

The Provincial Statutes of Lower-Canada, Being the second session of the seventh Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1812.

52 George III – Chapter 1 (Session 1)

An Act to continue, for a limited time, and amend an Act passed in the forty-third year of His Majesty's reign, intituled, "An Act for the better regulation of the Militia of this Province and to repeal certain Acts or Ordinances therein mentioned." (19th May, 1812.)

Whereas an Act was passed in the forty-third year of the reign of His present Majesty, intituled, "An Act for the better regulation of the Militia of this Province and for repealing certain Acts or Ordinances therein mentioned" which Act will expire on the first day of March in the year of Our Lord one thousand eight hundred and thirteen, and whereas it is expedient and necessary that the said Act should be altered, amended and continued: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act of the Parliament of Great Britain passed in the thirty-first year of His Majesty's reign, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America;' And to make further provision for the Government of the said Province:" And it is hereby enacted by the authority of the same, that the said Act, intituled, "An Act for the belter regulation of the Militia of this Province and for repealing certain Acts or Ordinances therein mentioned" and all matters and things therein contained and are not hereby repealed, as also the present Act, shall continue to be in force until the first day of July one thousand eight hundred and fourteen. Provided always, that if at the time hereby limited for the expiration of this Act, the Province shall be in a state of insurrection or invasion or imminent danger thereof, or if war was declared and commenced between Great Britain and the United States of America, the above recited Act and the present Act shall continue and be in force until the end of the said war, insurrection or invasion.

II. And be it further enacted by the authority aforesaid, that so much of the second clause of the said Act passed in the forty-third year of His present Majesty's reign, which enacts and declares the age required at which every person residing within this Province shall present himself to be enrolled within the limits of the company of Militia where he shall reside, and so much of the said second clause which gives power to every Captain or Officer Commanding a company of Militia, to fix the time for enrolling all the militia men who reside within the limits of his company, be and the same are hereby repealed: and that from and after the passing of this Act, every Person residing within this Province, shall present himself to be enrolled, on any day of the month of April in each year, and that every person coming to reside in this Province or who shall have attained the age of sixteen years, shall present himself to be enrolled in the manner and within the time required after the age above mentioned, under the penalties prescribed and ordained by the second clause of the aforesaid Act for the persons who have attained the age of eighteen years; and that on every Sunday in the said Month of April, the Captain or Officer commanding each company of Militia shall give or cause to be given or posted up a written or Public Notice at the Church door or at the most public place of the Parish, Seignior or Township where

such company shall reside, of the obligation under which every Militia man is held so to enroll himself during the month of April, in pursuance of this Act, and to the aforesaid clause as far as the same is not hereby repealed.

III. And be it further enacted by the authority aforesaid, that so much of the first clause of the said Act passed in the forty-third year of His present Majesty, which enacts and declares every man residing or who shall come to reside within this Province, from the age of eighteen years to sixty to be a militia man, be and the same is hereby repealed: and that from and after the passing of this Act, every man residing or who shall come to reside within this Province from the age of sixteen years to sixty, (excepting such as are excepted by the said Act before recited and hereby amended) is hereby declared to be a Militia man, and bound to serve in the Militia of the City, Town, Parish, Village, Township, Seignior or Division thereof, wherein he resides.

IV. And be it further enacted by the authority aforesaid, that the fifth clause of the said Act before recited and hereby amended, which enacts that every Militia man between the age of eighteen and forty years shall be assembled in their respective Parishes or Townships at the periods therein mentioned, and which provides for the exercise of the said Militia by third parts thereof, shall be and the same is hereby; repealed Act and that from and after the passing of this Act, every militia man between the age of sixteen and fifty years shall be assembled in their respective Parishes or Townships to wit: one half of the said militia men during four Sundays or Obligatory Holidays in the month of June of each year, and the other half during the four subsequent Sundays or Obligatory Holidays by the Captains or Commanding Officers of companies, in order that one half of the said militia men be then mustered and for a time not exceeding three hours on each day, go through such exercises as shall be prescribed and ordained by the Field or other Officer who shall of right preside at such muster and exercise according to their rank. Provided always, that in the County of Gaspé the Commanding Officers of Militia shall have power to fix eight days for such muster and exercise at any time in the year that may best suit the local situation of the said County: and every Non-Commissioned Officer and militia man who shall refuse or neglect to attend at such muster and exercise when thereunto commanded, or who shall disobey or leave the place of meeting without permission, shall for the first offence, pay a fine each not exceeding five shillings, and for every repetition thereof a fine not exceeding ten shillings; and all Commissioned Officers who shall refuse and neglect to appear at such muster and exercise when they shall have been commanded, or shall disobey or quit the place of exercise, without leave, shall be condemned to pay each a fine of twenty shillings for the first offence, and for every subsequent offence a fine of forty shillings. Provided also, that it shall be lawful for the Commanding Officers of Protestant Battalions, to fix upon any other days than Sundays and Holidays for such exercise.

