

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-FIFTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1856.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1830, February 26, 1840,  
and March 16, 1842.  
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Augusta:
FULLER & FULLER, PRINTERS TO THE STATE.
1856.

PUBLIC LAWS

OF THE

STATE OF MAINE.

1856.

CHAP. 265.

Tender of costs.

and the said debtor shall also, at the time of said tender, pay into court all the taxable costs in said action up to the time when such deed is tendered, then the suit shall be dismissed and the original judgment against said debtor shall be satisfied to the amount at which said real estate was appraised, deducting therefrom the expenses of the levy and the officers fees on the execution.

SECT. 2. This act shall take effect on its approval by the governor.

[Approved April 9, 1856.]

Chapter 265.

An act to organize and discipline the militia.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

Exemptions, enrollments, ununiformed and uniformed or active militia, organization, duties of.

Exempts.

SECT. 1. There shall be exempted from military duty under the laws of this state, in addition to the persons exempted by the laws of the United States, the judges of the supreme judicial court, judges of any court of record, judges of the probate, municipal and police courts, the clerks of all courts of record, registers of deeds, and registers of probate; all ministers of the gospel regularly ordained according to the usages of their denomination, so long as they sustain that relation in their denomination; the superintendent and other officers and assistants employed in the insane hospital at Augusta, and at the state reform school at Cape Elizabeth; also the officers and guards employed in the state prison at Thomaston; all officers who have held military or naval commissions, and who have been regularly discharged, or have in accordance with military or naval usage, without fault on their part, been discharged, or ceased to act as such; all quakers and shakers, so long as they continue members of such denominations; all members of engine companies, while they continue to do duty in such companies; all mariners, unless they have been discharged, and have done no service on board any vessel for more than three months at the time they shall be warned; all persons unable from bodily infirmity to do military duty; all idiots, lunatics, common drunkards, vagabonds, paupers and persons convicted

of infamous crimes. When any person enrolled shall exhibit to the enrolling officers proof that he is exempted by any part of this section, they shall strike his name from the roll.

SECT. 2. All other white male citizens of the United States, residing within this state, between the ages of eighteen and forty-five years, shall be enrolled by the assessors of the cities, towns and plantations in which they reside. They shall make such enrollment annually, on the first day of May, of all such persons then residing within their limits, and make a list of their names and seasonably deliver the same to the clerk of their city, town or plantation, to be by him preserved on file in his office. He shall annually, in the month of May or June, transmit a certified copy of such list to the office of the adjutant general. Persons so enrolled shall constitute the ununiformed militia of the state.

Persons liable to be enrolled.

Duty of assessors to enroll and make return.

SECT. 3. The ununiformed militia thus constituted, shall be subjected to no active duty whatever, except in case of insurrection, war, invasion, or to prevent invasion; in such case the governor and commander-in-chief is authorized and required to order out from time to time, by draft or otherwise, so many of the militia as the necessity of the case may demand. The militia, when called into active service, shall be governed and trained according to the laws of the United States and of this state.

Ununiformed militia, duty of.

SECT. 4. If necessary, the order of the commander-in-chief, calling out the ununiformed militia, may be made and directed to the municipal officers of any town within the state. And it shall be the duty of such officers to appoint a time and place of parade for the ununiformed militia in such city, town or plantation, and to order them to appear at such time and place, either by leaving a written notice or orally, and then and there to proceed to draft so many thereof, or to accept so many volunteers as may be required by the order of the commander-in-chief; and such municipal officers shall notify the commander-in-chief forthwith, that they have performed the duty aforesaid, by returning to him an alphabetical list of the names of the persons so drafted or volunteered; and such ununiformed militia shall thereupon be formed into companies and shall proceed to elect officers thereof, in the same manner as is provided for the election of officers of companies in the sixteenth and thirty-sixth sections of this act; and whenever any person thus detached or drafted, or any such volunteer, shall neglect or refuse to appear at the time and place designated by the

—may be called out by commander-in-chief.

—draft of, made.

—election of officers.

—penalty for non-appearance.

CHAP. 265. municipal officers aforesaid, and shall not, within twenty-four hours after he shall be notified, pay to the municipal officers the sum of fifty dollars, or procure an able-bodied, white male person in his stead, such person, on being ordered to march to the place of rendezvous, shall be considered a soldier belonging to the detachment, and shall be dealt with accordingly.

Penalty, when
civil officer
refuses to obey.

SECT. 5. Any civil officer named in this chapter, who shall neglect or refuse at any time to obey the provisions thereof, shall forfeit and pay not less than twenty dollars, nor more than five hundred dollars, for each and every offense, to be recovered in any court of competent jurisdiction, for the use and benefit of the state.

Volunteer militia.

Active militia.
Duty.

SECT. 6. The uniformed or active militia of this state shall consist of volunteers, or companies raised at large; and shall, in all cases, be first ordered into service to suppress riots, to repel invasions, or to aid civil officers in the execution of the laws of the state.

Number of
volunteers
limited and
apportioned.

SECT. 7. The whole number of volunteers shall not exceed ten thousand men, and shall be apportioned to the several divisions of the militia throughout the state, as the governor and council may determine.

Articles furnished.

Arms and
equipments.

Books of tactics,
tents and camp
equipage.

Musical
instruments.

State and
regimental
colors, furnished
by the state.

Blanks, blank
books, &c.,
furnished by
the adjutant
general.

SECT. 8. Each company of uniformed volunteer militia, raised at large, shall, whenever the state may have on hand for distribution, arms and equipments suitable to its corps of service, be furnished therewith. Each company, so raised, and the officers of divisions, brigades and regiments, shall be provided with the requisite books of tactics, and with such tents and other articles of camp equipage as the commander-in-chief may direct. All companies shall also be furnished with suitable musical instruments whenever the state may have them on hand for distribution. Each regiment and battalion shall be furnished by the state with the state and regimental colors, and their staffs, belts, sockets, and suitable coverings for the same; and the commanding officer of such regiment or battalion shall be responsible for the safe keeping of the same.

SECT. 9. It shall be the duty of the adjutant general to furnish all company and other officers all such blanks, blank books, rolls and notifications, as may be required to be used by the provisions of this chapter. It shall also be his duty to arrange

so much of the militia laws as shall at any time be in force, and cause the same to be printed in proper form from time to time, and to distribute one copy thereof to each commissioned officer and to the clerk of every city and town in this state.

Laws to be distributed.

SECT. 10. Division, brigade and regimental officers and commissioned officers of every company receiving arms, equipments or other military property in virtue of this act, shall, from the time of their qualification, be held jointly and severally responsible for the safe keeping and return thereof to the state.

Officers responsible for military property.

Armories.

SECT. 11. Suitable armories shall be provided in advance, by companies making requisition for arms and equipments, or by the town within the limits of which said companies shall have been chiefly raised, or shall have voted to establish said armories; and all arms, equipments and camp equipage furnished to said companies, shall be regularly deposited in said armories, subject to withdrawal for the military uses and purposes only of said companies, in body, and under the proper officer or officers. The several cities and towns within this state are hereby authorized to raise money to be expended in providing armories or places of deposit for military property issued to any company. The evidence that the armories named in this section have been duly provided for, shall be the certificate to the acting quartermaster general, of the mayor, or two or more aldermen, selectmen or assessors, as the case may be, of the locality in which such armories are established.

Armories, to be provided by companies or towns.

Military property to be deposited therein.

Cities and towns authorized to raise money to provide armories.

Evidence that armories have been provided.

SECT. 12. Any person who shall willfully mar or injure any of the arms, equipments or other military property issued to any company of volunteer militia, or the armory, or any portion thereof, or of its fixtures, provided for the deposit of arms, equipments or other military property, shall be subject to a fine of not more than fifty dollars; said fine to be recovered in any court of competent jurisdiction, in the name of the clerk or commanding officer of the company legally in charge or possession, and to be paid into the treasury of the company, for appropriation to its military purposes, by a vote of the commissioned officers.

Penalty for injury to military property.

How recovered.

SECT. 13. It shall be the duty of the brigade inspector of each brigade, or in case of a vacancy in that office, then it shall be the duty of the division inspector of each division as often as shall be required by the commander-in-chief, to examine any armory within the limits of each brigade or division provided

Duty of brigade or division inspector, to examine armories.

