

THE

Statutes at Large

OF

PENNSYLVANIA

FROM

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appoint for the purpose of electing to proceed to the election of the justices of the peace in their respective districts in the same manner as is by the said act directed for electing justices, who when chosen shall be held and deemed as legally elected as if the same had been done on the day appointed by the said act, anything therein contained to the contrary notwithstanding.

(Section III, P. L.) And whereas many of the militia of Northampton and other counties are now and some others may be in actual service whereby several of the districts in the said county have been or may be deprived of their right in the choice of their justices of the peace according to the intention of the said act:

[Section II] (Section IV, P. L.) Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the commissioners and assessors or any five of them of the said county of Northampton or such other counties as aforesaid to advertise the freeholders of such district or districts to meet together on the third Tuesday in April next at some convenient place within the said district respectively in order to choose their justices of the peace, that they may be commissioned accordingly, and if the freeholders of any township or townships in this state which by the said act is made a district shall neglect to elect justices on the day therein mentioned, the freeholders of every such district are hereby authorized to appoint such time and place as may suit their convenience within three months hereafter and elect justices as by the said act is directed.

(Section V, P. L.) And whereas the freeholders of several of the wards in the city of Philadelphia have neglected to elect justices of the peace as by the said act was directed, and it may happen that some other parts of the state may also neglect to elect justices at the time in the said act and by this act directed:

[Section III] (Section VI, P. L.) Be it enacted by the authority aforesaid, That where any such neglect has been or may be at the time by the above recited act or by this act directed for the election of justices for any district in any or either of the said counties, the commissioners and assessors of such county or counties or any five of them (in such county or counties where they are directed so to do by the said act) are hereby enjoined

and required to appoint a time and place for election of justices of the peace for such district and give notice thereof to the freeholders, who shall hold the said election and in all things relating thereto, act and do agreeable to the directions of the act to which this act is a supplement and when they shall have elected justices they shall be deemed and taken to be justices of the peace as in and by the said act declared.

(Section VII, P. L.) And whereas it has been represented to this assembly that the inhabitants of the borough of Chester express a dissatisfaction that they have but one justice of the peace allotted to them, inasmuch as other boroughs have more:

(Section VIII, P. L.) And whereas it may happen that some district or districts may yet neglect to elect justices notwithstanding this act:

[Section IV] (Section IX, P. L.) Be it therefore enacted by the authority aforesaid, That in any or either of the said cases on application being made in writing by twenty or more of the freeholders of the borough of Chester or of any such other district to the president of this state, it shall be lawful for the president in council to appoint and commissionate one or more justice or justices of the peace as the case may require for the said borough or district respectively, anything in this or the act to which this is a supplement to the contrary notwithstanding.

Passed March 15, 1777. See the note to the Act of Assembly passed February 5, 1777, Chapter 739. The act in the text was repealed by the Act of Assembly passed March 21, 1784, Chapter 1093.

CHAPTER DCCL.

AN ACT TO REGULATE THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA.

(Section I, P. L.) Whereas a militia law upon just and equitable principles hath ever been regarded as the best security of liberty and the most effectual means of drawing forth and exerting the natural strength of a state:

(Section II, P. L.) And whereas it is the indispensable duty of the freemen of this commonwealth to be at all times prepared to resist the hostile attempts of its enemies, and more especially now when America is invaded by a powerful army of British and foreign mercenaries and the freedom handed down by our virtuous ancestors may be in danger of being wrested from us unless the strongest and most immediate efforts are made for its support:

[Section I] (Section III, P. L.) Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That the president or in his absence [the] vice-president of the supreme executive council of this commonwealth shall commissionate one reputable freeholder in the city of Philadelphia and one in each county within this state to serve as lieutenant of the militia for the said city and counties respectively, who besides the powers which are given him by this act shall have the title and rank which the president and council shall confer, and also any number of persons not exceeding five for the said city and each county, qualified as aforesaid, to serve as sub-lieutenants in the said city and counties respectively, which said lieutenant and sub-lieutenants shall be respectively nominated by this house, and which lieutenant or in his absence or incapacity two or more sub-lieutenants shall have full power and authority to do and perform all and singular the duties required of them by this act except in cases where a greater number is hereby directed to join together to perform any service.

