

L A W S

OF THE

STATE OF NEW-HAMPSHIRE,

P A S S E D

NOVEMBER SESSION....1828.

PUBLISHED BY AUTHORITY.

CONCORD :

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For the State.

1828.

as aforesaid, shall not sell for a sum sufficient to pay and discharge the costs taxed and three times the price of the labor of removing the same, estimated by the justice as aforesaid, the said surveyor shall be entitled to recover the same or such parts thereof as shall remain unpaid after the sale of such articles, of the person or persons who shall so incur the said highways by an action on the case in any court proper to try the same.

A. D. 1829
Surveyor
may sue
for costs
and labor.

SECT. 3. *And be it further enacted*, That the act, entitled "an act in addition to, and amendment of an act, entitled an act for mending and repairing highways in this state," be and the same is hereby repealed.

Repeal.

Approved January 3, 1829.

CHAP. CVI.

AN ACT imposing fines for neglect of military duty, and for other purposes.

Passed Jan
3, 1829.
[March 1,
1829.]

SECTION 1. **BE** it enacted by the senate and house of representatives in general court convened, That the following persons be and they hereby are absolutely exempted from military duty, to wit : the vice-president of the United States ; the officers, judicial and executive, of the government of the United States ; members of both houses of congress and their officers ; all custom-house officers and their clerks ; all post-officers and stage drivers, who are employed in the care and conveyance of the mail of the post-office of the United States ; all ferrymen necessarily employed at any ferry on the post road ; all inspectors of exports ; all pilots ; all mariners actually employed in the sea service of any citizen or merchant within the United States ; the members of the executive council ; the judges of the superior court of judicature and of all other courts of record in this state and their clerks ; the members of the legislature and its officers, while the same is in session ; judges and registers of probate ; registers of deeds ; the attorney general ; secretary and treasurer of the state ; all officers of any college actually resident there ; all students at Dartmouth college, belonging to the freshman, sophomore, junior and senior classes, during the time they continue to be members of either of those classes ; all preceptors of academies actually employed as such ; ministers of the gospel of every denomination ; all officers who had held commissions in the militia of this state

Absolute
exempts.

A. D 1829. or of any other state in the union for the term of four years, and had been regularly discharged before the twenty-second day of December, 1820, or who having held a commission in the militia of this state or any other state in the union for the term of six years have been or shall be regularly discharged, or who have been superseded and discharged; all fife and drum majors who have held a warrant and actually done the duty of drum or fife major for the term of six years; fire engine men, not exceeding eighteen to each engine, who shall annually, on or before the twentieth day of April, produce to the commanding officer of the company within whose limits they reside, certificates from the selectmen of their respective towns, that they have been legally appointed and are bound to perform the duties of engine men; and every person of the religious denomination of quakers or shakers, who shall annually on or before the twentieth day of April procure and deliver to the commanding officer of the company, within whose limits he shall reside, a certificate signed by two or more of the elders or overseers, and countersigned by the clerk of the meeting or society with which he meets for worship, in substance, as follows:

Quakers or
Shakers.

We the subscribers, elders (or overseers as the case may be) of the meeting of the society of _____ in the town of _____ in the county of _____ do hereby certify, that _____ frequently and usually attends with said society for public worship, is a regular member thereof, and, we believe, he is conscientiously scrupulous of bearing arms.

A. B. } Elders (or overseers,
C. D. } as the case may be.)

E. F. Clerk.

SECT. 2. *And be it further enacted,* That the following persons be and they are hereby conditionally exempted from military duty, namely: all physicians and surgeons, on whom has been conferred the degree of doctor of medicine, or who shall be recommended by any regular medical society, and who shall annually pay to the selectmen of the town in which they reside, the sum of two dollars, and on or before the twentieth day of April in each year, produce to the captain or commanding officer of the company, within whose bounds they reside, a certificate of the payment of said sum; all officers who have held or shall hold commissions in the militia of this state or of any state in the union, and have been or shall be regularly discharged, who are not hereinbefore absolutely exempted, who shall annually pay to the selectmen of the town, in which they reside, the sum of two dollars, and on or before the twentieth day of April annually

Conditional
exempts.

produce to the captain or commanding officer of the company, within whose bounds they reside, a certificate of such payment ; and all persons, who are or may hereafter be between the ages of forty and forty-five years, who shall constantly keep themselves furnished with the arms and equipments required by this act, and shall on the first Tuesday of May in each year, carry or send said arms and equipments for inspection to the captain or commanding officer of the company within whose bounds they reside, at the time he inspects his company.