CHAP. 265.

Compensation.

for the use of any company in which any military property of the state may be deposited, who shall report to the commander-in-chief the condition thereof and of the property therein deposited; and for his services he shall be allowed a reasonable compensation to be paid by the acting quartermaster general after his account for said service shall have been audited and allowed by the governor and council.

Resignation of officers shall not be accepted until a certificate of the value of arms, &c., is furnished.

SECT. 14. No resignation of any officer of a company of volunteers shall be accepted, nor shall such officer be by any form of discharge relieved from his responsibility for arms, equipments, or other articles of military property furnished to said company, until it shall be made to appear by certificate of not less than two of the officers thereof, that the said arms, equipments and other articles of military property, are, at the time of date of such certificate, undiminished in quantity, and unimpaired in value, reasonable use and wear and losses by fire excepted.

Petitions for raising companies.

SECT. 15. The commander-in-chief, with the advice of the council, may grant petitions for raising companies at large, not to exceed the total number stated in this chapter, for all the divisions, inclusive of companies now raised and organized.

Election of officers.

SECT. 16. Whenever forty-eight men are enlisted according to the provisions of this chapter, an election of officers may be ordered upon notification being given by one or more of the petitioners, approved by the commanding officer of the division or brigade in which such company may be raised, to the commander-in-chief; and in case there be no officer of the volunteer corps conveniently located to preside at such election, the major general, or other officer, whose duty it shall be to cause an election to take place, may authorize the members so enlisted to choose some suitable person to preside at the election, and to make return thereof to the major general, or other officer commanding the division.

Presiding officer.

Compensation of quartermaster general for distributing arms.

SECT. 17. For his services in issuing arms, equipments, and other military property, under the provisions of this chapter, the acting quartermaster general shall be annually allowed and paid, in quarterly payments, the sum of one hundred dollars.

Companies to be numbered and record thereof made.

SECT. 18. The several volunteer companies of cavalry, artillery, light infantry, and riflemen, in each division, shall be numbered, and a record made of such numbers in the adjutant general's office; and when they exist in sufficient numbers in any one division, they shall compose battalions and regiments, and be put under the command of such regimental, brigade and

Sufficient number shall compose a battalion.

division officers, as the commander-in-chief may designate, and, when not attached to any battalion or regiment, shall remain under the command of the captain, or commanding officer of the company, subject to the orders of the brigadier general of the brigade to which the company is attached.

SECT. 19. Every non-commissioned officer and soldier of any company raised at large shall be holden to do duty therein for the term of five years from his enlistment, unless disability after enlistment should absolutely incapacitate him to perform such duty, or he should be regularly discharged by the proper officer.

Term of enlistment of non-commissioned officers and soldiers.

SECT. 20. Any commander of any volunteer company who shall knowingly enlist or permit to be enlisted into his company, any non-commissioned officer, musician or private, belonging to any other company, or who shall retain the name of any such non-commissioned officer, musician or private, upon the rolls of his company after being duly notified of the fact of such previous enlistment, shall be liable to court martial.

Liability of commander for enlisting members of other companies.

SECT. 21. The commanding officers of all volunteer companies, shall, on or before the first day of July annually, make out and certify through the proper officers to the adjutant general, a list of all persons belonging to their respective companies, describing the duties performed by each individual in his company throughout the year.

Annual return of companies.

SECT. 22. Every non-commissioned officer, musician or private, who shall unnecessarily neglect to appear on the days and at the times and places appointed for such duty, agreeably to the provisions of this chapter, shall pay two dollars for each and every such neglect, to be collected in an action of debt, one half of which shall go to the prosecutor, and the other half to the clerk of the company for the use of said company.

Fine for non-appearance.

SECT. 23. Whenever any volunteer company which has received any arms and equipments from the acting quartermaster general, shall be disbanded, it shall be the duty of the acting quartermaster general forthwith to take possession of said arms and equipments and other military property belonging to the state which shall have been issued to said company, and to cause the same to be deposited in one of the state arsenals, and in case of the neglect or refusal of the officers of said company on demand to re-deliver said property or any part thereof, it shall be the duty of the acting quartermaster general to cause an action of replevin in his name to be commenced against

Quartermaster general required to take possession of arms, &c., when companies are disbanded.

CHAP. 265. such officer or person having possession of the same, for the recovery of said arms, equipments or other military property.

Organization and arrangement of the militia.

SECT. 24. The governor is authorized, with advice of the council, to organize and arrange the militia of this state into divisions, brigades, regiments, battalions and companies, conformably to the laws of the United States, and make such alterations therein as from time to time may be necessary. Each division, brigade and regiment shall be numbered at the formation thereof, and a record made of such numbering in the adjutant general's office. Every new division, brigade and regiment shall be designated by the number next higher than that of the division established next before it, and the divisions, brigades and regiments shall take rank according to their numbers, the first being highest in rank. The governor with advice of the council, may organize independent battalions of infantry with a battalion staff, where the local situation of the troops is such that they cannot be conveniently connected with a regiment.

Divisions, brigades and regiments numbered.

Rank.

Battalions of infantry organized.

Non-commissioned officers and privates, how discharged.

SECT. 25. Each brigadier general within his own brigade, upon application of a majority of the members of any company of cavalry, artillery, light infantry, or riflemen, expressed by their vote at any regular meeting, and such application being communicated by the commanding officer of such company, may discharge any non-commissioned officer or private from any of the aforesaid companies; and such non-commissioned officer or private shall forthwith be enrolled in the ununiformed militia, within the bounds of which he resides; and every non-commissioned officer so discharged shall be considered as reduced to the ranks.

Enlistment of musicians.

SECT. 26. Every commanding officer of a company may enlist as musicians for his company, not exceeding two drummers and two fifers, or one fifer and one bugler, for and during the term of five years, unless sooner discharged by removal to such distance from the said company as to render it inconvenient for the said musician to perform the duties required of him, or by reason of some other good and legal excuse. Any musician, so enlisted, who, after having been duly notified and warned, shall refuse to perform his duty as a musician at any legal meeting of said company, shall forfeit and pay for every such offense, the same sum as would be forfeited by any non-commissioned officer or private for non-appearance at any such meeting; and in case of removal or discharge of any such musician, the said commanding officer may, from time to time, enlist other musicians to fill such vacancy.

Fine for non-appearance of musicians.

SECT. 27. Each colonel of a regiment may raise by voluntary enlistment and organize within his regiment, and for the use thereof, a band of musicians, not to exceed twenty in number, including one master and one deputy master, and may grant to the master, deputy master, and members, warrants as such; and such band shall be under the direction of the commanding officer of the regiment; and when the regiment shall be encamped, the commanding officer thereof shall order on duty his regimental band for the time that the troops are to remain in camp, and when on duty all regimental bands and other music shall be under the direction of the drum major, subject to the order of the senior officer in command.

The colonels of regiments authorized to raise bands of musicians.

SECT. 28. When any regimental band or company of music shall be ordered on duty as is prescribed in section twenty-seven, there shall be paid to each musician the sum of two dollars, for each day's service performed by them, by the acting quartermaster general.

Compensation

Rosters, rolls and returns.

SECT. 29. The aid-de-camp to each major general, by him appointed to be orderly officer, the aid-de-camp of each brigade, and the adjutant of each regiment, battalion or corps, shall constantly keep a correct roster of the division, brigade, regiment, battalion or corps to which they respectively belong, and an orderly book, and record therein all orders and other official communications received or issued by their respective commanding officers, and copy, distribute and transmit all such orders and other papers, as they may be directed by said officers, and attend them while on military duty.

Aids and adjutants required to keep rosters and orderly books, and distribute orders.

SECT. 30. The adjutant general shall record an abstract of the returns made to him in a book to be kept for the purpose. The brigade inspectors shall make the annual returns of their inspection of their respective brigades to the adjutant general, and transmit abstracts thereof to the major generals of their divisions, on or before the last day of November annually.

Record, by adjutant general. Annual return of brigade inspectors.