[Section II] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the said lieutenant or sub-lieutenants as aforesaid shall issue his or their warrant to the constable of each township, borough, ward or district in the said city and counties respectively or to some other suitable person, commanding him in the name of this commonwealth to deliver to him or them the said lieutenant or sub-lieutenants within ten days from and after the date of the said warrants (unless the lieutenant or sub-lieutenants shall judge a longer time to be necessary, which he is hereby empowered to grant) on oath or

affirmation, which they are also hereby empowered to administer, a true and exact list of the names and surnames of each and every male white person usually inhabiting or residing within his township, borough, ward or district between the ages of eighteen and fifty-three years capable of bearing arms. Delegates in Congress, members of the executive council, judges of the supreme court, masters and faculty of colleges, ministers of the gospel (or clergy) of every denomination and servants purchased bona fide and for a valuable consideration only excepted.

[Section III] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant or sub-lieutenants as aforesaid within five days after they shall become possessed of the lists aforesaid shall divide the city and counties respectively into districts, each district to contain not less than four hundred and forty nor more than six hundred and eighty privates, at the discretion of the lieutenant, and subdivide the said districts into eight parts as nearly equal as may be, paying due regard in each division to the convenience of the inhabitants.

(Section VI, P. L.) Provided always, That nothing in this act contained shall be construed to include any of the artillery companies or troops of light horse, already formed within this state nor shall prevent or restrain the said lieutenants respectively from forming a suitable number of other companies of artillery and troops of light horse in convenient places throughout the same. And the said lieutenants shall give public notice by advertisements at ten or more of the most public places in the said districts respectively of the said divisions being made and appointing a certain day for each district not less than five days after the said notice and requiring the male white inhabitants between the ages aforesaid residing in the said divisions respectively to meet at a certain place as near the center of the said division as may be, and then and there between the hours of ten in the morning and six in the afternoon of the said day to elect by ballot three field officers: That is to say, one colonel, one lieutenant colonel and one major, each of whom shall be a freeholder, and the inhabitants of the said sub-divisions respectively shall elect by ballot as aforesaid on the same or some other convenient day as soon as possible afterward to be

appointed by the lieutenant one captain, two lieutenants, one ensign and two persons to be styled court martial men, who shall respectively be such persons as are entitled to vote for members to serve in the general assembly and each of the said captains shall appoint a suitable person for a clerk in his company. And the said lieutenant or in his absence two or more of the said sub-lieutenants, shall attend and superintend each and every of the said battalion elections and shall cause the colonels so elected in the city and counties respectively, to meet together as soon as may be and cast lots for rank of their battalions; and the rank of the officers in each battalion shall be determined by the lot drawn by their respective colonels; and the captains so elected in the sub-divisions shall meet and cast lots for their rank in the battalion to which they belong and the rank of the subaltern officers of each company shall be determined by the lot drawn by their respective captains, and the said lieutenants shall within ten days or as soon as may be, having regard to their local situations, transmit proper certificates to the president of the supreme executive council, of the names of the persons so as aforesaid elected and their rank, both of battalion and companies in the several battalions, in order that commissions may forthwith be granted to them agreeable to the said certificates. And no militia officer shall be required to take and subscribe any oath or affirmation at this time to qualify him to receive a commission to act in the character to which he shall be elected.

[Section IV] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That if any battalion or battalions, company or companies, shall neglect or refuse to elect their officers as aforesaid then and in such case it shall and may be lawful for the lieutenant with the advice and consent of two or more of the sub-lieutenants of such county where such neglect or refusal shall be, to appoint such officers so neglected to be chosen and certify the same to the president of the council as aforesaid, which shall be as effectual to all intents and purposes as if the said officers had been elected as first before directed; and the said lieutenant shall as soon as may be acquaint the par-

ties so neglecting or refusing with the appointments so as aforesaid made, and the said several and respective officers elected or appointed as aforesaid shall respectively serve as officers of [*sic*] [the] militia for the space of three years, at the end of which time the lieutenant of the city and counties respectively in the manner herein before directed shall cause a new election to be held in the said city and counties respectively. But nothing herein contained shall be construed to render any of the former officer or officers incapable of being re-elected.

[Section V] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the rank or precedence of the officers of the city of Philadelphia and of the several counties in this commonwealth shall be determined as follows: That is to say, officers of the city of Philadelphia, the district of Southwark, the townships of the Northern Liberties, Moyamensing and Passyunk, to take rank of precedence of all other officers of equal dignity in this state, and next to them the officers of the county of Philadelphia, and so on according to the seniority of the counties respectively.

[Section VI] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the several lieutenants aforesaid shall within three days after the respective elections aforesaid cause the several companies of militia in their respective precincts to be divided by lot into eight parts, to be called classes, as nearly equal as may be and numbered from one to eight in numerical order, and the said captains shall cause the names and surnames of the persons in the respective companies with the class to which each belongeth to be returned to the said lieutenants respectively at such time as they shall appoint within six days after such divisions are made.