SECT. 3. *And be it further enacted,* That each and every free, able bodied, white male citizen of this state, resident therein, who now is or hereafter may be of the age of eighteen years and under the age of forty-five years, or who shall hereafter come to reside in this state, (except such as are hereinbefore absolutely exempted,) shall be liable to do military duty in the company within whose bounds such citizen may reside, or into which he may have enlisted.

Persons liable to do military duty.

SECT. 4. *And be it further enacted,* That in all cases of doubt respecting the name or age of any person, supposed to be liable to do military duty, if such person, when enquired of by the captain or commanding officer of any company, shall neglect or refuse to give information, or shall give false answers or information in relation to his name or age, with intent to discharge himself from performing military duty, he shall forfeit the sum of five dollars for each offence, to be recovered by the captain or commanding officer of the company for the time being, within whose bounds such offender may reside, in an action of debt, before any justice of the peace. And if such person be a minor, the action may be against the master, parent or guardian of such minor.

Penalty for refusing to give information of name or age, &c.

SECT. 5. *And be it further enacted,* That any keeper of a tavern, or boarding-house, or any master or mistress of any dwelling-house, who shall refuse to give information of the name or names of any person residing with him or her, liable to do military duty, when applied to for that purpose, by the commanding officer of the company, within the bounds of which such tavern, boarding house or dwelling house is situated, or when applied to for that purpose by any person acting under the orders of such commanding officer, or shall give any false information upon such application, shall forfeit the sum of five dollars, to be recovered by the commanding officer of such company by action of debt, before any justice of the peace in the county where such offender resides.

Keepers of taverns, boarding houses, & to give names of boarders, &c.

SECT. 6. *And be it further enacted,* That whenever the commanding officer of a company shall parade his company

D. 1829.
Captain to
issue orders
or training.

Evidence
of enrol-
ment.

Warning to
train.

Fine for
neglecting
to warn.

Evidence of
warning.

Return or
record
amended.

for inspection, training or review, he shall issue his orders to one or more of the sergeants of his company, not being the orderly sergeant, or if there be no sergeant, or no sergeant excepting the orderly sergeant, then to one or more of the privates of his company, requiring him or them to notify the whole or part of the non-commissioned officers and privates belonging to his company, whose names shall be inserted in or annexed to such orders, to appear at the time and place appointed ; and the insertion of the name of any person in such orders, or its annexation thereto, shall in all cases be evidence that such person is duly enrolled in such company. And it shall be the duty of the sergeant or sergeants, private or privates, to whom such orders shall be issued, seasonably to give notice to each and every person he or they shall have been ordered to notify, by delivering to each of them in person, or leaving at his last and usual place of abode, a written or printed order ; and no notice shall be legal for any training, inspection or review, unless the same shall be given or left at least four days previous to the time appointed therefor. *Provided always*, that in case of actual or threatened invasion, insurrection or other emergency, any notice, however short, shall be legal and binding. And any legal notice or warning, to any person, to attend any training, inspection or review shall be legal notice of his enrolment.

SECT. 7. *And be it further enacted*, That if any sergeant or private shall refuse or neglect to notify and warn any of the non-commissioned officers or privates of the company, to which he belongs (being thereto ordered by the captain or commanding officer of the company,) he shall pay a fine of two dollars for each non-commissioned officer and private he shall neglect to warn, to be recovered by such captain or commanding officer, in an action of debt before any court or justice of competent jurisdiction.

SECT. 8. *And be it further enacted*, That in all cases the return of the person, who shall have received orders to notify the whole or any part of the men of any company, to appear at the time and place appointed for military duty, made on the back of the order to him directed, and sworn to before a justice of the peace, shall be received as evidence, that due notice was given, unless invalidated by other evidence ; and the said orders and return being recorded in the company records, a copy of the record thereof, certified by the clerk of such company, shall be received as evidence, and shall have the same force and effect, as said original orders and return. And the person who shall notify the men or the clerk who shall keep the record may in any stage of the proceedings

Militia.

amend the return or the record so that all the facts may appear. And any non-commissioned officer or private, who shall be convicted of making a false return, shall be liable to the pains and penalties provided in other cases of perjury.

A. D. H
Punish-
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false ret:

SECT. 9. *And be it further enacted,* That whenever any company shall be paraded, the commanding officer of such company is hereby authorized verbally to notify the men so paraded, to appear on some future day, not exceeding thirty days from the time of such notification, and such notification shall be legal, as it respects the men present, and a record of such notification, together with the names of the noncommissioned officers and privates present, being made in the orderly book of the company and signed by such commanding officer and the clerk of the company, the said record or a copy thereof, certified by said clerk, shall be received as evidence, that due notice was given, unless invalidated by other evidence.

