

and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That from and after the passing of this act if any person or persons whatsoever shall directly or indirectly give to, sell, barter or exchange with any Indian or Indians whatsoever any guns, gunpowder, shot, bullets, lead or other warlike stores without license from the commander in chief of the King's forces in those parts or from the governor or commander in chief of this province for the time being first had and obtained, every such person or persons so offending, being thereof legally convicted in any county court of quarter sessions within this province, shall forfeit and pay the sum of five hundred pounds, one moiety thereof to the informer and the other moiety to the governor or commander in chief of this province for the time being, and shall furthermore be whipped with thirty-nine lashes on his bare back, well laid on, and be committed to the common gaol of the county, there to remain twelve months without bail or mainprise.

[Section II.] And be it further enacted by the authority aforesaid, That this act shall continue in force for the term of twelve months and from thence to the end of the next session of assembly, and no longer.

Passed October 22, 1763. Referred for consideration by the King in Council, February 10, 1766, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section VIII. Expired.

CHAPTER DVII.

AN ACT FOR REGULATING THE OFFICERS AND SOLDIERS IN THE PAY OF THIS PROVINCE.

Whereas many barbarous hostilities have lately been perfidiously committed by the Indians on the western and northern frontiers of this province and there is great reason to apprehend that a confederacy has been formed among several tribes of the said Indians to continue and extend their incursions, and

by the cruelest murders and devastations to spread destruction through this province.

And whereas it is judged necessary that a body of forces not exceeding eight hundred [and twenty-five] men should be continued in the pay of this government, to be employed in the most effectual manner for the defense of this province until the first day of February next ensuing.

And whereas no man can be forejudged of life or limb, or subjected, in time of peace, to any kind of punishment within this province by martial law or in any other manner than by the judgment of his peers and according to the known and established laws of this province; yet, nevertheless, it being requisite for the retaining such forces in their duty that an exact discipline be observed and that offenders be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

[Section I.] Be it therefore enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That from and after the publication of this act, if any person who is or shall be hereafter during the continuance of this act mustered or in the pay of this province as an officer or who is or shall be hereafter during the continuance of this act listed, voluntarily entered or in the pay of this province as a soldier shall, at any time during such continuance of this act, begin, excite, cause or join in any mutiny or sedition in the company, troop or regiment whereto he doth belong or in any other company, troop or regiment in His Majesty's service, or shall not [use his] utmost endeavors to suppress the same, or coming to the knowledge of any mutiny or intended mutiny shall not, without delay, give information thereof to his commanding officer, or shall desert His Majesty's service, or being a soldier actually listed in any regiment, troop or company, shall list himself in any other regiment, troop or company without a dis-

charge produced in writing from the colonel, or, in his absence, the field officer commanding in chief the regiment, troop or company in which he last served as a listed soldier; or shall be found sleeping upon his post or shall leave it before relieved, or if any officer or soldier of the said forces shall hold correspondence with any of the said Indians who have been concerned in the hostilities lately committed or that shall hereafter be committed within this province or with any person who has assisted or shall hereafter assist the said Indians in committing such hostilities, or give them advice or intelligence, either by letters, messages, signs or tokens in any manner or way whatsoever, or shall treat with such Indians or persons or enter into any condition with them without His Majesty's license or license of the general, lieutenant general or chief commander or shall strike or use any violence against his superior officer, being in the execution of his office; or shall disobey any lawful command of his superior officer, all and every person and persons so offending in any of the matters before mentioned shall suffer death or such other punishment as by a court-martial shall be inflicted.

[Section II.] And be it further enacted by the authority aforesaid, That the governor or commander in chief of this province for the time being may from time to time grant a commission, under the great seal, to any officers not under the degree of a field officer for the holding a general court-martial within this province, in which courts-martial all the offenses in this act specified shall be tried and proceeded against in such manner as by this act shall be hereafter directed.

[Section III.] And be it also further enacted, That it shall and may be lawful to and for such courts-martial, by their sentence or judgment, to inflict corporal punishment not extending to life or limb on any soldier for immoralities, misbehavior or neglect of duty.

