

ACTS

PASSED AT A

GENERAL ASSEMBLY

OF THE

COMMONWEALTH.

OF

VIRGINIA,

BEGUN AND HELD AT THE CAPITOL,

CITY OF RICHMOND,

ON MONDAY, THE SECOND DAY OF DECEMBER, IN THE YEAR OF OUR LORD, ONE
THOUSAND EIGHT HUNDRED AND THIRTY-THREE, AND OF THE
COMMONWEALTH THE FIFTY-EIGHTH.

RICHMOND:

PRINTED BY THOMAS RITCHIE
Printer to the Commonwealth.

1834.

- teen, well bound in calf and lettered, and the sum necessary for such purchase, shall be paid out of any money in the treasury not otherwise appropriated, upon the warrant of the auditor of public accounts by order of the governor, at any time after the said copies shall have been delivered: *Provided*, That the price thereof shall not exceed five dollars for each copy.
- Price per copy.**
- To whom Code to be distributed.** 2. *Be it further enacted*, That when the copies aforesaid shall have been purchased and received, it shall be the duty of the governor to cause to be delivered one copy thereof to each acting justice of the peace within this commonwealth, who shall not heretofore have received a copy of the same, to be held by such justice during his continuance in office; and every justice of the peace at the time of the delivery of such copy, shall give to the clerk of the county or corporation court, a receipt conditioned for the return of the same to the said clerk, upon the expiration of the office of such justice, by resignation, removal, death or other legal disability; which receipts it shall be the duty of the clerks of the county and corporation courts, respectively to register and preserve. Any justice of the peace or his representatives failing to return such copy according to his receipt as aforesaid, shall, for every such failure, forfeit and pay the sum of ten dollars, to be recovered by motion after ten days notice, in any court of record, for the commonwealth to the use of the literary fund.
- Justices to give receipts.**
- Clerks of courts to register receipts. Penalty on justice failing to return copy.**
- Commencement.** 3. This act shall commence and be in force from and after the passing thereof.

CHAP. 22.—An ACT for the better organization of the militia.

[Passed March 8, 1834.]

- Preamble.** Whereas, a well regulated militia constitutes the great defence of a free people, and it is expedient to carry into effect the laws of congress providing for the national defence, by establishing an uniform militia throughout the United States:
- Fourth division. Brigades.—Twenty-first. Ninth. Eighth. Second. Fourteenth.** 1. *Be it therefore enacted*, That the counties of Accomack and Northampton shall compose the twenty-first brigade; the counties of Princess Anne, Norfolk, and the borough of Norfolk, the ninth brigade; the counties of Isle of Wight, Nansemond, Surry, Southampton, Sussex and Prince George, the eighth brigade; the counties of Elizabeth City, Warwick, York, James City, Charles City, New Kent, Hanover, Henrico, and the cities of Richmond and Williamsburg, the second brigade; the counties of Gloucester, Matthews, Middlesex, Essex, King William, King & Queen, Lancaster, Northumberland, Richmond and Westmoreland, the fourteenth brigade; and the said brigades shall compose the fourth division: That the counties of Loudoun and Fairfax shall compose the sixth brigade; the counties of Fauquier, Prince William, Stafford and King George, the fifth brigade; the counties of Culpeper, Rappahannock, Madison, Orange, Spotsylvania and Caroline, the first brigade; the counties of Louisa, Goochland, Fluvanna, Albemarle, Nelson and Amherst, the third brigade; and the said brigades shall compose the second division: That the counties of Frederick, Berkeley, Jefferson and Morgan, shall compose the sixteenth brigade; the counties of Augusta, Rockingham, Shenandoah and Page, the seventh brigade; the counties of Hampshire, Hardy and Pendleton, the eighteenth brigade; the counties of Monongalia, Preston, Ohio, and Brooke, the tenth brigade; the counties of Harrison, Tyler,
- Second division. Brigades.—Sixth. Fifth. First. Third.**
- Third division. Brigades.—Sixteenth. Seventh. Eighteenth. Tenth. Twentieth.**

Lewis, Randolph and Wood, the twentieth brigade; and the said brigades shall compose the third division: That the counties of Washington, Russell, Lee, Tazewell, Scott and Smyth, shall compose the seventeenth brigade; that the counties of Wythe, Montgomery, Giles, Monroe, Grayson and Floyd, shall compose the nineteenth brigade; the counties of Rockbridge, Botetourt, Greenbrier, Bath, Alleghany and Pocahontas, the thirteenth brigade; the counties of Nicholas, Kanawha, Mason, Cabell, Jackson, Fayette and Logan, the twenty-second brigade; and the said brigades shall compose the fifth division: That the counties of Henry, Patrick, Franklin, Campbell and Bedford, shall compose the twelfth brigade; the counties of Pittsylvania, Halifax, Charlotte and Prince Edward, the eleventh brigade; the counties of Dinwiddie, Greenville, Brunswick, Lunenburg and Mecklenburg, the fifteenth brigade; the counties of Chesterfield, Nottoway, Amelia, Powhatan, Cumberland and Buckingham, the fourth brigade; and the said brigades shall compose the first division.

Fifth division.
Brigades.—Seventeenth.
Nineteenth.
Thirtieth.

First division.
Brigades:
Twelfth.
Eleventh.
Fifteenth.
Fourth.

2. The several counties and corporations within this commonwealth shall constitute the battalions, portions of battalions, regiments, or portions of regiments, as now established: *Provided*, That it shall be lawful for the executive to divide or alter the regimental districts in the several counties, as circumstances may require; and it shall be the duty of the adjutant general annually to report to the executive such regiments as in the two last returns have been less in strength than three hundred rank and file: and such regiments may be consolidated with some adjoining one, or such an alteration made in the bounds of the neighboring regiments as to make its strength at least three hundred rank and file.

Battalions and regiments.

Executive may alter regimental districts.

Adjutant general's annual report concerning regiments. Regiments, when consolidated.

3. It shall be the duty of the executive to number by ballot, where the same has not already been done, the several divisions, brigades and regiments, and cause the same to be registered in the office of the adjutant general; and every commission hereafter issued by the governor as aforesaid, shall express the number of the division, brigade and regiment, respectively, to which the person obtaining the same shall belong.

Numbers of divisions, brigades and regiments, how made and where registered. Commissions to express the number of division, brigade and regiment, respectively, to which the person obtaining the same shall belong.

4. Every battalion shall, if convenient, be formed into four companies of the line, each company to consist of not less than fifty nor more than one hundred men, rank and file; and whenever any company district shall contain more than one hundred men, a new company district shall be created, or such an arrangement of the bounds of the adjoining company districts, at the discretion of the regimental court of enquiry, or board of officers, be made, as shall reduce their strength to some number within that limited by law; and in the event of the creation of a new company district, it shall constitute an additional company to the battalion of which it is a part; and whenever any company of the line shall be reduced to less than fifty rank and file, such company shall either be apportioned among the other companies of the battalion, or such an alteration shall be made in the bounds of the other companies, at the discretion of the regimental court of enquiry, or board of officers, as shall increase its strength to more than fifty rank and file.

Companies in battalions. Strength of companies. New companies how formed; or old ones reduced.

Companies too small, how dissolved or enlarged.

5. The militia of the city of Williamsburg, city of Richmond and borough of Norfolk, and town of Petersburg, shall be under the same rules and regulations as the different counties.

Regulations for militia of certain towns, same as in counties.

Adjutant general;
How appointed;
where to reside.

Governor may
cause his office to
be removed.

Major generals
and brigadier gen-
erals, how ap-
pointed; where to
reside; how com-
missioned.
Vacancies sup-
plied.

Other field offi-
cers.
How elected.
Company officers,
how elected.

Elections how de-
cided.

Elections of field
officers, how su-
perintended.

Other elections,
how.

To be certified to
governor.

Vacancies among
field officers, how
supplied.

Among company
officers.

6. There shall be an adjutant general for the militia of the state, to be appointed by joint vote of the two houses of the general assembly, who shall reside and keep his office at the seat of government: *Provided however*, That if, at any time, the public service shall render it expedient, the governor may direct the said adjutant general to remove, with his office, to any other place within this state. And there shall be a major general to each division, and a brigadier general to each brigade, to be appointed in like manner, and who shall reside within the limits of their respective commands, and shall be commissioned by the governor; and whenever a vacancy shall occur, during the recess of the legislature, in the office of adjutant general, it shall be lawful for the governor of this commonwealth, with the advice of council, to fill such vacancy, and to issue a commission therefor, which shall expire at the end of the next session of the legislature, or at such time previous thereto, as an appointment to the office shall be made by the general assembly. And there shall be a colonel, lieutenant colonel and major to each regiment of infantry of the line, to be elected by the company officers of such regiment and others attached thereto; and there shall be a captain and four lieutenants to each company of infantry of the line, to be elected by the non-commissioned officers, musicians and privates composing such companies respectively. All such elections shall be decided by a majority of the officers of the regiment, or men composing the company, as the case may be, and shall be superintended and conducted in the manner hereinafter prescribed.

7. Every election of a field officer of a regiment shall be superintended by the three officers of highest grade in the regiment, who may be present, and not themselves candidates for promotion in the said election. And all other elections of officers of the militia shall be superintended by the commandant of the regiment, or by such officer as he may designate for that service. The officer or officers thus superintending, shall see that the election is conducted fairly and justly; and when a majority of the votes present shall have been given to any individual, the officer or officers superintending, shall certify the said election to the governor, who shall thereupon commission the person so elected.

8. When any vacancy shall occur, by death, resignation, removal or otherwise, if it be a vacancy of a field officer of the line, it shall be the duty of the commandant of the regiment to order the commissioned officers of the several companies composing such regiment, and others thereto attached, to assemble on an appointed day at the place at which such regiment usually musters, or at the place at which the officers of such regiment are usually trained, for the purpose of holding an election for an officer or officers to supply such vacancy or vacancies; and if it be a vacancy of a company officer, it shall be the duty of the commandant of the regiment, or such officer as he may designate for that service, to order such company to assemble on some day to be by him, or such designated officer appointed and specified in the order, at its usual place of mustering, for the purpose of holding an election for an officer or officers to supply such vacancy or vacancies, unless a regular muster of the regiment, or of the company, as the case may be, in which such vacancy exists, is so soon to occur, as in the discretion of such officer to render such proceeding unnecessary.

9. Each commandant of a company shall appoint to his company five sergeants and six corporals, to be approved by the commandant of his battalion. Non-commissioned officers, how appointed.

10. The major generals, brigadier generals and colonels of the militia, shall each appoint their own staff. Generals to appoint their staff.

11. The staff of a major general shall consist of one division inspector, with the brevet rank, pay and emoluments of a lieutenant colonel of infantry when in actual service; two aids-de-camp, and one division quarter master, each with the brevet rank, pay and emoluments of a major of infantry, when in actual service. Major general's staff; Their rank and pay.

12. The staff of a brigadier general shall consist of one brigade inspector, with the brevet rank, pay and emoluments of a major of infantry; one aid-de-camp, with the rank, pay and emoluments of a captain of infantry, with an addition of sixteen dollars per month pay, and forage for two horses, when in actual service, and one brigade quarter master, with the brevet rank, pay and emoluments of a captain of infantry, and forage for two horses, when in actual service. Brigadier general's staff. Rank, pay and emoluments.

13. The brigade inspectors shall reside within the limits of the brigades for which they are appointed, and the governor shall commission the several major generals, brigadier generals, and the adjutant general, who may be hereafter appointed pursuant to this act, and all vacancies hereafter occurring in any of the said offices, shall be supplied by appointments in like manner to be made. Brigade inspectors, where to reside. Generals to be commissioned by the governor.

