

L A W S

OF THE

PROVINCE OF NEW-BRUNSWICK.

CAP. I.

An ACT for the greater security of this Province by the better regulating the Militia thereof: Passed the 30th of July, 1808:

Expire
X

WHEREAS a well regulated Militia in this Province will at all times; tend not only to the security and defence thereof, but to the honor and service of His MAJESTY: And Whereas in times of imminent danger either by invasion or sudden attack made or threatened to be made by His MAJESTY'S enemies on any of His MAJESTY'S subjects within this Province; it may become expedient and necessary that the Militia of the several and respective Counties or a part thereof, should be drawn out and embodied; and ordered into actual service, in which case it will become requisite that due subordination should be observed: And Whereas the Law now in force is inadequate to these important purposes.

I. *Be it enacted by the President, Council and Assembly, That* an Act made and passed in the Forty-fifth Year of His MAJESTY'S Reign, intituled "An Act for the better regulating the Militia in this Province;" and an Act intituled "An Act in addition to an Act intituled an Act for the better regulating the Militia in this Province" be, and the same are, hereby repealed, saving nevertheless the right of recovery of such fines and penalties as may have been incurred by the said Act intituled "An Act for the better regulating the Militia in this Province."

II. *And be it further enacted, That* from and after the passing of this Act, every male white inhabitant or resident within this Province from sixteen to sixty years of age shall be enrolled in some one of the Regimented Companies of foot in the district where he dwells or resides, the extent of which district shall be determined by the Colonel or Commanding Officer of the Militia of the County, and all Captains or Commanding Officers of Companies in the several Towns or Parishes within the Province, are hereby required to take due care to enroll in a book or register to be kept by them respectively for that purpose, all male white inhabitants from sixteen to sixty years of age, and that once in every year, and oftener if thereunto required each Captain or Commanding Officer of the Company shall give to his Colonel or in his absence to the next Commanding Officer of the Regiment fair written rolls of their respective Companies and Regiments, whose duty it shall be to report the same to the Captain General or Commander in Chief for the time being.

All male white Inhabitants to be enrolled in the district where they reside.
Extent of districts to be determined by Colonels.
Captains to enroll all white Inhabitants.
Capts. to give Rolls of their Companies once a year to the Colonel,
who is to report to the Commander in Chief.

Militia to be formed into Regiments by Counties.

Companies to consist of not more than one Captain, one Lieutenant, one Ensign, three Serjeants, and sixty rank and file, except Flank and Artillery Companies heretofore established.

Officers of Companies to appoint Serjeants, &c.

Penalty on non-Commissioned Officers refusing to serve.

Regiments to be called out by Companies twice in every year,

times and places to be appointed by the Colonel,

of which ten days previous notice to be given in writing by the Captains, and posted up by a non-Commissioned Officer.

Companies not to go more than twelve miles from their usual rendezvous.

Adjutants to be appointed to the Militia to attend each Company, Detachment or Regiment when called out, to inspect their arms, &c. and superintend their exercise.

Allowances to Adjutants 7s 6d p. diem,

days to be certified by the Colonel,

not to exceed the following rates per annum.

III. *And be it further enacted*, That the Militia shall be formed into Regiments by Counties, and that no Regimented or Artillery Company shall consist of more than one Captain, one Lieutenant, one Ensign, three Serjeants and sixty rank and file, except such Flank and Artillery Companies as have heretofore been established, which may have two Lieutenants, and that the Captain and Commissioned Officers of each Company shall be and they are hereby fully empowered to nominate and appoint proper persons to serve as Serjeants, Corporals, Drummers and Fifers in their respective Companies and with the consent of the Commanding Officer to displace them and appoint others in their room as they shall see occasion. And if any non-commissioned officer so to be appointed shall refuse to accept the office to which he shall be appointed, or after having been appointed shall refuse or neglect to perform such duties as appertain to his office, he shall for such refusal or neglect forfeit and pay the sum of *two pounds* to be adjudged, levied and disposed of as other fines and penalties are directed by this Act.

