GENERAL PROVISIONS APPLICABLE TO ALL COURTS MARTIAL AND COURTS OF INQUIRY.

§ 232. The president of every court martial and of every court of inquiry, both before and after he shall have been sworn, and also the judge advocate, if required, shall issue subpœnas for all witnesses whose attendance at such court may, in his opinion, be necessary in behalf of the people of this state, and also on application for all witnesses in behalf of any officer charged or accused, or persons returned as delinquent; and may direct the commandant of any company to cause such subpœna to be served on any witness or member of his company. Subpœnas.

§ 233. The president of such court martial or the court of inquiry shall have power to administer the usual oath to witnesses, and shall have the same power to compel attending witnesses to be sworn and testify, and to preserve order, as courts of common law jurisdiction; and all sheriffs, jailors and constables are hereby required to execute any precept issued by such president or court for that purpose. Administering oaths.

§ 234. Every witness not appearing in obedience to such subpœna when duly served, personally, with a copy of the same, and not having a sufficient or reasonable excuse, shall forfeit to the people of this state a sum not less than ten nor more than fifty dollars; and the president of such court shall, from time to time, report to the district attorney the names of all such delinquent witnesses, together with the names and places of residence of the persons serving such subpœna, the better to enable him to prosecute for such forfeiture. Fine for disobeying subpœna.

§ 235. Whenever it shall appear to the satisfaction of any court martial or court of inquiry, by proof made before such court, that any person duly subpœnaed to appear as a witness before said court, shall have refused or neglected without just cause to attend as such witness in conformity to such subpœna, and the party in whose behalf such witness shall have have subpœnaed shall make oath that the testimony of such witness is material, such court, or the president thereof, shall have power to issue an attachment to compel the attendance of such witness. Attachment to compel attendance.

§ 236. Every such attachment shall be executed in the same manner as a warrant, and by any officer authorized How executed and costs of.

to execute warrants, and the fees of the officers serving the same shall be paid by the person against whom the same shall have been issued, unless he shall show reasonable cause, to the satisfaction of such court, for his omission to attend; such costs shall be ascertained by the court, who may thereupon issue an execution for the collection against the person liable to pay the same, and which may be collected as other executions are collected, and by any officer authorized to collect executions issued from courts of justice.

Disorderly conduct.

§ 237. Any person or persons who shall be guilty of disorderly, contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expressions to or before any court martial or court of inquiry, or any member of either of such courts, in open court, intending to intercept the proceedings or to impair the respect, the authority of such courts, may be committed to the jail of the county in which said courts shall sit, by warrant under the hand and seal of the president of such court.

Warrant how served.

§ 238. Such warrant shall be directed to the sheriff or any or either of the constables and marshals of any such county, or any officer attending the court, and shall set forth the particular circumstances of the offence adjudged to have been committed; and shall command the officer to whom it is directed to take the body of such person and commit him to the jail of the county, there to remain without bail or mainprize, in close confinement, for a time to be limited, not exceeding three days, and until the officer's fees for committing and the jailor's fees be paid.

Duty of sheriff.

§ 239. Such sheriff shall receive the body of any person who shall be brought to him by virtue of such warrant, and keep him until the expiration of the time mentioned in the warrant, and until the officer's and jailor's fees shall be paid, or until the offender shall be discharged by due course of law, unless sooner discharged by any judge of a court of record, in the same manner and under the same rules as in cases of imprisonment under process for contempt from a court at law.

Senior officer to preside in absence of president.

§ 240. In the absence of the president of any court martial, the senior officer present may preside, with all the powers of the president; and all the members of such courts shall, when on duty, be in full uniform.

§ 241. The president of any court martial or any court of inquiry may appoint, by warrant under his hand and seal, one or more marshals. Marshals.

§ 242. The marshals so appointed may not only perform the usual duties of such marshals, but may also execute all process lawfully issued by such president or court, and perform all acts and duties in this act imposed on and authorized to be performed by any sheriff, marshal or constable. Their powers.

§ 243. Whenever the sentence of any court martial shall be appealed from, the officer hearing the appeal shall require the court, or the president thereof, to furnish him forthwith with a statement of the case, and of the evidence touching the same; which statement and evidence shall, in case of an appeal to the commanding officer of the brigade, be forthwith, on notice of such appeal, transmitted to him. Appeal papers.

§ 244. Such statement being furnished, the officer hearing the appeal may hear such further evidence, by affidavit or otherwise, as the nature of the case may require, and for that purpose he shall have power to administer the usual oaths to witnesses produced before him, except in cases where trials may have been had upon charges preferred. May receive further testimony.