14. The staff of a colonel shall consist, when called into actual service, of one adjutant, one quarter master, one pay master, one surgeon, two surgeon's mates, one sergeant major, one quarter master sergeant, and two principal musicians. The colonel shall cause the pay master and quarter master to give bond and security to the governor, for the time being, and his successors, in the sum of seven thousand dollars, for the faithful discharge of their respective duties. And in time of peace the regimental staff shall consist of one adjutant, one quarter master, one pay master, one sergeant major, and one quarter master sergeant, one surgeon, and one surgeon's mate; and it shall be the duty of the adjutant to attend the several regimental and battalion musters, as also, the meeting of the officers within his regiment, to assist in the necessary training of the militia; and he shall receive for such service such compensation as shall be adjudged and allowed by the regimental court of enquiry, not exceeding four dollars for each day he shall attend the regimental and battalion musters and training of the officers of the regiment, to be paid by order of the commandant of the regiment, out of the fines to be collected by virtue of this act; and it shall also be the duty of the sergeant major to attend the regimental and battalion musters, and the training of the officers, and he may be allowed by the regimental court of enquiry, a compensation for his services, not exceeding two dollars per day for each day he may attend the regimental and battalion musters; and it shall be the duty of the surgeon and surgeon's mate to attend the regimental muster, and regimental court of enquiry; and it shall also be the duty of the pay master and quarter master to attend the regimental muster. Colonel's staff. Pay master and quarter masters to give bond and security. Regimental staff, in peace. Adjutant to attend regimental and battalion musters, and trainings of officers. His compensation. Flow paid. Sergeant major to attend regimental and battalion musters and trainings. His compensation. Surgeon and surgeon's mate to attend regimental muster and court of enquiry. Pay master and quarter master to attend regimental muster.

15. And whereas inconveniences have arisen from the want of a safe and speedy conveyance of orders from commandants of divisions and brigades respecting the militia of the commonwealth, for remedy whereof: *Be it enacted*, That the commandants of divisions Division and bri-

gado orders, how transmitted, and person employed, how compensated.

When regimental orders may be transmitted in like manner.
Brevet rank, how bestowed.

When and how officers may resign.

Proviso as to officers in actual service.
Where change of residence to be considered resignation.

Supernumerary officers to return to ranks.

What service to entitle officer to exemption from duty in peace.

Oaths of militia officers;

By whom administered.

Form thereof.

and brigades are hereby authorized and empowered to employ some person in their respective districts to convey all such orders, who shall receive such compensation as the court of enquiry of the regiment in whose district he may reside, shall think proper, not exceeding three dollars per day, on his producing his certificate to the court, of his having discharged the said services; and it shall be the duty of the auditor (by order of the executive) to issue his warrant on the fund arising from militia fines, and the treasurer shall pay the amount thereof; but in case of extraordinary service, the executive, upon the certificate of the officer employing such expresses may allow such additional compensation as may be judged reasonable: *Provided, nevertheless, That in cases of emergency a like power shall be exercised by commandants of regiments.*

16. The governor shall be, and he is hereby authorized, at any time, to bestow brevet rank upon any person in actual service, for distinguished military merit.

17. Any officer of the militia, not under arrest at the time, and who shall have held a commission at least three years, may, whenever he shall think proper, resign his commission, by tendering the same, or by a letter of resignation, if he be an officer above the grade of lieutenant colonel, or if he be a commandant of a regiment, to the governor; or if below the grade of colonel, to the commandant of the regiment to which he may be attached, who shall immediately give notice to the proper officer, in order that the vacancy may be supplied. For good cause, however, the governor or commandant of the regiment may permit such officer to resign at any time: *Provided, however, That no officer in actual service shall avail himself of this privilege, without the permission in writing of the commandant of the troops with which he shall be serving; and any officer who shall remove from his county and the bounds of his regiment, or shall have ceased to perform the duties of his office for twelve months, or any officer of the militia of this commonwealth who shall remain out of the limits of the state for more than twelve months after he shall have been elected or appointed, shall be considered to have resigned his office; and the vacancy thereby occasioned shall be filled as in other cases, unless such officer shall be employed abroad in the service of the state, or of the United States.*

18. There shall be in future no supernumerary officers in the militia; and the commissions of all those who hold no command shall be deemed null and void, and the persons holding them, unless otherwise exempt, shall return to the ranks. No officer of the militia, after serving seven years successively, on resigning his commission, shall be compelled to perform military duty in time of peace, but shall be kept enrolled for service in time of war.

19. Each and every officer who may be hereafter appointed and commissioned in manner aforesaid, shall, previous to his entering on the execution of his office, take the following oaths, (to be administered by any justice of the peace or clerk of the county or corporation court,) to wit: "*I, do swear that I will be faithful and true to the commonwealth of Virginia, of which I profess myself to be a citizen, and that I will faithfully and justly execute the office of , in the militia thereof, according to the best of my skill and judgment. So help me God.*" "*I do solemnly swear or affirm, (as the case may be,) that I have not been engaged in a duel, by sending or accepting a challenge to fight a duel, or by*

fighting a duel, or in any other manner, in violation of the act, entitled, 'an act to suppress duelling,' since the passage of that act, nor will I be so concerned, directly or indirectly, in such duel, during my continuance in office. So help me God." The justice of the peace or clerk administering such oath, shall certify the same to the commandant of the regiment to which such officer may belong, or to which he may be attached; and it shall be the duty of the officer qualifying, to deliver such certificate to the commandant of his regiment, within sixty days from the time he shall have received his commission, and the commandant shall cause the same to be entered in the order book of his regiment; and every person hereafter commissioned as a field officer, captain or subaltern, shall, within sixty days after he shall have received his commission, take the oaths hereby prescribed; and, in case of failure, he shall be considered as having vacated his commission, and the vacancy thereby occasioned shall be filled as in other cases.

Oath to be certified to commandant of regiment.

Within what time to qualify.

20. In all cases of death, absence or resignation of any major general, brigadier general, colonel, lieutenant colonel, major, captain or lieutenant, the next officer in rank in his respective command, shall be considered as the commanding officer during such vacancy, and liable to perform the duties required by this act, and for neglect therein, shall incur the penalties annexed thereto.

Next officer in rank to perform duties in case of vacancies.

21. The adjutant general shall have the brevet rank of a brigadier general. He shall be and is hereby authorized and required to direct returns and reports to be made to him of the strength and condition of the militia; the state of the public arms and accoutrements and other public property applicable to military purposes, at least once a year, and whenever he may be required by the executive of the commonwealth.

Adjutant general's rank. Returns of strength of militia, state of arms, &c. how often to be made to him.

22. It shall be his duty to prepare general regulations, defining and prescribing the respective duties of the different departments of the militia, which, when approved by the executive, shall be respected and obeyed, until altered or revoked by the same authority; and the said general regulations thus prepared and approved, shall be recorded in the adjutant general's office, and a copy thereof laid before the general assembly at their next session.

Adjutant general to define duties of different departments.

Regulations to be recorded and laid before legislature.

23. The offices of quarter-master general and commissary general of ordnance, shall be attached to that of the adjutant general, who shall be held responsible for the performance of all the duties hereby attached to those offices; and he shall be allowed five hundred dollars per annum, payable quarterly, in lieu of all other compensation.

Offices of quarter-master general and commissary general of ordnance attached to adjutant general's office. His salary.

24. The adjutant general shall take charge of the quarter-master's department throughout the state, and shall have power to issue orders to all quarter-masters, requiring of them such returns and reports, and giving them such instructions as he may deem proper and necessary for the security and preservation of the public property.

Quarter-master's department under charge of adjutant general. May require reports of quarter masters.

25. It shall be his duty as commissary general of ordnance, to direct the inspection and proving of all pieces of ordnance, cannon balls, shells and shot, procured for the use of the state, and to direct the construction of all carriages, and every apparatus for ordnance for garrison and field service, and all ammunition wagons and travelling forges.

Duty as commissary general of ordnance.

Inspection of ammunition, for garrison and field service.
Inspection of arms, ordnance, &c. at forts and arsenals.

26. He shall have the direction of the laboratories, the inspection and proving of the public powder, and the preparing of all kinds of ammunition for garrison and field service, and shall, at least once in every twelve months, examine into the state and condition of all arms, ordnance, carriages, ammunition and apparatus in the respective fortresses, magazines and arsenals, and cause the same to be preserved and kept in good order.

To execute executive orders.
When to make returns of ordnance, arms, &c.

27. He shall also execute all orders issued by the executive, and shall transmit to them, at least once in every three months, a correct return of all ordnance, arms, ammunition and military stores in the respective fortresses, magazines and arsenals, with a statement of their order, quality and condition; and also what may be necessary to keep up an ample supply of each and every article wanted for the public service.

Inspection of arms at armory.

28. He shall also inspect from time to time, the arms manufactured at the armory, and report to the executive any defect he may discover in them.

What laws to regulate his duties.

29. The duties aforesaid, shall be performed agreeably to the laws of the United States and of this state, and such regulations as may be prescribed by the executive of the state.

Who exempt from military duty.

30. The members of the council of state, judges of the superior courts, clerks of both houses of the general assembly, clerks of the superior and inferior courts, sheriffs, the attorney general, the treasurer and his clerks, the auditor of public accounts, the register of the land office, and their clerks, the second auditor and his clerks, the secretary of the commonwealth and his clerks, the clerk of the council, all inspectors of tobacco, all professors and tutors of the college of William and Mary, and all other public seminaries of learning, all ministers of the gospel licensed to preach according to the rules of their sect, who have previously taken before the court of their county the oath of fidelity to the commonwealth, keepers of the public county and corporation jails, and of the public hospitals, the keeper of the penitentiary and his assistants, and the door-keepers to the executive, shall be, and are hereby exempted from the performance of all or any part of the duties required by this act; and the cryers of the court of appeals, and chancery district courts, shall be exempt from fines for failing to attend musters, which may happen during the sitting of their respective courts.

Who from muster fines in certain cases.

Who exempt from ordinary militia duty.

31. The officers of the several banks established by authority of the commonwealth, and their respective branches, and all millers necessarily and personally employed in any grist mill, and all ferry-men necessarily and personally employed at any ferry established by law, the general agent and store-keeper of the penitentiary and his clerks, two of the clerks in the office of collector of tolls on the lower section of the James river canal, inspectors of boats, lock-gate keepers and overseers employed by the James river company, shall be, and are hereby exempted from the performance of the ordinary duties of militia men; but it shall be the duty of every commandant of a company, in the bounds of which any person so exempted shall reside, to enrol such person in his proper class in such company, as other persons are by law directed to be enrolled; and every such person shall be liable to be drafted and detailed for actual service, in the same manner as he would have been had this exemption not been made.

Such exempt to be enrolled and liable to be drafted for actual service.

32. The commandants of companies shall enrol every able-bodied white male citizen, between the ages of eighteen and forty-five, (except such as are exempted by this act,) resident within his district; and in all cases of doubt respecting the age of any person enrolled, or intended to be enrolled, in any company of militia, the party questioned shall prove his age, to the satisfaction of a majority of the officers of the company within whose bounds he may reside.

Who to be enrolled in militia.

Burden of proof as to age.

33. There shall be a muster of each company of militia, including volunteers and light companies, in the months of April and October in every year; and there shall be a muster of each battalion in the month of October or November in every year; and there shall be a muster of each regiment, or (if the court of enquiry or board of officers of such regiment hereinafter provided for, shall so elect,) of each battalion in each regiment, in the month of April or May in every year. Such musters shall take place at such times and places as the regimental courts of enquiry, or boards of officers of their respective regiments may from time to time direct and appoint; which said company, battalion and regimental musters shall continue one day and no longer: *Provided however*, That if from any cause, the times and places of any of the said musters shall not be appointed as is herein directed, it shall in such case be the duty of the commandant of the regiment in which such failure may occur, to designate, by order, the times and places of said musters: *And provided moreover*, That the regimental court of enquiry of each regiment, shall have power to dispense with the company muster in October, the battalion muster in October or November, and the extra musters of volunteer companies, required by this act.

Company musters, when.

Battalion musters;

Regimental musters;

How battalion musters may be substituted for regimental.

Time and place of musters, how appointed.

Musters, how long to continue.

When commandants of regiments may fix time and place of musters.

How full musters and extra musters of volunteers dispensed with.

34. The commandants of regiments shall give notice to the commandants of battalions, of the time of regimental and battalion musters, and the training of the officers, at least thirty days; and the commandants of battalions to the commandants of companies, at least twenty days, and the commandants of companies to their lieutenants, at least fifteen days, and to their sergeants of the time of regimental and battalion musters, at least ten days; and the sergeants to each person in their companies at least one day before such muster; and no notice of company musters shall be necessary. And the commandants of regiments shall moreover give notice to all other officers required by law to attend the trainings of their respective regiments, at least ten days previous thereto: *Provided however*, That where there is more than one regiment in a county, the senior commandant shall give the like notice to the other commandants of regiments in such county, at least thirty-five days previous thereto.

Notice of regimental and battalion musters and trainings of officers, by whom given and when.

No notice of company musters necessary.

Other officers required to attend trainings, how notified.

Where several regiments in county, who to give notice.

