age aforesaid: *Provided*, that no greater sum shall be allowed in any case to the widow or to the child or children of any officer than the half pay of a lieutenant colonel. Limitation of amount.

Sec. 3. *And be it further enacted*, That every officer, according to the rank which he held as aforesaid, non-commissioned officer and private, of the volunteers and militia, who served in the said campaign, and who have been disabled by known wounds received in said service, shall be placed on the list of invalids of the United States, at such rate of pension as shall be directed by the President of the United States, upon satisfactory proof of such wound and disability being produced to the Secretary of War, agreeably to such rules as he may prescribe: *Provided*, that the rate of compensation for such wounds and disabilities shall never, for the highest disability, exceed half the monthly pay of such officer, at the time of being so wounded or disabled, and that the rate of compensation to a non-commissioned officer and private, shall never exceed five dollars per month; and all inferior disabilities shall entitle the person so disabled, to receive a sum in proportion to the highest disability; but no pension of a commissioned officer shall be calculated at a higher rate than the half pay of a lieutenant colonel. Pensions to be in proportion to the wounds, &c. Compensation for disabilities not to exceed half monthly pay.

Sec. 4. *And be it further enacted*, That any person or persons belonging to the said army, who may have had a horse or horses killed or lost during the late battle on the Wabash, shall be entitled to, and receive the value thereof: *Provided*, that the proof of the value of such horse or horses shall be by affidavit of the quartermaster of the corps to which the owner may have belonged, or of two other credible witnesses. Horses killed in the battle of the Wabash to be paid for.

Sec. 5. *And be it further enacted*, That to the heirs or legal representatives of every person who was killed, and to every person who was wounded in the said campaign, who were purchasers of public lands of the United States, and whose lands had not, before the seventh of November, one thousand eight hundred and eleven, been actually sold or reverted to the United States, for the non-payment of part of the purchase money, a further time of three years shall be allowed, in addition to the time allowed by former laws, to complete their payments; which further time of three years shall commence from the respective times when their payments should have been completed according to former laws. Further time given to such as were wounded, or to the representatives of those killed to make payment for public lands.

Approved, April 10, 1812.

Statute I.

April 10, 1812.

[Expired.]

Chap. LV.—*An Act to authorize a detachment from the Militia of the United States.*(a)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the

(a) A justice of the peace, in the District of Columbia, is an officer of the government of the United States, and is exempt from militia duty. Wise *v.* Withers, 3 Cranch, 331; 1 Cond. Rep. 552.

The court martial has not exclusive jurisdiction of that question, and its sentence is not conclusive. *Ibid.*

Trespass lies against a collector of militia fines, who distrains for a fine imposed by a court martial, upon a person not liable to be enrolled in the militia; the court martial having no jurisdiction in such cases. *Ibid.*

The act of the state of Pennsylvania of 28th March, 1814, providing, by the 21st section, that the officers and privates of the militia of Pennsylvania, neglecting or refusing to serve when called into actual service, in pursuance of any order or requisition of the President of the United States, shall be liable to the penalties defined in the act of Congress of 28th February, 1795, chap. 36, or to any penalty which may be imposed since the date of the act, or which may hereafter be prescribed by any law of the United States; and also providing for the trial of such delinquents by a state court martial, and that a list of the delinquents fined by such court, should be furnished to the marshal of the United States, and also to the comptroller of the treasury of the United States, in order that the further proceedings directed to be had thereon by the laws of the United States might be completed; is not repugnant to the laws and the constitution of the United States. Houston *v.* Moore, 5 Wheat. 1; 4 Cond. Rep. 589.

The act of February 28, 1795, chap. 36, to provide for calling forth the militia to execute the laws of the Union, to suppress insurrections and repel invasions, is within the constitutional authority of Congress. Martin *v.* Mott, 12 Wheat. 19; 6 Cond. Rep. 410.

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President authorized to call upon the executives for their quotas of militia to be equipped and armed.

United States be, and he is hereby authorized to require of the executives of the several states and territories, to take effectual measures to organize, arm and equip, according to law, and hold in readiness to march at a moment's warning, their respective proportions of one hundred thousand militia, officers included, to be apportioned by the President of the United States, from the latest militia returns in the department of war; and, in cases where such returns have not been made, by such other data as he shall judge equitable.

