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THE
MILITIA LAW OF NORTH-CAROLINA.

PASSED AT THE
SECOND EXTRA SESSION
OF THE
GENERAL ASSEMBLY,
1861.

· *SEC. 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the militia organization of the State shall be as follows: One Adjutant and Inspector General, with the rank of Major-General, who shall be General-in-Chief of all the forces of the State of North Carolina; such Brigadier-Generals as may be necessary to command brigades of not less than two nor more than six regiments, the regiments now established by law, and until otherwise, ordered the following shall be the established brigades and regiments, viz:*

BRIGADES.	COUNTIES.	No. of REG'T.	How distinguished in counties where more than one Regiment.
1st	Currituck,	1	
	Camden,	2	
	Perquimans.	3	
	Pasquotank.	4	
2nd	Chowan,	5	
	Hertford,	6	
	Gates,	7	
	Bertie,	8	
	"	9	
3rd	Martin,	10	
	Washington,	11	
	Gyrell,	12	
	Hyde,	13	

BRIGADES.	COUNTIES.	NO. OF REG'T.	How distinguished in counties where more than one Regiment.
4th	Beaufort,	14	
	Craven,	15	North.
	"	16	South.
5th	Pitt,	17	
	Carteret,	18	
	Jones,	19	
	Lenoir,	20	
	Onslow,	21	
6th	New Hanover,	22	East of N. East River.
	"	23	West of " " "
	Sampson,	24	East of Big Coharie.
	"	25	West of " "
7th	Duplin,	26	
	Wayne,	27	Upper.
	"	28	Lower.
8th	Greene,	29	
	Edgecombe,	30	Upper.
	"	31	Lower.
9th	Nash,	32	
	Wilson,	33	
	Halifax,	34	Upper.
	"	35	Lower.
	Northampton,	36	
10th	Warren,	37	
	Wake,	38	East of Raleigh.
	"	39	West " "
	Franklin,	40	
11th	Johnston,	41	
	Granville,	42	North.
	"	43	South.
	Person,	44	
	Orange,	45	Hillsboro'.
12th	"	46	Hawfields.
	Caswell,	47	
	Alamance,	48	
	Chatham,	49	Lower.
"	50	Upper.	

BRIGADES.	COUNTIES.	No. of REG'T.	How distinguished in counties where more than one Regiment.
13th	Moore,	51	
	Harnett,	52	
	Cumberland,	53	Lower.
	"	54	Upper.
14th	Bladen,	55	
	Brunswick,	56	
	Columbus,	57	
	Robeson,	58	Lower.
15th	"	59	Upper.
	Richmond,	60	Lower.
	"	61	Upper.
16th	Montgomery,	62	
	Randolph,	63	West.
	"	64	East.
	Davidson,	65	Lower.
17th	"	66	Upper.
	Guilford,	67	West.
	"	68	East.
	Rockingham,	69	Lower.
	"	70	Upper.
	"	71	
18th	Forsythe,	72	
	Stokes,	73	North.
	Surry,	74	South.
	"	75	
19th	Yadkin,	76	
	Rowan,	77	
	Davie,	78	North of S. Yadkin.
	Iredell,	79	South " " "
	"	80	Lower.
20th	Anson,	81	East.
	Union,	82	West.
	"	83	
21st	Stanly,	84	
	Cabarrus,	85	North.
	Mecklenburg,	86	South.
	"	87	
	Gaston,		

BRIGADES.	COUNTIES.	No. of REG'T.	How distinguished in counties where more than one Regiment.
22nd	Lincoln,	88	
	Catawba,	89	
	Cleaveland,	90	Upper.
23rd	"	91	Lower.
	Wilkes,	92	Lower.
	"	93	Upper.
	Alexander,	94	
	Caldwell,	95	
24th	Alleghany,	96	
	Ashe,	97	
	Watauga,	98	
25th	Mitchell,	99	
	Burke,	100	North.
	"	101	South.
	McDowell,	102	
	Rutherford,	103	North.
26th	"	104	South.
	Polk,	105	
	Henderson,	106	
	Transylvania,	107	
	Buncombe,	108	North.
27th	"	109	South
	Madison,	110	
	Yancey,	111	
28th	Haywood,	112	
	Jackson,	113	
	Macon,	114	
	Cherokee,	115	
	Clay,	116	

SEC. 2. Each regiment of Artillery, Infantry, Rifle-men, or Cavalry shall consist of one colonel; one lieutenant-colonel; one major; three surgeons, with the assimilated rank, one of major, one of captain, and one of first lieutenant; one adjutant; one assistant commissary and one assistant quartermaster, who shall also be the paymaster, each with the rank of first lieutenant; and

[one] chaplain, with the assimilated rank of captain ; one sergeant-major ; one commissary's sergeant ; one quartermaster's sergeant ; and one chief musician—(all after the major to be appointed by the colonel), and ten companies. Each company shall consist of one captain, one first lieutenant, two second lieutenants, five sergeants, four corporals, two musicians, (and in horse companies, one farrier and one blacksmith,) and from sixty to one hundred privates, (non-commissioned officers, musicians, farriers and blacksmiths to be appointed by the captain.)

SEC. 3. All free white men and white apprentices, residents of this State, except ministers of the Gospel of every denomination that are properly ordained, or have the cure of souls, and the superintendent, assistant physician and necessary attendants of the Insane Asylum, of North Carolina, who shall be of the age of eighteen and under fifty years, shall as soon as practicable, be severally and respectively enrolled in the militia of this State by the captain or commanding officer of the infantry company within the bounds of whose district, (to be allotted to him as hereinafter directed,) such person shall reside ; and it shall at all times be the duty of every captain, or commanding officer of any company, to enrol every such person, except as hereinbefore or hereinafter excepted, and also those between the ages aforesaid and not exempt by law, who may, from time to time, come to reside within the bounds of his district, and remain therein thirty days, and he shall without delay notify such person of the enrolment, by a proper non-commissioned officer of the company, by whom the notice may be proved. And in case there shall be no captain or commanding officer in any district, the Adjutant-General shall appoint an enrolling officer for such district, whose duty it shall be to make a note of the free white persons and white apprentices in said district, between the ages of eighteen and fifty years, and he shall within ten days

after said enrolment, order an election, and notify all persons to attend said election, who are required to do militia duty ; the said enrolling officer is further required to open the polls and superintend the election for company officers, and transmit to the Adjutant General a fair statement thereof, with a copy of the vote ; and it shall be the duty of the Adjutant General to compare the statements made to him by the enrolling officer aforesaid and make known to the Governor the persons elected ; and he shall commission said persons. And any enrolling officers, appointed as aforesaid, who shall refuse to act, or undertaking to act, shall fail to make his returns to the Adjutant General within thirty days from his appointment, shall forfeit and pay to the State of North Carolina one hundred dollars, to be recovered upon summary motion in the Superior Court of law for Wake County.