35. The notices given to the commandants of battalions shall be in writing, delivered to each person to be notified, or left at his usual place of abode. Nevertheless, all notices publicly given by commandants of companies at their respective musters, of any subsequent muster, shall be held and deemed as legal notice.

Notice to be in writing.

Public notice at musters legal.

36. Every officer and soldier shall appear at his respective muster ground on the day appointed, by eleven o'clock, *ante meridian*: *Provided however*, That the courts of enquiry, or boards of officers of regiments, within the several towns of the commonwealth, shall have power to fix the hour at which musters shall take place within their respective regimental districts. At every muster the commandant shall call his roll, and note down all delinquencies occurring

At what hour to appear at musters. In towns, how hour may be fixed.

Duties of commandants of companies at musters.

Return of delinquencies to commandants of battalions.

Commandants of regiments to return delinquent officers to courts of enquiry.

Return how certified.

Returns of delinquents in companies without officers, how made.

Such companies, how trained.

Compensation to officer for training such company.

Training and instruction required at regimental and battalion musters.

At company musters.

Officers on duty to appear in uniform.

Governor empowered to arm militia.

Arms, &c. of militia exempt from execution.

When militia exempt from arrest in civil cases.

Field officers of cavalry and artillery in each division to be commissioned.

Regiments of cavalry and artillery.

Strength of each troop of cavalry and company of artillery.

therein, and make return thereof, at or before the next battalion court of enquiry, to the commandant of his battalion, including all delinquencies which may have occurred, as well at the regimental and battalion musters, as at his company musters, since the last return of delinquents. And the commandants of regiments and battalions shall, at their respective regimental or battalion musters, (as the case may be,) note down all delinquent officers, and shall lay the same, together with the return of delinquencies from the commandants of companies, before the court of enquiry under this act, to take cognizance of, and determine on them; and to each of said returns shall be annexed the following certificate, to wit: "I

do certify, that the returns hereto annexed, contain all the delinquencies which have occurred since my last return, having duly examined the same."

37. Whenever hereafter there shall be no commissioned officer to any company of the militia of the line of this commonwealth, whereby the musters of such company are neglected, and no returns can be made of failures to attend the regular musters thereof for the assessment of fines, it shall be the duty of the commandant of the regiment to which such company may belong, to order his adjutant, or such other officer of the line of the regiment as he may think proper, to make out a list of all persons within the bounds of the said company subject to militia duty, and to attend the regular musters of such company, so long as it may remain thus destitute of such commissioned officer, to train the said company, and return all delinquents, as required of commandants of companies; and such adjutant or other officer shall be allowed by the regimental court of enquiry, for his services, a sum not exceeding four dollars for every day he shall be engaged.

38. It shall be the duty of all commandants of regiments and battalions, at their respective regimental and battalion musters, to keep the men on duty for the space of two hours at least; during which time they shall be diligently trained and instructed in battalion evolution, in strict conformity with the mode of discipline prescribed by congress. And it shall be the duty of commandants of companies, at their respective musters, to keep their men on duty for the space of two hours at least; a due proportion of which time they shall be drilled in the school of the soldier and company.

39. All officers of the militia shall, when on duty, appear in full uniform, and with side arms.

40. The governor shall be authorized to arm such portions of the militia of the line as he may deem expedient.

41. All arms, ammunition and equipments of the militia, shall be exempt from executions and distresses at all times, and their persons from arrest, and process in civil cases, while going to, continuing at, or returning from musters, and while in actual service.

42. The governor shall appoint and commission, to each division, one colonel, one lieutenant colonel, and one major of cavalry; and one colonel, one lieutenant colonel, and one major of artillery, to command the several troops and companies of cavalry and artillery, (as the case may be,) annexed to such division. And the cavalry and artillery annexed to each division, shall each compose one regiment, which regiments shall be denominated the first, second, *et cetera*, regiments of cavalry or artillery, (as the case may be.) Each troop of cavalry, and company of artillery, shall consist of not less

than forty-five nor more than one hundred men, to be commanded by one captain and four lieutenants, to be appointed and commissioned as officers of other volunteer companies are appointed and commissioned.

43. The cavalry and artillery shall be armed, accoutred, equipped, instructed and manœuvred according to the regulations prescribed for the United States' army. And it shall be competent for the governor to require any one or more of the companies of artillery, to perform the duties of light artillery; and when performing such duties, they shall be entitled to the pay, subsistence and forage of the same corps in the service of the United States.

44. There shall be to each troop of cavalry and company of artillery, eleven non-commissioned officers, to be elected by the troop or company, and two musicians, that is, five sergeants and six corporals; and to each troop of cavalry, two buglers, and to each company of artillery, one drummer and one fifer.

45. All officers of cavalry and artillery, except brigadier generals, shall attend the trainings of the officers of the regiments to which they shall be attached for duty, or in the bounds of which they may reside. It shall be the duty of commandants of troops and companies, and they are hereby required to attend and sit as members of courts of enquiry held in such regiments, as officers of such regiments are by this act required. And all officers of cavalry and artillery, of every rank, when ordered, shall attend and sit as members of courts martial: *Provided, however,* That nothing in this clause contained shall be so construed, as that troop and company officers shall not be trained with the officers of the regiment to which their respective troops and companies may be attached.

46. There shall be but one troop of cavalry and one company of artillery to each regiment of infantry within this state. Such troop or company may be raised by voluntary enlistment, within the county or bounds of the regiment to which the said troop or company shall be attached; and each man so enlisting, shall enlist for a term not less than three years. And in order to encourage volunteer companies, *It is enacted,* That those members of all volunteer companies, who shall produce to their regimental courts of enquiry a certificate from their commanding officer of seven years faithful service, and that they are expert in the use of their arms, and in their general duties, shall be exempt from militia duty, except in time of war, invasion or insurrection.

47. Each company of artillery which is now, or which may hereafter be equipped with ordnance, shall be allowed, for the hire of horses to draw their artillery and caissons, a sum of money not exceeding one dollar per day for each horse, at every muster required by law, which sum shall be adjudged by the regimental court of enquiry for the regiment to which such company may be attached, and shall be paid as other expenses are by this act provided to be paid.

48. Each troop of cavalry and company of artillery shall parade with the regiment to which they are attached, and with such battalion as the regimental court of enquiry shall direct; and the said troops and companies shall be governed by the same rules and regulations, and be subject to the like penalties as are by law directed with respect to the rest of the militia.

To be called into service by troops and companies.

When more than one company, to be commanded by field officer.

Uniform of cavalry and artillery.

Light infantry and rifle attached to each regiment.

Additional number of companies allowed in towns.

How enlisted, and for what time.

When company may be organized.

When volunteer company may be enlisted from different regiments.

Strength of volunteer companies of infantry and rifle. What commissioned officers. How elected and commissioned.

Such elections, how conducted.

Non commissioned officers.

Uniform of infantry, light infantry and rifle.

Officers of volunteers to attend trainings, and to sit on courts of enquiry; and courts martial, when ordered.

49. Whenever the cavalry and artillery of this commonwealth shall be ordered into service, they shall be called out by troops and companies, unless a smaller number shall be deemed necessary to perform the duty; and when more than one troop or company shall be called into service, a field officer of such corps shall be ordered to command them.

50. The cavalry and artillery of Virginia shall wear the uniform of those corps in the United States' army, unless the governor by proclamation shall prescribe a different uniform. But the cavalry of the state shall be uniformed alike, and the artillery of the state shall be uniformed alike: *Provided*, That nothing herein contained shall be so construed as to make it necessary to change the uniform of troops and companies now uniformed.

51. There shall hereafter be commissioned in each regiment of infantry of the line in this commonwealth, not more than two light companies of volunteers, to be denominated light infantry or rifle, (as the case may be;) and in the cities, towns and corporations of this commonwealth, there may be in addition to such light companies, any number of volunteer companies of infantry of the line, not exceeding four to each regiment, as may be recommended by the regimental court of enquiry for such regiment. All of which said volunteer companies shall be raised by voluntary enlistment within the bounds of the regiment to which they belong. And each man so enlisting, shall enlist for a term not less than three years. And when the minimum number required by this act shall have been enlisted, they shall proceed forthwith to the election of their officers as required by law: *Provided, however*, That whenever the boundary line of two or more adjoining regiments shall run through any town, the volunteer company or companies of any such town may be enlisted from either or any of said regiments, and be assigned by the commandant of the brigade to any one of said regiments he may designate.

52. Each volunteer company of infantry, light infantry and rifle, shall consist of not less than forty-five, nor more than one hundred men, to be commanded by one captain and four lieutenants, who shall be elected by a majority of their respective companies, and be commissioned as other militia officers are.

53. All elections for officers of volunteer companies shall be conducted as elections for other militia officers are required to be conducted by this act.

54. There shall be to each volunteer company aforesaid five sergeants and six corporals, to be elected by the company.

55. The infantry, light infantry and riflemen of Virginia, shall wear the uniform of those corps in the United States' army, unless the governor, by proclamation, shall prescribe a different uniform. But the infantry of the state shall be uniformed alike, the light infantry of the state shall be uniformed alike, and the riflemen of the state shall be uniformed alike: *Provided*, That nothing herein contained shall be so construed as to make it necessary to change the uniform of volunteer companies now uniformed.

56. All officers of volunteer companies shall attend the trainings of the officers of their regiments, and shall attend and sit as members of courts of enquiry, as the other officers of their regiments are by this act required; and when ordered, shall attend and sit as members of courts martial.

57. Whenever any volunteer company shall, for six months together, fall below the minimum number required by law, or shall, for six months together, be without uniform required by law, it may, at the discretion of the regimental court of enquiry, be dissolved, and its members enrolled in the respective companies of the line in whose districts they reside.

When volunteer companies may be dissolved.

58. Substitutes shall not be allowed in volunteer companies, except in cases of extreme urgency, and such cases shall be decided by the company to which the member offering a substitute belongs.

Substitutes not allowed in volunteer companies. Exception.

59. The volunteer companies shall muster at least twice in each year, in addition to the regimental, battalion and company musters before provided for. The commanding officers of the companies shall appoint the time for the two extra musters herein required, and report such appointment to the commanding officer of the regiment; and for failing to appoint and order such musters, and making report thereof to the commandant of the regiment, they shall be by him reported to the regimental court of enquiry, and shall be fined not less than five, nor more than ten dollars for every such failure. All delinquents for such extra musters shall be returned to the courts of enquiry as other delinquents are returned, and without a reasonable excuse, shall be fined, if an officer, not less than one, nor more than two dollars; and if a non-commissioned officer or private, not less than fifty cents, nor more than one dollar for each delinquency; and the fines thus assessed shall be furnished to the sheriff, or such other person as the company may appoint, by the clerk of the court of enquiry, as in other cases, and by him collected. The amount collected by the sheriff or such other person shall, after deducting ten per centum for his services, be paid by him to the treasurer or treasurers of the company or companies to which the delinquent may belong, to be disposed of by such companies as they may deem proper. And in case the sheriff or such other person shall fail to account for and pay over the said fines, the treasurer shall recover the same upon motion, on ten days notice in the court of the county in which the sheriff or such other person shall reside.

Extra musters of volunteer companies.

Time for such musters, how fixed. Report to commandant of regiment. Penalty for failure.

Delinquents, how reported.

Fines.

How collected.

Commission for collection. Amount collected, to whom paid, and how disposed of.

Remedy against collector failing to account.

60. All volunteer companies may adopt by-laws for their own government, and such laws, provided they do not conflict with the laws or constitution of the state, or of the United States, shall be obligatory upon their members.

Volunteer companies may prescribe by-laws.

61. Whenever the volunteers of this commonwealth are ordered into service, they shall be called out by companies, unless a smaller number shall be deemed necessary to perform the duty: and, to the end that they may be at all times ready and efficient, they shall be furnished with the necessary arms and accoutrements; *Provided, however,* That the governor shall not be required to furnish arms to any volunteer company, unless he shall have previously received from the commandant of the regiment to which such company may belong, a certificate, stating that such company is provided with uniform, in pursuance of the provisions of this act.

Volunteers to be called out by companies.

To be armed and accoutred.

Certificate required, that company is provided with uniform.

62. In addition to other returns required by this act, it shall be the duty of the commandant of each regiment to report to the regimental courts of enquiry, annually, the strength of each volunteer company belonging or attached to his regiment. And it shall moreover be the duty of each commandant of a volunteer company to report the strength of his company at each battalion muster to the

Commandants of regiments to report strength of volunteer companies to courts of enquiry.