V. And be it further enacted by the authority aforesaid, that so much of the twenty-second clause of the Act of the forty-third year of His present Majesty's reign which enacts, that no part of the militia commanded from certain Districts or Battalions, in cases of war, invasion or imminent danger thereof, insurrection or other pressing circumstances, shall be obliged to continue in actual service for more than six months, and that no militia man shall be so commanded who shall be above the age of fifty years unless that the whole of the Militia of any District or Battalion to which he may belong shall be called out and embodied, be, and the same is hereby repealed; and it is hereby enacted that after the

passing of the present Act, in all and every case of war in this Province, invasion, insurrection or imminent danger thereof it shall and may be lawful for the Governor, Lieutenant Governor or the Person, administering the Government to keep the whole or such part of the Militia of the Province embodied under the authority of the aforesaid clause, during the time of the war invasion, insurrection, or imminent danger thereof which rendered it necessary to call out or embody the whole or such part of the militia, in such manner and under the restrictions provided by the aforesaid clause, as far as the same is not hereby repealed.

VI. And be it further enacted by the authority aforesaid, that the fortieth clause of the said Act herein before recited and amended, which empowers the Governor, Lieutenant Governor or person administering the Government to call out every year twelve hundred batchelors of the militia between the age of eighteen and twenty five years, and which enacts the other Matters and things in the said clause mentioned, shall be and the same is hereby repealed; and that from and after the passing of this Act, it shall and may be lawful for the Governor, Lieutenant Governor or person administering the Government, when he shall judge it expedient to call out once in every year, any number of Batchelors between the age of eighteen and thirty years, which shall not exceed two thousand in the whole Province, or any proportion thereof in each District of each Division, Battalion or company; and the militia men so called out to form into Companies and Battalions in such manner as he, in his discretion shall think proper, and under the command of such Officers as he shall appoint; and them to march to such place or places and in such manner as to him may appear best adapted for training or exercising the same—Provided that such place be at least two leagues distant from any Town, Borough or Fort wherein any Regular Troops shall be quartered, except in case of war, invasion or insurrection— Provided always, that each division of the whole Militia of the Province shall furnish their Quota of the said two thousand men, in proportion only to the number of Militia men which the said respective divisions bear to the whole Militia of the Province, conformable to the orders which may be issued by the Governor, Lieutenant Governor or person administering the Government for the time being, to that effect; and no part of Militia men called out in manner aforesaid, shall be obliged to continue in service for more than Ninety days between the first day of May and the fifteenth day of August in each year; to be reckoned from the time of their arrival at the General rendez-vous; and the said Militia men shall not be again liable to the same service until by rotation it shall come to their turn, and the Militia men who shall be embodied, as aforesaid, shall be drawn by lot or commanded in the manner prescribed by the said Act herein before recited and hereby amended for embodying the Militia in case of war, invasion or insurrection, and subject to the same penalties, rules and articles of war, as directed by the above recited Act.

VII. And whereas it is essential to the future defence and safety of this Province that the Governor, Lieutenant Governor or person administering the Government, should be empowered in case of invasion and insurrection or imminent danger of invasion or insurrection, whenever he shall think it necessary to keep embodied and to exercise the said number of two thousand Militia men for a longer period than the time before specified. Be it therefore enacted by the authority aforesaid, that it shall and may be lawful for the Governor, Lieutenant Governor or person administering the Government for the time being, whenever the Province shall be invaded or in a state of insurrection or when the same shall be in imminent danger of invasion or insurrection, as in his discretion he may deem it necessary and for the public good to keep embodied and to march and exercise the said two thousand Militia

men for a period exceeding that before mentioned, and in the following manner, that is to say, that the one half of the said two thousand men shall not be obliged to serve for more than one year reckoning from the day on which they shall appear at the general rendez-vous, and that the same shall be determined by lot under the orders and directions of such Officer commanding the respective Battalions as the Governor, Lieutenant Governor or person administering the Government shall appoint for that purpose, which one half shall be replaced by an equal number to be drawn by lot for that purpose and commanded in the manner herein before specified, to serve for and during the period of two years; and the remaining half of the said two thousand men and which by lot are not to be replaced the first year, shall be in that case bound and obliged to serve for and during a period not to exceed two years reckoning from the day on which they shall appear at the general rendez-vous as aforesaid, and thus from year to year, one thousand men shall be discharged and replaced by another thousand to serve for and during the period of two years as before mentioned, and that the said Officers, non commissioned Officers and privates of Militia so to be appointed for that service, shall receive the same pay and allowances as are specified in the thirtieth clause of the Act herein before recited and hereby amended.