SEC. 4. The Vice President of the Confederate States, the officers, judicial and executive, of the Confederate States, the judges of the Supreme and Superior Courts of Law, the secretary, comptroller, treasurer, high sheriffs of the several counties ; all the necessary employees of the different Railroad Companies in the State, and Telegraph Operators ; all custom house officers, postmasters, and stage drivers or mail carriers, employed in the care and conveyance of the mail to the post offices of the Confederate States, all millers of public mills, *provided* that this exemption shall only extend as to each mill to one person subject to do military duty, whose occupation and daily employment it is to attend and perform the duty of a public miller ; all branch pilots, all mariners actually employed in the sea service of the Confederate States, or of any merchant ; shall be, and they are hereby, exempted from military duty : *Provided, always,* That nothing herein contained shall be so construed as to exempt any person from performing duty in case of in-

vasion or insurrection in this State. *And provided further*, that every practising physician shall be exempted from any fine or penalty for not attending to the ordinary company and regimental drill upon making oath that it was necessary for him to be absent upon professional duty.

SEC. 5. The members of the several fire companies, so long as they shall continue members of said companies, that now are, or may hereafter be established in this State, shall be and they are hereby declared exempted from all military duty, except in time of war, invasion or insurrection. It shall be the duty of the captains of all fire companies, once a year, to send a regular muster roll to the colonel commandant of the regiment, by the first of November, in each year, under the penalties now imposed on the captains of militia companies on failure of sending a muster roll in the limits of which the company exists, of all persons belonging to said company, liable to do military duty, and the colonel of the regiment shall include them in his regular annual returns to the general of the brigade, and adjutant general. Persons having scruples of conscience against bearing arms, who shall produce to the captains of their respective districts certificates, signed by the clerks of their respective churches, that they are regular members thereof, and shall make oath or affirmation, before a justice of the peace, that they are, from religious scruples, averse to bearing arms, and shall also produce a certificate from such justice of the peace, that such oath or affirmation has been duly made, shall not be compelled to muster or perform military duty, except in cases of insurrection or invasion, or pay any tax for said exemption, but they shall be subject to taxation in time of insurrection, invasion or war, and also to furnish their quota of men or pay an equivalent. All other persons liable to do military duty shall be allowed to furnish their quota of men, or pay an equivalent.

SEC. 6. The captains or commandants of companies

shall enrol and keep enrolled on their muster rolls, all within the limits of their respective districts, who are exempt from performing militia duty by law, except in time of invasion or insurrection, and shall return the number of exempts on their annual muster rolls to the commandants of regiments, who shall make a like return of all exempts in their respective regiments in their annual returns to the brigadier and adjutant generals, regulations for which annual reports are hereinafter prescribed.

SEC. 7. That the tax list shall have a column headed military roll, to be prepared by the comptroller, and that the tax list takers shall annually include in their lists the names of the persons in their districts between the ages of eighteen and fifty years, liable to be enrolled for military duty; and it shall be the duty of every white person who shall give in his taxables to report himself on oath for enlistment, who is liable for military duty; and every white person who shall return his taxes, shall also, on oath, report every white person residing in his family who shall be liable for military duty.

SEC. 8. That the tax list takers shall return the lists to the clerks of the county courts, and by them the names of the persons liable to military duty shall be drawn off, the district in which they live specified, and a copy of such list shall be given to the colonel of the regiment, and also to the captain of the company in each district; and the clerks shall receive the sum of five dollars for their services, to be paid by the county treasurer.

SEC. 9. It shall not be lawful for any captain or other militia officer in this State to enrol any free persons of color, except for musicians, and, in time of actual service, four to each company as cooks, who shall be rationed and paid by the State, and four others as washers, to be rationed by the State, and paid by men of the company for whom they wash.

SEC. 10. Every resident enrolled and notified, as is di-

rected in the third section of this act, shall, within one month thereafter, provide himself with a good musket, smooth bore gun or rifle, shot pouch and powder horn, and shall appear so armed and accoutred, when called out to exercise or in actual service; the commissioned officers shall severally be armed with a sword—or revolver at his discretion; and every resident, so enrolled and providing himself with arms and accoutrements as herein directed, shall hold the same exempt from all writs, executions, or sales for debt or for the payment of taxes; and if he shall fail to provide himself with arms and accoutrements, as herein directed, and if the commissioned officers of his company shall deem him in sufficient circumstances to equip himself, he shall forfeit and pay, as follows: for want of a good serviceable musket, smooth bore gun or rifle, the sum of fifty cents. And all parents, guardians and masters shall furnish those of the militia, who shall be under their care or command, with the arms and equipments above mentioned, under the like penalty for each neglect: *Provided*, Such guardian shall have sufficient in his hands belonging to his ward to purchase said arms. If the company court martial, after examination on oath, shall adjudge any person enrolled to be incapable of providing himself with arms and accoutrements, as here required, they shall make a report thereof to the next court martial, who may, if it shall appear necessary, exempt such person from the fines here imposed, until such arms and accoutrements shall be provided and delivered to him by the court martial, who shall take security for the safe keeping of such arms and accoutrements, to be returned when required.