SECT. 31. If any captain or commanding officer shall refuse or neglect to make the return of the state of his company as required by this chapter, and continues to neglect or refuse to make such return for fifteen days after being notified by the adjutant general that such return has not been received, he shall forfeit and pay a fine of ten dollars; one-half thereof to the use of the state, and the remainder to the adjutant, who

Penalty for neglect of captain to make return.

CHAP. 265. shall be required to collect said fine by an action of debt in any court proper to try the same.

Returns to be made by adjutant general.

SECT. 32. The adjutant general shall form and sign correct abstracts of all the returns, as before herein required, and transmit one of them to the commander-in-chief, and one to the President of the United States, on or before the first day of January, annually.

Arms, uniforms, &c., exempt from attachment.

SECT. 33. The arms, ammunition, accoutrements and uniform of every officer, non-commissioned officer and private, and the uniform and musical instruments of the musicians of such companies, shall be exempted from attachment, execution or distress.

Officers and privates exempt from arrest, when on duty.

SECT. 34. No officer, non-commissioned officer or private shall be arrested on any civil process during his going unto, returning from, or his performance of military duty, nor during his going unto, remaining at, or returning from any place, at which he may be ordered to meet for the election of any officer or officers. And no officer shall be arrested in any civil process while going to, serving upon, or returning from any court martial, court of inquiry, or board of officers, upon which it may be the duty of such officer to attend.

Governor to cause repairs of apparatus and repairs and erection of gun houses for artillery.

SECT. 35. The commander-in-chief is hereby authorized to cause all necessary repairs to be made upon all the carriages and apparatus of the artillery, and all the gun-houses belonging to the state; and also to cause gun-houses to be erected for the safe keeping of the public property, as aforesaid, where such have not been erected; good and sufficient deeds of land therefor being first given, free of expense to the state.

Officers, appointment, election and qualification of.

Officers, designated by the laws of the United States, how elected or appointed.

SECT. 36. The commissioned officers of the militia, named in the laws of the United States, shall be chosen and appointed in the manner following:

Major generals.

The major generals shall be chosen by the senate and house of representatives, each having a negative on the other. The secretary of state, as soon as may be after any such election, shall notify the person elected thereof; and if such person shall not signify his acceptance of the office within thirty days after such notice, he shall be considered as declining.

Adjutant and quartermaster general.

The adjutant general and quartermaster general shall be chosen as provided by the constitution, with the rank of brigadier general, and shall keep their offices at the seat of government.

The division inspectors shall be appointed by the major generals of their respective divisions, with the rank of lieutenant colonel.

Division inspectors.

The aids-de-camp of the major generals shall be appointed by their respective major generals, with the rank of major.

Aids of major generals.

The division quartermasters shall be appointed by the major generals of their respective divisions, with the rank of major.

Division quartermasters.

The brigadier generals shall be chosen by the written votes of the field officers of their respective brigades.

Brigadier generals.

The brigade majors shall be appointed by their respective brigadier generals, with the rank of major.

Brigade majors.

The aids-de-camp of the brigadier generals, and quartermasters of brigades, shall be appointed by the brigadier generals of their respective brigades, with the rank of captain.

Aids of brigadier generals.

The field officers of regiments and battalions shall be chosen by the written votes of the captains and subalterns of their respective regiments and battalions.

Field officers of regiments and battalions.

The captains and subalterns of companies shall be chosen by the written votes of the members of their respective companies.

Captains and subalterns.

The adjutants, the quartermasters and the paymasters of regiments, shall be appointed by the colonels of their respective regiments, with the rank of lieutenant.

Adjutants, quartermasters and pay masters of regiments.

The chaplains, the surgeons and the surgeons' mates of regiments, shall be appointed by the colonels of their respective regiments.

Chaplains, surgeons and surgeons' mates.

The aforementioned officers shall be commissioned by the governor.

How commissioned.

SECT. 37. Sergeants and corporals shall be appointed by, and receive their warrants from the captains of their companies.

Non-commissioned officers, how appointed.

SECT. 38. In addition to the officers specified in the laws of the United States, there shall be the following, who shall receive commissions from the governor, viz :

Additional officers, and how commissioned and appointed.

Aids-de-camp to the commander-in-chief, not to exceed four in number, with the rank of lieutenant colonel, to be appointed by the governor.

Aid to the commander-in-chief.

One or more hospital surgeons, to be appointed by the governor; and said surgeons, while in actual service, shall be at the head of the medical department, within the district assigned them by the commander-in-chief, with advice of the council.

Hospital surgeons.
Duty.

A division advocate for each division, to be appointed by the commander-in-chief.

Division advocate.

CHAP. 265.

Adjutant and
quartermaster to
battalion of
artillery and
cavalry.

An adjutant and quartermaster to each battalion of artillery and cavalry, to be appointed by the commanding officers of their respective battalions, with the rank of lieutenant.

And the following non-commissioned officers, viz :

Non-commissioned
staff
officers.

To each regiment, a quartermaster sergeant and a sergeant major, a drum and fife major, master, deputy master and musicians of the regimental bands, to be appointed by the colonels of their respective regiments, who shall grant them warrants accordingly.

Quarter master
sergeant.

A quartermaster sergeant to each separate battalion of artillery and cavalry, to be appointed by the commanding officers of their respective battalions, who shall grant them warrants accordingly.

Officers of
cavalry,
artillery, &c.

SECT. 39. To each company of cavalry, artillery, light infantry, infantry or riflemen, there shall be one captain, one first, one second, one third and one fourth lieutenant, five sergeants, four corporals, two fifers and two drummers, and to each company of artillery there shall be three drivers, and to each company of cavalry one saddler, one farrier, and one or more trumpeters, who shall be respectively chosen or appointed as provided in the thirty-sixth section.

Mode of giving
orders for choice
of officers.

SECT. 40. Each major general is authorized and it shall be his duty, from time to time, to give all such orders as may be necessary for filling, by election, any vacancy of brigadier general, field officer, captain or subaltern, existing within his division. Previously to any such election, except in the organization of companies of ununiformed militia, called into actual service under section four, the electors shall have ten days notice thereof, at least, and no election for the choice of brigadier general or field officer shall be valid until a majority of all the electors qualified by law to vote in such choice, counting all the existing vacancies in the offices of such electors, shall be present at such election. Every person, who shall have been elected to any office as aforesaid, and shall not, within one hour after he shall be declared so elected, signify his acceptance to the presiding officer thereof, in person, or in writing, shall be considered as declining to serve, and a new election shall be had.

Notice to
electors.

Persons elected,
to accept within
one hour.

Officers to take
rank from the
date of their
election or
appointment.

SECT. 41. The commission of every officer shall designate the division, brigade, regiment or battalion, and the corps in which he shall be commissioned, and the day of his election or appointment; and he shall take rank from that day; and whenever an officer is transferred from one corps or station to

another in the same grade, the day of the date of his original appointment or election shall be expressed in his new commission, and that day be considered the date of his commission.

SECT. 42. When an officer shall by any casualty lose his commission, upon his making affidavit thereof before any justice of the peace of the county wherein he resides, and on filing such affidavit in the office of the adjutant general, he shall be entitled to receive a new commission of the same tenor and date as the one so lost.

When a commission is lost, officer may be commissioned anew.

SECT. 43. When two or more officers of the same grade are on duty together, and their commissions bear an equal date, and former pretensions of some commission do not decide their rank, then their relative rank with each other shall be determined by lot to be drawn by them before the commanding officer present; and when on a court martial, before the president thereof.

Rank of officers, how decided in certain cases.

SECT. 44. Every officer duly commissioned shall, before he enters upon the discharge of the duties of his office, take and subscribe the oaths required by the constitution, before some justice of the peace, or before some superior field or general officer, or staff officer of the rank of field officer who has previously taken and subscribed them himself. And on the back of every military commission, the following form of certificate of qualification shall be printed:

Oath of commissioned officers.

“STATE OF MAINE.

This may certify that ——— ———, commissioned as within, on this ——— day of ———, in the year 18—, personally appeared, and took and subscribed the oaths, required by the constitution of this state, to qualify him to discharge the duties of his office.

Form of certificate.

Before me, ——— ———, ———.”