[Section VII] (Section X, P. L.) And be it further enacted by the authority aforesaid, That the whole of the militia so enrolled as aforesaid shall be subject to be exercised in companies under their respective officers as follows: That is to say, on the two last Mondays in the month of April and the three first Mondays in the month of May and in battalion on the fourth Monday in May, and in companies on the two last Mondays in the month of August and the two last Mondays in the month of

September and the third Monday in the month of October, and in battalion on the fourth Monday in October and on each of which days every militia-man so enrolled shall duly attend with his arms and accoutrements in good order, and a sergeant or clerk of each company is required at the end of one hour after the time appointed for the meeting of the company or battalion to call over the muster-roll of the company or battalion are absent and on that day shall make return in writing to the captain or commanding officer then present of such absentees, and all persons so absent at the time of calling over the roll or shall depart from the parade before duly discharged shall be liable to the fines hereafter mentioned.

[Section VIII] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That if any commissioned officer shall neglect or refuse to attend on any of the days appointed for exercise in companies as aforesaid (unless prevented by sickness or some other unavoidable accident) such commissioned officer shall forfeit and pay the sum of ten shillings per day, and any non-commissioned officer or private and all enrolled persons so refusing or neglecting (except as before excepted) shall forfeit and pay the sum of five shillings per day, and if on a field day or meeting in battalion, then if a field officer he shall forfeit and pay the sum of five pounds per day, and a commissioned officer under that rank the sum of fifteen shillings per day; and if a non-commissioned officer or private and enrolled person refusing to meet and exercise the sum of seven shillings and six pence per day (excepting as before excepted), the names and surnames of all which persons so incurring the said fines and penalties (except such as may have paid the same into the hands of the captain or commanding officer of the company) shall be duly returned by the captain or commanding officer of each company under his hand, together with such fines as he has received to the colonels of the battalions respectively on each field day, which said colonels or commanding officers of battalions shall on receipt of such fines and returns forthwith transmit the same to the lieutenant of the county: and the said lieutenant shall immediately after the said returns are respectively made unto him cause the same to be respectively recovered be-

fore one justice of peace nearest to the place where the delinquents do respectively reside as debts under forty shillings are by law directed to be recovered, and the said lieutenant shall twice in each year transmit the said fines when collected into the hands of the county treasurer, who shall pay the same into the hands of the state treasurer for the use of the state.

[Section IX] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That the master or mistress of any apprentice and the father or mother of any minor who shall refuse or neglect to attend as aforesaid, being in the service of his father or mother, master or mistress, shall be accountable for the fine or fines so incurred by such minor or apprentice.

[Section X] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the executive council in case of invasion or rebellion within this state or in case the assistance of the militia of this state shall be requested by Congress to assist the continental army in this or any of the adjoining states, to call into actual service such part of the militia by classes as aforesaid as to them shall seem necessary, the first draft to be composed of the class number one of each company, and in case the first draft shall not be sufficient for the exigency, then the class number two shall be drawn and so on by classes from time to time as occasion may require. And to the end that each particular draft may be suitably officered, the following order is hereby directed and enjoined: That is to say, For the first draft, the captain of the first company, the first lieutenant of the second company, the second lieutenant of the third company and the ensign of the fourth company; for the second draft, the captain of the second company, the first lieutenant of the first company, the second lieutenant of the fourth company and the ensign of the third company; for the third draft, the captain of the third company, the first lieutenant of the fourth company, the second lieutenant of the first company and the ensign of the second company; for the fourth draft, the fourth captain, the first lieutenant of the third company, the second lieutenant of the second company, and the ensign of the first company; for the fifth draft, the fifth captain, the first lieutenant of the sixth company, the

second lieutenant of the seventh company and the ensign of the eighth company; for the sixth draft, the sixth captain, the first lieutenant of the fifth company, the second lieutenant of the eighth company and the ensign of the seventh company; for the seventh draft, the captain of the seventh company, the first lieutenant of the eighth company, the second lieutenant of the fifth company and the ensign of the sixth company; for the eighth draft, the captain of the eighth company, the first lieutenant [of the seventh company, the second lieutenant] of the sixth company and the ensign of the fifth company; non-commissioned officers to take their tour of duty with the commissioned officers. And the field officers of battalions in the city of Philadelphia and in each county of the state shall be divided in like manner, and each class to be considered as detachments from different corps liable to serve two months and to be relieved by the class next in numerical order, the relief to arrive at least two days before the expiration of the term of the class to be relieved; but nothing herein contained shall prevent the supreme executive council from employing or calling out one-half of any battalion where it may be convenient, or one-half of any company without respect to this rule whenever the exigency is too sudden to allow the assembling the scattered militia which compose the particular classes; and the militia in actual service shall receive the same pay and rations as continental troops, their pay to commence two days before their marching, and receive pay and rations at the rate of twenty miles per day till they return home.