SEC. 11. When a company in any district exceeds one hundred, it shall be divided into two as nearly equal as may be; and all the companies in any one county shall remain in the same regiment until the number reaches sixteen, when it shall be divided into two regiments of

eight companies each, unless otherwise especially provided by law; and any new companies shall be added alternately to one and the other. The regimental courts martial of the several regiments in this State, shall have power so to lay off the several captain's districts, as to render them as convenient to the inhabitants as a due regard to the number of persons liable to perform military duty will permit; and they may at any subsequent court martial so alter or consolidate their respective districts, as to create new ones, or to unite portions of districts together, so as to form other and separate districts, as a majority of the court martial may think proper; and all allotments or alterations shall be duly recorded by the adjutant in the books of the regiment. Where a small number of inhabitants are so detached by water courses or mountains, as to render their attendance inconvenient at any place where they have been accustomed to muster, and where such detached sections contain a population of thirty-six men, liable to perform military duty, it shall be the duty of the regimental court martial to lay that section off into a separate captain's district; and where there shall be two or more regiments in any county within this State, a majority of the officers, composing such regiments, shall have full power to alter and regulate the boundary lines of their regiments, and in the event the officers should not agree with respect to said lines, it shall be the duty of the county court, a majority of the justices being present, to establish the said lines; and when so fixed, the adjutant of each regiment shall spread the same on the books of the regiment.

SEC. 12. The Governor, being the constitutional Commander-in-Chief, shall be entitled to appoint and commission the following staff officers, in addition to the adjutant general: one military secretary and one aid-de-camp, each with the rank of colonel, and two other aids-de-camp—one with the rank of lieutenant colonel and one with

that of major ; one surgeon general, with the assimilated rank of colonel, and one chaplain. The adjutant general shall be elected by the joint vote of the General Assembly every four years, and in case of death, resignation or removal from the State, when the General Assembly is not in session, the Governor and Council of State shall fill said vacancy.

SEC. 13. A major general shall be entitled to appoint the following staff officers : one assistant adjutant and inspector general, with the rank of lieutenant colonel . one assistant quartermaster, who shall also be paymaster, and one assistant commissary of subsistence, each with the rank of major ; two aids-de-camp—one with the rank of major, and one with that of captain ; one surgeon, and one chaplain.

SEC. 14. A brigadier general shall be entitled to appoint the following staff officers : one assistant adjutant and inspector general with the rank of major ; one assistant quartermaster, who shall also be paymaster, and one commissary of subsistence, each with the rank of captain ; one aid-de-camp, with the rank of captain ; one surgeon, and one chaplain.

SEC. 15. Whenever two brigades are assembled, or ordered to act together, the brigadier generals shall nominate and the Governor commission a major general to command them. Should they not agree, the Governor shall appoint and commission him.

SEC. 16. Brigadier generals shall be elected by the field officers of a brigade, by a majority of the written votes of said officers, to be sent to the adjutant general, on a day to be named by him in an order to such colonel or commanding officer of a regiment in said brigade ; should no one receive a majority, the Governor shall appoint and commission one of three having the largest number of votes : and should no more than three votes be received within twenty days after the day named by the

adjutant general, then the Governor shall appoint and commission one.

SEC. 17. Field officers, (colonels, lieutenant colonels and majors,) shall be elected by a majority of the commissioned officers of each regiment present, on a day to be designated by the adjutant general, and at the usual place of assembling the regiment, the votes to be counted by the two senior officers of the regiment present, and the result certified to the adjutant general, through the brigadier general. Should there be no election, the brigadier general, in forwarding the result to the adjutant general, shall nominate two of the persons voted for for each office, one of whom shall be appointed and commissioned by the Governor.

SEC. 18. Company officers shall be elected by the company on a day to be designated by the colonel or commanding officer of the regiment, and at the usual place of parade of said company, and a majority of those present shall elect. Two officers of the regiment to which the company belongs, shall be ordered to superintend the election, and make return thereof to the colonel or commanding officer of the regiment, who shall forward it to the adjutant general through the brigadier general of the brigade. Should there be no election, the colonel or commanding officer of the regiment, in forwarding the result to the adjutant general, shall nominate two or more of the persons voted for for each office, of whom the brigadier general shall nominate two for each office to the adjutant general, one of whom shall be appointed and commissioned by the Governor.

SEC. 19. Any officer who shall fail or refuse to accept the office to which he may be elected or appointed, or who shall fail to equip himself according to law within three months from the date of his commission: if a major or brigadier general, he shall forfeit and pay the sum of two hundred dollars; if a field officer, one hundred dollars;

if a captain, fifty dollars ; and if a lieutenant, twenty-five dollars ; to be recovered as in *section 3 of this act* : *Provided*, That no officer shall be compelled to hold his office longer than three years.

SEC. 20. All officers shall reside within the brigade, regiment or company district to which they respectively belong.

SEC. 21. The uniform of the militia shall be that prescribed for the army of the Confederate States, but the button shall have the words "North Carolina" thereon.

SEC. 22. All officers shall be commissioned by the Governor, and shall take the following oath, to wit : "I, A. B., do solemnly swear or affirm (as the case may be) that while I continue in the service I will bear true faith and yield obedience to the State of North Carolina, and that I will serve it honestly and faithfully against its enemies, and that I will observe and obey the orders of the Governor of the said State, and the orders of the officers appointed over me, according to law." This oath shall be taken and subscribed by the officer and returned to the adjutant general.

SEC. 23. It shall be the duty of the adjutant general to keep books in which all commissions given to officers shall be recorded, to issue all orders of the commander-in-chief, and to keep a record thereof, and to do all other things properly belonging to the adjutant and inspector general of an army. He shall discharge the duties of quarter master and paymaster general, commissary general, and chief of ordance, with such assistants in each department not exceeding four in times of war, and one in times of peace, and such clerks as the Governor may deem necessary, to be appointed by him and subject to his removal ; said assistants shall do duty in any of said departments when required by the adjutant general, and shall have rank and pay not higher than captain in times of war, and the rank and pay of captain in

times of peace ; said pay to be the same as in the confederate service ; and the clerks shall receive not more than five hundred, nor less than three hundred dollars *per annum*. The adjutant general shall receive for his services as above directed, in time of war the pay and allowance of a brigadier general in the army of the Confederate States, and in time of peace one thousand five hundred dollars, and may hold his office four years from and after the meeting of the first regular session of the General Assembly after the passage of this act, or until his successor is elected.

SEC. 24. Major generals will command two brigades when in actual service. It shall be the duty of the brigadier general to review at least once a year the regiments composing his brigade. It shall be the duty of the colonel to assemble his regiment twice in each year for drill and review. It shall be the duty of the captain to assemble his company for drill once a month in time of war, and once in three months in time of peace.