Strength of companies to be also reported to commandants of battalions.

commandant of the battalion, who shall lay the same before the next regimental court of enquiry.

When militia not allowed to join volunteer companies.

63. It shall not be lawful for any militia man, belonging to the infantry of the line, to join any volunteer company, after such company shall have performed a tour of duty, either in the service of this state or of the United States, until twelve months after such volunteer company shall have been discharged from such tour of duty; unless such militia man shall have previously performed a like tour of duty: *Provided, however,* That nothing herein contained shall prevent young men, arriving at the age of eighteen years, and who shall not have been enrolled in any militia company of the line, from joining any volunteer company within their county or corporation.

Trainings of officers by commandants of regiments, when and where;

64. And for more effectually preserving and keeping up a spirit and knowledge of military discipline, the commissioned officers, adjutants and sergeant majors of the regiments to which they belong or may be attached, shall meet together once in every year, for the purpose of being trained and instructed by the commandant of the regiment in the system prescribed by congress, the days and place of meeting to be fixed on by the commandant of the regiment, within the months of April or May in each year, immediately preceding the regimental muster, which training shall continue three days and no longer.

And how long.

Roll to be called daily, and delinquencies reported. Where several regiments in county, training to be at court-house. Time how fixed.

65. The commandant shall call the roll on each day, and report the delinquencies to the succeeding regimental court of enquiry: *Provided always,* That where there is more than one regiment in a county, the officers of each regiment shall meet together at the courthouse of the county, at such time as the senior colonel in the county may appoint, for the purpose of being trained as aforesaid; and the senior officer present shall command, and the commandants of the respective regiments shall call the rolls, and report the delinquents to their respective courts of enquiry; but it shall be the duty of the senior officer to require the several commandants of regiments present, occasionally to take command of and conduct the drill.

Who to command. Who to call rolls and report delinquents. Commandants of regiments to be required to drill.

Regimental music, and music for trainings, how employed. Battalion and company music.

66. The commandants of regiments shall each employ one drummer and fifer to attend their respective regimental musters, and the regimental trainings of the officers; and the commandants of battalions and companies of the line, and of volunteer companies, shall each employ one drummer and fifer, or bugler, to attend their respective musters; and each drummer and fifer, or bugler, so attending, shall be allowed by the regimental courts of enquiry a sum not exceeding two dollars for each day they shall so attend.

Pay of musicians.

Annual returns of militia, when and how to be made. Return of commandants of companies.

67. The annual returns of the militia of this commonwealth shall be as follows: On the first day of the training of the officers within every regiment, the commandant of each company of the regiment, and those attached thereto, shall deliver to the commandant of the regiment, a fair and correct return of the strength and condition of his company.

Return of commandants of regiments.

68. The commandant of the regiment shall cause the returns to be consolidated, and within thirty days shall transmit to the commandant of the brigade to which his regiment belongs, a fair and correct return of the strength and condition of his regiment, including every species of troops. He shall invariably note therein the failure of every commandant of a troop or company to make

Duty to note failure of commandants of companies to make returns.

the returns hereby required of him. He shall also enter and pre-serve a copy of his regimental return in a book which he shall keep for that purpose.

69. When the training of the officers of the several regiments in a brigade shall have been finished, the commandant of the brigade shall consolidate the returns which he shall have received from each regiment, and within thirty days shall transmit to the adjutant general, a fair and correct return of the strength and condition of the brigade, distinguishing particularly the strength and condition of each regiment therein, and noting the failure of every commandant of a regiment to make the return hereby required of him. He shall also enter and preserve a copy of such return in a book to be kept by him for that purpose.

70. The forms of the several returns hereby directed, shall be prescribed by the adjutant general, subject, however, to the revision and control of the executive; and when so prescribed, shall be furnished by the adjutant general, to each commandant of a brigade within this commonwealth, and the commandant of the brigade shall cause to be furnished the forms of the regimental and company returns to the commandants of the regiments within his brigade, and the commandant of the regiment shall cause to be furnished the form of the company returns to the commandant of each troop or company belonging to or attached to his regiment.

71. The company, and regimental, and brigade returns shall be according to the forms so prescribed and furnished. Every commandant of a troop or company in which there are or may be any public arms, shall deliver to the commandant of the regiment, on the morning of each regimental muster, or battalion muster substituted therefor, a return of such of his troop or company as have any public arms in their possession, shewing distinctly the number and description of public arms in possession of each non-commissioned officer, musician and private, when received, from whom, and by what authority; and on the said return, opposite the said names, he shall leave a blank space for the remarks of the commandant of the regiment; and every commandant of a troop or company, failing to perform this duty, shall be returned by the commandant of the regiment, to the next regimental court of enquiry.

72. And it shall further be the duty of the commandant of the regiment to make return to the regimental court of enquiry, of the true state of such arms as may be brought to muster.

73. There shall be battalion courts of enquiry in the months of October or November in each year, for the assessment of fines incurred under this act by the non-commissioned officers, musicians and privates in such battalion, at such time after the last battalion muster, and at such place as the commandant of the regiment to which the battalion is attached may appoint; and there shall be moreover, a regimental court of enquiry in the months of November or December in each year, for the assessment of fines incurred by the officers of the regiment, at such time after the last battalion court of enquiry, and at such place as the commandant may appoint; and such battalion courts of enquiry shall consist of the commandants of the battalion and companies, or a majority of them; and such regimental court shall consist of the commandants of the regiment, battalions and companies, or a majority of them; who shall take the following oath, to be administered by the presiding

To keep copy of his own return.

Commandant of brigade to consolidate returns.

To make return to adjutant general, and when.

Return what to contain.

Forms of returns to be prescribed by adjutant general. How furnished to commandants of brigades. To commandants of regiments. To commandants of companies.

Returns to be in form. Returns of arms to be made by commandants of troops or companies.

Return, what to contain.

For failure to make return to be reported to court of enquiry.

Commandants of regiments to return state of arms brought to muster.

Battalion courts of enquiry, when and where.

Regimental courts, when and where.

Battalion courts, of whom composed. Regimental courts, how.

Oaths of members
and president of
courts.

Delinquencies to
be laid before
court, to be heard
and determined.
Power to court to
adjourn.

Return of delin-
quent officers fail-
ing to attend
courts.

Regimental courts
may remit or no-
torate fines.

Exempts from bo-
dily infirmity.

Board of officers,
how constituted;
Their powers.

Officers present at
courts or boards
may adjourn from
day to day.

No officer attend-
ing at court or
board on day ap-
pointed, who to
fix day for future
court or board.

Clerk and provost
martial, how ap-
pointed and when.
How removable.

These officers to
attend courts and
boards.
Duty of clerk.

His compensation.

Compensation to
provost martial.

Pay of clerks of
the 19th, 39th and
54th regiments.

officer of the respective courts, and afterwards by any other officer of the said court, to him, to wit: "*You shall truly and faithfully enquire into all delinquencies which appear on the returns to be laid before you, and shall assess the fines thereon as shall seem just, without favor, partiality or affection. So help you God.*"

74. The commandant of the regiment or battalion, as the case may be, shall lay before the court all delinquencies as directed by this act; whereupon, they shall proceed to hear and determine. And such courts shall adjourn from time to time, until the business before them shall be completed.

75. It shall be the duty of each presiding officer of each and every such court of enquiry, to return to the next regimental court of enquiry, all delinquent officers failing to attend the preceding court. And such regimental court may, for good cause shewn, remit or moderate any fine imposed by the preceding battalion courts, or the preceding regimental courts of enquiry.

76. The said court may also exempt any militiaman from duty on account of bodily infirmity, and may again direct such person to be enrolled when able to do duty.

77. Commandants of regiments may at any time summon a board of officers, consisting of the commandants of the regiment, battalions and companies, or a majority of them, who shall have power to fix the times and places of musters; to arrange company and battalion districts, and to attend to any business of the regiment not connected with the assessment or remission of fines.

78. If at any time appointed for a regimental or battalion court of enquiry or board of officers of any regiment, a sufficient number of officers to form a quorum should not attend, those present may adjourn from day to day, until a majority shall attend; and in case no officer shall attend on the day appointed, the commandant of the regiment or battalion, as the case may be, shall appoint another day for holding such court or board, giving at least ten days notice thereof.

79. The respective regimental courts of enquiry, where it has not already been done, shall at their first court to be held under this act, appoint a clerk and provost martial, who shall be removable at the pleasure of the said court, and shall attend the courts of enquiry, and boards of officers herein directed to be held.

80. Such clerk shall keep a fair record of the proceedings of such courts, as also of the returns made by the several commandants of companies for regular routine of duty; he shall make out for the sheriff, a fair list of the fines assessed by the regimental and battalion courts of enquiry, and perform all other duties required by this act, and together with the provost martial, shall receive such allowance, to be paid out of the fines, as the court shall think reasonable, not exceeding to the clerks five dollars for each court they shall attend, whether for the assessment of fines, or for other purposes authorized by this act; and for making out and certifying the list of fines and tickets placed in the sheriff's hands for collection, and for a copy thereof, to be certified to the auditor, the sum of five dollars for each such list and copy; and not exceeding to the provost martial one dollar for each day he shall attend the courts of enquiry: *Provided, however,* That the clerks of the courts of enquiry for the nineteenth, thirty-ninth and fifty-fourth regiments shall be allowed and paid each ten dollars for their attendance at each of their regimental and battalion courts of enquiry.

81. Every clerk shall take an oath faithfully to execute his duty, Oath of clerks. to be administered by the president of the court, before such clerk shall proceed to act as such.

82. And it shall be the duty of every commandant of a regiment Commandant of regiment to certify to auditor name of clerk. to certify to the auditor, within ninety days after the appointment of any clerk of the court of enquiry for the regiment commanded by him, the name of such clerk: *Provided*, That nothing herein contained shall be construed to deprive the clerk of the nineteenth regiment of the extra allowance of fifty dollars per annum, to which he Extra allowance to clerk of 19th regiment. is now entitled by law.

83. It shall be the duty of the clerks of the several courts of enquiry to transmit to the auditor of public accounts, on or before the first day of September in each year, a certified copy of the sheriff's receipt for each list of militia fines put into his hands for collection, together with a copy of such list; or if there be no such list put into his hands in any year, to certify the fact to the auditor; and it shall further be their duty to transmit to the auditor of public accounts, within sixty days after the adjournment of their respective regimental courts of enquiry, a list of all claims allowed upon the militia fine fund; or if there be no such claim allowed, to certify that fact; and such certified copy of the sheriff's receipt shall be evidence on a motion against him for such fines. When clerks to certify to auditor copies of sheriff's receipts and lists for fines. To certify lists of claims allowed on militia fine fund.

84. It shall not be lawful hereafter for the clerk of any regimental court of enquiry to grant any duplicate certificate of any allowance made by the court to any person having a claim to be paid out of the militia fine fund, unless such court, upon satisfactory proof made to them, by the oath of the party or otherwise, that the original certificate had been lost or destroyed, not having been paid, shall order a duplicate thereof to be issued. Every duplicate issued in pursuance of such order, shall shew upon the face thereof, that it is a duplicate issued by order of court. What evidence good against sheriffs for fines. Duplicate certificate of claims not to be granted but by order of court.

85. If any clerk shall issue any duplicate otherwise than is hereby provided, or shall fail to perform any of the duties required of him by the two preceding sections, he shall forfeit and pay for every such offence or failure, one hundred dollars, to be recoverable, on motion of the auditor, in the general court, upon reasonable notice. Penalty on clerks for neglect of duties. How recoverable.

86. All fines to be assessed by virtue of this act, shall be collected by the sheriff of the county; and to enable him to make such collection, the clerks of the courts of enquiry shall make out tickets of fines in the same manner as county court clerks do for their fees; which shall be delivered to the sheriffs, on or before the first day of May in every year; but no fine imposed at any battalion court of enquiry shall be put into his hands, before a subsequent regimental court of enquiry shall have intervened. The sheriff shall give his receipt therefor, and having deducted a commission of six per centum on the amount collected, shall account for, and pay the residue into the public treasury, on or before the fifteenth day of December next thereafter, under the same penalties, and subject to the same mode of recovery as are prescribed by law with respect to the collection of taxes. Fines, how to be collected. Clerks to make out tickets of fines. When to be delivered to sheriffs. Fines at battalion courts not to be collected till regimental court intervenes. Sheriff's commissions. When to account with auditor. Penalty for failure, and mode of recovery.