IV. *And be it further enacted*, That from and after the passing of this Act, every Regiment shall be called out and rendezvous by Companies twice in every year for the purpose of training, disciplining and improving in martial exercises, the times and places of rendezvous to be appointed by the Colonel or Commanding Officer of the Regiment, and arranged on different days or in such manner that the Field and Staff Officers may have an opportunity of attending the several Companies in order to introduce uniformity in the manœuvres and discipline of the Regiment, of all which several and respective days of rendezvous and training previous notice shall be given in writing by the Captains or Officers commanding Companies at least ten days, which notice shall be posted up by a non-commissioned Officer at three of the most public and conspicuous places within the Parish or district where such Company may reside, which notification shall be deemed a lawful and sufficient warning.—*Provided always*, that no Company shall be obliged to go more than twelve miles from the usual rendezvous of such Company.

V. *And be it further enacted*, That there shall be an Adjutant appointed to each Regiment in the Province, whose duty it shall be to attend at the places of rendezvous of each Company, Detachment or Regiment, when called out as aforesaid, then and there to inspect their arms, ammunition and accoutrements, superintend their exercise and manœuvres, and introduce such a system of Military discipline as shall be established by the PRESIDENT or Commander in Chief for the time being, and do and perform such other duties and services suitable for an Adjutant as the Colonel or Commanding Officer of the Regiment shall from time to time order and direct, and that every such Adjutant shall be allowed as a full compensation for all the services he is required to perform by this Act, the sum of *seven shillings and six-pence* by the day for every day he shall be actually employed as such, the number of days to be certified by the Colonel or Commanding Officer of the Regiment. *Provided*, that the sum allowed to the Adjutant of the Militia in the County

County of *Northumberland* shall not exceed the sum of *twenty pounds* in any one year; the Adjutant of the County of *Westmorland* shall not exceed the sum of *sixteen pounds* in any one year; the Adjutant of the City of *Saint John* shall not exceed the sum of *ten pounds* in any one year; the Adjutant of the County of *Charlotte* shall not exceed the sum of *twenty pounds* in any one year; the Adjutant of the County of *Kings* shall not exceed the sum of *twelve pounds* in any one year; the Adjutant of the County of *Queens* shall not exceed the sum of *ten pounds* in any one year; the Adjutant of the County of *Sunbury* shall not exceed the sum of *ten pounds* in any one year; and the Adjutant of the County of *York* shall not exceed the sum of *twenty pounds* in any one year.

VI. *And be it further enacted*, That every person enrolled as aforesaid, shall at all times when called out, under, and by virtue of this Act, appear with such arms, accoutrements and ammunition as have been, or may hereafter be issued to him by Government, or with arms, accoutrements and ammunition of his own equally sufficient in complete order, and for not appearing with such arms, accoutrements and ammunition as aforesaid, shall for each and every neglect forfeit and pay the sum of *ten shillings*, to be levied by distress and sale of the offenders goods; by the Captain's or Commanding Officers Warrant, directed to a Serjeant or Corporal of the Company to which such offender belongs, who are respectively empowered to serve and execute the same, rendering the overplus, if any, after deducting the costs and charges of such distress and sale to the offender; and if no such effects shall be found, whereon to levy the said fine, such offender shall be sentenced to hard labour or imprisonment for not more than six nor less than three days; all which fines shall be applied to defray the contingent expenses of the Regiment to which such offender may respectively belong: And every Commissioned Officer when called out as aforesaid, shall appear with a Sword, and for not so appearing shall forfeit and pay for each and every neglect the sum of *forty shillings*, to be recovered by Warrant under the hand and seal of the Commanding Officer.

And whereas, arms and accoutrements have been issued from His MAJESTY'S Stores for the use of the Militia in several parts of this Province; and it is necessary to provide for the security of those arms and accoutrements or such as may hereafter be issued.

VII. *Be it further enacted*, That such arms so issued or which may be hereafter issued, shall be branded distinctly on the broad part of the Butt with the letter M and the name of the County to the Militia of which they are issued (such Brand to be provided by the Commanding Officer of the Regiment) and all Captains or other Officers commanding Companies shall be and they are hereby made responsible (except in case of unavoidable accident) for the safe keeping, and return if called for, of such arms and accoutrements as were issued to the men in their respective Companies, or may hereafter be so issued; and such Captains or Officers commanding Companies, are hereby empowered

person to whom they have been issued give Bond for their safe keeping and return.

Bonds to be lodged with the Clerks of the Peace.

Person giving Bond may keep the arms while he continues in the Company,

on leaving the Company to deliver the arms to the Captain, &c. who shall give him a receipt.

Arms, &c. lent by Government, being fold, disposed of, or conveyed away, of tender to forfeit 10l.