[Section IV.] And it is hereby further enacted and declared, That no general court-martial which shall have power to sit by virtue of this act shall consist of a less number than thirteen, whereof none to be under the degree of a commission officer; and the president of such general court-martial shall neither be the commander in chief or governor of the garrison where the

offender shall be tried nor under the degree of a field officer, unless where a field officer cannot be had, in which case the officer next in seniority to the commander, not being under the degree of a captain, shall preside at such court-martial; and that such court-martial shall have power and authority and are hereby required to administer an oath to every witness in order to the examination or trial of any of the offenses that shall come before them.

Provided always, That in all trials of offenders by general courts-martial to be held by virtue of this act, every officer present at such trial, before any proceedings be had thereupon, shall take the following oaths upon the Holy Evangelists before the court and judge advocate or the person officiating as such (who are hereby authorized to administer the same) in these words, That is to say:

“You shall well and truly try and determine, according to your evidence in the matter now before you, between our Sovereign Lord the King’s Majesty and the prisoner to be tried. So help you God.”

“I, A. B., do swear that I will duly administer justice according to an act of general assembly of this province now in force, entitled ‘An act for regulating the officers and soldiers in the pay of this province,’ without partiality, favor or affection; and if any doubt shall arise which is not explained by the said act, according to my conscience, the best of my understanding and the custom of war in the like cases. And I further swear that I will not divulge the sentence of the court until it shall be approved by His Majesty, the general or commander in chief of this province; neither will I, upon any account at any time whatsoever, 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 a due course of law. So help me God.”

And so soon as the said oaths shall have been administered to the respective members, the president of the court is hereby required and authorized to administer to the judge advocate or the person officiating as such an oath in the following words:

“I, A. B., do swear that I will not upon any account, at any time whatsoever, 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 a due course of law. So help me God.”

And no sentence of death shall be given against any offender in such case by any general court-martial unless nine officers present shall concur therein; and if there be more officers present than thirteen, then the judgment shall pass by the concurrence of two-thirds of the officers present. And no proceeding or trial shall be had upon any offense but between the hours of eight of the clock in the morning and three in the afternoon, except in cases which require an immediate example.

Provided always, That the party tried by any such court-martial shall be entitled to a copy of the sentence and proceedings of the said court, upon demand thereof made by himself or any other person or persons in his behalf (he or they paying reasonably for the same) at any time not sooner than three months after such sentence.

Provided also, That every person presiding at any trial whereupon sentence of death shall be given against any officer or soldier by virtue of this act shall transmit as soon as conveniently may be to the governor or commander in chief of this province for the time being a fair transcript of the proceedings and sentence of such court-martial, under the hands and seals of the officers who composed the said court, and that the execution of the sentence so given shall be suspended until the pleasure of the governor or commander in chief of this province for the time being be known and his warrant for the same under the great seal shall be received.

[Section V.] Provided always, and be it further declared and enacted, That no officer or soldier being acquitted or convicted of any offense be liable to be tried a second time by the same or any other court-martial for the same offense unless in the case of an appeal from a regimental to a general court-martial; and that no sentence given by any court-martial and signed by the president thereof be liable to be revised more than once.

Provided always, That nothing in this act contained shall extend or be construed to exempt any officer or soldier whatsoever from being proceeded against by the ordinary course of law.

[Section VII.] And be it further enacted by the authority

aforesaid, That this act shall be and continue in force until the first day of February next, and no longer.

Passed October 22, 1763. Referred for consideration by the King in Council, February 10, 1766, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section VIII, and the Act of Assembly passed May 30, 1764, Chapter 514. Expired.

CHAPTER DVIII.

AN ACT FOR PREVENTING TUMULTS AND RIOTOUS ASSEMBLIES AND FOR THE MORE SPEEDY AND EFFECTUAL PUNISHING THE RIOTERS.

Whereas of late several dangerous riots and tumults have been in divers parts of this province, to the disturbance of the public peace and the great terror of His Majesty's subjects, and the same are yet continued and fomented by many turbulent and evil-minded persons.

Therefore, for the preventing and suppressing of such riots and tumults and for the more speedy and effectual punishing the offenders therein:

[Section I.] Be it enacted by the Honorable John Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That if any persons to the number of twelve or more being unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace at any time after the publication of this act, and being required or commanded by any one or more justice or justices of the peace or by the sheriff of the county or his under-sheriff, or by the mayor, bailiff or bailiffs or other head officer or justice of the peace of any city or town corporate where such assembly shall be, by proclamation to be made in the King's name in the form hereinafter directed to