SECT. 45. To every company there shall be a clerk, who shall be one of the sergeants, and he shall be appointed by the captain or commanding officer thereof, and on the back of his warrant as sergeant, the captain or commanding officer shall in writing certify that he does thereby appoint him to be clerk of the company. And before such clerk enters upon the duties of his clerkship, he shall be sworn to the faithful discharge of his duty, by taking the following oath before the captain or commanding officer of the company to which he belongs, who is hereby authorized to administer the same, viz:

Clerks of companies, how appointed and sworn.

“I, A. B., do solemnly swear, that I will faithfully and impartially perform all the duties incumbent on me, as clerk of

Form of oath.

CHAP. 265. the company to which I belong, according to the best of my abilities and understanding. So help me God."

Certificate of oath.

And the captain or commanding officer of the company shall, at the time of administering said oath, certify on the back of the warrant of the sergeant appointed to be clerk, that he was duly qualified by taking the oath required by law.

Duties of clerk of companies.

SECT. 46. The clerk shall keep a fair and exact roll of the company, together with the state of the arms and equipments belonging to each man, which roll he shall annually revise on the first Tuesday of May, and correct the same from time to time, as the state of the company may require. He shall register all orders and proceedings of the company in the orderly book; keep exact details of all drafts and detachments; distribute all company orders and notifications, which he may be required to do; examine the equipments of the men, when ordered; note all delinquencies; sue for and recover all fines and forfeitures which may be required to be sued for in this chapter; and keep accounts in the orderly book of all fines and forfeitures, and all other moneys collected by him, with the persons' names of whom they were collected, and of the times when, and for what offense; which book shall not be alienated from the company, and shall always be open to the inspection of any officer or private of the company.

Clerks, pro tempore.

SECT. 47. In case of the sickness, absence, or other disability of the clerk of any company, the commanding officer thereof may appoint a clerk *pro tempore*, who shall be duly sworn before he enters on the duties of the office; and shall, for the time expressed in his appointment, or until specially discharged, have all the powers, and be subject to all the duties, and liable to all the penalties of the clerk in whose place he is put.

Commanding officer may require any member to perform certain duties of clerk, in certain cases.

SECT. 48. In case of such sickness, absence or other disability, or whenever the office of clerk in any company shall become vacant, and it shall satisfactorily appear to the commanding officer that no person will accept the same, temporarily or permanently, as the case may be, he may issue his order in writing to any non-commissioned officer or private in said company, requiring him to perform all the duties of the clerk of said company, except keeping the records, until the clerk shall be able to perform the same, or some other person be appointed, for a term not exceeding three months; and if any non-commissioned officer or private so appointed, and who shall not have been, within one year previous, required to perform the

same duties, shall refuse or neglect to perform all or any of the duties of said office, during said term, except keeping the records, he shall forfeit and pay not less than ten, nor more than twenty dollars, to be recovered by indictment, or by action on the case, by any person whatever; one half to the use of the state, and the other half to the use of the prosecutor.

Penalty for neglect.

SECT. 49. In all such cases, the records of the company shall be kept by the commanding officer, so long as such vacancy absence, sickness or other disability shall continue; and the records so kept shall be competent evidence of such orders and temporary appointments, as well as of all matters of which such records would be evidence if kept by the clerk.

Commanding officer to keep records in such cases.

SECT. 50. When the office of major general, brigadier general, colonel, lieutenant colonel, major commandant or of captain shall be vacant, or in case of the absence of any such officer, the officer next in grade and in commission in the division, brigade, regiment, battalion or company, on due notice thereof from the proper superior officer, shall exercise the command, and perform the duties thereof, until the vacancy shall be supplied.

Vacancy of commanding officer, how supplied.

SECT. 51. When a company shall have neither commissioned nor non-commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, shall appoint suitable persons within said company, to be non-commissioned officers of the same, and grant them warrants accordingly; one of which non-commissioned officers he shall appoint clerk, and endorse his warrant and administer the oath to him, as directed in the forty-eighth section; and the senior non-commissioned officer of a company, while there are no commissioned officers in office, shall command the same; and all the powers of commanding officer shall be vested in him, until some commissioned officer shall be appointed, or chosen and qualified.

When a company is destitute of officer, commander of regiment or battalion may appoint non-commissioned officers.

SECT. 52. When any company shall have remained without any commissioned officers for the term of three months, the commanding officer of the regiment to which said company belongs shall detail some suitable officer of the staff, or of the line, not above the rank of lieutenant, to train and discipline said company, until some officer shall be elected, or appointed by the commander-in-chief, as provided in the second section of the seventh article of the constitution, and commissioned; and such officer so detailed shall have the same power and authority, and be subject to the same liabilities, as if he were

In case a company remain without officers three months, commander of regiment shall detail an officer to take command.

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Such officer shall keep records and prosecute for fines.

captain of such company; and he shall keep the records of the company, and prosecute for all fines and forfeitures, in such manner as he may be authorized and required to do, by virtue of the eighteenth section of this chapter; one-half of the amount recovered to be to the use of the regiment, and the other half to the use of the officer. The officer so prosecuting shall be a competent witness in the case.

Penalty, if non-commissioned officer or private, in such case, neglect to warn the company, when ordered.

SECT. 53. When the officer, so detailed to command such company, or, where no officer shall have been detailed, whenever the commanding officer of the regiment to which such company belongs, shall, in writing, order any non-commissioned officer or private, to notify the persons liable to do duty in such company to appear for any duty required by law, any non-commissioned officer or private who shall neglect or refuse to notify such persons to meet at the time and place and for the purposes mentioned in such order, as aforesaid, shall forfeit and pay not less than twenty, nor more than one hundred dollars, to be recovered by indictment, or by an action on the case, by any person whatever; one half to the use of the state, and the other half to the prosecutor.

Compensation of adjutant and quartermaster general.

SECT. 54. The adjutant general and quartermaster general shall receive compensation for their services, to be allowed by the legislature.

General duties of officers.

SECT. 55. It shall be incumbent on all officers and non-commissioned officers, whose duties are not herein fully defined, to do and perform all such duties as by law and military principles and usages are attached to their offices respectively; provided such duties shall be required of them by their senior and commanding officer.

Officers, how discharged.

Term of office, seven years, unless re-elected.

SECT. 56. All military officers, who have been or may hereafter be commissioned, shall hold their respective offices for a term not longer than seven years from the date of their commissions, unless re-appointed or re-elected: and the commander-in-chief shall discharge all such officers accordingly; *provided*, that in case of vacancy of major general in any division, the commissions of the brigadier generals in such divisions shall not terminate by the limitation aforesaid, till the office of major general shall be filled. But no officer shall be discharged within the term of five years, otherwise than in pursuance of the sentence of a court martial, except by the commander-in-chief, on request of such officer in writing; by actual removal of resi-

Proviso.

Causes for discharge.

dence out of the bounds of his command, and to such distance that the major general shall think it inconvenient for him to discharge the duties of his office; by twelve months absence without leave of the commanding officer of his division, or by the legal disbanding of the corps to which he belongs; and whenever any division, brigade, regiment or battalion shall be divided, and the residence of any staff officer attached thereto shall be without the bounds of the corps in which he was commissioned, such staff officer shall be entitled to an honorable discharge, and shall cease to do duty in such office, after such division is made; and the commanding officer may proceed to fill the vacancy occasioned thereby.

SECT. 57. No officer shall be permitted to resign, while under arrest; and no resignation of any officer shall be approved, if such resignation be offered between the first day of May and the first day of November, unless the reasons offered by the officer wishing to resign within those days be very urgent.

Officers not to resign, while under arrest, nor between May 1st and Nov. 1st.

SECT. 58. No general or field officer shall approve a resignation until the orderly and other books and property of the state, in possession of the resigning officer, are taken care of for the use of the corps to which such officer belongs, in order that such books and property may be delivered to his successor.

Officer to deliver up books and other property, before resigning.

SECT. 59. If any person, having held an office in the militia, shall, after his discharge or removal from office, neglect or refuse, after demand made upon him by his successor in office, to deliver over to his said successor any property in his possession belonging to the state, said person shall forfeit and pay a sum not less than twenty dollars, nor more than one hundred dollars, to the use of the state, to be recovered by indictment before the court.