87. And should any person so charged with fines fail to make payment, on or before the first day of May in any year, the sheriff is hereby authorized to make distress and sale therefor. When sheriff may distrain for fines.

88. And it shall be the duty of the sheriffs, having at the next preceding county court advertised the same at the door of the court- Lists of insolvents, when returned to court.

- house, to return to the regimental courts of enquiry such of those tickets as by reason of insolvencies or other causes, they could not collect, to be examined by the said court, who shall judge of such insolvencies, and shall direct their clerk to certify a part or the whole of such list, as to them shall seem just. And it shall moreover be the duty of the sheriffs to return a list of all insolvents in relation to such fines, allowed by their respective courts of enquiry, to the auditor of public accounts, within twelve months after such fines shall have been payable into the treasury; and no list of insolvents not returned within that period, shall be allowed by the auditor in his settlement with such sheriff; nor shall any such list, hereafter returned to any court of enquiry, be allowed by the auditor, unless the same shall be verified by the oath or affirmation of the sheriff, made and certified at the foot thereof, to the following effect: "*county, to wit: This day A. B. sheriff, (or deputy sheriff,) for the county of , made oath, (or affirmation,) before me a justice of the peace for said county, that the foregoing list of delinquents in the militia fines he verily believes is correct and true; that he has used due diligence for the collection of the fines in the said list mentioned, and hath not collected any part thereof. Given under my hand this day of . C. D.*" Nor shall any such list be allowed by the auditor, unless after it shall have been so verified, the court of enquiry shall certify that they believe the same to be correct, and that it ought to be allowed.
89. And where it shall appear to such courts of enquiry, that any of the tickets returned were not collected, in consequence of the removal or non-residence of such delinquent, it shall be the duty of the clerk of the court to transmit the said tickets to the sheriff in whose county such delinquent or delinquents may reside, for collection: *Provided*, The regimental court of enquiry shall make an order, on the minute book of their proceedings, to that effect.
90. A list of all such fines so to be transmitted by the clerk, shall by him be certified to the auditor of public accounts, together with the receipt which shall be taken from the sheriff to whom such tickets were given for collection; which receipt shall be good evidence whereupon to charge the sheriff therewith; and such sheriff shall be liable for, and proceeded against in like manner as for other militia fines now directed by law.
91. All claims upon the militia fine fund, which shall not be paid by the sheriff, and which shall be payable out of the public treasury, shall be presented within three years after the same shall have been allowed by the respective courts of enquiry; and the auditor of public accounts shall not be authorized to issue his warrant for any such claim, which shall not be so presented for payment before the said period of three years shall have elapsed.
92. The clerks of the respective courts of enquiry in the commonwealth shall, at the two successive courts for their county, next following each regimental court of enquiry, set up at the front door of the court-house, in alphabetical order, a fair and distinct list of all the tickets which may be returned by any sheriff as insolvent, removed or otherwise, and which may be allowed by said court, and shall note in such list against every man's name, the sheriff's return on such ticket. And for every list so made out and set up as aforesaid, such clerk shall be allowed by the regimental court of enquiry a sum not exceeding four dollars.
- Proceeding thereupon.
- Lists of insolvents allowed, to be returned to the auditor, and when.
- Lists returned to auditor, how verified by sheriffs.
- Form of verification.
- Certificate of court of enquiry.
- Where person fined has removed, tickets to be sent to sheriff of county where delinquent resides.
- Court to make order to that effect.
- Lists of such fines and sheriffs' receipts to be returned to auditor.
- To be evidence against sheriff.
- When claim upon militia fine fund barred by lapse of time.
- Lists of fines not collected, to be posted at court-house by clerks.
- Allowance to clerk for making out such list.

93. If any officer, non-commissioned officer or private in the militia shall heretofore have been fined, or shall hereafter be fined by the sentence of any court of enquiry, for any alleged failure of duty, and for want of notice of such fine, or by any other sufficient cause, he shall have been prevented from applying to the next succeeding regimental court of enquiry, for a remission thereof, it shall be lawful for the commandant of the regiment, upon the application of the person fined, and upon good cause shewn by affidavit, at any time before the fine shall have been paid, to suspend the collection thereof, by a written order to the clerk of such court, or to the sheriff, (as the case may be,) and the next succeeding regimental court of enquiry shall have full power to remit such fine, if it shall appear just and proper to them to do so. The order of the commandant, directed as aforesaid to the sheriff, shall be a sufficient voucher to entitle him to a credit on his settlement with the auditor: *Provided*, That the authenticity of such order be certified by the order of the county in which the sheriff may reside.

Power given commandant of regiment to suspend collection of fines.

Power of courts to remit fines.

How sheriff to be credited therefor.

Order of commandant, how authenticated.

If fine not remitted, how to be collected.

94. When the collection of any fine shall have been suspended by the commandant, as is provided for by this act, and the succeeding regimental court of enquiry shall not have remitted the same, it shall be the duty of the clerk of such court to insert such fine in the next list, which he shall deliver to the sheriff, to be collected and accounted for in the same manner as if the collection had never been suspended.

95. If any person on whom any fine shall be imposed, shall not have any visible property, it shall be lawful for the sheriff to attach the effects or money of such delinquent in the hands of any person; and it shall be lawful for such garnishee to satisfy and pay the amount due on account of such fines, and it shall be a discharge for so much against such delinquent; but, if he shall refuse or fail to pay the said amount, it shall be the duty of such sheriff to summon such garnishee before the nearest justice of the peace for such county, informing him the precise time he shall appear; and if he shall appear, and on oath confess, that he has effects in his hands, or stands indebted to such delinquent sufficient to satisfy such fine and costs, or if he shall fail to appear, it shall be lawful for the said justice to award execution against such garnishee for the amount thereof, or so much as shall appear to be in his hands, including sixty-three cents as a fee to the sheriff: *Provided*, That before such justice shall award any execution for default, he shall require an oath that such garnishee was duly informed of the time of such application.

When effects may be attached in garnishee's hands.

Sheriff's fee.

96. The sheriff of each county shall pay and satisfy all drafts of the commandants of regiments, drawn as herein directed, for claims for music, within three months after the same shall have been allowed by the regimental court of enquiry; and he shall, on or before the first day of October in every year, pay and satisfy all other drafts of the commandant of the regiment, drawn as aforesaid, for any purpose authorized by law; and on failure so to do, the court of the county whereof he is sheriff, shall be, and hereby are empowered and required, on motion of the commandant of the regiment, to render judgment against the said sheriff, his executors or administrators, for the amount of such draft, with the costs of the said motion; upon which judgment execution shall issue, be endorsed and proceeded on, in like manner as executions are directed

When drafts of colonels for music to be paid.

When other drafts to be satisfied.

Remedy against sheriff.

Provision where
sheriff is comman-
dant.

by law in other cases, against delinquent sheriffs: *Provided*, Where it shall so happen that the sheriff of any county shall be commanding officer of a regiment therein, the officer next in command shall proceed as herein particularly directed.

Tickets not deliv-
ered to sheriff in
time to be col-
lected by succeed-
ing sheriff.

97. If it shall have so happened that tickets of fines may have not in due time been delivered to the sheriff for collection, any succeeding sheriff shall, and he is hereby directed to receive such tickets, and shall collect and account for the same in like manner with other fines placed in his hands for collection.

Militia fine fund,
how appropriated.

98. Whatever fines shall be thus paid into the public treasury by virtue of this act, shall be held as a fund for defraying the salaries of the officers herein after mentioned, and equipping and furnishing the militia with all necessary apparatus for the defence and security of the state.

Regimental colors,
how to be pur-
chased.
Drums, fises and
horns.

99. The commandant of each regiment may cause to be purchased, out of the money arising from the fines, a set of colors for such regiment. He shall in like manner procure, or cause to be procured for each company, a drum and fife, or two bugle horns, if a company of cavalry or riflemen; and on the colors and drums shall be marked the number of the regiment and battalion, together with the name of the county to which they belong: *Provided, however*, That no set of colors for a regiment or battalion shall exceed in price forty dollars; no drum and fife twelve dollars; and no bugle fifteen dollars, including the price of transportation and other incidental expenses: *And provided moreover*, That none of the foregoing equipments shall be furnished to any regiment, battalion or company, oftener than once in ten years; and no draft for the payment of the same shall be allowed by the auditor, unless sanctioned by the regimental court of enquiry; nor unless it be expressly stated therein, that none of the said equipments had been previously purchased for such regiment, battalion or company, within the said period of ten years. The regimental court may make a reasonable allowance for repairing the said equipments whenever it shall become necessary.

Price of colors
and drums, &c.
limited.

How often such
equipments to be
furnished.

Drafts to be sanc-
tioned by regi-
mental courts.
Time of prior
purchases to be
stated in order.

Repairs of equip-
ments, how made.

Claims on fine
fund how certified.

When allowances
made by courts
to be paid by sher-
iffs.

Fund insufficient
to meet drafts,
deficiency how
supplied.

Regimental, batta-
lion or company
districts, how laid
off or altered.

Lines and bounds
to be recorded by
clerks of courts
of enquiry.

100. All claims upon the militia fine fund shall be certified by the clerk of the regimental court, and countersigned by the commandant of the regiment. All allowances made by a regimental court of enquiry may be paid out of any money in the hands of the sheriff, or in the treasury, at the time such allowances are made, applicable to the purposes of the militia. And if the fines arising from any regiment be insufficient, the auditor shall be authorized to issue his warrant for the amount of said allowances, as well as for the purchase of colours, drums and fises and bugles, payable out of any money in the treasury arising from militia fines, or out of any fund appropriated for that purpose by the general assembly.

101. Where commandants of regiments have failed to lay off their regimental, battalion and company districts, or where any alteration in districts actually laid off may hereafter be found necessary, commandants of regiments shall assemble the commandants of battalions and companies at some fit and convenient place; and may proceed to lay off and alter any such battalion or company district; which districts shall, in all cases, be designated by certain lines and bounds, and recorded by the clerks of the courts of enquiry respectively: *Provided however*, That no such alteration shall be made in any battalion or company districts, unless the board of

officers or regimental court of enquiry, by which it may be done, shall consist of at least two field officers, and a majority of the commandants of companies belonging to the regiment in which such alteration may be made.

102. Where it has not already been done, it shall be the duty of the commandants of companies to proceed forthwith to divide their companies into divisions by ballot, from one to ten, for the purpose of a regular routine of duty, when called into actual service, and to return a roster of each division, and its number in rotation, within fifteen days thereafter, to the commandant of his battalion, who shall forthwith transmit the same to the commandant of the regiment, who shall direct the same to be recorded by the clerk of the court of enquiry. The same regulations shall be observed by every commandant of a company, battalion and regiment, on the subsequent enrolment of any person therein, unless such person shall produce a certificate of his having been before drawn for the above purpose, in which case, he shall be enrolled accordingly; and every militiaman removing out of the bounds of one company into another, shall apply to the commandant of the company to which he did belong, who shall give him a discharge, certifying the class wherein he was arranged, and whether he had performed the tour of duty or not, and also the time and date of such service; which certificate the said militiaman shall produce to the commandant of the company into whose bounds he shall so have removed, within ten days after his settlement; and such officer is hereby required to enrol him in the numerical class specified therein; and every militiaman so removing and failing to produce such certificate, shall be arranged and enrolled in the class destined to perform the next tour of duty, and shall moreover be fined as in other cases of delinquency.

Companies to be divided for routine of duty.
Roster of division when and to whom returned, and how recorded.

Provision as to persons subsequently enrolled.

Persons removing from company bounds, how to obtain discharges;

To be produced to commandant of company into whose bounds they remove.

Consequence of neglect.

Fine.

103. Any officer who may be guilty of disobedience or other misbehaviour, when on duty, or shall, at any time, be guilty of any conduct unbecoming the character of an officer, shall be put under arrest by his commandant, and be subject to the fines and penalties provided by this act.

Arrests of officers.

104. If any non-commissioned officer or soldier shall behave himself disobediently or mutinously when on duty, or before any court or board directed by this act to be held, the commanding officer, court or board, may confine him for the day; and he may moreover be fined as provided by this act.

Non commissioned officers or soldiers for disobedience or mutiny, how punished.

105. It shall be the duty of every person in the militia, who hath received or may hereafter receive into his possession any public arms or accoutrements, under the provisions of any act of assembly, to keep the same in neat and good order, the musket barrel and bayonet free from rust, the lock clean, well oiled, and with a good flint; and to appear with such arms at every muster, where by law he is required to appear, and at all other times when he may be called on duty; and at all musters, the officers at their respective stations shall be diligent and careful in training and instructing their men, and inspecting their arms, in noting delinquencies, and making report thereof as herein directed.