[Section XI] (Section XIII, P. L.) Provided always, and be it further enacted by the authority aforesaid, That if after the regulation aforesaid it should so happen that substitutes cannot be found for all the enrolled militia upon the said limited drafts, then and in such case each and every of the persons who cannot yield their personal service as aforesaid nor find substitutes shall pay such sum or sums of money as each of the substitutes included in the said drafts will amount unto upon an average within each respective battalion.

(Section XIV, P. L.) Provided also, That no militia-man hav-

ing personally or by substitute served in the militia shall be obliged to serve again until by rotation it comes to his turn.

[Section XII] (Section XV, P. L.) Provided always, and be it further enacted by the authority aforesaid, That no officer serving in the militia when called out into actual service shall sit in any court-martial upon the trial of any officer or soldier serving in any of the continental forces, nor shall any officer serving in any of the continental forces or other troops in any other of the United States sit in any court-martial upon the trial of any officer or private man serving in the militia of this state.

[Section XIII] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That when any part or parts of the militia shall be called into actual service every person enrolled as aforesaid who is not an officer shall have it in his choice either to serve in person or to find a sufficient person for a substitute, which said substitute shall be approved of by the lieutenant, sub-lieutenant or by one of the field officers of the battalion to which he belongs; and if an officer, he shall find as a substitute an officer of equal rank to be approved of by the lieutenant of the county; but if any person shall neglect or refuse to serve or find such sufficient substitute in his place within three days after notice given to him, the lieutenant or sub-lieutenant of the county nearest to where such delinquent resides shall and he is hereby required to provide, hire or procure on as reasonable terms as may be a substitute for such person so refusing or neglecting, and to charge such sum or sums, together with reasonable expenses for procuring the same, to such delinquent, to be recovered by distress and sale of his goods and chattels, lands and tenements by warrant under the hands and seals of any two justices of the peace of the county where such person resides: and if such delinquent be unmarried then the said money to be recovered against him in the same [manner] as is directed by the laws of this state in cases of debts under five pounds.

(Section XVII, P. L.) Provided always, That if any person or persons shall think him, her or themselves aggrieved in the seizure of his, her or their lands and tenements, he, she, or they

may enter an appeal before the justices to the next court of common pleas for the county, and on the party's giving sufficient security within six days next after any lands and tenements shall be seized or distrained as aforesaid to prosecute such appeal with effect, the justices shall receive the same and stay further process. And the said justices shall return every such appeal on the first day of the next term, and the court shall direct a trial by a jury of the country as in other cases of debt, whose verdict shall be final and conclusive; and (except in extraordinary cases, of which the court shall be judge) all such appeals shall be tried at the term to which such returns shall be made, any law, custom or usage to the contrary notwithstanding.

[Section XIV] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That arms and accoutrements sufficient for two classes in each company shall be provided at the expense of the state as soon as convenient by the lieutenant of the city of Philadelphia and of the several counties of this state, and shall be in the care and under the direction of the said lieutenants respectively and marked with the name of the county and the number of the battalion to which they belong.

[Section XV] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons shall sell or knowingly buy, take in exchange, conceal or otherwise receive, contrary to the true intent and meaning of this act, any arms or accoutrements belonging to this state on any account or pretense whatsoever, the person so offending, being convicted thereof before one or more justice or justices of the peace of the city or county where such offense shall be committed shall forfeit and pay for every such offense treble the value of such arms or accoutrements, to be ascertained by the said justice or justices and levied by distress and sale of the offender's goods and chattels by the justice or justices before whom such offender shall be convicted returning the overplus if any on demand, to such offender, and for want of such distress shall commit such offender to the common gaol of the county, there to remain

without bail or mainprise for any term not exceeding three months, unless such money is sooner paid.