Penalty for refusing to deliver up property of state, on removal from office.

SECT. 60. No officer shall be considered as exempted from the duties of his station, except when under arrest, until he shall have been discharged by one of the methods or causes pointed out in section fifty-seven, or shall have received a certificate of discharge from the commander-in-chief.

No officer exempt from duty, until discharged, except when under arrest.

SECT. 61. If any officer shall in due course of law be convicted of any infamous crime, he shall be forthwith put in arrest, and deprived of all military command, until he shall be removed by the governor and council.

Officers convicted of infamous crimes, to be put in arrest.

SECT. 62. No idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able-bodied male citizens, shall be eligible to any office in the militia; and whenever it shall appear to

Election of unsuitable persons to be void.

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Officers becoming unsuitable, may be discharged.

the commander-in-chief, that any person, thus ineligible, has received a majority of votes cast at any election of officers, he shall not commission him; but, with the advice and consent of the council, shall declare said election null and void, and appoint some person to fill the vacancy. And when it shall appear to the commander-in-chief, that any person commissioned as an officer in the militia of this state, has become an idiot, lunatic, common drunkard or vagabond, he shall, with the advice of the council, forthwith remove him from office, and a new election shall be ordered to fill such vacancy.

Discipline, trainings, reviews, uniform.

Citizens not required to perform military duty on election days.

SECT. 63. No officer, non-commissioned officer or private shall be held to perform any military duty on any day, except on days which are or may be specially prescribed by law, on which the selectmen of the town in which such officer, non-commissioned officer or private resides, shall appoint a meeting for the election of a representative to the legislature; nor shall there be any military parade on the day pointed out by the constitution of this state for the election of governor and senators; nor on any day which may be appointed for the choice of electors of president and vice-president of the United States, or representatives to congress; and it shall not be lawful for any officer to parade his men on either of said days, unless in case of invasion made, or threatened, or in obedience to the orders of the commander-in-chief, except as provided for in this chapter; and if any officer, contrary to the provisions aforesaid, shall parade his men on either of said days of election, he shall be liable to be tried by a court martial; and shall moreover forfeit a sum not less than fifty, nor more than three hundred dollars, to be sued for and recovered, in an action on the case, before any court of competent jurisdiction; one moiety thereof to the use of the person who may prosecute for the same, the other to the use of the state.

Penalty, if officer requires it.

Penalty for parading troops within fifty rods of court house, when court is in session.

SECT. 64. If the commanding officer of any company, battalion, regiment or brigade of the militia of this state shall parade, march or exercise the same within the distance of fifty rods from any court house of any county, whilst any judicial court shall be in session therein, unless when called out to suppress insurrection, repel invasion, or enforce the laws, he shall, for every such offense, forfeit and pay a fine not less than twenty, nor more than one hundred dollars, to be recovered by indictment, to the use of the state.

SECT. 65. At all regimental and battalion parades, the several companies shall form in regiment or battalion, according to the rank of the officers present actually commanding them; and the same rule shall apply in all cases, excepting those in which artillery, cavalry, light infantry and riflemen may, by usage and necessity, be detached from the regiments and battalions.

Precedence of companies on parade.

SECT. 66. When different corps shall parade, join, or do duty together, the senior officer present, according to rank, shall command without regard to corps.

Rank of officers of different corps, on duty together.

SECT. 67. When a company, destitute of commissioned officers, shall parade with other troops, the commanding officer present shall assign some commissioned officer or officers to such destitute company to command the same while on parade.

Officers to be assigned to companies on parade.

SECT. 68. Every commanding officer when on duty is hereby authorized to ascertain and fix necessary bounds and limits to his parade (not including any road on which people travel, so as to prevent their passing) within which no spectator shall have a right to enter without leave from such commanding officer, and in case any person shall intrude within the limits of the parade after being once forbidden, he may be confined under guard during the time of parade, or a shorter time, at the discretion of the commanding officer; and any person who shall resist any sentry who attempts to put him out of such limits, or keep him out of the same, may be arrested by order of such commanding officer and carried before some court or magistrate, to be examined or tried for such assault or disturbance and breach of the peace upon complaint thereof.

Officers authorized to assign limits to parade.

SECT. 69. Encampments or camps of instruction, in bodies of not less than one regiment, may be ordered by the major general of each division, to take place between the middle of July and the middle of October, and at points convenient to the troops ordered to be encamped; and in all cases of ordering of such encampments or camps of instruction, reasonable compensation for transportation of arms and equipage shall be paid by the acting quartermaster general, the accounts having first been audited and allowed by the governor and council.

Encampments for instruction, by order of major general.

Compensation for transportation of arms, &c.

SECT. 70. The commander-in-chief may designate any body of troops, beyond the limits of the division, which may have been ordered into encampment as provided for in the preceding section, to attend such encampment and perform duty therein, subject to the order of the commanding officer of said encampment; and when the troops thus designated shall do duty as

Commander-in-chief may designate troops not within the division, to attend such encampment.

CHAP. 265. aforesaid, compensation for transportation of arms and equipage shall be allowed as is before provided for.

Discipline and inspection of troops encamped.

SECT. 71. Troops so encamped shall be carefully and thoroughly exercised in the whole routine of camp and field duty, according to the tactics prescribed from time to time, as shall be ordered by the officers in chief command; and the troops shall also be inspected by the brigade major and inspector, whose duty it shall be to attend such encampments, and shall be reviewed and manœuvred in company and battalion, by the commanders of brigades if in regiments, and by the major general if in brigades, in presence of such general and other officers as may be present.

Notice for encampment.

SECT. 72. The notice for such encampment shall be issued at least thirty days before the time appointed for the same; and said troops, whenever thus ordered out, shall continue to perform duty for at least two days, unless sooner discharged by the senior officer in command.

Term of duty.

Temporary buildings within one mile of muster field, used for sale of intoxicating liquors, may be removed.

SECT. 73. The mayor and aldermen of any city, or the selectmen of any town, upon complaint made to them under oath, that the complainant has reason to believe that any booth, shed, or other temporary erection, situated within one mile of any muster field, is used and occupied for the sale of spirituous or fermented liquors, or for the purpose of gaming for money, or other property, may, if they consider the complaint well founded, order the owner or occupant thereof to vacate and close the same immediately; and if the owner or occupant shall refuse or neglect so to do, the said mayor and aldermen or selectmen may forthwith abate such booth, shed or other temporary erection, as a nuisance, and pull down or otherwise destroy the same in any manner they may choose, or through the agency of any force, civil or military, which they may see fit to employ.

Punishment of disorderly soldier.

SECT. 74. Any non-commissioned officer or private, who shall, while under arms or when on duty, behave himself with contempt to an officer, or shall conduct in a disorderly manner, or excite or join in any tumult or riot, or be guilty of any other unmilitary conduct, may be put under guard, and so kept for a longer or shorter time, at the discretion of the commanding officer of the company, not beyond the time when the company to which he belongs is dismissed; and shall moreover forfeit a sum not less than five nor more than twenty dollars for each offense, according to the degree and aggravation thereof.

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SECT. 75. The system of discipline and field exercise which is ordered to be observed by the regular army of the United States in the different corps of cavalry, artillery, light infantry and riflemen, or such other system as may at any time hereafter be directed for the volunteers and militia, by the laws of the United States, shall be observed by the companies raised at large in this state, and by the ununiformed militia when called into actual service, in the discipline and exercise of said corps respectively.

System of discipline and field exercise.

SECT. 76. Every commanding officer of a company raised at large, shall parade his company on the second Wednesday in May, annually, at one o'clock in the afternoon, for the purpose of inspecting, examining and taking account of all equipments of his men, in order that a thorough inspection may be made of all volunteer companies in the state. Every commanding officer of a company shall exercise and discipline as well as inspect his company on said day. Every commanding officer as aforesaid, shall, in addition thereto, parade his company for exercise and discipline on two other days, at the hour aforesaid, by his own order.

Inspection on 2d Wednesday of May.

Company trainings.