Arms, &c. called for to be delivered into the King's Stores, deficiencies to be paid for out of the Province Treasury.

Persons furnished with arms by Government not to use them for any other purpose than that for which they were supplied, under penalty of 10s.

Fines to be recovered before a Justice of Peace, and levied by Warrant of distress,

penalties applied half to the prosecutor, residue for repairing arms, &c.

overplus, if any, as other uses, for want of effects to levy the fine of 10l. offender to be imprisoned not more than six nor less than three months, and in lieu of the last fine of 10s. as many days.

powered and required to take into their possession all such arms and accoutrements, except where the person to whom they have been or shall be issued, shall give Bond with sufficient surety to our Sovereign Lord the KING in the penalty of *five pounds* conditioned for the safe keeping and return of the said arms and accoutrements; which Bonds so given shall be lodged with the Clerks of the Peace in the respective Counties; who are hereby required to receive and file the same in their respective Offices; which person so giving Bond as aforesaid; shall be intitled to keep possession of such arms and accoutrements while he continues in the same Company; and in case of the removal of any such person from such Company; his arms and accoutrements shall be returned to the Captain or other Officer commanding the said Company, who shall give a receipt for the same to the person so delivering the said arms: And if any person having such arms or accoutrements in his possession shall vend, pledge or exchange the same, or any part thereof (without leave of the Officer commanding the Company to which such person belongs) or shall convey or cause the same or any part thereof to be conveyed out of the Province, or shall convey or cause the same to be conveyed on board any Boat, Ship or Vessel with intent to have the same carried out of the Province, or if the Master of such Boat, Ship or Vessel shall wilfully receive into his Boat, Ship or Vessel any such arms or accoutrements so intended to be conveyed out of the Province, or if any person shall purchase the said arms, every person so offending shall for each and every offence forfeit and pay the sum of *ten pounds*: And in case the said arms and accoutrements shall at any time be called for to be delivered into His MAJESTY'S Stores, all deficiencies shall be paid for out of the Treasury of the Province, excepting such arms and accoutrements as shall have been lost on actual service against an enemy.

VIII. *And be it further enacted*, That no person who has been or may hereafter be furnished with arms, accoutrements or ammunition by Government, shall use the same for any other purpose than that for which they have been supplied, under a penalty of *ten shillings* for each and every offence; which fines shall be recovered upon conviction before any one Justice of the Peace upon the oath of one or more credible witness or witnesses, and levied by Warrant of distress and sale of the offenders goods, rendering the overplus, if any, after deducting the costs and charges of such distress and sale to the offender, one half of which penalties shall be paid to the person who shall prosecute for the same, and the other half be applied to the purpose of defraying the expences incurred in repairing such arms and accoutrements, and making good any deficiency which from unavoidable accident may have happened to such arms and accoutrements; the overplus, if any, to be appropriated as other fines incurred by the provisions of this Act, and for want of effects whereon to levy the said fine of *ten pounds*, such offender shall be imprisoned not exceeding six nor less than three months, and in lieu of the said last mentioned fine of *ten shillings*, not more than six nor less than three days,

IX. *And be it further enacted*, That every person enrolled as aforesaid, who shall refuse or neglect to appear agreeably to the provisions of this Act; when called upon, shall forfeit the sum of *ten shillings*, or appearing under arms, shall refuse or neglect to perform such Military duty as shall be required of him, or shall on the day of muster or training depart from the Company, when under arms, without leave from the Commanding Officer, shall forfeit and pay for each and every offence, the sum of *twenty shillings*. *Provided always*; that the Members of His MAJESTY'S Council, Members of the Assembly; Justices of the Peace, High Sheriffs, Coroners, Licensed Clergymen, all persons exercising Commissions Civil or Military under His MAJESTY, Officers on Half-Pay, supernumerary Militia Officers now in Commission, the Surveyor General, and the Treasurer of the Province, Officers of His MAJESTY'S Customs, Revenue and Naval Officers, gentlemen of the Learned professions, and one Miller to each Grist Mill, and one Ferryman to each established Ferry, shall be free and exempted from being enrolled in the Militia in manner herein mentioned; and all the said fines imposed by this Section shall be paid into the hands of the Colonel or Commanding Officer to defray the contingent expences of the Regiment.

Persons not appearing to forfeit 10s.

or appearing and refusing to do duty to forfeit 20s.

Persons exempted from being enrolled.