VIII. And be it further enacted by the authority aforesaid, that no commissioned Officer shall take and retain in his service as a servant, any Militia-man composing a part either of the embodied corps of two thousand militia-men or any other corps of militia employed in active service, under a penalty of Ten Pounds current money of this Province.

IX. Provided always, and it is hereby enacted by the authority aforesaid, that from the day on which the said militia-men above described, shall be discharged from the service required of them by this Act, the Adjutants, Sergeants Major, Quarter Master Sergeants, Drill Sergeants and Trumpeteers who shall have served in the militia embodied as aforesaid, shall continue to receive the same pay that they would have received being in actual service, from out of such funds of the Province as are or shall be appropriated for that purpose by this Act.

X. And whereas the defence of the Country is the indispensable duty of its inhabitants, be it further enacted by the authority aforesaid, that in case of an invasion, any person who shall, After Proclamation issued by the Governor, Lieutenant Governor or Person administering the Government, prohibiting all and any of His Majesty's subjects from going out of this Province, be convicted in any of the Courts of King's Bench of this Province, to have left the country without special leave had and obtained from the Governor, Lieutenant Governor or Person administering the Government, or of some other person specially authorized by the Governor, Lieutenant Governor or person administering the Government, to grant such leave, shall incur Perpetual Banishment and the confiscation of the whole of his Property, which shall be applied to the relief of the persons who shall have sustained any losses in the defence of the country during the War.

XI. And be it further enacted by the authority aforesaid, that that part of the forty first Clause of the said Act herein before recited, and hereby amended, which enacts that it shall be lawful for the Governor, Lieutenant Governor or Person administering the Government for the time being, whenever he shall have ordered a number of militia-men to be drawn out or commanded, short of twelve hundred men, to accept such number of Volunteers as he may think proper, provided that the total

number of militia-men incorporated, do not exceed twelve hundred men, as therein before provided, shall be and the same is hereby repealed; and that from and after the passing of this Act, it shall be lawful for the Governor, Lieutenant Governor or the Person administering the Government for the time being, to accept such number of Volunteers as shall offer themselves, and to form them into Battalions, Light Companies, Companies of Artillery and Squadrons of Cavalry or otherwise, as he shall judge proper, and to march them to such place or places as he shall find necessary, and under the orders of such Officers as he shall appoint for that purpose; and all such Volunteers shall be subject to the same Penalties, Orders and Articles of War as the Militia-men when embodied, as herein before enacted Provided nevertheless, that the number of Volunteers as is herein before mentioned, shall be exclusive of the two thousand men already granted by the present Act; and that all and every such Volunteers who shall so enroll or cause themselves to be enrolled, and who not having volunteered their services might have been balloted or commanded to serve in the Corps of the two thousand Militia Men embodied, shall be subject to be balloted for or commanded to serve in the Corps of the two thousand Militia Men embodied in the manner as is by this Act declared.

XII And be it further enacted by the Authority aforesaid that when it shall appear expedient and advantageous to the Governor, Lieutenant Governor or Person administering the Government to accept the services of such Volunteers and to place them on Actual service, such Volunteers and their Officers and non Commissioned Officers shall be entitled to receive the same pay and allowances as the regular Militia while employed in like manner; and that the wives and children of all such Volunteers shall be entitled to the same advantages as the wives and children of such regular Militia.

XIII. And be it further enacted by the authority aforesaid, that any person who shall keep a House of Public Entertainment, or who shall sell any Ale or Wine or any Brandy or other Spirituous Liquors by retail, shall be incapable of being appointed or of serving and receiving pay, as a Sergeant, Corporal or Drummer in the Militia when embodied.

XIV. And whereas it is of great importance that the whole of the Militia of this Province should be disciplined, and that no Substitutes should be allowed, Be it therefore enacted by the authority aforesaid, that the twenty ninth Clause of the above recited Act, and hereby amended, and such parts of the forty first Clause of the said Act which allows Substitutes, be and the same are hereby repealed.

