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follows, that, in issuing orders for the Companies composing  
artillery Battalions, he is bound to issue them thro' the  
major of the Battalion.

The Prisoner is aware that the concluding clause of the  
8 Sect. of the militia Law 4 Sect. Laws, 131, has been  
urged in support of the orders of the General, and as  
forming an exception, to the principles, as before stated  
in this defence. That Clause is in these words, "And any Company  
" of Artillery most convenient to the place of Regimental  
" Review appointed by this act, may be ordered to attend the  
" same at the discretion of the Brigadier." To a military  
eye, this Clause, which is so fondly calculated upon, to support  
the orders in question, will present little difficulty. I thought,  
it will doubtless be admitted, to be so construed, if practicable, as  
to be consistent with general principles, and not hastily thrown  
out as an anomalous irregularity. So to construe it, as to make  
it a part of the regular system, which, he has attempted  
to explain, is now proposed by the Prisoner. It will readily  
occur, to the enquirer, that this clause was intended, to  
vest in the Brigadier, either some new right, or perhaps  
more correctly, some right not before very clearly defined.  
This right was, at his discretion, to have at the Regimental  
Review, any Company, most convenient to the place of Review.  
The mode of procuring this attendance, that is, of issuing  
his orders, for that purpose, is not defined by this clause;  
for this clause merely gives the discretion, without ever  
declaring the mode, of carrying it into practice. The  
Company of Artillery may be <sup>ordered</sup> ~~called~~ out. - how ordered  
out? - the clause is silent as to the mode; it may be done, if  
the General choose it, but it directs not how. - Then if the Law  
is silent, we must enquire why it is so. We arrive by the  
answer to this Question, to a full solution of the difficulties,  
which

which have arisen on this clause of the Law. The Law was and is silent as to the mode in which the General shall exercise his discretion because that mode was well ascertained and fixed before, and because the Framers of the Law did suppose, that the only mode, of ordering out any Company of a Regiment, or of a Battalion, was by orders, thro' the Colonel or Major. The Law gave to the General a new right, or it more explicitly ascertained to him the exercise of an old one, but the Prisoner submits that it left the mode of exercising that right precisely upon the same ground on which the exercise of similar rights, depends. — The ideas suggested above are strongly supported by the manner in which the Law is expressed in this very clause. — The words are not, the Brigadier may order, but "such Company may be ordered out," and not, by the Brigadier, but "at the discretion of the Brigadier." This very mode of expression, strongly negatives the construction, which, the General appears inclined, to put upon this Clause. Further, the Practice, under the Law referred to, in relation to the Cavalry, which Corps is similarly situated as the Artillery, shows plainly that the view, even of the Brigadier General himself, has, until this order to the Artillery, been in conformity with the ideas of the Prisoner. This usage, the Prisoner refers to, as it has been fully shown to this Court, and cannot for a moment conceive that it will sanction a deviation from it. — It will not escape the attention of this Court that ~~the~~ the orders of the General purport on the face of them, to be merely orders, to a single



single company, yet in fact and in truth, they were orders to the whole Battalion of Artillery, inasmuch, as all the companies constituting that Battalion, were ordered out. Thus, by a forced construction of an isolated paragraph, it is attempted (and has so far succeeded) to call out the whole Battalion, and leave the Commanding Officer of it, at home. This would be going beyond even what the General is proved to have declared to be his intention "that he would not suffer any Corps to be ordered without his permission"? it would deprive the Major of Artillery who, alone is responsible for the conduct of his Battalion, entirely ~~out~~ of command, and so reduce him to a mere nominal, and inefficient officer. And in adopting the novel course which, he has pursued, the General has not only departed from the letter, and spirit of the Clause, which has been referred to in the respect, which has been mentioned, but has also exceeded that power, which, his own construction of the Law, could give him, by ordering out not one, but two companies of Artillery, to attend the review of the First regiment. The words of the Law are, "any company most convenient, &c." It requires no comment to show, that, in ordering out two companies, and those forming the whole Battalion, the General has violated both the letter and the spirit of the Law; which can only mean one company and not the whole Battalion. The natural construction of the whole Clause which has now been presented to the attention of this Court is, that one company of Artillery may be ordered, by its proper officer, the Captain, under the orders of his Major, at the discretion or according to the orders of the Brigadier, to attend the Review of that Regiment, to which it is most convenient.

In the observations which, have now been submitted,  
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