[Section XVI] (Section XX, P. L.) And be it further enacted by the authority aforesaid, That the commissioned officers of each company shall appoint four sergeants, four corporals, one drummer and [one] fifer for their respective companies. And all persons who have heretofore been officers in the militia under the late association if not re-elected, shall deliver up their arms, accoutrements, drums, fifes and colors if paid for by the public to the lieutenant of the county aforesaid or unto the nearest sub-lieutenant; and the lieutenant of the city of Philadelphia and the lieutenants of the several counties respectively are hereby authorized to draw on the state treasury for the purchase of such drums, fifes and colors as may afterwards be wanting to supply the companies in the city and counties respectively.

[Section XVII] (Section XXI, P. L.) And be it further enacted by the authority aforesaid, That the field officers of each battalion in this state shall constitute and appoint to their respective battalions one quartermaster, one adjutant, one sergeant-major, and one drum and fife major, which sergeant major and drum and fife major shall be persons experienced in the duties of their respective offices.

[Section XVIII] (Section XXII, P. L.) And be it further enacted by the authority aforesaid, That no militia-man shall leave the company to which he belongs or join any other under the penalty of three pounds, to be recovered before a justice of the peace of the county, unless in case of removing to some other district within this or any other state, and in such case he shall apply to the commander of such company, who shall give him a certificate of his being discharged, and if the said militia-man had been in actual service shall also certify the time thereof and how long he had continued therein.

[Section XIX] (Section XXIII, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant or in his absence the nearest two sub-lieutenants in the city and counties respectively shall cause the constable or some other suitable person of the several townships, boroughs, wards or districts

within their respective jurisdictions to make true lists annually of all male white persons between the ages aforesaid, usually residing in their respective townships, boroughs, wards or districts, in order that such as shall then be above the age of fifty-three years, or otherwise disqualified may be discharged, and that such as are arrived to proper age or may have within the said year become residents may be enrolled, and the constable shall be allowed five shillings only for each day he shall be faithfully employed in obtaining and returning a list of the persons of his township to be paid by the county treasurer respectively out of the moneys in his hands belonging to the state.

[Section XX] (Section XXIV, P. L.) And be it further enacted by the authority aforesaid, That no person serving as a substitute for another shall thereby be excused from serving in his own turn.

[Section XXI] (Section XXV, P. L.) And be it further enacted by the authority aforesaid, That if any militia-man when called into actual service shall absent himself or desert from the company, battalion or troop to which he belongs, the person or persons so offending shall forfeit and pay a sum equal to two month's pay and if an officer shall be cashiered.

[Section XXII] (Section XXVI, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant with one or more of the said sub-lieutenants, together with any one justice of the peace or any two or more sub-lieutenants, together with any two justices of the peace, shall meet in the city and several counties from time to time as often as they shall find necessary for the due execution of this act and one of the said meetings in every year shall be on the last Monday in the month of July, and one other of the said meetings shall be on the third Monday in the month of December.

[Section XXIII] (Section XXVII, P. L.) And be it further enacted by the authority aforesaid, That the said lieutenant of the city and the said lieutenants for the counties respectively shall have and receive the sum of fifteen shillings per day each for their trouble and the sub-lieutenants of the said city and counties respectively shall have and receive the sum of twelve

shillings per day each for their trouble for every day in which they shall be employed in doing and performing the respective duties required of them by this act, which said sum or sums of money shall be respectively paid unto them out of the state treasury.

[Section XXVIII, P. L.] And if upon any draft of part of the militia for actual service it should happen to fall to the lot of any minor or apprentice to be so drafted and the said minor or apprentice should neglect or refuse to go, and also the parent or master or mistress refuse or neglect to find a substitute in his stead, and a substitute or substitutes having been found agreeable to the directions of this act:

[Section XXIV.] It is hereby enacted and declared, That the father or mother of such minor and the master or mistress of such apprentice shall be liable to the payment of such sum or sums of money as it shall cost to procure such substitute or substitutes; and also in case such substitute or substitutes cannot be obtained, then to pay all such fines or sums of money as are imposed by this act on such minor or apprentice.

[Section XXV] (Section XXIX, P. L.) And be it further enacted by the authority aforesaid, That if any parent, guardian, master or mistress of any person between the ages of eighteen and twenty-one years or of any other person made liable to serve in the militia by this act shall think him or herself aggrieved by any of the rates, fines or sum or sums of money agreed for in the procuring of substitutes (and for the redress of which no express provision is already made by this act he, she or they may appeal to the lieutenants and justices aforesaid on the days and times before mentioned, who are hereby required and enjoined to give attendance from day to day as long as may be necessary at such convenient place or places as they shall appoint, of which days and places of meeting they shall cause due notice to be given to the inhabitants, and then and there the said lieutenants and justices shall hear all such appeals as may be made to them and shall moderate or remit the said rates and fines as to them shall appear just and necessary, in consideration of inability of body or estate only.