Fines applied to defray Regimental contingencies.

X. *Provided always, and be it further enacted*, That every person professing himself to be of the people called Quakers, and producing to the Captain or Commanding Officer of the Company in whose district he resides, a certificate signed by two or more principal people of that profession; that such person has been deemed and allowed to be one of the people called Quakers, for the space of one whole year or more; before the date of such certificate; such person so producing such certificate shall be, and hereby is exempted from the ordinary duties of training and mustering; unless upon an actual invasion or imminent danger thereof, as herein after mentioned.

Quakers exempted from training on producing certificate.

XI. *And be it further enacted*, That in case of any actual invasion or imminent danger thereof by the enemy, in any County where the Commander in Chief cannot be immediately consulted, the Commanding Officer of the Militia in such County shall have power, if he in his discretion, shall think it absolutely necessary or expedient, to call out the Militia in such County, or any part thereof into real service, and also the whole or a proportion of those described as exempts in the ninth Section of this Act (licensed Clergymen, Millers and Ferryman excepted) which exempts shall appear armed and accoutred as is required of persons serving in the Militia, excepting Physicians and Surgeons who may appear without arms, and in case of any such actual invasion or imminent danger thereof in any Town, Parish or district, in any County where the Colonel or Commanding Officer of such County cannot be immediately consulted, the Officer Commanding the Militia in such Town, Parish or district shall have power, if he in his discretion shall think it absolutely necessary or expedient to call out the Militia under his command, and also the exempts as aforesaid or any part thereof into real service: And such Officer last mentioned shall

In case of invasion, Commanding Officers of Counties may call out Militia,

and the exempts who are to be armed.

Where Colonel cannot be consulted, Officer commanding a district may call out the Militia,

and report to the Colonel, who is to send an express to the Commander in Chief. forthwith report his proceedings and the reasons and grounds thereof to the Colonel or Commanding Officer of the Militia of the County, who is hereby required in case he shall call out or continue in real service any part of the Militia under his command, forthwith to dispatch an express to the Captain General or Commander in Chief for the time being, notifying the danger and the strength and motions of the enemy, and the said Colonel or Commanding Officer is hereby empowered to impress Boats, Men and Horses as the service may require.

Col. may impress boats, men & horses.

Commander in Chief may in case of invasion call out the Militia of the several Counties.

XII. *And be it further enacted,* That the Captain-General or Commander in Chief shall be, and he is hereby authorised and empowered in case of any actual invasion or imminent danger thereof as aforesaid, to call out the Militia of the several Counties or any part thereof into real service, as he in his discretion shall think fit, and the exempts as aforesaid.

Militia may be ordered to march from one County to another.

XIII. *And be it further enacted,* That the Militia or any part thereof, and the exempts as aforesaid, so called out into real service, by virtue of the provisions of this Act, shall and may be ordered to march from one County or part of the Province to another, on any necessary service occasioned by such actual invasion or imminent danger thereof.

Non-Commissioned Officer or Private misbehaving at any muster, the Officer Commanding the Company may confine him and impose a fine not exceeding 10s.

XIV. *And be it further enacted,* That if any non-Commissioned Officer, or private of any Company of Militia in this Province, shall be guilty of drunkenness, contemptuous behaviour, disobedience of orders, or shall otherwise misbehave himself at any muster or training, while under arms, it shall and may be lawful in any such case for the Officer Commanding the Company to order such person or persons so offending to be confined under a Guard during the time of such muster or training, and also to impose a fine on such offender or offenders not exceeding the sum of *ten shillings* to be recovered and applied as other fines and forfeitures are directed to be recovered and applied in the sixth Section of this Act.

Fine how recovered and applied.

Any person wilfully interrupting any detachment at exercise to be confined and pay a fine of 20s.

XV. *And be it further enacted,* That if any person shall wilfully interrupt any Company, Detachment or Regiment of Militia at exercise or muster, or any duty prescribed by this Act, it shall and may be lawful for the Officer commanding such Company, Detachment or Regiment to confine such person during the time of such exercise or muster (if necessary) to prevent the continuance of such insult or wilful interruption; and the person so offending shall forfeit and pay the sum of *twenty shillings* for each and every offence, to be recovered on conviction before any one Justice of the Peace.

to be recovered before a Justice of the Peace.