SEC. 25. For failure to perform the duties required in section 24 of this act, the brigadier general shall forfeit and pay the sum of two hundred dollars ; the colonel, one hundred dollars ; and if any captain or commanding officer of a company shall fail or neglect to muster his company, as directed by section 24 of this act, he shall forfeit and pay the sum of six dollars for each failure, to be adjudged by the next regimental court martial ; and if he or any commissioned officer of the company shall fail to appear equipped as directed at said muster, the officer so failing shall pay the sum of four dollars ; and if a non-commissioned officer or private shall fail to attend at a company muster, he shall forfeit and pay the sum of one dollar ; and if he attend without being armed and accoutred, he shall pay the sum of fifty cents, which sum shall be adjudged by the company court martial according to the circumstances of said delinquent : *Provided*, That every

absentee shall be allowed until the next succeeding company muster to make his excuse, which shall always be on oath, the officer highest in rank present being hereby authorized to administer the same. When companies consist principally of persons residing within any town, and the muster ground is at or within one mile of said town, all fines imposed by this act for not appearing at reviews and musters, or if appearing, not being properly armed and accoutred, shall be doubled.

SEC. 26. That in each brigade the general commanding the same shall appoint a brigade inspector who shall hold the rank of major, whose duty it shall be to drill all the commissioned officers and orderly sergeants of the brigade at least two days before each regimental muster, said officers being required to drill in uniform, and for each day's service he shall receive two dollars, to be paid at the treasury upon certificate of the commandant of the brigade that such services were rendered. He shall drill according to Hardec's Tactics, and such other tactics as the commander-in-chief may prescribe, and a copy of such tactics shall be furnished to each commissioned officer by the Adjutant-General at the expense of the State.

SEC. 27. Between the middle and end of November in each year, every regiment of militia shall be regularly mustered by the brigadier-general, or its own commander. For this muster each captain shall fill out two muster rolls, blanks to be furnished by the adjutant-general, which shall contain the names of all persons belonging to the company. By these muster rolls, the brigadier-general, or commander of the regiment, shall muster each company, after having inspected it. These rolls shall be signed by both the captain and mustering officer, and be, by the latter, sent to the adjutant-general. The colonel shall make similar rolls for his staff.

SEC. 28. The commissioned officers of companies, or a majority of them, shall, after every muster of the com-

pany, on a day to be appointed by the commanding officer of the company, meet in court-martial, and proceed to try and determine all cases which may come before them, and on conviction of any delinquent, the officer highest in rank, present, shall enter up judgment, and issue writs of execution against the goods and chattels or body of the delinquent, as in judgment in civil cases.

SEC. 29. The right of appeal shall be allowed from a company to a regimental court-martial, but no appeal shall be granted, unless the person praying the same shall give notice thereof in ten days from the sitting of the court. and he shall give security, to be approved by the captain or presiding officer of the company court-martial, to abide by the decision of the regimental court-martial ; said appeal shall be taken in like manner as appeals from justices of the peace to the county courts, and shall be proceeded on in like manner by the regimental court-martial.

SEC. 30. Every execution coming up on a judgment entered up before any court-martial, shall be directed to a constable or the sheriff of the county, and the officer to whom such execution may be directed and delivered, shall proceed to collect the same in the manner and under the rules established in civil cases, and shall be allowed the same fees for his services. He shall make his return to the next company court-martial, under a penalty of twenty dollars for every neglect of duty, to be recovered by such on the official bond of such constable or sheriff, in the name of the State to the use of the presiding officer of the court-martial from which such execution issued. Any penalty so recovered shall be appropriated as other military fines, and in case the presiding officer of any court-martial should fail in any such suit, he is authorized to use so much of the fines of the company or regiment, as the case may be, as shall be necessary to defray the expenses of said suit.

SEC. 31. The presiding officer of such court shall ad-

minister to each member the following oath, viz: "We, A. B. C., do each of us swear, (or affirm,) that we will faithfully enquire into all delinquencies brought before this court and assess the fines therefor, without partiality, favor, or affection: So help us God."

SEC. 32. Every court-martial shall have the power and authority to issue writs of *capias ad satisfaciendum* upon any judgment rendered in said courts under the same rules as are now or may be prescribed by law in civil cases; said writ shall be issued by any lawful officer of the county, and it shall be returned to the county court, under the same rules and regulations as though the said writ had been issued by a justice of the peace, and shall be treated and governed accordingly, except no affidavit shall be required to make up any issue of fraud.

SEC. 33. All executions issued by any court-martial and levied upon real estate, shall be returned to the county court under the same rules, regulations and law as justice's executions for the same.

SEC. 34. All witnesses who have been summoned by any court-martial shall appear accordingly, and continue from term to term until discharged, and in default thereof shall forfeit and pay the sum of forty dollars, to be recovered by a *scire facias*, issued by said court-martial.

SEC. 35. There shall be in each regiment a regimental court-martial, composed of the commandant of the regiment, and the commandants of battalions and companies, in the regiment, or attached to it. A majority of these officers shall constitute a quorum.

SEC. 36. The senior officer present shall preside. The court shall sit twice in every year at such time and place as the commandant may appoint.

SEC. 37. The president and members shall take the oath prescribed for a company court-martial, which shall be administered in the same manner.

SEC. 38. The adjutant shall act as judge advocate

in such courts, and in addition to other duties, shall keep a fair record of the proceedings of the court, and in case of his disability to attend, the president shall appoint an acting judge advocate in his stead.

SEC. 39. The said regimental court shall have power to assess fines according to law, upon officers of the regiment, upon officers attached thereunto, or upon other persons when specially authorized; may hear and determine appeals from the company courts-martial, and may remit or lessen any fines imposed by them or any fine imposed by the preceding regimental court, on good cause being shown; may adjourn from time to time until the business before it is completed; and if a quorum be not present, may adjourn until a quorum is formed, or the commanding officer may adjourn it to any day, giving reasonable notice thereof.

SEC. 40. All complaints upon which general courts-martial may be ordered, shall be in writing, under oath, signed by the complainant, and shall clearly specify the offence, and the time when, and the place where it was committed.

SEC. 41. Every officer to be tried by court-martial shall be put under arrest.

