

Supposing then that this Act of Assembly, which was made in 1715, for the Ordering and Regulating the Militia of this Province, for the better Defence and Security thereof, is in full Force and Virtue (and if any Thing could have been said to invalidate it, I am, as I have already hinted, apt to think you would not so studiously have avoided entering into a Dispute with me about it's Existence) : It not only seems to give, but expressly does give Power to every Colonel, Lieutenant-Colonel, Major or Captain, to enlist the Inhabitants of this Province to be of the Militia, and to muster, exercise and train them, and it likewise subjects such Inhabitants to a Fine for Non-Appearance, or Refusal to be enlisted in the Militia or Train-Bands ; but whence you would deduce, that the Inhabitants of this Province are to be only mustered in, and not liable to be marched out of, the Counties where they respectively reside, I cannot conceive, since the Act plainly and expressly declares, that the Officers shall muster, exercise, and train the Persons so enlisted, " in and at such Places, and at such certain Times as to them shall seem meet, and as the Service, Safety or Defence of this Province shall require, or as his Excellency the Governor of this Province, or Commander in Chief for the Time being, shall see Cause to Order."

L. H. J.
Liber No. 50
May 5

After this Act has settled or regulated the Pay of the Officers and Soldiers of Militia, while in actual Service, it proceeds by another Clause, beginning with the Words, " and to the Intent that whensoever," &c. and by the following Enacting Clause, to vest, or it supposes the Governor and his Council already vested, with the sole Power of determining when it is necessary to raise Men for suppressing any foreign Invasion, domestic Insurrection or Rebellion, or War with any Indians ; it consequently makes, or supposes, them the only Judges of what is to be deemed a foreign Invasion, domestic Insurrection, &c. and does not leave that to the Determination of every Individual, or any Number of Individuals of the Militia whatever. The Law then declares, that the Pay of such Officers and Men, as may be so raised and employed, and all the necessary Charges of such War, shall be discharged and defrayed by an equal Assessment upon the Taxables of this Province, or out of the Public Treasury of this Province, and no otherwise whatsoever.

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By a subsequent Clause of this Act, beginning with the Words, " and be it further Enacted, by the Authority aforesaid, that if upon any foreign Invasion, any Person or Persons, or a Mode is prescribed, (as the Gentlemen of the Lower House observed to Governor Ogle, in an Address they presented to him the 4th of June 1740) " for the Punishment of any Men that shall not, after being duly warned, appear and serve in Arms, for the necessary Defence of this Province on such an Occasion ; " to wit, they are first to be carried before a Justice of the Peace, and if the Justice shall think their Excuses insufficient, he is to commit them, and they are to remain