Captains or Subalterns misbehaving at a muster, to be tried by a Regimental Court Martial,

XVI. *And be it further enacted,* That whenever hereafter any general muster or training shall be ordered in pursuance of this Act, and any Captain or Subaltern Officer of any Regiment or Detachment shall be guilty of disobedience of orders or contemptuous or improper behaviour during such muster or training, it shall and may be lawful for the Colonel or Commanding Officer of such Regiment to order a Court Martial forthwith on such

such Officer so misbehaving, which Court shall consist of two Captains and three Subalterns belonging to the same Regiment, and in case such charge is proved, it shall be their duty to report their proceedings to the Colonel or Commanding Officer of such Regiment, and if the sentence of such Court Martial shall be approved of by the Commander in Chief of the Militia of this Province, such Officer so found guilty shall be dismissed.

and (if sentence approved by the Commander in Chief,) to be dismissed.

XVII. *And be it further enacted*, That it shall and may be lawful for the Colonel or Officer Commanding any Battalion of Militia in this Province, to appoint a Serjeant-Major, Quarter-Master-Serjeant and Clerk for such Battalion, who are hereby made liable to be tried by a Regimental Court Martial for disobedience of orders or contemptuous and improper behaviour, which said Court Martial shall be constituted as herein before-mentioned, and shall have power to punish by fine and imprisonment, such fine not to exceed *forty shillings* or imprisonment ten days. *Provided always, and be it further enacted*, that no sentence of any such Court Martial shall be put in execution until approved by the Commanding Officer of such Regiment or Detachment, and the Serjeant-Major, Quarter-Master-Serjeant and Clerk, so appointed shall be exempted from all balloting for actual service.

Col. &c. may appoint Serj. Major, Qt. Master-Serjeant and Clerk, who are liable to be tried by a Regimental Court Martial for disobedience of orders, &c. and are exempted from balloting.

XVIII. *And be it further enacted*, That the Militia of this Province as herein after described, that is so say, persons from the age of *eighteen to fifty* years, those exempted by the ninth Section of this Act excepted, shall be drilled by Companies in their respective districts, or, where that cannot conveniently be done, by half Companies twelve days in each and every year, that is to say, six days commencing the last Monday in the month of *June*, and six days commencing the last Monday in the month of *October* in each year; over and above the number of days directed by the fourth Section of this Act; and such Companies or half Companies shall be drilled under the direction of a Commissioned Officer by such persons as the Commander in Chief shall appoint for that purpose.

Persons between 18 and 50 years of age (exempts excepted) to be drilled by Companies in their respective districts or by half Companies twelve days in each year, six days in June, and six in October, over and above the number of days directed in the fourth Section.

XIX. *And be it further enacted*, That such non-Commissioned Officers and other fit persons as the Commander in Chief shall in his discretion think proper to employ (and under such regulations and directions as he shall think fit) for the purpose of drilling the Commissioned, non-Commissioned Officers and privates in the several and respective Regiments, Battalions and Companies of Militia in this Province, at the several and respective times, when such Regiments, Battalions and Companies shall be called out for training and exercise, under and by virtue of this Act, shall be intitled to and receive *two shillings* per day during the time they shall be so employed, and at the same rate for every fifteen miles travelling in going to and returning from such service, to be paid out of the Treasury of this Province.

Persons employed to drill the Militia to be paid 2s. per day during the time they are employed, and at the same rate for every fifteen miles going and returning.

XX. *And be it further enacted*, That all persons of the age last above-mentioned, that is to say from *eighteen to fifty* years, shall assemble by Regiments or Detachments in each County

Persons from 18 to 50 years of age to assemble by Regiments or detachments one

day, or three days successively if so ordered by the Commander in Chief, who is to fix the times and places,

when called out more than one day, to be paid for the additional days.

Persons neglecting to attend or refusing to do duty, subject to the penalties mentioned in the sixth Section.

No person to go more than twenty miles from his place of residence.

Commander in Chief when he deems the Militia of any Regiment sufficiently disciplined may lessen the duties required by this Act.

Militia ordered for actual service,

a draught to be by ballot of all persons between 18 and 50 years of age.

Exempts between 18 and 50 years of age to be formed into a Company under the direction of the Colonel, except licensed Clergymen, Millers and Ferrymen,

and liable to be drafted.