SECT. 77. No private shall be compelled to perform any other military duty in one year than is herein provided, except in time of war or public danger, and for choice of officers, nor after sunset. But on the approach of any public danger, when, in the opinion of the commander-in-chief, any of the exigencies are likely to happen upon which the militia could, by the constitution of the United States, be called into actual service, he shall have power to order such other and further training and disciplining of the militia, or any part thereof, as he may deem necessary.

Limit of soldiers duty.

Commander-in-chief may order further trainings, on approach of public danger.

SECT. 78. The commander-in-chief may prescribe a style of uniform which shall be the state uniform, and shall be worn by the volunteers when on duty at the annual or other reviews, when so ordered by the brigadier or major general; *provided, however,* that all volunteer companies which have heretofore adopted a different uniform, may for the present, and until otherwise ordered by the commander-in-chief, be permitted to appear in their present uniform.

Commander-in-chief may prescribe a style of state uniform.

SECT. 79. Whenever the commander-in-chief shall direct any corps to perform escort duties, the commanding officer of such corps shall present his account for necessary music to the quartermaster general, by whom the same shall be audited and paid.

Compensation for music, employed in performing escort duties.

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Commander-in-chief may call boards of officers.

SECT. 80. The commander-in-chief, whenever in his opinion it shall be necessary, may call boards of officers for settling military questions, or for other purposes relative to good order and discipline.

Notifications, excusrs, by-laws and regulations.

Mode of notifying men to appear.

SECT. 81. When the commanding officer of a company shall order out his company for inspection or training, or for any battalion, regimental, brigade or division inspection or review, he shall issue orders to some one or more of the non-commissioned officers or privates of his company, requiring him or them to notify the men belonging to his company to appear at the time and place appointed; and it shall be the duty of the non-commissioned officer or officers, private or privates, so ordered as aforesaid, to give notice of the time and place appointed for the parade of said company to each and every man he or they shall have been ordered to notify, either verbally, or by delivering to each man in person, or by leaving at his usual place of abode, a written or printed order; but no private shall be obliged thus to notify more than once in the same year.

Notice for trainings, reviews and elections.

SECT. 82. No notice shall be legal for any company inspection or training, or for any battalion, regimental, brigade or division inspection or review, unless the same shall be given four days at least previous to the time appointed therefor; and ten days previous notice shall be given, if the meeting be ordered for the election of officers. *Provided, always,* that in case of invasion, insurrection or other emergency, any notice, however short, shall be legal and binding. And whenever any company shall be paraded, the commanding officer thereof may verbally notify the men, so paraded, to appear on some future day, not exceeding thirty days from the time of such notification, for any military duty required by law, and such notice shall be legal as it respects the men present.

Proviso, in case of emergency.

Notice, when given on parade.

Duty of persons, ordered to notify for elections.

SECT. 83. When any non-commissioned officer or private in any company shall receive orders from the commanding officer of such company to notify and warn such company, or any part thereof, to meet for the purpose of choosing any officer or officers, it shall be the duty of such non-commissioned officer or private to give every person he is so ordered to warn, verbal notice, or to leave him a written or printed notification, at his usual place of abode, specifying the time, place and purpose of said meeting.

Excuses for non-appearance.

SECT. 84. All excuses for non-appearance of non-commissioned officers and privates must be made within twenty days

after any training, view of arms, or other military duty, to the commanding officers of their respective companies; and on the delinquent's producing, or causing to be produced, satisfactory evidence of his inability to appear, his commanding officer may excuse him; but all commanding officers of companies are hereby forbidden from receiving any excuse for non-appearance, under any pretence whatever, after the expiration of the twenty days allowed. Any such non-commissioned officer or private who shall neglect to give, or cause to be given, to his commanding officer such satisfactory evidence of his inability to appear, provided he is not prevented therefrom by severe sickness or other inevitable accident within the said twenty days, shall forfeit and pay the penalty by law provided for such non-appearance. And if a warrant be issued to an individual who may have held a commission in this state, or any other of the United States, which may not be within the knowledge of the commanding officer of the company in which he is so warned, it shall be his duty to give notice thereof in manner above provided, or such commission shall not exempt him from such fine as would otherwise be imposed upon him for non-appearance. All commanding officers of companies shall inform, or cause their clerks to be informed, of all excuses for non-appearances which they may allow as good and sufficient.

Persons who have held commissions, to give notice thereof.

Consequence of neglect.

SECT. 85. Every company of the uniformed militia may by their by-laws provide for the payment of such fines and penalties, not inconsistent with the provisions of this chapter or of the laws of the state, for non-appearance at any company trainings and drills, for deficiency in arms and equipments, for neglect of any duty required by law, for disobedience of orders, or disorderly behavior when on duty, as the good of the service shall require. If such by-laws are submitted to, and approved by the commander-in-chief, the fines and penalties thereby imposed may be sued for and recovered in an action of debt, or any other proper action, by the clerk of the company.

Volunteer companies may establish by-laws.

SECT. 86. When the militia shall be called into actual service, the commander-in-chief may prescribe such rules and regulations as the good of the same shall require, to be enforced by suitable fines and penalties to be prescribed by him, and enforced and collected in such manner as he may order.

Commander-in-chief may establish rules and regulations for militia in actual service.

Compensation.

SECT. 87. The following shall be the annual allowance to be paid by the acting quartermaster general, to the officers

Compensation of certain officers.

CHAP. 265. named in this chapter, for all services they may render in the official discharge of their duties respectively:

| | |
|------------------------------------|--|
| Aid to major general. | To the aid-de-camp acting as orderly officer to the major general of each division, twenty dollars; |
| Brigade inspector. | To the brigade inspector of each brigade, twenty-five dollars; |
| Aid to brigadier general. | To the aid-de-camp of each brigadier general, twenty dollars; |
| Adjutant of regiments. | To the adjutant of each regiment, twenty-five dollars; |
| Adjutant of battalions of cavalry. | To the adjutant of each battalion of cavalry or artillery, ten dollars; |
| Clerks of companies. | To the clerk of each company, ten dollars; if said officers shall promptly and faithfully perform the duties belonging to them respectively; <i>and provided, also</i> , that the said service shall be duly certified by the proper officers. |

Riots, &c.

SECT. 88. Whenever there shall be, in any place within this state, any tumult, riot, mob, or any body of men acting together by force with intent to commit any felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the state, and the fact be made to appear to the commander-in-chief, he may issue his order to any commanding officer of any division, brigade, regiment, battalion or corps, to order his command, or any part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid civil authority in suppressing such violence and supporting the laws.

SECT. 89. Whenever any such tumult, riot or mob shall be threatened, and the fact be made to appear, then the commander-in-chief may issue his order, directed to any commanding officer as aforesaid, to order his command, or any part thereof, (describing the kind and number of troops,) to appear at a time and place specified therein, to aid the civil authorities in preventing and suppressing such violence, and in supporting the laws.

SECT. 90. The officer to whom the order of the commander-in-chief shall be directed, shall forthwith order the troops therein mentioned to parade at the time and place appointed, and if he shall neglect or refuse to obey an order issued in pursuance thereof, he shall be cashiered, and be further punished by fine, or imprisonment not exceeding six months, as a court martial may sentence. And any non-commissioned officer or soldier who shall neglect or refuse to appear at the place of parade, to obey an order issued in such case, or any person

Commander-in-chief may detach troops to aid in suppressing riots and mobs.

—may detach troops to prevent threatened tumults and riots.

Penalty, if officer neglects to obey the order issued in such case.

Penalty for non-appearance of non-commissioned officer or soldier.

who shall advise, or endeavor to persuade any officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall be punished by a fine of fifty dollars, to be recovered by indictment to the use of the state, or by an action in the case, by any person whatever, one-half of the sum recovered in such case, to accrue to the use of the state, and the other half to the use of the prosecutor.

SECT. 91. Such troops shall appear at the time and place appointed, armed and equipped and with ammunition, as for inspection of arms, and shall obey and execute such orders as they may then and there receive according to law.

Troops required to appear with arms and ammunition.

SECT. 92. The city or town in which such riot, tumult or mob shall occur or be threatened, shall cause suitable provisions, quarters and ammunition, to be furnished to such troops as may be called out, pursuant to the foregoing section, and the expenditures therefor shall be reimbursed by the state.