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Evidence
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warning

SECT. 10. *And be it further enacted,* That if any noncommissioned officer or private, after being duly notified to attend any training, inspection or review, shall unnecessarily neglect to appear or shall be at any time absent from his guard, platoon or company, without leave from the commanding officer of the company, before such company shall be dismissed, he shall pay a fine of three dollars for each regimental, brigade or division muster, and two dollars for each company inspection or training. And if any noncommissioned officer or private of any company of cavalry, artillery, light infantry, grenadiers or riflemen shall appear at a company or regimental muster without the uniform of the company to which he belongs, he shall pay a fine of three dollars for each regimental muster, and two dollars for each company inspection or training.

Fine for
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Fine or
cavalry
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SECT. 11. *And be it further enacted,* That signals of alarm may be appointed by the captain-general, and may by him be altered from time to time, proper notice thereof being given; and if any noncommissioned officer or private shall, upon the alarm being given, unnecessarily neglect to appear properly armed and equipped at such time and place as the commanding officer shall appoint, due notice having been given him of such signals and of the time and place so appointed, he shall pay a fine of ten dollars.

Signals
alarm.

SECT. 12. *And be it further enacted,* That every noncommissioned officer and private shall yield entire obedience to the commands of his superior officers; and if any noncommissioned officer or private shall prove refractory or disobedient, while on duty at any regimental muster or company

Private
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D. 1829. training, or shall insult or abuse his officers, or either of them, or treat them with disrespect, such noncommissioned officer or private shall pay a fine of two dollars for each offence.

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equip-
ments.

SECT. 13. *And be it further enacted,* That every noncommissioned officer and private, who shall appear on parade, not completely equipped according to law, shall forfeit and pay the following sums as fines for the equipments, with which he shall not be provided, to wit ; a gun, eighty cents ; steel or iron ramrod, twenty cents ; bayonet, scabbard and belt, twenty five cents ; rifle, one dollar ; pistol, forty cents ; sword, forty cents ; two spare flints, ten cents ; priming wire and brush, ten cents ; cartridge box capable of containing twenty four rounds, twenty five cents ; cavalry cartridge box, twenty five cents ; knapsack, twenty cents ; canteen, ten cents ; valise, twenty cents ; holsters, twenty cents. And if any noncommissioned officer or private shall neglect to have his gun and bayonet, or rifle, or pistols clean and in good order, he shall pay a fine of fifty cents. And if any noncommissioned officer or private shall come on the parade with his musket or pistol loaded with powder and ball, slugs or shot, he shall forfeit and pay the sum of two dollars.

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parade with
loaded mus-
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SECT. 14. *And be it further enacted,* That whenever any company shall be paraded for training, inspection or review, it shall be the duty of the clerk of said company to make a roll of the delinquents at such training, in which shall be set down the names of such delinquents, together with such description of their respective offences, in substance, as is required to be inserted in complaints for the recovery of the fines imposed by law on such offences. And such roll, being signed by the commanding officer of such company, and countersigned by such clerk, shall be received as evidence of the offences of such delinquents. And such roll being recorded in the records of such company, or being originally made in the orderly book of such company, a copy of such record or original, certified by the clerk of the company, shall be received as evidence, and shall have the same force and effect, as the said original roll. And in case there be no clerk, or in case of his absence, the commanding officer may appoint a clerk for that time, who shall have the powers, and perform the duties of clerk. *Provided however,* that in case no such roll shall have been made, or in case it shall be insufficient, any other evidence of such offences shall be admitted.

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SECT. 15. *And be it further enacted,* That if any noncommissioned officer or private shall, upon any muster or training day or evening of the same day, discharge or fire off

any gun or pistol in any public road or near thereto, or in or near to any house, or on or near the place of parade, without permission first had from a commissioned officer, he shall forfeit the sum of two dollars for each offence, to be recovered by action of debt, before any justice of the peace within the county, where such offence may be committed, by any person, who shall sue for the same, with costs of prosecution.

A. D. 1829.
Guns not to be discharged in or near public roads.

SECT. 16. *And be it further enacted,* That parents, masters and guardians shall be liable for all fines and penalties incurred by persons under their care, and may at the choice of the person prosecuting therefor be proceeded against in the manner provided by this act, against other delinquents, or the persons, incurring such penalties or fines, may be proceeded against in the same manner, they might be, if they were of full age.