Each person drafted to go himself or find a good man in his room under penalty of 10l.

or three months imprisonment.

one day in the year, or three days successively if the Commander in Chief shall so order and direct, for the purpose of training and disciplining as aforesaid, the time and place of which general training shall be as the Commander in Chief shall direct and appoint; in order that an opportunity may be afforded to the inspecting Field Officer to attend the same, and whenever the Commander in Chief shall deem it necessary to exercise or review any Regiment or Detachment as aforesaid more than one day in any one year as aforesaid, the Officers; non-Commissioned Officers; Drummers, Fifers and Privates, shall be entitled to receive the like pay and allowances for each day more than one as aforesaid as is herein after provided for the Militia when on actual service, and every person neglecting to attend, or refusing to perform his duty at such district or general training, or who shall not appear with his arms, accoutrements and ammunition as herein before directed shall be subject to the same fines and penalties as are imposed for neglect of duty on training days; regulated in the sixth Section of this Act: *Provided always,* that no person shall be obliged to go more than twenty miles from his place of residence to attend any such general training: *And provided also,* that the Commander in Chief (whenever he may deem the Militia of any Regiment to be well and sufficiently trained and disciplined) may, and he is hereby authorised by Proclamation, or order directed to the Commanding Officer of any such Regiment, to dispense with or lessen so much and such parts of the duties required by this Act as to him may seem meet.

XXI. *And be it further enacted,* That whenever the Captain-General or Commander in Chief, shall direct any part of the Militia or the exempts as aforesaid, of any or either of the Counties to be called out as aforesaid into real service, a Draught by ballot shall be made from each Company in exact proportion according to the number then fit for duty, which shall be on the oath of the Captain or Commanding Officer of such Company to the best of his knowledge if required, of all persons from the age of *eighteen to fifty* years, and on such occasions all the persons within the County in which any part of the Militia shall be called out as aforesaid, between *eighteen and fifty* years of age, who are herein before declared to be exempted from being enrolled in the Militia, in manner herein before mentioned, except licensed Clergymen, one Miller and one Ferryman to each Grist Mill and established Ferry, who shall not have joined or formed themselves into any Company as aforesaid, shall be formed into a Company, under the direction of the Colonel or Commanding Officer of the Militia in such County, and shall be liable to the same Draught by ballot as any other Company in such County, in proportion to their numbers then fit for duty as aforesaid, and each and every person so drafted, shall go in his own proper person or find a good and sufficient man in his room, and for his neglect or disobedience herein, he shall be subjected to a fine of *ten pounds*, which if he neglect or refuse to pay, he shall be committed to Gaol by Warrant from the Commanding Officer, where he shall remain three months or until

until he pays the said fine, and another man shall be drafted as ^{In case of refusal} another man to be drafted who shall have half the said ^{fine, if he shall not refuse or neglect to go or find a good and sufficient man in his room as aforesaid, but if he shall so neglect or refuse, then he shall be subject to the like fine; and a further draught shall be made of another man who shall have half of the fine last mentioned; if he shall not neglect or refuse to go or find a good and sufficient man as aforesaid; and so as often as such case shall happen. *Provided always,* that in case any part of the Militia or exempts as aforesaid in any County shall be called out more than once, no person who has been once drafted as aforesaid, shall be again drafted until all the others belonging to the same Company shall have been drafted: *Provided always,* that nothing in this Act shall be construed to extend to oblige the Firemen appointed by the Corporation of the City of *Saint John* to the two Engines in that City, or Firemen that may be appointed to any Engine that may be hereafter established in any other Town in this Province, not exceeding fifteen men to each Engine; to do duty beyond the limits of the said City or Town respectively: *Provided always,* that no persons commonly called Quakers; and duly certified as such by their Society, being drafted, shall be liable to the foregoing fine, but in such case such Quaker being drafted as aforesaid and refusing to serve or procure a substitute as aforesaid; it shall and may be lawful for the Captain or Officer Commanding the Company to which such Quaker belongs, to procure and hire a substitute for such Quaker, and such Quaker shall be liable to pay the expence of such hiring, to be recovered before any two of His MAJESTY'S Justices of the Peace; and provided the same shall not exceed *ten pounds*: *Provided also,* that those who have already served in the Embodied Militia, and those to be hereafter drafted shall not be liable to be again drafted until all the others belonging to the same Company shall have been drafted.}

XXII. *And be it further enacted,* That whenever the PRESIDENT or Commander in Chief for the time being, shall in consequence of any actual invasion or imminent danger thereof, as aforesaid, think it expedient to order a proportion of the Militia of any County to march out of such County on real service, volunteers who offer themselves for such service, being able of body in the opinion of the Field Officers of the Regiment to which such volunteer or volunteers shall belong, shall be accepted therefor, and being so accepted, shall be subject to all the provisions of this Act as though they had been drafted by ballot.