SEC. 42. No commissioned officer shall be tried but by a general court-martial to be ordered by a brigadier-general, or higher authority.

SEC. 43. No officer shall be arrested for an offence committed more than one year before application for such arrest, unless his absence or other manifest impediment, has prevented the preferment of the complaint within that time.

SEC. 44. Any officer making an arrest shall forthwith certify the same to the brigadier-general, together with the cause thereof, and the charges, specifications and proofs offered to sustain said charges. No officer shall be arrested but by a field-officer of his regiment or commander of his company, or higher authority.

SEC. 45. If the brigadier-general shall refuse to order a court-martial upon any officer so arrested, he shall cause an order of discharge to be issued, and, if no court-martial be ordered within thirty days, the arrested officer shall be restored to command.

SEC. 46. The Governor, for misconduct within his own knowledge, or upon complaint in writing by any commissioned officer, may order a court of inquiry to investigate charges against any officer of militia. His order for such court shall be issued by the adjutant-general.

SEC. 47. A court martial shall consist of not less than five nor more than nine members, and shall be constituted in the same manner as is provided for the government of similar courts in the army of the Confederate States.

SEC. 48. At least ten days before the meeting of any court martial, the officer detailing the same shall give the officer arrested notice in writing of the time and place of the sitting of the court for his trial; and shall furnish him with a list of the officers detailed therefor, and he shall draw up in writing the charges and specifications of the alleged offence and shall sign his name thereto, and cause a duplicate of the same to be delivered to the accused ten days before his trial; and if he objects and the court is satisfied that he has not received the same, they shall adjourn so as to allow the time required to elapse after the delivery of the proper notice. Upon such trial, nothing shall be alleged against the accused except what is embraced in the charges and specifications, unless for misconduct on trial.

SEC. 49. The officer detailing a court martial for the trial of any commissioned officer, shall appoint a Judge advocate and an orderly to summon the court and witnesses, and a provost marshal.

SEC. 50. The judge advocate, after being notified of his appointment, shall issue subpoenas for witnesses, as well for the prosecution as for the accused; shall attend the court; attend to the preparation and disposition of the record; have the custody and safe keeping of all papers connected with the trial; and perform all the duties pertaining to his office as prescribed by the regulations of the army of the Confederate States. The judge advocate shall be the certifying officer to authenticate copies of papers and documents used before courts martial, courts of inquiry, or boards of officers.

SEC. 51. Before a court martial proceeds to the trial of an officer, the judge advocate shall administer to the president and members thereof, severally, the following oath, viz: "You, A. B., do swear, (or affirm), that you will well and truly try and determine, according to evidence, the matter now before you, between the State of North Carolina and the prisoner to be tried, and that you will duly administer justice, according to law, without partiality, favor or affection, according to your conscience and the best of your understanding; and you do further swear (or affirm) that you will not divulge the sentence of the court until it shall be published by the proper authority; neither will you discover or disclose the vote or opinion of any particular member of the court martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law: So help you God." And so soon as the oath shall have been administered to the respective members, the president of the court shall administer to the judge advocate, or person officiating as such, an oath in the following words, viz: "You, A. B., do swear, that you will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same: So help you God."

SEC. 52. No member of the court shall be challenged by the accused before the president, judge advocate and members shall have been sworn; only one member shall be challenged at a time, and the challenge shall be in writing, stating the cause of said challenge. The court being then cleared, and the challenged member having withdrawn, the other members shall proceed to try whether the challenge is good. Illegality or irregularity in the detail of a member of the court shall be good cause of challenge by either party; but shall be considered as waived unless the objection is taken at the time and in the manner aforesaid.

SEC. 53. If the accused neglects to appear and defend, or refuses to plead, or withdraws in contempt of the court, the court may proceed to trial and judgment as if he had pleaded not guilty.

SEC. 54. If any person summoned as a witness to at-

tend any court martial, shall fail to appear accordingly, the judge advocate may issue a *capias ad respondendum* in like manner and with the like consequences as in criminal prosecutions, and if such witness be an officer, he shall be liable to arrest, and tried by court martial, and to be cashiered or censured; and if any person so summoned, and attending, shall refuse to give evidence, he may be fined as aforesaid, or be committed to prison by the court as for a contempt; and the said fines shall be collected by the sheriff of the county in the same manner and the same proceedings had thereon, in case of failure to pay, as are had on executions issued from any court of record in the State: *Provided*, That in all cases the judge advocate shall place in the hands of the sheriff or collector of the county in which said witness resides, an execution for the amount of such fine, and make a return to the presiding officer of the court martial, issuing said execution, setting forth against whom such execution has issued, and for what amount, and to what officer it was delivered.

SEC. 55. Before the witnesses testify they shall be sworn by the judge advocate in the following form, viz: "You swear, or affirm (as the case may be,) the evidence you shall give in the cause now in hearing shall be the truth, the whole truth, and nothing but the truth: So help you God."

SEC. 56. When the adjutant is complainant for neglect or default in making returns, he shall not be required to be present; and his certificate shall be *prima facie* evidence that such return was or was not made, and that a copy of a return is true.

SEC. 57. The statement of the complainant and the defence of the accused, and motions, arguments and objections to the proceeding by either party, and the answer thereto, shall be submitted to the court in writing; the evidence and proceedings in and out of court, and opinions of the judge advocate on questions of law arising during the trial, shall be put in writing by him. After the prosecution and defence are concluded he shall state and sum up the evidence and give his opinion to the court upon matters of law, which opinion, with the judgment he shall put in writing. When a question is to be decided, the judge advocate shall receive the vote of each member, beginning with the youngest and proceeding to

the oldest, and unless two-thirds of the members agree that the accused is guilty, he shall be acquitted.

SEC. 58. If two-thirds of the members find him to be guilty, he shall be sentenced to be reprimanded in orders, or to forfeit a sum not exceeding two hundred dollars, or to be cashiered, either or all of them; in the last case, may be further adjudged to be disqualified from holding any military office during life or for a term of years; but no sentence of disqualification or of dismissal from office shall be executed, until the proceedings of the court shall have been laid before the commander-in-chief, and approved by him.

