks as Mayor Johnson threatened to do.

SUIT INSTITUTED TO OUST MAYOR GEO. B. M'CLELLAN.

New York, Jan. 7 .- Atty. Gen. Jack on today entered suit in the supreme court against George B. McClellan, praying that the latter be ousted from the office of mayor of the city of New York on the ground that he has usurped his office, whereas William R. Hearst is legally entitled to the same.

It is stated this new proceedings has nothing to do with the quo warranto action which last week was temporarily entitled at the application of Mayor.

enjoined at the application of Mayor McClellan.

McClellan.

A summons was served on Mayor McClellan at the city hall. The complaint declares that at the election in November. 1905, Mr. Hearst was "duly and legally elected mayor." It alleges that ballots legally market for Hearst were counted for McClellan and that these "miscounts" formed the basis of the returns of the vote. It is claimed that men not entitled to vote were allowed to vote for McClellan and that in many other ways the election laws were other ways the election laws were

Notwithstanding the election of said "Notwithstanding the election of said Hearst," the complaint concludes, "George B. McClellan has usurped and intruded into and now unlawfully usurps and holds the office of mayor."

The complaint prays that McClellan be ousted and excluded from said office and that the plaintiff (the people) may recover of the defendant the costs and disbursements of this action."

Mayor McClellan refused today to discuss the case.

Albany, N. J., Jan. 7.—In view of the precedence given in the courts to actions begun by the attorney general, the suit of ouster against Mayor McClellan will come to trial at once. Atty. Gen. Jackson said today that this action would take the place of that proposed upon the delation of Mr. Hearst himself, further proceedings in which were enjoined Saturday by the supreme court.

DENVER FRANCHISES.

State Supreme Court Says County Court Has no Jurisdiction,

Denver, Jan. 7.—Justice Campbell in the state supreme court today announced a decision, in which all his associates concurred that the county court has no jur, sdiction over the contest against Franchises voted to the Denver Gas and Electric company and the Denver City Tramway company at the last city election, The decision was given on the appeal from an order made by Judge Ben B. Lindsey in which F. A. Williams, chairman of the Republican county committee, Henry L. Doherty, president of the gas company, and Geo. I. Ordway, election commissioner, were fined and sentenced for refusing to testify in the contest cases. Suits are still pending in the federal court contesting the franchises. Denver, Jan. 7 .- Justice Campbell in

CHICAGO BOARD OF TRADE.

Hiram N. Singer Elected President Without Any Opposition.

Chicago, Jan. 7.—Hiram N. Sager was elected president of the board of trade today without opposition.

THAW MURDER CASE.

District Attorney Makes Application For a Special Panel of Talesmen.

For a Special Panel of Talesmen.

New York, an. 7.—An application for a special panel of talesmen from which to choose a jury to try Harry K. Thaw, charged with the murder of Stanford White, was made by the district attorney today. The request was based on the contention that the wide publicity given the Thaw case would make it exceedingly difficult to get an impartial jury in the regular way. The motion was opposed by counsel for Thaw. The court directed the defense to embody its objections in an affidavit and serve it upon the district attorney, after which hearing will be held on the application.

Jno. B. Gleason, of Thaw's counsel, said that he opposed the motion "on the ground that so many false state-ments and injurious articles have been printed and attributed to his defendand and his family since Jan. I that it is doubtful if a fair and impartial trial jury could be selected from a special panel selected under the stat-

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CARDINAL GIBBONS.

Statement About M. Briand. Baltimore, Jan. 7 .- Since Cardinal Gibbons issued his statement on Dec. 13 regarding the church trouble in France, he has received many inquiries asking for his authority as to the quo-

Saturday Review His Authority for

tations cited by him from public ut-terances of M. Briand, French minister terances of M. Briand, French minister of public worship. The cardinal credited M. Briand as saying:

"The time has come to root up from the minds of French children the ancient faith which has served its purpose and replace it with the light of free thought; it is time to get rid of the Christian idea. We have hunted Jesus Christ out of the army, the navy, the schools, the hospitals, insane and orphan asylums and law courts; and now we must hunt Him out of the state al-

we must hunt Him out of the state alwe must hunt Him out of the state altogether."

Premier Clemenceau has denied on the authority of M. Briand that the latter, as minister, ever delivered any such statement as is given in the second sentence of the foregoing excerpt. Cardinal Gibbons stated today that the quotations were taken from the London Saturday Review of Aug. 18 and Aug. 25, 1906.

COAL FAMINE AT MISSOULA.

Butte, Mont., Jan. 8.—A Miner dispatch from Missoula states that the Northern Pacific rallway at that point is confronted with a famine, the situation being aggravated by the extra detion being aggravated by the extra de-mand for coal to maintain big rotary plows on the Coeur d's ene line, where the snow in some places is said to be eight feet deep. As it is, that branch of the Northern Pacific through the moun-tain section is said to be practically snow-bound. Coal has ceased coming from the Roslyn mines and the bunk-ers of the company at this place con-tain only 10,000 tons, a little more than enough to last the balance of the week.

ENGINEERS ON TRIAL.

Goldfield, Nev., Jan. 7.—The trial of J. G. Flynn and E. L. Sheridan, the mining engineers who with C. S. Thomas, Jr., were arrested last night on complaint of a miner whose cabin they searched for high grade ore began today.

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