XXIII. *And be it further enacted,* That whenever the whole or any part of the Militia shall be ordered to march from one part of the Province to another on real service as aforesaid or shall be called out as aforesaid to do actual duty on real service within any Town or County in this Province, there shall be allowed and paid to the Commissioned, and non-Commissioned Officers, Drummers and Private men for so long a time as they remain on such service at and after the rates following, that is to say, to the Commissioned Officers after the same rate as Officers of the like rank in His MAJESTY'S troops; to every Serjeant *two*

shillings sterling per day, dollars at *four shillings and eight pence*, to every Corporal *one shilling and nine pence* per day, to every Drummer and Fifer *one shilling and nine pence* per day, and to every Private *one shilling and six pence* per day together with the like allowances of all kinds, as are distributed and allowed to His MAJESTY'S regular forces, and subject to the like deductions therefor, and also one days pay for every days travel to and from the place of rendezvous computing fifteen miles for each days travel.

with allowances of all kinds, subject to deductions.

Militia being called into real service, every person is required to yield obedience to the lawful commands of his superior Officer for performing Military duties.

XXIV. *And be it further enacted*, That when in consequence of the order of the PRESIDENT or Commander in Chief, or in the cases herein before mentioned of the Colonel or Officer commanding the Militia of any County: The Militia or any part thereof shall be called into real service, every Officer or person enrolled in the Militia so called into actual service is hereby bound and required to yield obedience to all lawful commands of his superior Officers, for mounting guards, erecting works, and other military services for repelling, resisting or guarding against the attacks of the enemy, under the penalty of incurring the forfeitures appointed by this Act for disobedience of orders.

Any person under arms, &c. on actual service guilty of disobedience of orders or contemptuous behaviour.

If an Officer to be tried by a General Court Martial and a broke.

Non-Commissioned Officer or Private to be confined and tried by a Regimental Court Martial,

and fined 40s.

which shall be either stopped out of his pay, or levied by distress and sale of his goods, &c. and for want thereof, he shall be imprisoned or subject to hard labour not exceeding ten days.

No sentence to be executed till approved by the Officer ordering the Court.

XXV. *And be it further enacted*, That if any Officer non-Commissioned Officer or Private of the Militia or exempts as aforesaid under arms for real service on a march, or on guard or that shall be ordered for any of the duties or services herein before mentioned, shall disobey orders or neglect doing his duty or shall shew any contemptuous behaviour towards his superior Officer, if an Officer he shall on conviction thereof before a general Court Martial to be constituted and appointed as herein after directed, be cashiered by the sentence of such Court Martial, if a non-Commissioned Officer or Private, he shall be confined by the Commanding Officer of the party or guard, and it shall be lawful for the Commanding Officer of the Regiment or of any party or command not under the degree of a Captain, to order a Regimental Court Martial to be forthwith held for the trial of such offender, the said Court Martial to consist of three Commissioned Officers at least, but where they can be had of five; who may give judgment by laying a fine on such offender in any sum not exceeding *forty shillings*, which fine so ordered by the Court Martial if he neglect or refuse to pay, shall be either stopped out of the pay of such offender or recovered by warrant of distress and sale of his goods and chattels under the hand and seal of the Commanding Officer of such Regiment or party, and for want thereof to be imprisoned or subject to hard labour for a term not exceeding ten days. *Provided always nevertheless*, that no sentence of a Regimental Court Martial shall be put in execution, until approved of by the Officer ordering such Court Martial, and no Officer being the accuser shall be a member.

