

XVIII.

1552 AN ACT of the Congress of the "Confederate States of America," entitled, "An Act to organize Military Courts to attend the Army of the Confederate States in the Field and to define the Powers of said Courts."

The Congress of the Confederate States of America do enact, That courts shall be organized, to be known as military courts,¹ one to attend each army corps in the field, under the direction of the President. Each court shall consist of three members, two of whom shall constitute a quorum, and each member shall be entitled to the rank and pay of a colonel of cavalry, shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office during the war, unless the court shall be sooner abolished by Congress. For each court there shall be one judge advocate, to be appointed by the President, by and with the advice and consent of the Senate, with the rank and pay of a captain of cavalry, whose duties shall be as prescribed by the Rules and Articles of war, except as enlarged or modified by the purposes and provisions of this act, and who shall also hold his office during the war, unless the court shall be sooner abolished by the Congress; and in case of the absence or disability of the judge advocate, upon the application of the court, the commander of the army corps to which such court is attached may appoint or detail an officer to perform the duties of judge advocate during such absence or disability, or until the vacancy, if any, shall be filled by the President.

Sec. 2. Each court shall have the right to appoint a provost marshal to attend its sittings and execute the orders of the court, with the rank and pay of a captain of cavalry; and also a clerk, who shall have a salary of one hundred and twenty-five dollars per month, who shall keep the record of the proceedings of the court, and shall reduce to writing the substance of the evidence in each case, and file the same in the court. The provost marshal and the clerk shall hold their offices during the pleasure of the court. Each member and officer of the court shall take an oath well and truly to discharge the duties of his office to the best of his skill and ability, without fear, favor, or reward, and to support the Constitution of the Confederate States. Each member of the court, the judge advocate, and the clerk shall have the power to administer this.

1553 Sec. 3. Each court shall have power to adopt rules for conducting business and for the trial of causes, and to enforce the rules adopted, and to punish for contempt, and to regulate the taking of evidence, and to secure the attendance of witnesses, and to enforce and execute its orders, sentences, and judgments, as in cases of courts-martial.

Sec. 4. The jurisdiction of each court shall extend to all offences now cognizable by courts-martial under the Rules and Articles of war and the customs of war, and also to all offences defined as crimes by the laws of the Confederate States or of the several States, and, when beyond the territory of the Confederate States, to all cases of murder, manslaughter, arson, rape, robbery, and larceny, as defined by the common law when committed by any private or officer in the army of the Confederate States against any other private or officer in the army or against the property or person of any citizen or other person within the army: *provided*, said courts shall not have jurisdiction of offenders above the grade of colonel. For offences cognizable by courts-martial, the court shall, on conviction, inflict the penalty prescribed by the Rules and Articles of war, and in the manner and mode therein mentioned; and for offences not punishable by the Rules and Articles of war, but punishable by the laws of the Confederate States, said court shall inflict the penalties prescribed by the laws of the Confederate States; and for offences against which penalties are not prescribed by the Rules and Articles of war, nor by

¹ Note the constitution, &c., of these more permanent courts in connection with Chapter V, Vol. I, p. 52, 54—"Nature of the court-martial: a temporary tribunal," &c.

the laws of the Confederate States, but for which penalties are prescribed by the laws of a State, said court shall inflict the punishment prescribed by the laws of the State in which the offence was committed: *provided*, that in cases in which, by the laws of the Confederate States or of the State, the punishment is by fine or by imprisonment, or by both, the court may, in its discretion, inflict any other punishment less than death; and for the offences defined as murder, manslaughter, arson, rape, robbery, and larceny by the common law, when committed beyond the territorial limits of the Confederate States, the punishment shall be in the discretion of the court. That when an officer under the grade of brigadier-general, or private, shall be put under arrest for any offence cognizable by the court herein provided for, notice of his arrest and of the offence with which he shall be charged shall be given to the judge advocate by the officer ordering said arrest, and he shall be entitled to as speedy a trial as the business before said court will allow.

SEC. 5. Said courts shall attend the army, shall have appropriate quarters within the lines of the army, shall be always open for the transaction of business, and the final decisions and sentences of said courts in convictions shall be subject to review, mitigation, and suspension, as now provided by the Rules and Articles of war in cases of courts-martial.

SEC. 6. That during the recess of the Senate the President may appoint the members of the courts and the judges advocate provided for in the previous sections, subject to the confirmation of the Senate at its session next ensuing said appointments. [Approved October 9, 1862.]

The above legislation was added to and amended by subsequent Acts, of which the principal were the following:—

Act of May 1, 1863, authorizing such "military courts" for the military departments.

1554 *Act of Feb. 3, 1864*, authorizing the President to transfer judges from one such military court to another.

Act of Feb. 6, 1864, authorizing commanders of corps and departments to detail field officers as members of military courts whenever any of the judges thereof should be "disqualified by consanguinity or affinity, or unable from sickness or other unavoidable cause, to attend said courts."¹

Act of Feb. 13, 1864, establishing a military court in "North Alabama," for a limited period.

Act of Feb. 16, 1864, authorizing the President in his discretion "to appoint a military court to attend any division of cavalry in the field, and also one for each State within a military department."

Act of Feb. 17, 1864, providing that when two or more army corps, each having a military court, are united in the same army, the jurisdiction of each court shall extend to the whole army; providing for the exchanging and transferring of judges of different courts; and subjecting to the jurisdiction of such courts "all offenders below the grade of lieutenant-general."

Act of Feb. 17, 1864, empowering military courts (and courts-martial) to summon citizens as witnesses, and providing that a citizen disobeying a summons of such court should be subjected to the same penalties as a witness disobeying an order of the District Court of the Confederate States, or arrested by military force and brought before the military court, to be held in close confinement till he should consent to testify.²

Act of June 14, 1864, repealing the provision of the original Act allowing the "military courts" to appoint their clerks and marshals, and making it the duty of the Secretary of War to detail persons to act as such from the officers, non-commissioned officers and privates of the army unable to perform field duty.

¹ Note this provision in connection with Chapter XIV, Vol. I, p. 336-7—"Relationship."

² Note this provision in connection with Chapter XVII, Vol. I, p. 466-7—"Contempts."