[Section XXVI] (Section XXX, P. L.) And be it further

enacted by the authority aforesaid, That on the death, removal or other incapacity of any of the lieutenants of the city and counties respectively, the sub-lieutenants shall continue to act and exercise all the authorities by this act committed to them until the general assembly and the supreme executive council shall have appointed and commissioned another lieutenant or lieutenants in his or their room or stead.

[Section XXVII] (Section XXXI, P. L.) And be it further enacted by the authority aforesaid, That all the lieutenants and sub-lieutenants to be appointed by virtue of this act shall regularly once in every six months lay their accounts of the money received and expended by them before the general assembly or any committee appointed by them for that purpose.

[Section XXVIII] (Section XXXII, P. L.) And be it further enacted by the authority aforesaid, That if any commissioned officer, non-commissioned officer or private militia-man of this state who has or hereafter may lose a limb in any engagement in the service of this state or in the service of the United States of America, or be so disabled as to render him incapable of getting a livelihood, shall receive during life or the continuation of such disability a pension not more than one-half of the monthly pay, from and after the pay as an officer or private militia-man ceases, still subject to be lowered so as to be made adequate to the necessity of such disabled officer or private militia-man by the judgment of the orphans' court of the county where such disabled officer or private militia-man shall dwell or reside; and every officer or private disabled as aforesaid shall before he be legally entitled to the pension above mentioned produce a certificate from the commanding officer who was in the same engagement in which he was wounded or from some other officer of the same corps or the surgeon that attended him; and upon such disabled officer, non-commissioned officer or private militia-man's producing such certificate as aforesaid to the orphans' court of the county where such disabled officer or private militia-man shall dwell or reside, the said court is hereby enjoined and required to give every such officer or private an order on the lieutenant of the said county for such sum or sums of money from time to time as to them shall appear just and necessary,

and the said lieutenant is hereby enjoined and required to accept and pay the said order to such officer or private, and the said lieutenant shall draw on the state treasurer as often as he shall have occasion for such sum or sums of money as he shall make appear [to the president and council to be] necessary for carrying this law into execution.

[Section XXIX] (Section XXXIII, P. L.) And be it further enacted by the authority aforesaid, That if any officer, non-commissioned officer or private militia-man residing in this state, having a family shall be killed or die of his wounds received in the service of this or the United States, a certificate from some officer who was in the same engagement in which he was so killed or wounded and died of his wounds being produced to the orphans' court and also a certificate from the overseers of the poor and two other reputable freeholders of the township, borough, ward or district where the family of such deceased officer, non-commissioned officer or private militia-man shall dwell or reside at that time, setting forth the particular circumstances of such family, the age or ages of the child or children and the necessity of granting them some support, the said orphans' court when possessed of the certificates aforesaid are hereby authorized to give [an] order in favor of such family upon the lieutenant of the county for such sum of money as they may think just and necessary for the support of such family from time to time.

Provided always, That the support granted do not exceed half the pay that such officer, non-commissioned officer or private militia-man was entitled to at the time of such killing or wounding.

[Section XXX.] Be it enacted by the authority aforesaid, That if any lieutenant, sub-lieutenant, officer of the militia or constable shall be found guilty of any fraud or wilful partiality to any person in the carrying this act into execution, or shall refuse or neglect to do and perform all and singular the duties, other than military duties, required of him or them respectively by this act, and shall be duly convicted thereof by a jury of his country before any court of record in this state, such lieutenant, sub-lieutenant, militia officer or constable shall for every such

offense be fined at the discretion of such court in any sum not exceeding fifty pounds.

[Section XXXI.] And be it further enacted by the authority aforesaid, That if any suit, or suits shall be brought or commenced against any person or persons for anything done in pursuance of this act, the action shall be laid in the county where the causes of such action did arise and not elsewhere. And the defendant or defendants in such action or actions to be brought may plead the general issue and give this act and the special matter in evidence; and if the jury shall find for the defendant or defendants in such action or actions, or if the plaintiff or plaintiffs shall be non-suited or discontinue his or their action or actions after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs and the like remedy for the same as any defendant or defendants hath or have in other cases to recover costs by law.

[Section XXXII.] And be it further enacted by the authority aforesaid, That the following rules and regulations shall be the rules and regulations by which the militia shall be governed:

I. If any commissioned officer make use of any profane oath or execration when on duty, he shall forfeit and pay for each and every such offense the sum of five shillings; and if a non-commissioned officer or private man be thus guilty of cursing or swearing, he shall forfeit and pay for each and every such offense the sum of one shilling.