§ 245. The last two sections shall extend to appeals made from the order of an officer approving the sentence of a court martial.

§ 246. If any officer having a warrant for the collection of any fine, shall not be able to collect the fine within the time specified therein, then the officers issuing the warrant may, at any time thereafter, within two years from the time of imposing the fines, issue a new warrant against any delinquent, or renew the former warrant, from time to time, as may become necessary. Renewal of warrants.

§ 247. Any warrant for the collection of fines, issued by virtue of this act, shall and may be renewed in the same manner that executions issued from justice's courts may by law be renewed.

§ 248. It shall be the duty of the respective presidents of courts martial to prosecute, in the name of the people of the state of New York, any marshal or constable, sheriff and their sureties, who shall incur any penalty for neglect in the execution or return of any warrant, or in paying over moneys collected by him. Marshals, sheriffs and constables to be prosecuted for neglect.

§ 249. Whenever any court martial shall consist of one person, he shall be deemed the president thereof within the meaning of this act.

Chiefs of staff to make returns of delinquents.

§ 250. The chiefs of the staff in each division, regiment or battalion, shall, on or before the first day of November in each year, return to the commandants of division and brigade, respectively, the names of all commissioned officers absent from any parade, encampment or drill which they shall be required by law to attend. Within ten days after the receipt of such returns, the respective commandants of division or brigade, as the case may be, shall order a court martial, to consist of three commissioned officers, without regard to rank, to pass upon such delinquency. It shall not be necessary to cause the arrest of such absentee, nor to serve any charges, unless, in the discretion of the officer ordering the court, it may be proper; but the delinquent may be fined, pursuant to the provisions of this act, provided notice of the return and of the time appointed for holding the court martial shall have been delivered to him or left at his usual place of abode at least ten days before the assembling of said court.

Delinquents to be court martialed.

§ 251. The court may excuse any delinquent for good cause shown.

Offences against by-laws.

§ 252. Any fine for offences against the by-laws of any company of the national guards or of regimental boards, not exceeding the sum of twenty-five dollars, a certified copy of the proceedings relating to the infliction of which has been returned to any regimental court martial or court of appeals, may be enforced by such court in the manner hereinbefore provided, due notice being given to the delinquent, and further provided that a certified copy of said by-laws be filed with the commandant of the regiment.

Regulations of United States army to govern.

§ 253. Whenever any portion of the military forces of this state shall be ordered to assemble for purposes of military instruction, under the authority of the Commander-in-Chief, or whenever any part of the state forces shall be ordered to assemble, under his authority, in time of war, insurrection, invasion or public danger, the rules and articles of war, and general regulations for the government of the army of the United States, so far as they are applicable, and with such modifications as the Commander-in-Chief may prescribe, shall be

considered in force and regarded as a part of this act, during the continuance of such instruction, and to the close of such state of war, invasion, insurrection or public danger; but no punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted, except in time of actual war, invasion or insurrection, declared by proclamation of the Governor to exist.

OF THE DUTIES OF CERTAIN STAFF OFFICERS, AND OF VARIOUS MATTERS CONNECTED WITH THEIR VARIOUS RESPECTIVE DEPARTMENTS.

OF THE ADJUTANT GENERAL.

Roster of officers.

§ 254. The Adjutant General shall keep a roster of all the officers of the military forces of this state, containing the date of their commissions, their ranks, the corps to which they belong, the division, brigade and regiment of such corps, and the places of their residence, as accurately as can be ascertained, which roster shall be revised and corrected every year.

Description of districts.

§ 255. He shall also enter in a book, to be kept for that purpose, a local description of the several company, regimental, brigade and division district.

Roster of divisions and brigades.

§ 256. It shall be the duty of the commandants of divisions and brigades, to furnish the Adjutant General with a roster of their officers, containing the facts requisite to enable him to comply with the provisions of this act.

Books.

§ 257. The books required by the Adjutant General to comply with this act, shall be furnished him at the expense of this state, and shall go to his successors in office.

Seal.

§ 258 The seal now used in the office of the Adjutant General shall continue to be the seal of his office, and shall from time to time be delivered to his successor in office; and all copies of records or papers in his office, duly certified and authenticated under the said seal, shall be evidence in all cases, in like manner as if the originals were produced.

Printing and distribution of militia laws

§ 259. It shall be the duty of the Adjutant General to cause so much of the militia laws as shall at any time be in force to be printed in proper form, from time to