SEC. 59. Courts martial may preserve order during their sessions, and whosoever in such court behaves in a disorderly or an insulting manner, or makes a tumult or disturbance, may be arrested by order of the court, and confined, not exceeding twenty-four hours, or fined not exceeding ten dollars, either or both. If the fine be not paid, the judge advocate shall issue a writum forthwith, to commit such person to prison in the same manner and with the same effect as upon executions in cases of prosecutions for non-payment of military fines and costs.

SEC. 60. The original proceedings and sentence of any court martial, with the papers used therein, certified by the judge advocate, shall be sealed up, and without delay delivered by him to the officer ordering the court, who shall transmit the same with his written approval or disapproval, and the reasons therefor subjoined, to the adjutant general to be filed in his office. The judge advocate shall also make, certify and transmit the parol of the court martial to the same office. The order constituting the court, or a certified copy thereof, must be attached to the bill, and signed by all the persons interested.

SEC. 61. Every decision of a court martial shall be officially communicated to the accused by the officer ordering the court, within three days after said officer shall have approved or disapproved of such decision. The officer ordering the court, and the party tried thereof shall receive, upon request from the adjutant-general, a copy of the record, the party tried paying a reasonable sum for his copy. Every person who shall think himself aggrieved by the judgment of a court martial, may appeal therefrom to the commander-in-chief,

who, upon examination, may remit the proceedings to the said court for re-consideration, or may confirm or disapprove the same, and his decision shall be final. Officers in court martial shall rank by seniority of commission.

SEC. 62. Each officer attending as a member of courts martial, court of inquiry, or military board, shall receive three dollars per day, for every day he shall attend, and ten cents for every mile he shall necessarily travel, in going to and returning from the place appointed for the meeting of the court. The judge advocate shall receive for his services five dollars per day which shall be in full compensation for all services in preparing papers before and making copies after trial, inquiry or investigation. The provost marshal shall receive two dollars per day. The orderly appointed to summon the court and witnesses shall receive ten cents per mile for every mile he shall necessarily travel in performing such duty, and one dollar per day for his attendance in the court. The witnesses attending the court shall receive the same compensation and mileage as allowed to witnesses attending the Superior Courts of law. Fees for subpoenas and service of them shall be the same as in civil cases. All compensation to the court and its officers and other incidental expenses, shall be certified to the adjutant general by the judge advocate of the court, if any shall be holden, or if not, by any three officers summoned to attend as aforesaid; and shall be paid out of the contingent fund, except only that the expense of more than three witnesses to the same fact shall be paid by the party at whose instance they attend.

SEC. 63. Every officer commanding a regiment or corps in actual service, may appoint in his own regiment or corps, a court martial to consist of three commissioned officers, for the trial and punishment of any non-commissioned officers, musician or private belonging thereto, for all offences not capital. Each court shall be governed by the rules which govern similar courts in the army of the Confederate States. The proceedings of such court shall be submitted to the officer ordering the same for his revision and decision, and said officer may pardon or mitigate any punishment ordered by said court to be inflicted. If the accused think himself aggrieved by the decision of any such court, he may appeal to a general court martial, which shall be detailed for that purpose, when a new

trial shall be had, and the proceedings shall be the same as in other cases tried by general courts martial.

SEC. 64. In the trial of any case before a court martial, the court shall proceed, unless otherwise and specially provided by law, according to the rules and articles of war, as established by Congress, and according to the practice and laws which govern such cases in the army of the Confederate States.

SEC. 65. All fines collected through the adjutant general shall be paid into the treasury of the State, and all fines imposed by a court martial shall be paid into the hands of the presiding officer of the court martial, for which the execution may issue, and to be disposed of by the court martial for the benefit of the regiment or company for which said court martial may have been held.

SEC. 66. The commander-in-chief, when in his opinion it is necessary, may call boards of officers for settling military questions, or for other purposes relative to good order and discipline.

SEC. 67. Courts of inquiry shall be ordered only by the commander-in-chief, and will be organized in like manner as courts martial, and under the same regulations; may examine into the nature of a transaction, imputation, or accusation, made against any officer by an inferior. Vacancies shall be filled as in courts martial. The judge advocate shall administer to each of the officers composing a court of inquiry the following oath, viz: "You shall well and truly examine and enquire, according to your evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: So help you God." After which the president shall administer to the judge advocate or recorder, the following oath: "You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court, and the evidence to be given in the case in hearing: So help you God." The witness shall take the same oath as witnesses sworn before a court martial. The proceedings shall be recorded, and with the papers and documents used therein, authenticated and transmitted by the judge advocate to the adjutant general; no officer appointing a court martial, court of inquiry, or board of officers, shall order a guard for the same, unless in his opinion it is necessary for their protection.

SEC. 68. That whenever the Governor of this State shall receive from the President of the Confederate States a requisition for troops from this State, or whenever in the opinion of the Governor, the public safety shall require a resort to the provisions of this section, he shall issue his proclamation declaring how many men are required to be raised from each regiment of the State, taking into consideration the number each regiment shall have theretofore furnished, and upon the proclamation of the Governor, it shall be the duty of the commandant of each regiment to assemble within thirty days, upon the regimental muster ground, all of his command, and make a call for volunteers pursuant to, and in accordance with the said proclamation, and if any regiment in the State shall neglect, refuse or fail to tender their quota of volunteers as required by said proclamation; upon such call, then the Governor is hereby authorized and required to order a draft from such regiment as refuse or neglect to tender the requisite number of officers, non-commissioned officers and privates, each captain's company being credited with the number already in the service: *Provided*, That no volunteer who has served out his time shall be subject to said draft, and provided further that no captain's district shall be subject to such draft, which has furnished in volunteers in the State troops or twelve months' volunteers, its full quota of men according to white population, nor shall men be drawn from any district more than shall be sufficient, when added to the volunteers from such district, to make its full quota: *And provided, further*, That it may be lawful for anyone so drafted to tender to the commander of the regiment a substitute for himself if he desires so to do, and if said substitute is received by said commander, the individual drafted shall be excused from going into actual service.

SEC. 69. That the term of service for each person so drafted shall be twelve months, unless sooner discharged by the order of the commander-in-chief, and no person having served as a drafted soldier shall be liable to a second term of service until all the requisitions have been called into service, except in cases of insurrection or invasion, or such circumstances of imminent peril as in the discretion of the Governor may render a general call upon the militia necessary.