Detachment of militia, how to be officered: general officers to be apportioned.

Sec. 2. *And be it further enacted*, That the detachment of militia aforesaid, shall be officered out of the present militia officers, or others, at the option and discretion of the constitutional authority in the respective states and territories; the President of the United States apportioning the general officers among the respective states and territories, as he may deem proper: and the commissioned officers of the militia, when called into actual service, shall be entitled to the same pay, rations and emoluments as the officers of the army of the United States.

Pay and rations of the commissioned officers.

Term of service of the detachment not to exceed six months: non-

Sec. 3. *And be it further enacted*, That the said detachment shall not be compelled to serve a longer time than six months after they arrive at the place of rendezvous; and during the time of their service the non-commissioned officers, musicians and privates, shall be entitled to the

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The President is the sole and exclusive judge whether the exigency has arisen, in which he is authorized to call out the militia. *Ibid.*

Where a party justifies, in an action against him, under the orders of the President calling out the militia, it is not necessary that he should aver in his pleadings, that the exigency had actually occurred; it is sufficient that the President has so decided, and has issued his orders; and if the fact of the existence of the exigency were averred, it might be traversed. *Ibid.*

Nor is it necessary to set forth the orders of the President at large; it is sufficient to state that the call made by the governor of the state was in obedience to the orders of the President. *Ibid.*

A requisition from the President upon the governor, is an order, in legal intendment. *Ibid.*

A militia man who refuses to obey the order of the President, calling him into public service, is liable to be tried for the offence, under the 5th section of the act of 1795. *Ibid.*

The 64th of the rules and articles of war, enacted by the act of April 10, 1806, chap. 20, which provides that general courts martial may consist of any number of commissioned officers, from five to thirteen inclusively, but they shall not consist of less than thirteen where that number can be convened without manifest injury to the service, being in a matter submitted to his sound discretion, is conclusive. *Ibid.*

This article, however, is not obligatory in cases where the court martial is convened to try militiamen who have neglected to obey the orders of the President, calling them into public service. *Ibid.*

Where there is no positive statutory regulation as to the number of persons of whom the court is to be constituted, reference must be had to the general usage of the military service, or what may be called the customary military law. *Ibid.*

Courts martial, when duly organized, are bound to execute their duties, and regulate their modes of proceeding by this customary military law in the absence of positive enactment. *Ibid.*

In a case out of the operation of the articles of war, the sentence of a court martial, which has been approved by the President, is sufficiently approved. *Ibid.*

A court martial regularly called under the act of 1795, does not expire with the termination of the war then existing; nor is its jurisdiction to try offences in any way dependent upon the fact of war or peace. *Ibid.*

Where, in an action of replevin, the defendant being a deputy marshal of the United States, avowed and justified the taking of the plaintiff's goods, by virtue of a warrant issued to the marshal of the district, to collect a fine imposed by the judgment of a court martial, described as a general court martial, composed of officers of the militia of the state of New York, in the service of the United States, (six in number, and naming them,) duly organized and convened by general orders issued pursuant to the act of Congress of February 28, 1795, chap. 36, for the trial of those of the militia of the state of New York, ordered into the service of the United States, in the third military district, who had refused to rendezvous and enter into the service of the United States, in obedience to the order of the commander in chief of the state of New York, of the 4th and 29th of August, 1814, issued in compliance with the requisition of the President, made in pursuance of the same act of Congress; and alleging that the plaintiff being a private in the militia, neglected and refused to rendezvous, &c.; and was regularly tried by the said general court martial, and duly convicted of the said delinquency: Held, that the avowry was good. *Ibid.*

Alien enemies, who had enrolled themselves as volunteers, and been accepted by the President, under the act of February 6th, 1812, chap. 21, are not entitled to a discharge on the ground of such alienage; there being no law enjoining the President from accepting their services. Wilson et al. *v.* Izard et al., Paine's C. C. R. 68.