Cities and towns required to furnish quarters, provisions, &c., for troops.

SECT. 93. There shall be paid out of the moneys of the state to each person who shall perform the duties required of him by the ninety-first section of this act, the following sums, to wit: to each commissioned officer, three dollars per day, and to each non-commissioned officer, musician and private, one dollar and fifty cents per day, for each day's service so performed by him, from the time he may be ordered out until he shall be legally discharged from duty by the proper officer.

Compensation of officers, musicians and privates.

Courts martial.

SECT. 94. All courts martial shall consist of three members, to be detailed in the manner hereinafter directed.

Courts martial, how constituted.

One of the members of each court shall be designated, in the order under which they shall act, as the president thereof, and in case of his absence at the trial of any cause within their jurisdiction, the senior officer of such court, who shall be present, shall officiate as president pro tempore.

President.

Any two members of said court shall constitute a quorum for the trial of all causes coming before them in the manner hereinafter provided.

Quorum.

Any one member of said court may, and it shall be his duty to adjourn the proceedings thereof from time to time, as to him may appear just, in the absence of the other members.

One member may adjourn.

SECT. 95. When any such court shall be in session, the president thereof shall appoint a marshal, whose duty it shall be to preserve order therein, and with the concurrence of either of the associate members, he may also appoint a warrant officer to attend upon the same.

Appointment of marshal and warrant officer.

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Members of
general court
martial, how
appointed.

SECT. 96. When the commander-in-chief shall deem it necessary to assemble any court martial, for the trial of any officer, it shall be lawful for him to appoint the president and members thereof from any division or divisions of the militia, which the circumstances of the case and the ends of justice may, in his opinion require.

Summary
investigation of
complaints, by
special officer.

SECT. 97. Summary inquiry may be made into the truth and circumstances of any matter contained in any complaint or allegation against the conduct of any officer or corps of the militia, by an officer specially appointed for that purpose by the commander-in-chief; and it shall be the duty of any officer appointed to make such inquiry to report the result of his inquiry and investigation as soon as may be after he shall have completed the same, to the adjutant general's office; the officer making and reporting such summary inquiry, shall file his account for such services in the adjutant general's office, to be presented to the legislature for allowance.

Duty of such
officer.

Compensation.

Division
advocate, how
appointed.

SECT. 98. There shall be appointed and commissioned by the governor, a division advocate for the militia, of suitable learning in the law, for each division, with the rank of major, to continue in office for the term of five years, whose duty shall be as follows:

Term of office.

Duties.

To reduce to proper form the charges and specifications of charges contained in every written complaint of any person aggrieved, or of any commissioned officer, which may be lodged with him, against any military officer within his division, upon any alleged offense by such officer committed, and cognizable by the court martial within his division, and transmit the same to the adjutant general within fifteen days, for the consideration of the commander-in-chief.

Duty in relation
to prosecutions
before courts
martial.

SECT. 99. When a court martial is ordered by the commander-in-chief, for the trial of any officer on charges and specifications of charges preferred against him, the division advocate shall prosecute the same; and in all cases the division advocate shall be furnished by the adjutant general, forty days at least before the time of trial, with a copy of the general order convening the court, and of the charges and specifications preferred, and cause the respondent to be served with a copy thereof twenty days at least before the trial.

Courts martial,
how convened.

SECT. 100. The courts martial hereby authorized shall be convened from time to time, according to the appointment and order of the commander-in-chief, for the trial of such officers as are, by the provisions of this chapter, made amenable to the jurisdiction of said courts.

SECT. 101. All persons summoned to testify in any cause ordered for trial, or pending before either of said courts, by virtue of a subpoena issued by the division advocate, if for the state, or by any justice of the peace, if for the respondent, shall be held to obey such subpoena under the same penalties and liabilities for neglect as are provided in other public prosecutions: all oaths required of persons testifying in said courts may be administered by any member thereof; depositions may be taken and used in like manner as in cases pending in courts of common law.

Witnesses,
liability for
neglecting to
appear before
court martial.

How sworn.

Depositions.

SECT. 102. If the respondent shall be found guilty by said court, either upon admission, trial or default, of any charge preferred against him, involving an offence against military law, or the principles of duty and usage, attached to his office, the court shall sentence him to be reprimanded in orders, and to pay a fine of not less than ten, nor exceeding fifty dollars, together with part or all of the costs of court, or to either, according to the nature of the offense; or to be removed from office with or without the payment of such fine and costs, at the discretion of the court; and in addition thereto, if the court think proper, to be disqualified for, and incapable of holding any military office under this state for life or for a term of years. And the judgment or sentence of the court shall, as soon as may be, be certified by the president, under seal of the court, to the commander-in-chief, to be promulgated and carried into effect.

Judgment and
sentence.

To be certified to
the commander-
in-chief.

SECT. 103. The division advocate shall keep a summary record of the proceedings of each court, from day to day, under the direction of the court.

Division
advocate to keep
a summary
record.

SECT. 104. A copy of the record of any court martial, certified by the president of any such court, together with a duly authenticated copy of the order convening said court, shall be sufficient and conclusive evidence to sustain, in any court, any action commenced for the recovery of any fine, or costs, or part of costs, or either, agreeably to the provisions of the two following sections.

Certified copy
of orders and
records, to be
evidence in
suits.

SECT. 105. In the order of the commander-in-chief promulgating the sentence of any court martial, as herein directed, if such sentence shall include the payment by any officer, of any fine and costs, or either, the division advocate of such division shall be directed, and it shall be his duty, to enforce the payment of such fine and costs, by an action of debt to be commenced in his own name, within thirty days next succeeding such order, unless the same shall be sooner paid to him by such officer.

Division advo-
cate to enforce
payment of fines
and costs.

CHAP. 265.

Judgment and execution in such suits.

Action not to abate in certain cases.

Fines and costs, how appropriated.

Compensation of officers and witnesses.

—of members and division advocate.

Additional, to division advocate.

Marshal.

Warrant officer.

Witnesses.

Pay roll.

SECT. 106. The court before whom such action shall be commenced, shall render judgment therein, and issue execution accordingly, against the property and body of the defendant, in accordance with the provisions of law, for the amount of such fine and costs, including the costs of such action, upon proof that the same has been awarded by the sentence of a court martial in the manner herein provided; and no action for such fine and costs, or either, shall abate in consequence of the death, resignation, removal or expiration of the term of office of the division advocate who may have commenced the same; but such action may be prosecuted afterwards to final judgment by his successor, and the court before which the same may be pending, may order such continuances and amendments and notices to the successor as may be necessary, and render such judgment as the rights of the parties may require. The fine and costs which shall be included in such sentence, shall be paid over by the division advocate, when collected, to the treasurer of the state, for the use of the state.

SECT. 107. The compensation of the officers and witnesses shall be as follows:

To each member of the court, and to the division advocate, for each day spent in holding a session of said court, two dollars, and for every mile's travel, four cents;

In addition to his pay for travel and attendance at the session of the court, the division advocate, in each case, may charge in the pay roll, as follows, and no more:

For drawing charges and specifications and filing the same, three dollars;

For preparing the case for trial, three dollars; subpoenas, ten cents each; copies of the case for service on the respondent, one dollar; recording the case, two dollars;

To the marshal, two dollars a day;

To the warrant officer attending upon the court, one dollar a day.

All witnesses duly summoned and attending any court as aforesaid, shall be allowed one dollar a day for attendance, and four cents a mile for travel to and from court; but no witness' fees shall be taxed against the state until he has certified his travel and attendance, and unless summoned by the direction of the division advocate.

A pay roll shall be made up, including all said fees and reasonable expenses for room and stationery, at the close of each session of said courts, and certified by the president and division advocate, and filed in the office of the adjutant general;

and the same shall be paid out of the treasury of the state to the several persons entitled thereto. CHAP. 265.

SECT. 108. It shall be the duty of the president of every court held as aforesaid, to prepare compendious reports of all questions of law arising and adjudged in trials had before him, and of the decisions made thereon, stating in substance so much of the evidence as may be necessary for a correct understanding thereof, and deposite the same in the office of the adjutant general.