Arms and accoutrements to be kept in good order.

Arms to be brought to musters.
Duty of officers in relation thereto.

106. If any person in the militia, possessed of public arms or accoutrements as aforesaid, shall be about to remove out of the limits of the company to which he belongs, or during such possession shall arrive at the age of forty-five years, or in any other man-

Persons removing or discharged, how and to whom to deliver arms, &c.

Duty of executors,
&c. of persons
dying possessed
thereof.

Penalty for breach
of duty.

Fines on non-com-
missioned officers,
for failing to deli-
ver arms.

How recoverable.

Prices chargeable
for public arms
destroyed.

Penalty for selling
or carrying away
arms, &c.

Inspection of
arms, when made.

Delinquents re-
ported.

Process to recover
arms embezzled.

And bring offend-
ers to punishment.

How major-gene-
rals, brigadier-gene-
rals, adjutant-
general and bri-

ner have a right to be discharged from militia duty, every such person, before such removal, or before he shall be entitled to any such discharge, shall deliver to the commandant of the company to which he belongs, in good order and unimpaired, such public arms or accoutrements as may have been delivered to him; and if any person so possessed shall die, it shall be the duty of his executors or administrators, executrix or administratrix, to restore such arms or accoutrements to the commandant of the company to which his or her testator or intestate belonged; and for a failure therein, he or she shall be subject to the same fines and penalties to which his or her testator or intestate would have been subjected.

107. And where any non-commissioned officer shall remove out of the limits of his company district, without delivering to some commissioned officer of the company in which he stood enrolled, all arms and accoutrements in his possession, belonging to the public, he shall forfeit and pay the sum of twenty dollars, to be recovered by warrant or attachment, before any justice of the peace, for the use of the commonwealth.

108. Every person in whose possession public arms or accoutrements have been lost or destroyed, contrary to law, shall make satisfaction to the commonwealth for the same, to be awarded by the courts of enquiry, at the following prices: For a musket fifteen dollars; for a ramrod one dollar; for a bayonet two dollars; for a cartridge box two dollars; for a pistol five dollars; for a sword ten dollars; for a pair of holsters five dollars; and for a rifle twenty dollars.

109. If any militiaman or other person shall sell, buy, or give away, any part of the public arms or accoutrements, or carry the same out of the bounds of his regiment, with intent to defraud the commonwealth, he shall be considered guilty of a misdemeanor, and being convicted thereof, at any time within five years, on information or indictment, in any county or superior court of law, shall be amerced in a sum not exceeding fifty dollars, and imprisoned for a term not exceeding twenty days, at the discretion of a jury.

110. It shall be the duty of commandants of companies at their respective musters, to inspect the public arms and accoutrements in possession of the non-commissioned officers and privates of their companies; and where it shall appear to him that any such arms or accoutrements are not in the condition required by this act, it shall be the duty of such officer to report the same, as other delinquencies; and if it shall at any time come to his knowledge, that any one of his company has embezzled or disposed of his arms and accoutrements, or has removed out of the limits of his company, without delivering them up, as herein before directed in all such cases, it shall be his duty immediately to proceed by and under the authority of a warrant, according to law, issuing from any justice of the peace of the county or counties where such arms or accoutrements, or any part thereof, are supposed to be, to regain possession of such arms or accoutrements, wherever the same may be found, and it shall moreover be the duty of such commandant to proceed as herein directed, to bring to punishment according to this act, every person offending, in the disposing, buying or concealing such arms or accoutrements.

111. Whenever any commandant of a division or brigade, or the adjutant general, or brigade quarter-master, shall fail to perform any duty required by this act, such failure shall be reported within thirty

days thereafter, by the commandant of the brigade or regiment, (as the case may be,) in which such failure may occur, to the commandant of the regiment in the bounds of which such officer so failing may reside, whose duty it shall be to cause notice in writing, specifying the failure, to be given to such delinquent officer, or left at his usual place of abode, within ten days after he shall receive such report. And if such failure shall occur within the regiment, in the bounds of which such delinquent officer may reside, the commandant of such regiment shall cause the notice to be given to such delinquent officer, required as aforesaid. And it shall be his further duty, if such delinquent shall reside without the bounds of his regiment, to lay the report so received by him before, and if within the bounds of his regiment, to make report of such failure to, his next regimental court of enquiry and such court shall proceed to enquire into such failure, and to adjudge the fine, as in other cases, saving to the party aggrieved, an appeal to the executive.

(as gado quarter-masters may be reported and fined for neglect of duty.

Appeal to executive.

112. No fine prescribed by law for neglect or breach of duty of the commandant of a regiment, shall be imposed by the court of enquiry for the regiment commanded by such officer. But it shall be the duty of the commandant of the brigade within whose command such officer may be, whenever he shall know of any such neglect or breach of duty, or whenever he shall be informed thereof by any written statement, signed by the next senior officer in command, whose duty it shall be to report such delinquency to the brigadier general, to cause the matter, without delay, to be laid before the regimental court of enquiry, for some adjoining regiment, and to give notice to such commandant that his case will be submitted to such court of enquiry. That there may be no delay in the decision of the said court, the commandant of the brigade shall, at the time of giving notice to the said commandant of the regiment, also notify the commandant of the said adjoining regiment, in order that he may summon the necessary witnesses, or direct the clerk of the court of enquiry to do so. And the court last mentioned shall have full power and authority to hear and determine thereupon according to law. If the sentence of such court shall inflict a fine, it shall be the duty of the clerk of such court forthwith to certify such sentence, and deliver it to the sheriff of the county in which the officer fined may reside, and to certify such sentence also to the auditor.

Fines on commandants of regiments, how imposed.

Duty of commandants of brigade in relation thereto.

Duty of clerk of court imposing fine.

113. And for enforcing obedience to this act, the following forfeitures and penalties shall be incurred for delinquencies, viz: A commandant of a division, for failing to order into actual service any militia, legally called for, a sum not exceeding five hundred dollars; and for failing to perform any other duties required of him by this act, not less than fifty nor more than three hundred dollars. A commandant of a brigade, for failing to order into actual service any militia, legally called for, a sum not exceeding four hundred dollars; and for failing to perform any other duty required of him by this act, not less than ten, nor more than two hundred dollars. A commandant of a regiment, for failing to order into actual service any militia, legally called for, or to turn out the militia under his command, upon any invasion or insurrection of his county, or requisition from a neighboring county, or for failing to repair, on such occasions, to the place of rendezvous, a sum not exceeding three hundred dollars; and for failing to perform any other duty re-

Penalties for breach of duty. On commandants of divisions;

On commandants of brigade;

On commandants of regiments;

- quired of him by this act, not less than one dollar, nor more than seventy dollars. A commandant of a battalion, for failing to order into actual service any militia, legally called for, or to turn out the militia under his command, upon any invasion or insurrection of his county, or requisition from any neighboring county, or for failing to repair, on such occasions, to the place of rendezvous, a sum not exceeding three hundred dollars; and for failing to perform any other duties required of him by this act, not less than one dollar, nor more than thirty dollars. A commandant of a troop or company, for failing to order into actual service any militia, legally called for, or to turn out the militia under his command, upon any invasion or insurrection of his county, or requisition from any neighboring county, or for failing to repair, on such occasions, to the place of rendezvous, a sum not exceeding two hundred dollars; and for failing to perform any other duty required of him by this act, not less than one dollar, nor more than twenty dollars. A subaltern officer, not being in command of a troop or company, for failing to repair to the place of rendezvous, when ordered, upon any call legally made, on any invasion or insurrection of his county, or requisition from a neighboring county, a sum not exceeding one hundred and fifty dollars; and for failing to perform any other duty required of him by this act, not less than one dollar, nor more than ten dollars. A non-commissioned officer or soldier, for failing to repair to the place of rendezvous, when ordered, upon any legal call, on any invasion or insurrection of his county, or requisition from a neighboring county, not exceeding eighty dollars, and moreover shall be enrolled in the class destined to perform the next tour of duty; for failing, at any muster, to go into the ranks when required, or to perform any order given, not having a reasonable excuse, not less than five, nor more than ten dollars; and for failing to perform any other duty required by this act, not less than seventy-five cents, nor more than three dollars. The adjutant general, for failing to perform any duty required of him by this act, not less than ten, nor more than two hundred dollars. A brigade quarter master, for failing to perform any duty required of him by this act, not less than ten, nor more than two hundred dollars. Any regimental staff-officer, for failing to perform any duty required of him by this act, not less than one dollar, nor more than twenty dollars.
- Penalties on clerks of courts of enquiry.** 114. A clerk of a court of enquiry, for failing to furnish the sheriff with a list of the fines assessed by his regimental and battalion courts of enquiry, as herein directed, or for failing to transmit tickets against non-resident delinquents to the sheriffs of other counties, as required by this act, for every such failure, he shall forfeit and pay fifty dollars; and for failing to perform the duties required by the **one hundred and twelfth* section of this act, thirty dollars.
- Penalties on officers, how assessed.** 115. All forfeitures and penalties incurred under this act, unless otherwise provided by law, shall be assessed, if the delinquent be an officer, by the regimental court of enquiry, or if he be a non-commissioned officer or private, by the battalion court of enquiry, of the regiment or battalion to which such delinquent may belong, or to which the troop or company to which he belongs may be attached, or if he be a field officer of cavalry or artillery, by the court of enquiry of the regiment in the bounds of which he may reside.
- By-standers misbehaving may be confined and fined.** 116. If any by-stander shall interrupt, molest or insult any officer or soldier while on duty at any muster, or shall be guilty of like con-

On commandants
of battalions;

On commandants
of troops or com-
panies;

On subalterns;

On non-commissioned officers or
privates;

On the adjutant
general;

On brigade quar-
ter masters;

On regimental
staff.

Penalties on clerks
of courts of en-
quiry.
* The section here
referred to (owing
to the number of
sections stricken
from the bill as
originally drafted)
should be the
ninety-second.

Penalties on offi-
cers, how assess-
ed.
On non-commissioned officers and
privates.

On field officers of
cavalry or artiller-
y.
By-standers mis-
behaving may be
confined and fined.

duct before any court or board, the commandant, or such court or board, may cause him to be confined for the day; and such court or board, or the regimental court of enquiry, in the bounds of which such offence may have been committed, may moreover fine him in a sum not less than two, nor more than ten dollars.

117. The fines and penalties incurred by infants and apprentices, for the breach or neglect of their duty in any particular service by law required of them, shall be paid by the parent, guardian or master. Fines on infants and apprentices, how paid.

118. The governor shall be authorized and empowered, on an invasion or insurrection, or probable prospect thereof, to call forth such a number of the militia, and from such counties as he may deem proper: and for the accommodation, equipment and support of the militia, so at any time to be called forth, the governor may appoint such quarter masters, commissaries and other staff, as to him shall seem proper, and fix their pay and allowances; and shall also take such measures for procuring, transporting and issuing all orders which may be necessary, as to him shall seem best. Governor to call out militia on invasion or insurrection. Appoint quarter masters, commissaries and other staff, and fix their pay.

119. Orders for the militia to be called forth as aforesaid, shall be sent to the commandants of brigades, or to the commandants of regiments, or in such other manner as may be deemed expedient, with a notification of the place or places of rendezvous; who shall immediately take measures for detaching the same, with the necessary number and rank of officers, by detail and rotation of duty. Orders to whom issued.

120. And if it shall appear to the executive, upon calling forth the militia as aforesaid, that the necessary number and ranks of officers will not attend the detachments for officering them at the place of rendezvous, the governor is hereby authorized and required to appoint such officers as may be necessary, from the counties called upon, as he may think proper, to join the detachment so raised. May detach officers from counties called upon.

121. The commandant of a regiment shall be, and he is hereby authorized and required, whenever a requisition is made for troops, to direct an officer to muster and inspect the men detailed from his regiment to take the field, who, together with the surgeon of the regiment, shall certify to the court herein directed to be holden their opinions of the ability of the persons so detailed to perform military duty. The said commandant of the regiment shall cause a court of enquiry to sit at the time of such detail, or as soon as practicable thereafter, whose duty it shall be to hear and decide all questions which may arise in relation thereto. The officers of such courts shall receive the same compensation for their services as are allowed by law to the officers of other regimental courts of enquiry. Commandants of regiments to direct officer to muster men detailed from his regiment. Officer and surgeon to certify ability of men detailed. Court of enquiry to be convened to decide questions relating thereto. Compensation to officers of court.