Parents, masters and guardians liable for fines.

SECT. 17. *And be it further enacted,* That if any noncommissioned officer or private shall be guilty of any offence, which is, by this act, punishable by fine, it shall be the duty of the clerk of the company, to which such offender belongs, after the expiration of fifteen days, and within sixty days, after the day of any parade of the company, to which he belongs, either company or regimental, to exhibit to some justice of the peace for the county, in which such offender resides, not being at the same time a military officer, a complaint, under oath, against every such noncommissioned officer or private, who shall not have been excused by the commanding officer of the company, or who shall not have paid to such clerk the fine or fines by him incurred, within the fifteen days aforesaid from the day of such parade: which complaint shall be in substance as follows, to wit :

Clerk to exhibit complaint for offences.

To A. J. a justice of the peace for the county of

B. C. of in the county of clerk of the company commanded by complains, that the following persons, being liable to do military duty in said company, and being duly notified to meet with said company on the parade near in on the day of in the year of our Lord at o'clock in the noon, completely armed and equipped according to law, for inspection and military exercise, were severally guilty of the offences set against their respective names :

Form of complaint.

| Names. | Offences. |
|-----------------|--|
| A. B. sergeant. | } Did unnecessarily neglect to appear on said day. |
| C. D. private. | |
| E. F. | } Was deficient of a gun on said day. |
| G. H. | |
| | } Did come on parade with his gun loaded with powder and |
| | |

A. D. 1829. (And in the same manner substantially all other offences are to be set forth, against offending noncommissioned officers and privates,) contrary to the form of the statute in such case made and provided and against the peace and dignity of the state.

Wherefore, the said B. C. prays, that each of the persons above named may be summoned to appear and answer to the said complaint.

Dated at the day of A. D.

B. C.

ss.

A. D.

B. C. made oath, that the above complaint, by him signed, is, in his belief, true, before me,

A. J. justice of the peace.

Form of
summons

And the justice, to whom such complaint shall be exhibited, shall issue a summons to each of the persons complained against as aforesaid, which shall be, in substance, as follows :

State of New-Hampshire.

ss. To the sheriff of said county of
or his deputy, or to either of the consta-

{ Seal. } bles of the town of in said county,

Greeting.

Whereas, B. C. of in the county of clerk of the company commanded by has exhibited to me, A. J. a justice of the peace for said county, his complaint on oath, that A. B. of in the county of being liable to do military duty in said company, and being duly notified to meet with said company on the parade near in on the day of A. D. at o'clock in the noon, completely armed and equipped, according to law, for inspection and military exercise, did unnecessarily neglect to appear on said day, (describing the offence substantially as in the complaint) You are therefore, in the name of the state of New-Hampshire, required to summon the said A. B. to appear before me, the said justice, at in on the day of next, at o'clock in the noon, to answer to the said complaint. Hereof fail not. And make due return of this writ, with your doings thereon, unto myself at or before the time aforesaid.

Dated at the day of A. D.

A. J. justice of the peace.

Service of
summons.

And such summons shall be served in like manner, as other writs of summons should by law be served, at least sev-

en days before the time of trial. And it shall be lawful to amend such complaint or summons in any stage of the proceedings, in any court, without payment of costs.

A. D. 186
Complain
amended

SECT. 18. *And be it further enacted,* That if any noncommissioned officer or private, being duly summoned, shall neglect to appear, judgment shall be thereupon rendered against him. And upon the trial of any such complaint, no evidence of any disability, by reason of any bodily infirmity or debility, shall be admitted, except the certificate of the surgeon and surgeon's mate of the regiment, to which the person alleging such disability shall belong, unless he shall first prove, that by reason of such infirmity or debility, he was unable to apply to such surgeon or surgeon's mate for a certificate, and that as soon as he was able, he left or caused to be left with the clerk of the company, in which he was warned to do military duty, a written notice, stating such infirmity or debility, and the reason he had not obtained a certificate ; nor shall any evidence of any excuse for non-appearance at any company training or regimental muster be admitted, unless it be shown, that within fifteen days of the training or muster, the person alleging the same was warned to attend, he left with the clerk of the company, in which he was so warned, a written notice of such excuse, or unless he shall first prove, that he was absent from the town, in which such company is formed, when the notice to attend such training or muster was left, and did not return, until said fifteen days were expired, and that immediately on his return, he left with the clerk the written notice aforesaid. And if any orders, received or issued by the commanding officer of any company, shall be recorded in the orderly book of such company, a copy of such record, certified by the clerk of such company, shall be received as evidence of such orders.