II. Every militia-man who on any of the days of exercise shall refuse to obey the lawful commands of his superior officer may be suspended from doing duty on that day and upon conviction before a court-martial shall be fined, if a commissioned officer in a sum not exceeding three pounds, and if a non-commissioned officer or private in any sum not exceeding twenty shillings.

III. Any officer or private man who shall begin, excite, cause, join in or promote any mutiny or disturbance in the battalion, troop or company to which he belongs, or in any other battalion troop or company, shall be fined or censured according to the nature of the offense by a general or regimental court-martial.

IV. Any officer or private man who shall strike his superior

officer or draw or offer to draw or shall lift up any weapon or offer any violence against him, being in the execution of his office, shall upon a conviction before a general or regimental court-martial [be fined] in a sum not exceeding five pounds.

V. Any commanding or other officer who shall strike any inferior officer or private man when on duty, upon conviction before a general court-martial shall be fined in any sum not less than five pounds and not exceeding ten pounds.

VI. Any officer or private man who shall make use of insolent, provoking or indecent language while on duty shall suffer such censure or fine as shall be inflicted by a general or regimental court-martial according to the nature of the offense.

VII. If any officer or private man shall think himself injured by his colonel or the commanding officer of the battalion, and shall upon due application made to him be refused redress, he may complain to the lieutenant of the county who shall summon a general court-martial that justice may be done.

VIII. If any inferior officer or private man shall think himself injured by his captain or other superior officer in the battalion, troop or company to which he belongs, he may complain to the commanding officer of the battalion, who shall summon a regimental court martial for the doing justice according to the nature of the case.

IX. Any officer or private man found drunk when under arms shall be suspended from doing duty in the battalion, company or troop on that day and be fined at the discretion of a general or regimental court-martial.

X. Whatever sentinel shall be found sleeping or drunk on his post, or shall leave it before he is regularly relieved, shall be fined at the discretion of a court-martial.

XI. Whatever commissioned officer shall be convicted before a general court-martial of behaving in a scandalous or infamous manner, unbecoming the character of an officer and a gentleman, shall be cashiered or fined at the discretion of a court-martial.

XII. All disorders and neglects which officers or privates may be guilty of, to the prejudice of the good order and military discipline of the militia of this state, are to be taken cognizance

of by a general or regimental court-martial, according to the nature and degree of the offense, and such officers or private men shall be fined or censured at the discretion of a court-martial.

XIII. Every general court-martial shall consist of thirteen members, six of whom shall be commissioned officers under the rank of a field officer, and six court-martial men, who shall be drawn by lot out of the whole number of the battalion, and these twelve are to choose a president, who shall be a field officer.

XIV. Every regimental court-martial shall be composed of seven members—three officers, three court-martial men and a president, who is to be a captain and to be chosen by the six.

XV. In all courts-martial not less than two-thirds of the members must agree in every sentence for inflicting any punishment or otherwise he [the culprit] shall be acquitted.

XVI. The president of each and every court-martial whether general or regimental, shall require all witnesses, in order to the trial of offenders, to declare on oath or affirmation that the evidence they shall give is the truth, the whole truth and nothing but the truth, and the members of all such courts shall take an oath or affirmation which the president is required to administer to the other members and the next in rank is required to administer to him, that they will [give] judgment with impartiality.

XVII. All members of the militia called as witnesses in any case before a court-martial who shall refuse to attend and give evidence shall be censured or fined at the discretion of the court.

XVIII. No officer or private man being charged with transgressing these rules shall be suffered to do duty in the battalion, company or troop to which he belongs until he has had his trial by a court martial, and every person so charged shall be tried as soon as a court martial can be conveniently assembled.

XIX. The officers and private men of every company of artillery or other company, troop or party that is or shall be annexed to any battalion shall be subject to the command of the colonel or commanding officer of said battalion and the officers shall sit as members of courts-martial in the same manner as the officers of any other company.

XX. No penalty shall be inflicted at the discretion of a court-martial other than degrading, cashiering or fining, the fines to the officers not to exceed ten pounds, and the fines for a non-commissioned officer or private man not to exceed five pounds for one fault.

XXI. No company or battalion shall meet at a tavern on any of the days of exercise, nor shall march to any tavern before they are discharged.

XXII. The militia on days of exercise may be detained under arms on duty in the field any time not exceeding six hours, provided they are not kept above three hours under arms at any one time without allowing them a proper time to refresh themselves.