122. No non-commissioned officer, musician or private, shall absent himself from his regiment, after the commandant thereof has received an order requiring a detail to be made, and of which the said non-commissioned officer, musician or private, shall have been in any way or by any means informed, until such detail shall have been made. No person to absent himself from regiment after detail ordered.

123. And every non-commissioned officer, musician or private, who shall absent himself as aforesaid, and who shall be subsequently detailed to march in requisition, shall be considered and treated as a deserter, unless he join the detachment with which he is so detailed for duty, at the place appointed for the rendezvous of such If absent, to be treated as a deserter.

detachment, or shew that he was prevented from so joining by some unavoidable cause.

Provision where
person drafted
shall die or fail to
march.

Place how sup-
plied.

How absentees
from rendezvous
may be apprehen-
ded.

Such person to be
treated as deser-
ter
Proviso in favor of
person not able to
march.

Offender perform-
ing tour of duty or
standing trial, not
finable.

Substitutes how
furnished.

Effect of substi-
tute's being drafted
to perform his own
tour of duty.

Person furnishing
substitute liable to
muster during his
absence.

Fines for failing to
appear at rendez-
vous, to whom to
be certified.

124. Where a draft shall be made from any company of militia within this commonwealth, and any of the persons drafted to perform a tour of duty shall die, before he or they shall march, or from sickness be unable to march, or from any other cause shall fail to march when ordered to march, the next man or men in the class or roll of the company to which he or they shall belong, shall march in the requisition then ordered, and so on until the requisition be completed; taking from each company in each regiment a sufficient number to make up the quota required from each company by the draft.

125. When any non-commissioned officer, musician or private, shall fail to appear at the place of rendezvous appointed when ordered, or absent himself without leave, it shall be the duty of the commandant of the regiment to which he belongs forthwith to order some commissioned officer, and as many men as may be necessary, belonging to the said regiment, to apprehend and take such non-commissioned officer, musician or private, and deliver him to the commandant of the detachment with which he was detailed; and in such cases, every person so failing or absents himself without a justifiable excuse, shall be deemed a deserter, and treated accordingly: *Provided, nevertheless,* That if, in the opinion of such commandant, the person so failing shall not be able to march, such commandant shall not be bound to execute such order: *And provided also,* That if any person so offending shall be apprehended and delivered to the commandant of his corps, so that he perform his tour of duty, or stand his trial for the offence of desertion, he shall not be liable to the fine imposed by this act.

126. When any militiaman, other than a volunteer, shall be detailed or drafted for service, he may furnish to the commanding officer of the regiment from which he is so detailed or drafted, or to the commandant of the company or detachment, or to the commandant of the regiment to which he may be transferred, at any time before the organization of the regiment, an able bodied man, well clothed; and if either the commandant of the said regiment or the commandant of the company called into service, on inspection, shall adjudge the man tendered as a substitute able to perform the tour of duty, he may receive him as a substitute; and the commandant of the regiment to which he may be transferred, may, at any time after the organization thereof, receive such substitute: *Provided,* That in his opinion the public service will thereby be promoted. And if it should so happen that the substitute from his stand in his class, roll or division list of his company, should be called on to perform his own tour of duty before the time for which he is so engaged shall expire, the person furnishing him as a substitute shall march in his place, or furnish another substitute, or be liable to the fines and imprisonment provided for by this law. And the person furnishing a substitute shall be liable to muster, and shall perform militia duty in the absence of such substitute, in the same manner as if he had not furnished a substitute.

127. The fines imposed by law upon a non-commissioned officer, musician or private, for failing to appear at the place of rendezvous when ordered, or failing to march when ordered, or to furnish a substitute, shall be certified by the president of the court before whom

the same shall be assessed, to the sheriff of the county in which the delinquent shall reside, and also to the auditor of public accounts, noticing in the certificate to the auditor the residence of the delinquent.

128. The said sheriff shall proceed forthwith, upon such certificate, to levy the said fine, with costs, by distress and sale of the goods and chattels of the delinquent, and shall pay all such fines by him levied into the public treasury, at the same time that the public revenue is payable, shall be entitled to the same commission thereon as for the collection of the said revenue, and liable to be proceeded against for a failure to pay the same, in like manner as for a failure to pay the public revenue.

Fines how levied and paid.

Sheriff's commission and liability.

129. And when any non-commissioned officer, musician or private, shall be adjudged to suffer imprisonment, there being no goods and chattels found whereof to levy the said fine, the said sheriff shall forthwith commit such delinquent to jail, there to be confined during the term for which he was adjudged to suffer imprisonment, or until he shall pay the fine with costs.

When delinquents may be committed to jail.

130. When any detachment of militia shall be hereafter called into the service of the United States, or of this state, from any particular division, brigade or regiment within this state, the officers intended to command such detachment shall be detailed from the division, brigade or regiment from which such detachment shall be detailed.

Officers to command detachments, how detailed.

131. The militia of this commonwealth, when called out under state authority, shall serve six months after their arrival at the place of rendezvous, unless sooner discharged, and shall have credit only for the time actually served: *Provided, however,* That the governor of this commonwealth shall, at all times, have power to retain the militia in the service of this state, for such period of time, and no longer, as the president of the United States now is or may hereafter be authorized by the laws of congress to retain the militia in the service of the United States.

Term of service of militia called out by state authority.

How long governor may retain them in service.

132. If a sudden invasion shall be made into any county of this commonwealth, or in case of an insurrection in any county, the commandant of the militia in such county is hereby authorized and required to order out the whole, or such part of the militia as he may think best, for repelling such invasion, or suppressing such insurrection; and shall call on the commandants of regiments in the adjacent counties for such aid as he may think necessary, who shall forthwith, in like manner, furnish the same.

Who empowered to call out militia in sudden invasion or insurrection.

When to call for aid from adjacent counties.

133. Whenever the commandant of the militia in any such county shall call out such militia, or any part thereof, in pursuance of law, he shall forthwith communicate such call to the governor of the commonwealth, with a correct statement of the number and description of the force so called out, and the causes thereof, in order either that the governor may sanction the call or disband the whole, or any part of the force so called out, or that such other measures may be taken as the public good may require.

Duty to communicate call to executive.

134. The commandants of regiments from which detachments are drawn, shall cause to be procured by impressment or otherwise, for each company or detachment, the necessary and proper camp equipment, to consist of one camp kettle for every six, and one axe and spade for every twenty men, with one wagon and team for every eighty men, or as near as may be in that proportion.

Camp equipment, how procured.

Of what to consist.

Camp equipage,
how valued.

How disposed of
when tour is over.

Compensation for
use, how adjud-
ged.

Articles not re-
turned, value and
interest, how al-
lowed and certi-
fied.

Liability of offi-
cers for loss of ar-
ticles.

Receipt for camp
equipage to be re-
turned to regimen-
tal court of enquiry,
or certificate of
loss.

Camp equipage,
how procured in
case of invasion,
&c.
To be returned
when regiment
discharged.

Militia, when go-
vernied by articles
of war.

Courts martial for
trial of militia,
how composed.
When approbation
of executive ne-
cessary.

Pay and rations of
militia in service.

Commutation for
rations, when al-
lowable.

135. The said camp equipage having been first valued by two or more freeholders on oath, shall be delivered to the commandant of the company or detachment, who shall be accountable for the same, and shall either deliver it, taking a receipt therefor, to the quarter master or other officer authorized to receive it, at the post or place where the company or detachment shall have served or been discharged, or shall return it when his tour is over; and, in that case, the articles aforesaid shall be returned to the owner or owners, who shall be allowed for the use of the same whatever sum shall be adjudged by the regimental court of enquiry of the regiment within the bounds of which the articles were procured; and if the articles procured by virtue of this act shall be turned over to the quarter-master, or other officer authorized to receive them, at the post or place where the company or detachment was discharged, or shall have been lost in the service, the owner or owners, on the receipt of the quarter-master, or other officer, or the certificate of the commandant of the company or detachment, that any article or articles were lost in the service, being laid before the said court, the value thereof shall be allowed, with the interest thereon, from the time of the valuation, till paid, without any allowance for the use of the said articles; and the said allowance shall, in all cases, be certified to the auditor of public accounts.

136. The said court shall also make enquiry as to the cause of any such loss, and unless it shall be satisfied that such loss was not occasioned by the misconduct or inattention of any officer under whose charge it may have come, it shall proceed to fine such officer, in amount at least equal to the value of the article or articles so lost.

137. Any commandant of a company or detachment, who shall fail to return to the regimental court of enquiry next succeeding the expiration of his tour of duty, a receipt or certificate shewing in what manner any camp equipage to him delivered had been disposed of, or lost in the service, may be fined by such court in an amount equal to the value thereof; and the value of his, her or their article or articles may thereupon be allowed by the court to the owner or owners of such camp equipage.

138. Whenever a regiment, or any part thereof, is called out by the commandant, in case of invasion or insurrection, camp equipage may be procured as aforesaid; but in such cases it shall, when the regiment, or such part as may be called out is discharged, be returned to the owner or owners.

139. Whenever any militia shall be called forth into actual service as aforesaid, or shall be enlisted for a fixed period, to guard any arsenal or other public property, they shall be governed by the articles of war which govern the troops of the United States. And courts martial shall be held as therein directed, to be composed of militia officers only, for the trial of any person in the militia; but to the cashiering of any officer, or capital punishment of any person, the approbation of the executive shall be necessary; and when any militia shall be in actual service of the state, they shall be allowed the same pay and rations as are allowed by law to the troops of the United States.

140. And whenever any militia in the service of this state shall be disbanded, they shall be allowed to draw money in lieu of the rations to which they may be entitled, to be commuted at a fair price, which shall be ascertained, whenever practicable, by the con-

tract price; and whenever not so practicable, it shall be regulated by the quarter master general.

141. No proceedings shall hereafter be had in any suit, either at law or equity, or on any writ of *feri facias*, or other execution against the person or property of any person or persons, who may be called by draft from the militia into the military service of the United States, or of this state, or against his or their security or securities, from and after the time when such person or persons shall be ordered to the place of rendezvous, until his or their term of service shall have expired.

Civil proceedings against drafted persons and their securities suspended, how long.

142. And if any such writ of *feri facias*, execution or process, shall issue contrary to the true intent and meaning of this act, it shall be the duty of the sheriff or other officer charged with the execution thereof, to suspend, or of the court from which such *feri facias*, execution, or other process issued, to order to be suspended, all further proceedings thereon: *Provided, nevertheless*, That nothing herein contained shall be so construed as to apply to the security or securities of any sheriff, sergeant, coroner, constable, guardian, executor or administrator, or committee of an idiot or lunatic, or other person of unsound mind, or as receiver or trustee, under an order or decree of any court of equity.

If process shall have issued, execution to be suspended.

Exceptions as to sheriffs.

143. *And provided also*, That the benefit of this act shall not extend to any person or persons employed in the military service of the United States, or of this state, and who shall have received the money of any other person or persons, as attorney, sheriff, sergeant, coroner, constable, guardian, executor or administrator, or committee of an idiot or lunatic, or other person of unsound mind, or as receiver or trustee, under an order or decree of any court of law or equity, their security or securities.

Exceptions applying to persons indebted for money received by them for others.

144. If any person or persons shall have any claim, demand or matter of controversy existing and depending between him or them, and any person or persons who hereafter may be in the military service of the United States, or of this state, he, she or they are hereby authorized and empowered, after pursuing the course heretofore directed by law in such cases, to take the deposition or depositions, *de bene esse*, of any witness or witnesses which he, she or they may deem material to the final establishment of such claim, demand or matter of controversy, to be read as evidence in any suit or suits, which now do, or hereafter may exist, in consequence of such claim, demand or matter of controversy between the parties aforesaid, in case such witness or witnesses should be unable to attend.

Depositions *de bene esse* may be taken.

145. The provisions last aforesaid shall not extend to any person or persons who may be called into the military service of the United States, or of this state, in the manner aforesaid, and shall have employed a substitute to perform his or their tour of duty; nor shall the said provisions extend to any person or persons who shall enter the military service of the United States, or of this state, as a substitute: *And provided also*, That nothing contained in this act shall in any manner prevent the granting or reinstating of an injunction against any person whatever.

Proceedings against persons having substitutes not suspended.