Presidents to prepare reports of questions of law, and the decisions thereof.

SECT. 109. Every officer to be tried by a court martial, shall be put in arrest, so as to be suspended from the exercise of his office, and shall have a copy of the charges exhibited against him, and notice of the time and place of trial, twenty days at least before his trial is commenced, but the time of such trial, shall, in all cases, be within sixty days from the time of such arrest.

Officers accused, to be arrested, and to have a copy of charges before trial.

SECT. 110. If any officer, for the trial of whom a court martial is appointed, shall neglect to appear and make defense, or, if appearing, shall afterwards withdraw in contempt of court, or being arraigned before a court martial, shall, from obstinacy or deliberate design, stand mute, or answer foreign to the purpose, the court may proceed to trial and judgment as if he had regularly pleaded not guilty.

Proceedings, if he fail to appear, withdraw or stand mute.

SECT. 111. Every commissioned officer shall be liable to be tried by a court martial for the following offenses :

Offenses for which commissioned officers may be tried by courts martial.

For any unmilitary conduct, neglect of duty, or disobedience of orders, or behaving in an unofficer like manner when on duty ;

For neglect of any of the duties required by this chapter ;

For disobedience of orders, or any act contrary to the provisions of this chapter ;

For wilfully oppressing or injuring any under his command ;

For setting on foot or joining in any combination to resist or evade the lawful orders of any commissioned officer ;

For presuming to exercise any command, while under arrest, in which case, if convicted, he shall be removed from office ;

For neglect or refusal, as commanding officer, to call out his company at the times required in this chapter, or by any other law, or at any other time when lawfully required thereto by his superior officer ;

For excusing any under his command for unnecessary absence or deficiency ;

For neglect or refusal to make a draft or detachment when legally ordered under the authority of the commander-in-chief ;

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For parading his men on either of the days of election mentioned in section sixty-six, contrary to the provisions thereof;

For neglecting or refusing, after receiving his commission, forthwith to take and subscribe the oaths required by the constitution to qualify him to discharge the duties of his office.

Limitation of prosecutions before courts martial.

SECT. 112. No officer shall be tried by a court martial for any offense which shall have been committed more than one year previous to the time when a complaint shall have been made in writing therefor, unless he shall have repeated such offense in two or more successive years; or by reason of having absented himself, or some other manifest impediment, he shall not have been amenable to justice within that period.

Arrests for offenses on parade.

SECT. 113. No arrest on the field for offenses committed on parade, shall be legal, unless made by the commanding officer present, in writing; and unless such commanding officer shall within fifteen days exhibit to the competent authority his complaint in writing, setting forth the cause of arrest.

Proceedings on drafts for actual service.

Duty and liability of persons drafted for actual service.

SECT. 114. When, in case of actual or threatened invasion, insurrection, or other public danger or emergency, the militia shall be ordered out, or any part thereof shall be ordered to be detached, or drafted, by the commander-in-chief, any person who shall be ordered out, detached or drafted, in pursuance of, and obedience to, such orders, and shall not within twenty-four hours after he shall be notified thereof pay a fine of fifty dollars to the commanding officer of the company to which he belongs, or procure an able-bodied man in his stead, such person, on being ordered to march to the place of rendezvous, shall be considered as a soldier belonging to the detachment, and be dealt with accordingly.

Appropriation of fines.

SECT. 115. All fines paid as aforesaid shall be appropriated to the hire of men to complete the detachment.

Officers, how detailed; non-commissioned officers and privates, how drafted.

SECT. 116. The officers of any detachment ordered to be made as aforesaid, shall be regularly detailed from the rosters; and the non-commissioned officers and privates, by lot, from the company rolls.

Drafts from companies not organized.

SECT. 117. When any company shall not be organized, the officer commanding the brigade, or regiment, shall, either by himself or some officer under him, proceed to make and complete the detachment from such unorganized company.

Persons detached, to furnish themselves with provisions for three days.

SECT. 118. When the militia or any part thereof, after having been ordered out or detached as aforesaid, shall be ordered to march for the service of the state, each non-commissioned

officer and private so ordered to march, shall provide and take with him three days' provisions, if so ordered.

SECT. 119. The selectmen of every town, and aldermen of every city, and the assessors of every plantation to which the men detached as aforesaid, and ordered to march for the service of the state, belong, shall provide and cause carriages to attend them with further supplies of provisions, and also the necessary camp equipage and camp utensils, until notice shall be given them by the commanding officer of the detachment to desist; and the selectmen, aldermen and assessors shall present their accounts for supplies to the legislature for allowance.

Selectmen to furnish further supplies, carriages and camp equipage.

SECT. 120. When the selectmen of any town, aldermen of any city or assessors of any plantation, from which a detachment or part thereof, as aforesaid, shall march, being notified by the commanding officer of such detachment or part thereof belonging to such town, city or plantation, shall neglect or refuse to furnish the necessary supplies, camp equipage, and camp utensils, the town, city or plantation to which the selectmen, aldermen or assessors neglecting or refusing as aforesaid belong, shall forfeit not less than two hundred, nor more than five hundred dollars, to be sued for and recovered by any person who may prosecute for the same, in an action on the case, in any court of competent jurisdiction; one moiety to the prosecutor, and the other to the use of the state.

Penalty for neglect of selectmen in such cases.

SECT. 121. The officer by whom or to whose order any camp equipage or camp utensils shall be delivered, shall be accountable for the same, unless injured or lost by some accident not in his power to prevent.

Officers responsible for camp equipage and utensils

SECT. 122. When any draft or detachment shall be made from any company of cavalry for actual service, the men drafted or detached shall march with their own horses; and before they march, if there be time, the horses shall be appraised by three impartial men, to be appointed by the commanding officer of the brigade to which the company belongs from which the draft or detachment is made.

Members of cavalry companies to march with their own horses, after appraisal.

SECT. 123. When any officer, neglecting or refusing to make a draft or detachment, when ordered as aforesaid, shall be arrested, the officer next in command shall be ordered to make the draft or detachment.

On arrest of officer neglecting to make draft, the next in command to make draft.

SECT. 124. If any non-commissioned officer or private shall be killed, or die of wounds received, when on military duty required by this act, his widow, child or children shall receive from the legislature such relief as shall be just and reasonable.

Pensions to be allowed, if a soldier be killed or disabled, when on duty.

CHAP. 266. And if any officer, non-commissioned officer or private shall be wounded, or otherwise disabled when on such duty, he shall receive from the state just and reasonable relief.

Art. 17, chap. 16, R. S., continued in force.

SECT. 125. The rules and articles for governing troops and militia in actual service, established by the seventeenth article of the sixteenth chapter of the revised statutes, shall be continued and remain in force.

Inconsistent acts repealed.

SECT. 126. All acts and parts of acts, inconsistent with the provisions of this act, are hereby repealed.

SECT. 127. This act shall take effect from and after its approval by the governor.

[Approved April 9, 1856.]

Chapter 266.

An act additional in relation to witnesses.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

Persons interested in the event of suits, &c., not excluded from being witnesses.

SECT. 1. No person shall be excused or excluded from being a witness in any civil suit or proceeding at law or in equity, by reason of his interest in the event of the same as party or otherwise, except as is hereinafter provided; but such interest may be shown for the purpose of affecting his credibility.

Parties not witnesses where the cause of action implies a criminal offense.

SECT. 2. Parties shall not be witnesses in suits where the cause of action implies an offense against the criminal law on the part of the defendant, unless the defendant shall offer himself as a witness, in which case the plaintiff may also be a witness, and in case the defendant in such suit shall offer himself as a witness, he shall be held to waive his privilege of not testifying where his testimony might render him liable to prosecution for a criminal offense.

The law relating to the execution of certain instruments, not affected.

SECT. 3. Nothing herein shall in any manner affect the law relating to the attestation of the execution of last wills and testaments, or of any other instrument which by law are required to be attested.

The taking of deposition of party residing without the state, provided for.

SECT. 4. When any party to a suit resides without the state, or is absent from the state, during the pendency of the suit, and the opposite party desires his testimony, a commission under the rules of court may issue to take his deposition; and it shall