SEC. 70. That upon any call upon the drafted militia, it

shall be lawful for the Governor to command any of the company officers, not volunteers, to make up a company of the same and lead them into the service.

SEC. 71. That during the existing war with the United States or any future war, the Governor of the State be and he is hereby authorized to keep in the service of the Confederate States, thirty regiments of soldiers, or so many as may be required by that government. Each regiment which has not been already organized shall conform its organization in all respects to the rules and regulations of the Confederate States, as to the number and kind of officers, non-commissioned officers and privates which it may contain; and the Governor shall have power, when the same is practicable and deemed expedient by him, to cause the organization of other regiments and corps already in the field, or in process of organization, to conform to the said rules. That the said additional regiments shall be composed of infantry, riflemen or artillerists as the Governor may determine, and he shall have power to cause the same to be armed and equipped and also supplied, until he shall deem them prepared to enter the service of the Confederate States, and shall then tender them for such service; and all sums of money necessary for that purpose, he shall have power to draw from the public treasury: *Provided*, It shall be the duty of the Governor to make arrangements at the earliest practicable day, with the Confederate States, of America to arm, equip and subsist such troops as may be raised for the service of the said Confederate States while being organized for such service, at the expense of said Confederate States, under such rules and regulations as may be prescribed for the government of the Confederate army; *Provided further*, That the troops known as "State Troops" shall be numbered as a separate corps and from one up successively according to the date of the organization of each regiment, and the troops known as Volunteers, shall be numbered in like manner as a separate corps.

SEC. 72. Said troops shall be raised by voluntary enlistment either for the war or for terms of not less than twelve months, to begin from the date of the election of field-officers by the regiment: *Provided*, The Confederate Government continues to receive into service volunteers for a time less than the continuance of the war. And all such volunteers when tendered for service to the Governor, may be accepted by him in companies or in numbers less than

a company, if he shall deem the same expedient, and when so accepted they shall be deemed in the service of the State, shall be subject to the orders of their superior officers and to the rules and articles of war adopted by the government of the Confederate States; and when received in numbers less than a company, they may be consolidated as to form companies, and shall be paid from the date at which they were accepted.

SEC. 73. When any such company is accepted or formed, it may proceed to elect its commissioned officers, and as in this act provides for the militia, and the persons so elected shall be commissioned by the Governor. And the Governor shall have power to organize such companies into regiments, the commissioned officers of which shall then be entitled to elect their field-officers, who shall then be commissioned accordingly; and such staff-officers as may be requisite for any such regiment, and which are not by the laws of the Confederate States to be appointed from the line thereof, together with one chaplain for each, shall be appointed by the Governor, subject to the approval of the Confederate Government, if it retains the right to appoint the same. And all vacancies among the officers by death or otherwise shall be filled in the same manner as is herein provided for their original appointments.

SEC. 74. The Governor is hereby authorized to complete the organization of the troops heretofore known as "State Troops," and composed of infantry, artillery and cavalry, and which have not yet been transferred to the Confederate Government, according to the terms of an act entitled "An act to raise ten thousand State troops," and to transfer the same when organized to the said government, and to add five companies to the corps of heavy artillery for coast defences and engineers; and the said corps shall hereafter be known as the regiment of artillery, with such number among the "North-Carolina Troops," together with an additional regiment of infantry, as may be given it. And all vacancies occurring among the commissioned officers of said regiments or corps of State Troops, after the passage of this act, shall be filled as heretofore by the appointment of the Governor.

SEC. 75. Should the number of troops herein provided be less than the quota of this State in any force called for by the Confederate Government, the Governor is then authorized and required to raise such additional force in the

same manner as is herein provided, and should the number of volunteers offering be inadequate to that purpose he is hereby empowered to cause a draft to be made from the militia to make up such deficiency in such manner as is herein provided.

SEC. 76. All non-commissioned officers and soldiers for the war shall receive from the State, when mustered into service, a bounty each of fifteen dollars, and those for a shorter period a bounty of ten dollars, over and above their outfit for service ; but the regular pay of all officers and soldiers shall be supplied by the Confederate Government, unless where they are retained in the service of the State, in which case they shall be paid by the State, and in like amount ; and as the Confederate government pays to each soldier a fixed amount *per annum* in lieu of clothing, the Governor, by the assent of said government, is hereby authorized to receive the amount thus allowed, if practicable, and to pay the same into the public treasury, to the end that the same may be expended under his direction in providing suitable clothing for said troops, together with such additional sum as may be needed to supply the same.

SEC. 77. The Governor is hereby empowered to give temporary appointments to such officers, drill masters, agents, &c., at the several camps which it may be necessary to establish for troops, as in his judgment may be needed, who shall receive such compensation as shall be fixed by him, and whose appointments shall cease when in his opinion their services can be dispensed with ; and he may also, when he deems it necessary, appoint in the same way drill masters for regiments, &c., going out of the State.

SEC. 78. All military officers having the charge of money or property belonging to the State shall make a quarterly return of the same to the adjutant general, in such form as he may prescribe and also any other returns or reports which he may require ; which returns shall be carefully examined by him and the accounts passed upon and adjusted for settlement, and any balances due to such officer shall be paid to him at the treasury upon the warrant of the Governor, and any sum due to the State shall be promptly paid into the treasury. All said returns shall be made within twenty days after the expiration of the quarter, and any officer failing to make the same in one

month after the expiration of such quarter, or to settle up his accounts when required to do so and pay any balance due by him on account for any property for which he ought to account, shall be dismissed by the Governor unless sufficient excuse is rendered for such failure or default.

SEC. 79. Every disbursing officer in the military service of the State shall before entering upon the discharge of his duties as such, give a bond payable to the State of North Carolina, with two or more sufficient securities, in the penal sum of not more than ten nor less than three thousand dollars, which bond shall be subject to the approval of the Governor, and lodged for safe keeping with the adjutant general, and shall be conditioned for the faithful performance of such officer's duty, and for any breach of the same shall be put in suit for the benefit of the State by order of the Governor.