Nor against substitutes.

proviso as to granting or reinstating injunctions.

146. And whereas it is necessary that certain tribunals be instituted for the trial of officers not in actual service, as they are to be viewed in a military light, and for enquiring into certain delinquencies, and for assessing fines, the governor or commanding officer of the militia of the state shall have power, for misconduct within his

Courts martial.

If adjutant general, major general or brigadier

general may be arrested.

Arrest of colonel, lieutenant colonel, aid, brigade inspector or major.

Of captain or subaltern.

Officer making arrest to certify fact, charges, &c. to governor.

When governor may order court martial on arrested officer, and to whom order issued.

When arrest discharged.

Court martial for trial of generals, how composed.

For trial of field and staff officers;

For trial of captains or subalterns.

Number to constitute court.

Sentence of court.

Appeal allowed.

Written notice of appeal to be filed with judge advocate.

Within what time to be prosecuted.

Copy of proceedings to be furnished appellant.

own knowledge, or upon complaint lodged in writing by any commissioned officer, to arrest and order a court martial for the trial of the adjutant general, a major general, or a brigadier general.

147. And any major general or brigadier general, for misconduct within his knowledge, or upon complaint lodged in writing by any commissioned officer, may arrest any colonel, lieutenant colonel, aid de camp, brigade inspector or major; and such colonel, lieutenant colonel or major may arrest any captain or subaltern.

148. And when any militia officer shall be arrested by any other officer than the governor himself, for any offence deemed cognizable by a court martial, the officer making the arrest shall forthwith certify the same to the governor, together with the cause thereof, the charges on which it was made, and such proofs as may have been offered to sustain the charges; and if thereupon the governor shall think that the offence charged is properly cognizable by a court martial, and ought to be prosecuted, he shall, without delay, cause an order to be issued to the commanding officer of the division to which the arrested officer may belong, if he be a field officer, aid de camp, or brigade inspector, or to the commanding officer of the brigade to which the arrested officer may belong, if he be a captain or subaltern, requiring him to detail and convene a court martial for the trial thereof; and it shall be the duty of the officer to whom such order shall be addressed, promptly to execute it; but if the governor shall be of opinion that the officer so charged ought not to be prosecuted before a court martial, he shall cause an order to be issued for discharging the arrest, and it shall accordingly be discharged; and if no order for a court martial be issued in sixty days after the arrest is made, such arrest shall, for that cause, be discharged, and the arrested officer restored to his command.

149. A court martial for the trial of the adjutant general, a major general, or a brigadier general, shall be composed of one major general, not more than four brigadier generals, and as many field officers as will make up the number required by law; for the trial of a colonel, lieutenant-colonel, aid de camp, brigade inspector or major, of one brigadier general, and as many field officers and captains as will make up the number required by law.

150. And for the trial of a captain or subaltern, of one or more field officers, and as many captains and subalterns as will make up the number required by law. Every court martial convened under the laws of this commonwealth, shall consist of not less than five, nor more than nine members, at the discretion of the officer by whose authority it shall be ordered; and such courts martial shall proceed to hear and determine on all offences under this act, and may censure or cashier any officer so tried, which sentence shall be final, saving to the party an appeal to the executive.

151. Every person who may think himself aggrieved by the judgment of any court martial shall, within ten days thereafter, file a notice in writing with the judge advocate, stating that he intends to appeal from such judgment, and shall, within ninety days after filing such notice, prosecute his appeal; otherwise the judgment of such court shall be final, as if the same had been approved by the executive.

152. And in all cases of appeal, the party making the appeal may demand of the judge advocate of the court martial, a full copy of the proceedings thereupon, to be laid before the executive, who shall

determine agreeably to the right of the case; and for obtaining the necessary evidence for the trials aforesaid, the commanding officer of the state, division or brigade, (as the case may be,) shall issue his summons; and every person so summoned, failing to attend, shall be subject to, and may be tried by, a court martial; and if an officer, may, at the discretion of the court martial, be cashiered or reported to the regimental court of enquiry, to which he may belong, and be then subject to such fines and penalties as are provided by this act; and if a non-commissioned officer or soldier, to be reported to the court of enquiry of the battalion to which he may belong, and be then subject to such fines and penalties as are provided by this act.

Witnesses, how to be summoned.

Penalty for disobeying summons.

153. When any court martial shall have been ordered for the trial of any militia officer, the officer arresting shall draw up in writing the charges and specifications of the alleged offence, shall sign his name thereto, and shall deliver a duplicate thereof to the officer arrested, at least ten days before the trial; and upon such trial nothing shall be alleged against the accused which is not embraced by such charges and specifications.

Charges and specifications, by whom made.

When duplicate to be delivered to arrested officer.

154. When any application shall be made for the arrest of any officer, in all such cases the officer to whom such application shall be made, shall determine whether the offence be cognizable before a military tribunal, and in all such cases, the charge or charges exhibited against such officer, shall be supported by affidavit.

Officer applied to for arrest, to judge whether offence be cognizable by court martial. Affidavit required.

155. No officer shall be arrested for any act of which he may be alleged to have been guilty two years previous to the application for such arrest.

Limitation of time for arrest.

156. If any militia officer shall be convicted of felony, or of any misdemeanor punishable by confinement in the penitentiary house, or by stripes, or of perjury or forgery, such conviction shall completely supersede and annul his commission, and the office which he filled shall be deemed vacant.

Conviction of felony, &c. to annul commission.

157. Whenever a court martial shall be convened for the trial of any commissioned officer, the officer detailing such court shall appoint a judge advocate, and forthwith give him notice thereof; it shall be his duty to attend the court, and perform all the duties appertaining to his office, and it shall likewise be his duty to issue subpoenas for all witnesses required, as well on behalf of the prosecution as on behalf of the accused: it shall moreover be the duty of the officer detailing the court, to appoint a fit person or persons to summon the court and witnesses; and if for any cause, such judge advocate, or such person or persons appointed to summon the court and witnesses, shall fail to attend and perform the duties hereby required of them, the court martial, while sitting, may supply the vacancy by appointing others. And the said courts shall have power to appoint a provost martial.

Judge advocate, how appointed.

His duties.

Witnesses, how summoned.

Person to be appointed to summon court and witnesses.

Failing to attend, vacancy, how supplied.

Provost martial to be appointed.

158. The subpoenas issued by the judge advocate shall be addressed to the person or persons appointed as aforesaid, and due obedience shall be paid to such subpoenas by all persons on whom they may be served. Any one failing in such obedience, without good cause, may be fined in any sum not exceeding one hundred dollars, by the battalion or regimental court of enquiry, (as the case may be,) for the regiment within which he may reside; to which court it shall be the duty of the court martial to report him; and if he be an officer of the militia, he shall moreover be liable to arrest

Subpoenas, to whom addressed. Obedience due thereto.

Fine for disobeying subpoena, how imposed.

If officer, liable to arrest and trial.

Punishment.

and trial by a court martial, and to be cashiered or censured at the discretion of the court.

Not more than three witnesses to be summoned to one fact.
If more, by whom paid.

159. And whenever a court martial shall hereafter convene for the trial of any commissioned officer, it shall not be lawful to summon more than three witnesses to depose to the same fact; and if more be summoned, their attendance shall be paid by the party at whose instance they shall attend.

Rules by which courts martial proceed.

Oath to be taken for trial of officer not in service.

160. The said courts martial shall, in the trial of any officer, proceed according to the rules and articles of war as established by congress; except when any officer shall be tried for any offence committed while not in actual service, the officers convened for his trial shall, instead of the oaths prescribed by the said articles, take the following, viz: "*I, A. B., do swear, that I will well and truly try and determine, according to the evidence, the matter now depending between the commonwealth of Virginia and C. D. under arrest; and that I will duly administer justice according to law, to the best of my knowledge, without partiality, favour or affection; nor will I, upon any account, at any time whatever, discover the opinion or vote of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice, or in due course of law. So help me God.*" Which said oath shall be administered by the judge advocate to all the members of the court martial; and the president of such court shall thereupon administer the following oath to the judge advocate, to wit: "*You, A. B., do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice, or in due course of law. So help you God.*"

By whom administered.

Judge advocate's oath.

Compensation to members of court;

161. Officers attending as members of a court martial for the trial of any arrested officer, shall receive the sum of three dollars each for every day they shall so attend, and three dollars for every twenty miles they shall necessarily travel in going to and returning from the place appointed for such trial. The persons appointed to summon the court martial, and the witnesses to attend the same, shall receive as a compensation ten cents for every mile they shall necessarily travel in summoning such court and the witnesses; and the witnesses attending such court shall receive the same compensation for attendance and mileage, as is allowed to witnesses attending the superior court of law.

To person summoning court and witnesses;

To witnesses.

Compensation to judge advocate and provost martial.

162. The judge advocate shall receive a compensation for his services, not exceeding ten dollars per day, and the provost martial not exceeding two dollars per day, to be judged of by the court before whom he shall have rendered the same.

When party appealing entitled to a copy of proceedings.

163. And when any appeal is taken from the decision of a court martial, the party making the appeal shall be entitled to a copy of the proceedings, provided he shall pay to the judge advocate a reasonable sum for the same, to be adjudged of by the court. The attendance of the officers, judge advocate, provost martial and witnesses, shall be certified by the court, if any shall be holden; if not, by any three officers summoned to attend as aforesaid, and paid out of the contingent fund.

Attendance how certified and paid.

Uniform to be prescribed by governor.

164. The governor shall be, and he is hereby authorized to declare by proclamation, what shall be the uniform of the militia of this commonwealth; and the several officers shall be governed accordingly.

165. The executive shall cause to be printed and distributed, so many copies of this act, together with the articles of war, as revised by the congress of the United States, as will be sufficient to furnish to each commissioned officer one copy. Act and articles of war to be printed and distributed.

166. All acts and parts of acts coming within the purview of this act, shall be and the same are hereby repealed: *Provided, however,* That all rights and remedies, fines, penalties, forfeitures and proceedings heretofore accrued, incurred or commenced, shall be and remain in the same state and condition as if this act had never been passed. Repealing clause. Proviso.

167. This act shall commence and be in force from and after the first day of January, one thousand eight hundred and thirty-five. Commencement.

CHAP. 23.—An ACT to amend an act, entitled, "an act concerning general elections in this commonwealth."

(Passed February 21, 1834.)

1. *Be it enacted by the general assembly,* That so much of the act "concerning general elections," passed April the second, eighteen hundred and thirty-one, as requires the courts of the several counties, cities, towns and boroughs in this commonwealth, at their February, March, April or May terms annually, to appoint three commissioners in each county, city, town and borough, to aid in the examination of the polls in the manner directed by said act; and so much of the said act as makes it the duty of said commissioners, of the sheriff or other officer who conducted the election at the court-house, of the clerk or deputy clerk of the county, city, town or borough, and of the commissioner or commissioners of the revenue, to assemble at the court-house on the eighth day after the commencement of the election, to examine and correct the original polls of the county, be, and the same is hereby repealed. Act requiring court to appoint commissioners to examine polls, repealed. Acts 1830-31, ch. 1, § 12. Sup. R. C. p. 103. Act requiring board of scrutinizors, repealed.

2. *Be it further enacted,* That in all future elections within this commonwealth, the original polls taken at the court-house of each county, city, town or borough, and at the several places in each county where separate elections are authorized by law, shall be the poll of the county, city, town or borough respectively, in lieu of the corrected poll heretofore required by law. Original poll to be poll of county, &c.

3. *Be it further enacted,* That the said original poll shall be delivered to the clerk of each county, city, town or borough, in the manner, and within the time directed by the said act concerning general elections, who shall carefully preserve the same, and shall suffer any candidate or elector at any time to take a copy thereof. When poll to be delivered to clerk.

4. *Be it further enacted,* That in addition to the superintendents required by the forty-sixth section of the said general election law, it shall be the duty of the court in such county where a separate poll or polls are authorized to be held, to appoint five discreet and intelligent freeholders, residing in the neighborhood, who, or any two or more of whom may act, to superintend the election at the court-house; and the persons so appointed, shall take the same oath, and perform the same duties that are required of the persons appointed to superintend the taking of the separate polls. And the same proceedings shall be had in case of the death, removal, resignation or refusal to act, of any of the persons appointed to superintend the election at the court-house, that are authorized and required by law in regard to the persons appointed to superintend separate elections. Courts to appoint persons to superintend elections at court-house. Sup. R. C. p. 116, § 46. Vacancies, how supplied.