Trial.
What ev
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Excuse f
nonappea
ance.

Evidence
company
order.

SECT. 19. *And be it further enacted,* That if judgment shall be rendered against any person complained against, he shall be adjudged to pay the fine imposed by this act on the offence charged against him, with costs of prosecution. And the person, against whom such judgment shall be rendered, may appeal therefrom to the court of common pleas next to be holden in such county. *Provided,* the person so appealing shall recognize with sufficient sureties to enter and prosecute his appeal at the court appealed to, and to pay such fine and costs as the said court shall adjudge against him. But if no appeal be entered, and the person against whom judgment shall be rendered shall neglect, for the space of two days thereafter, to pay to such justice the amount of such fine and costs, the said justice shall issue execution against him in substance as, follows :

Judgmen
for fine &
costs.

Appeal.

A. D. 1829.

State of New-Hampshire.

Form of execution.

ss. To the sheriff of said county, or his deputy, or to either of the constables of the town of Greeting, in said county,

Whereas, upon the complaint B. C. clerk of the company commanded by in said county, on the day of A. D. before me, A. J. a justice of the peace for the county aforesaid, judgment was rendered against A. B. of in said county for the sum of fine, and costs of prosecution, as to us appears of record, whereof execution remains to be done : We command you, therefore, that of the money of the said A. B. or of his goods and chattels, within your precinct, you cause to be levied the aforesaid sums, being in the whole ; and also, that out of the money, goods and chattels of the said A. B. you levy twenty-five cents more for this writ, together with your own fees ; and for want of such money, goods or chattels of the said A. B. to be by him shewn to you, or found within your precinct, we command you to take the body of the said A. B. and him commit unto our gaol in ; and we command the keeper thereof accordingly to receive the said A. B. into our said gaol, and him safely keep, until he pay the aforesaid sums, with your fees, or that he be discharged by order of law. Hereof fail not, and make return of your doings herein, and of all monies by you levied, to me the said justice, within twenty days next coming. Witness our said justice at the day of A. D.

A. J. justice of the peace.

imprisonment in and discharge from gaol.

And any person committed to gaol on such execution shall have the liberty of the gaol yard, and shall be admitted to take the oath prescribed by law for poor debtors, and be discharged in the same manner, as if such execution had issued on a judgment in an action of debt.

ines to be paid over,

SECT. 20. And be it further enacted, That it shall be the duty of every justice of the peace, who shall receive any fine or cost by virtue of this act, to pay such fine to the clerk of the company, to which the offender belonged, and the cost to the several persons entitled thereto or their order. And the clerk of each company shall retain to his own use one fourth part of all fines received by him, and the residue he shall faithfully pay over to the commanding officer of the company, on demand, who shall give to such clerk his receipt therefor. And all fines and forfeitures, recovered by the commanding officer of any company, by virtue of this act, and all money paid him by the clerk as aforesaid, shall be expended in defraying the necessary expenses of such compa-

id expen-

Militia.

ny, in purchasing and repairing musical instruments, and instructing the musicians belonging to his company. And all monies received by the selectmen of any town, by virtue of this act, shall be by them paid over to the treasurer of this state. A. D. 18
Fines p
to state
treasur

SECT. 21. *And be it further enacted,* That at the annual inspection in May, it shall be the duty of the captain of each company to read this act, or cause it to be read to his company, except the first and second sections. Act to be
read.

SECT. 22. *And be it further enacted,* That this act shall not take effect until the first day of March next. Takes
effect.

Approved January 3, 1829.

CHAP. CVII.

An act to establish the rates of toll at Piermont Bridge.
Approved January 3, 1829.

CHAP. CVIII.

An act authorizing the Dover Bank to reduce their capital stock. *Approved January 3, 1829.*

CHAP. CIX.

AN ACT regulating prisons.

SECTION I. **BE** it enacted by the senate and house of representatives in general court convened, That every gaoler or prison keeper shall, at the opening of the superior court of judicature and court of common pleas respectively, return a list, and certify to said courts respectively, the names of all prisoners then in his custody, with the cause of their commitment, and also the names of all prisoners that shall be committed during the sitting of said courts, that the said courts respectively may take cognizance thereof, and proceed to make deliverance of such prisoners according to law, for the crimes proper to the jurisdiction of the same courts. Passed J
3, 182
Gaoler
return li
of prison
to court