XV. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, the Students of the Seminary or College of Nicolet, the Schoolmasters of the Towns of Quebec, Montreal and Three Rivers [Trois-Rivières], the Schoolmasters who are and shall be approved of in the Parishes by the Curate and Church Wardens in office, shall not be liable to serve in the Militia in pursuance of the directions of this Act and the before recited Act, except in the case where the country in which any of the above mentioned persons may respectively reside, shall be invaded.

XVI. And be it further enacted by the authority aforesaid, that in case any Officer, Sergeant or other person shall at any time wilfully and knowingly inlist any militia men to serve in any other Corps of His Majesty's Forces who at the time of such inlistment shall have been balloted for or commanded and then serving in the embodied Militia, every such inlistment shall be deemed null and void, and in case any such Militia man at the time of offering to inlist as aforesaid, shall deny to the Officer, Sergeant or

other person recruiting for them to enlist and serve in His Majesty's other Forces, that he is (at the time of his offering to enlist a Militia man then actually balloted for or commanded, and then serving in the embodied Militia, which the said Officer, Sergeant or other person is hereby required to ask every man offering to enlist in His Majesty's other forces, or shall offer himself to be enrolled and serve in any other Regiment, Battalion or Corps of Militia, every Militia man so offending, shall, on conviction thereof upon the oath of one Witness before any Justice of the Peace, be committed to the common Gaol or House of Correction, there to remain without bail or mainprize, for and during any time not exceeding one month, and if any Officer, Sergeant or other person shall enlist any man belonging to the embodied Militia in the manner aforesaid, to serve in His Majesty's other Forces knowing him to belong to the embodied Militia, or without asking if he did belong to the embodied Militia, or if he has not been balloted for or commanded, and then serving in the embodied Militia, every such Officer, Sergeant or other person shall, for every such offence, forfeit and pay the sum of Twenty Five Pounds, Current Money of this Province.

XVII. And be it further enacted by the authority aforesaid, that every Militia man incorporated in the manner provided by this Act, shall be considered as serving in the embodied Militia during twenty days after the time when he shall be discharged from the Battalion or Corps in which he may have been incorporated, and such militia man shall be entitled to and receive, during the said twenty days, the same pay as when embodied.

XVIII. And be it further enacted by the authority aforesaid, that so much of the fifty first Clause of the Act herein before recited and hereby amended, which empowers the Governor, Lieutenant Governor or Person administering the Government, to apply and appropriate for the purposes therein mentioned, a Sum not exceeding Two Thousand Five Hundred Pounds, Current money of this Province yearly, shall be and the same is hereby repealed, and that from and after the passing of this Act, it shall and may be lawful for the Governor, Lieutenant Governor or Person administering the Government, out of any sum or sums of money raised under the authority of the Legislature of this Province, that are or shall be in the hands of the Receiver General unappropriated, to apply and appropriate a Sum not exceeding Twelve Thousand Pounds, Current money yearly, Six Thousand Pounds whereof shall be employed for the purpose of exercising and training the local Militia, and the other Six Thousand Pounds for the other purposes of this Act, and the due application of all such monies pursuant to the directions of this Act, shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury, in such manner and form as His Majesty, His Heirs and Successors shall direct.

XIX. And be it further enacted by the authority aforesaid, that in all cases where the mode of prosecution for the Fines and Penalties imposed by this Act is not directed and provided for in regard to the local Militia, that such Fines and Penalties shall be sued for and prosecuted in the manner and form provided by the forty sixth Article of the aforesaid Act, passed in the forty third year of His present Majesty's Reign, and the Fines and Penalties imposed by this Act, in respect to the Militia embodied for actual service, shall be sued for and prosecuted before any General or Regimental Court Martial to be held in conformity to the Rules and Articles for the better Government of the Militia of Lower Canada, when embodied for Service.

XX. And be it further enacted by the authority aforesaid, that if any action shall be brought against any person or persons for any thing done in pursuance of this Act, such Action or Suit shall be commenced within six months next after the fact committed, and not afterwards, and the Defendant or Defendants in every such Action or Suit may plead the general issue and give this Act and special matter in evidence at any trial to be had thereupon, and if judgment shall be given for the Defendant or Defendants in any such Action or Suit, or if the Plaintiff or Plaintiffs shall be non-suited or discontinue their Action or Suit after the Defendant or Defendants shall have appeared, the Defendant or Defendants shall have treble costs, and the like remedy for the same as any Defendant hath in other cases to recover costs.

XXI. And be it further enacted by the authority aforesaid, that no complaint shall be brought against any person or persons for any Fine or Penalty herein imposed, unless the same is commenced within six months after the offence committed.