It seems that the President had a right to accept volunteers to serve at a particular post, as well as for general service; the act being silent on the subject: at any rate, he had a discretion on the subject, not to be controlled by a court of justice. *Ibid.*

The insertion in the enrolment, of the officer's name, under whom the volunteers were to serve, was meant merely to ascertain the post where they were to serve, by designating its commander; and not to attach them to his personal command, so that he could not be changed. *Ibid.*

same pay and rations as is provided by law for the militia of the United States when called into actual service.

commissioned officers, &c. &c. their pay, emoluments, &c. &c.

Sec. 4. *And be it further enacted*, That the President of the United States be, and he hereby is authorized to call into actual service any part, or the whole of said detachment, in all the exigencies provided by the constitution; and the officers, non-commissioned officers, musicians and privates of the said detachment shall be subject to the penalties of the act, entituled "An act for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for those purposes, passed the twenty-eighth day of February, one thousand seven hundred and ninety-five;" and if a part only of said detachment shall be called into actual service, they shall be taken from such part thereof, as the President of the United States shall deem proper.

President may call out the whole or part of the detachment into actual service.

1795, ch. 36.

Sec. 5. *And be it further enacted*, That no non-commissioned officer, musician or private belonging to the aforesaid detachment of militia, who shall be ordered into actual service by the President of the United States, shall be subject to corporal punishment by whipping, any thing contained in any act to the contrary notwithstanding.

No officer or soldier shall be liable to punishment by whipping.

Sec. 6. *And be it further enacted*, That in lieu of whipping, as provided by several of the rules and articles of war, as now used and practised, stoppage of pay, confinement and deprivation of part of the rations shall be substituted in such manner as is herein after provided.

Whipping abolished, &c. other punishments substituted.

Sec. 7. *And be it further enacted*, That any non-commissioned officer or private belonging to the aforesaid detachment of militia, who shall, while in actual service, be convicted before any court martial of any offence, which before the passing of this act might or could have subjected such person to be whipped, shall, for the first offence, be put under such stoppages of pay as such court martial shall adjudge, not exceeding the one half of one month's pay for any one offence; but such offender may, moreover, at the discretion of such court martial, be confined under guard, on allowance of half rations, any length of time, not exceeding ten days for any one offence, or may, at the discretion of such court martial, be publicly drummed out of the army.

Non-commissioned officers, how punishable.

Stoppage of pay and confined.

Sec. 8. *And be it further enacted*, That the sum of one million of dollars be, and the same is hereby appropriated, to be paid out of any monies in the treasury not otherwise appropriated, towards defraying any expense incurred by virtue of the provisions of this act.

Specific appropriation.

Sec. 9. *And be it further enacted*, That this act shall continue and be in force for the term of two years from the passing thereof, and no longer.

Commencement and termination of this act.

Approved, April 10, 1812.

Statute I.

April 14, 1812.

Chap. LVI.—*An Act to prohibit the exportation of specie, goods, wares and merchandise, for a limited time.*(a)

Exportation of specie and

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful,

(a) Upon an indictment under the non-intercourse laws for putting goods on board a carriage, with intent to transport them out of the United States, contrary to the act of January 9th, 1809, the punishment of which offence is a fine of four times the value of the goods; it is not necessary that the jury should find the value of the goods. United States *v.* John Tyler, 7 Cranch, 285; 2 Cond. Rep. 492.

Under the non-intercourse law, a vessel, in March, 1811, had no right to come into the waters of the United States, to inquire whether she might land her cargo. The Brig Penobscot *v.* The United States, 7 Cranch, 356; 2 Cond. Rep. 528.

Wines, the produce of France, imported into the United States before the non-intercourse act, reexported to a Danish island, there sold to a merchant of that place, and thence exported to New Orleans during the operation of that act of Congress, were liable to forfeiture under that law. The Schooner Hoppet *v.* The United States, 7 Cranch, 389; 2 Cond. Rep. 542.

The non-intercourse act of March 1st, 1809, was in force between the 2d of February, and 2d of March, 1811, by virtue of the President's proclamation of November 2d, 1810. Schooner Anne *v.* The United States, 7 Cranch, 570; 2 Cond. Rep. 611.