XXIII. Adjutants, drummers and fifers shall receive the following pay for every day of service they attend their respective battalions or companies by order of the commanding officer.

An adjutant, ten shillings, a drummer three shillings, a fifer three shillings. The drum-major and fife-major of every battalion shall receive each a sum not exceeding twenty shillings per week, and be continued in pay as long as the colonels of the several battalions shall think necessary; and it is required that such drum-majors and fife-majors when not in service on days of exercise shall be diligently employed in instructing a proper number of persons for drummers and fifers of the several battalions.

XXIV. The lieutenant of the county for the time being shall have full power of pardoning or mitigating any censures or penalties ordered to be inflicted for the breach of any of these articles by any general court-martial, and every offender convicted as aforesaid by any regimental court-martial may be pardoned or have his penalties mitigated by the colonel or commanding officer of the battalion, excepting only where such censures or penalties are directed as satisfaction for injuries received by one officer or private man from another.

XXV. Upon the determination of any point by a regimental court-martial, if the officer or private man concerned on either side thinks himself still aggrieved, he may appeal to a general court-martial, but if upon a second hearing the appeal appears

groundless and vexatious, the person so appealing shall be censured at the discretion of the said general court.

XXVI. Upon the death, resignation, promotion or other removal of a field officer or any other officer or court-martial man from a battalion troop, or company, such vacancy is to be filled by the person such battalion, troop or company shall elect.

XXVII. No officer or private man shall be tried a second time for the same offense except in case of appeal.

XXVIII. All fines that shall be collected according to this act by direction of any court-martial and not otherwise appropriated shall be paid into the hands of the clerk of the company to which the offenders belong, who shall account for the same to the captain, to be applied to the purchasing powder and ball to exercise the men at proper times at shooting at marks and for prizes to the best marksmen.

The fines that shall be incurred in consequence of the breach of any of the above regulations shall be paid (if incurred by a field officer) to the clerk of that company whose captain has the first rank in the battalion or (if incurred by any other officer or private) to the clerk of the company to which they respectively belong within three weeks after they become due, but in case of neglect or refusal to pay any of the said fines, then and in such case, upon application made by the clerk to whom such fine or fines ought to have been paid it shall and may be lawful for any one justice of the peace of the county (if the fine does not exceed five pounds) or two justices (if above five pounds) by warrant under his or their hands and seals to levy such fine or fines respectively on the offender's goods and chattels and otherwise proceed in recovering the same as is by law directed in case of debts not exceeding five pounds; and when recovered the said justice or justices are required to pay such fines into the hands of the clerk who applied for the recovery; the fines so recovered from the field officers to be disposed of as the officers of the battalion shall think proper, and those recovered from the other officers and privates to be disposed of as is herein before [directed].

Passed March 17, 1777. See the Acts of Assembly passed June 19, 1777, Chapter 760; December 30, 1777, Chapter 731; April 5, 1779, Chapter 343; (repealed by the Act of Assembly passed) March 20, 1780, Chapter 902.

CHAPTER DCCLII.

AN ACT TO INCREASE THE WAGES OF ASSEMBLYMEN.¹

(Section I, P. L.) Whereas in and by a certain act of the general assembly of the province of Pennsylvania passed in the fourth year of the reign of the late Queen Ann, entitled "An act to ascertain the number of members of assembly and to regulate the elections,"² it was declared and enacted that every member chosen or to be chosen to serve in assembly should be allowed the sum of six shillings per day and the speaker ten shillings per day during his and their attendance in the service thereof, and that every member of assembly should be allowed towards his traveling charges after the rate of three pence per mile coming to and going from the place where the assembly should be held:

(Section II, P. L.) And whereas in and by one other act of the general assembly of the province aforesaid passed in the third year of the reign of the present King of Great Britain, entitled "An act to increase the allowance to members of assembly for their attendance on the public service,"³ it was therein set forth that since the passing the said above-entitled act the price of provisions and the expense of traveling, lodging and diet had greatly increased, in so much that the sum of money allowed by the said act to the said members per day was not sufficient to maintain and support them in the necessary accommodations during their attendance in the service of the public, whereupon it was enacted that instead of the said sum of six shillings every member to be chosen after the publication of the said last-recited act to serve in general assembly should be allowed the sum of eight shillings and the speaker, instead of the sum of ten shillings, the sum of twelve shil-

¹ The original roll of this act is missing; and therefore it has been compared with the copy in the Act Books.

² Passed January 12, 1705-6, Chapter 137.

³ Passed January 22, 1774, Chapter 696.