SEC. 80. All former disbursing officers who shall not have closed their accounts and had the same settled prior to the 20th of August 1861, shall make settlement of the same with the adjutant general, as is herein before provided, and should they fail to do so, their bonds shall be put in suit in like manner as above; this provision shall not extend to such accounts as are to be settled by the military secretary as provided by an ordinance of the Convention; and all officers having public property of every kind and description which shall be in his hands, who shall go out of office on the 20th of August or before or after that time, shall account for and deliver such property to the adjutant general, and failing to do so shall be liable to be sued in the name of the State; and all suits at law which it may be necessary to prosecute under this act for the State, may be brought in the Superior Court of Wake County.

SEC. 81. It shall be the duty of the surgeon-general to provide all necessary medical stores, surgical instruments, &c., for troops leaving and serving out of the State, and for all hospitals and places for the sick in this State, or for such of our troops as may be sent back to this State because of sickness or casualties in battle; establishing such rules and regulations for such hospitals as he may deem best, and such rules and regulations for the medical officers attached to our troops abroad as may be consistent with their duties to and the laws of the

Confederate States, all to be subject to the Governor's approval ; and in all other things to exercise such powers and perform such duties as belong to and are performed by surgeons-general in the military service.

SEC. 82. The Governor shall appoint for each regiment going into the service of the Confederate States, one surgeon and one assistant surgeon, if the same be allowable by the laws of the same, and if not, then he shall designate such persons as he deems suitable, to the Confederate Government, and ask for their appointment by the same ; and when appointed they shall have such rank and pay as may be allowed by the laws of the Confederate States, payment for their services to be made by the Confederate Government and not by the State. And the Governor shall also have power to appoint such post surgeons and assistants as may be deemed necessary at military hospitals, encampments or places of rendezvous for troops while in the State ; all such appointments to be of a temporary character, and subject to be dispensed with by the Governor, whenever in his opinion the services of any such are no longer needed ; but while in service they shall be paid the same salary as similar officers are paid in the service of the Confederate States.

SEC. 83. That in order to promote a proper military spirit and pride, each regiment or corps now in service or hereafter called into the service, shall be allowed to place upon its colors the name of each battle in which it may have been present and under fire.

SEC. 84. It shall be the duty of the Governor to dispose of any property of this State promised or on hand for the defence of the same, or which may hereafter be on hand, whenever the same shall in his opinion, be no longer needed, either by sale to the Confederate Government or to others, and the proceeds thereof he shall place in the public treasury.

SEC. 85. If the Confederate Government shall fail to provide for the defence of this State and especially of its coast defences, the Governor shall continue to provide for the same, and shall have power to keep in the service of the State such of the troops, herein provided for, as in his opinion are necessary for that purpose.

SEC. 86. That in addition to the troops herein provided, there shall be raised eight regiments of volunteers as herein provided, as a reserve, to be commanded by one major-

general and two brigadier-generals, should the Governor choose so to direct, said regiments to be placed at once in suitable camps for instruction, to be furnished a hat or cap, coat, pants, shoes and blanket, and kept in camp three months, Each non-commissioned officer or soldier to be paid ten dollars when his regiment is formed. Should additional troops be required by the Confederate States, these shall be transferred as already directed for the thirty regiments, and the money paid them shall be charged against their bounty, and a new reserve of eight regiments be at once organized, and so on till a reserve of eight regiments, raised by draft if necessary, shall be left in the State with three months' instruction in camp. They shall then be dismissed to their homes, with half pay from the time of their enrolment and a hat or cap, coat, pants, shoes and blanket. They shall be subject to the call of the Governor for any service, during the time for which they enrolled, and when called out, shall present themselves with the clothing above named: *Provided, however,* That the power granted in this section shall only be exercised in case of war, insurrection or threatened invasion.

SEC. 87. There shall be organized a regiment of artillery in the militia of the State, which shall consist of such companies as may now, or hereafter, be raised in the several counties of the State, not to exceed ten in number, to include both horse and foot artillery. The field-officers shall be elected as the officers of other regiments, and the regiments shall be under like command and control as other regiments.

SEC. 88. Any citizens may form volunteer companies, with the number of officers, non-commissioned officers, privates, &c., fixed in this bill, and form part of the militia regiment in any county, and be governed by their own by-laws, not inconsistent with this act.

SEC. 89. That upon the delivery of arms to any company of militia of volunteers, it shall be the duty of the commandant of the regiment delivering the same, to take a receipt, describing the arms, from the captains of said company, and the captain shall take such a receipt from each of the men receiving arms, all of which receipts shall be returned to the clerk of the county court, and the receipts thus taken and filed shall relieve said commandant and captain from the responsibility: *Provided,*

That it shall be the duty of the commandant of each company to require the arms thus delivered to the men to be exhibited at each drill, and if the arms are not so exhibited, or the said commandant shall have reason to believe said arms to be lost or disposed of unlawfully, he shall at once make the same known to the county attorney, who, upon notice issued against the person destroying or unlawfully disposing of his arms, shall recover a judgment for the full value of said arms, with costs.

SEC. 90. That it shall be the duty of any one of the field officers of a regiment, or the oldest captain, should there be no field officer, upon complaint on oath made by any responsible person, that there are unlawful assemblies within his command, or danger of insubordination amongst slaves, to detail a military patrol, designating their duties, and requiring the officer commanding the said patrol to report to him how he has discharged his duty; and the said patrol shall deliver all persons detected in the violation of the law to the civil magistrates for the examination of the charges made against them.

SEC. 91. Should any doubt arise under this act, as to its meaning or intention, or should any question arise not covered by this law, the Governor is authorized to decide any and all such questions according to the laws, articles of war and regulations of the Confederate States, and where they do not apply, according to his judgment; and any such decision announced in general orders shall have all the force of law, until repealed by law.

SEC. 92. Any commissions now or that may be recorded in the office of the adjutant-general shall be in force, and no others, under this act, although the numbers of the regiment may have been changed by this act. All process directed to be issued by this act shall be issued in the name of the State.

SEC. 93. That upon the passage of this act it shall be the duty of the adjutant-general to cause to be printed twelve hundred copies of this act, and have the same distributed among the militia officers of the State.

SEC. 94. This act shall be in force from and after its ratification, and all acts coming in conflict with the provisions of this act are hereby repealed.

Read three times and ratified in General Assembly, this 20th day of September, A. D., 1861.

N. N. FLEMING, S. H. C.
HENRY T. CLARK, S. S.

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