Persons guilty of mutiny or desertion or disobedience of orders,

XXVI. *And be it further enacted*, That if any Officer, non-Commissioned Officer or Soldier, shall in the field upon a march, or in quarters on actual service, begin, excite, or join any mutiny, or knowing of such mutiny, begun or intended, shall not give information thereof to his Commanding or other superior Officer,

Officer, or shall not when thereunto ordered, use his utmost endeavours to suppress such mutiny, or shall desert the Company or command to which he belongs, or shall disobey orders; if a commissioned officer he shall be put under arrest by any superior officer, if a non-commissioned officer or soldier, he shall be committed to the next County or other gaol as soon as convenient by order in writing under the hand of the Officer commanding the Regiment, Company, or Detachment, to which such person so offending shall belong, and it shall and may be lawful, for the Governor, Lieutenant-Governor, President or Commander in Chief of the Province for the time being, to order a general Court Martial, by warrant under his hand and seal, for the trial of such offender as speedily as the service will admit; which Court Martial shall not consist of a less number than thirteen Commissioned Officers of the Militia, and the President of such Court Martial shall not be under the rank of a Field Officer, and there shall be as many Captains as conveniently can be had; the eldest Subalterns to make up the number, and that such Court Martial shall have power to administer an oath to any witness in order to the examination or trial of any of the above offences that shall come before them, and shall also have power to punish with death or by fine and imprisonment, in proportion to the enormity of the offence, the fine not to exceed *fifty pounds* nor imprisonment six months. *Provided always*, that no sentence of any general Court Martial shall extend to death unless for desertion to the enemy, for mutiny and sedition, for traitorous correspondence with, or traitorously delivering up to the enemy any garrison, fortress, post or guard, nor shall any man serving in the Militia, be subject to be whipped, or otherwise corporally punished in any case whatsoever except by imprisonment, nor shall the sentence of any general Court Martial be carried into execution until it has been approved of by the Governor, Lieutenant-Governor, President or Commander in Chief for the time being.

XXVII. *And be it further enacted*, That in all trials by general Courts Martial, the President and every Member thereof before any proceedings be had, shall take the following oath, and the Judge Advocate is hereby authorised to administer the same, to wit: I (A B) do swear that I will duly administer justice, according to the Laws of this Province now in force for the better regulating the Militia without partiality, favor or affection; and I do further swear that I will not divulge the sentence of this Court until it shall be approved by the Commander in Chief of this Province, neither will I on any account 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 by any such General Court Martial, unless twelve Officers present shall concur therein, and the Governor, Lieutenant-Governor, President or Commander in Chief, shall have power to appoint any fit person to act as Judge Advocate at any such General Court Martial, who shall be allowed for his services *ten shillings* per diem during the time he shall be actually employed in such service, which Judge Advocate so appointed shall previous to

any

if an Officer to be put under arrest, if a non-Commissioned Officer or Soldier to be committed to gaol and tried by a General Court Martial,

to be appointed by warrant under the hand and seal of the Commander in Chief

to consist of not less than thirteen Officers, the President to be a Field Officer.

Court may administer oaths, and may punish with death or by fine not exceeding 50l. or imprisonment not exceeding six months.

No sentence to extend to death but for mutiny and sedition, desertion to the enemy, traitorous correspondence with or traitorously giving up to the enemy any post, &c.

Men serving in the Militia exempted from corporal punishment except imprisonment, no such sentence to be executed until approved by the Commander in Chief.

President and Members of the Court to be sworn.

Oath of Member.

No sentence of death shall be passed unless twelve Officers present shall concur.

Commander in Chief to appoint a Judge Advocate, to be allowed ten shillings per day, and to be sworn.

Oath of the Judge
Advocate.

any proceedings had on the trial of any prisoner, take the following oath, to be administered by the President of the Court Martial, to wit: 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.

No person to be put
to death until a War-
rant is issued under
the hand and seal of
the Commander in
Chief, directing the
time and place.

XXVIII. *And be it further enacted,* That no person shall be put to death under the sentence of a General Court Martial, until a Warrant under the hand and seal of the Governor, Lieutenant-Governor, President or Commander in Chief, shall issue for the execution of such sentence, which Warrant shall direct the time and place, when and where the person sentenced to death shall be executed, and all sentences of death shall be executed by either shooting or hanging the offender as the same may be directed and ordered in the said Warrant, which Warrant shall be a sufficient justification to the Officer or Officers to whom the same shall be directed, and to all those lawfully employed under them in executing such sentence. *Provided always,* that previous to any persons being put to death pursuant to the sentence of a General Court Martial, such sentence and the Warrant for the execution thereof shall be publicly read in the hearing of the bye-standers at the time and place appointed for such execution.

Death to be either
by shooting or hang-
ing.

Warrant to be a jus-
tification to the per-
sons executing it.

to be publicly read
at the time and place
of execution.

No Officer under the
rank of Captain to
try a Field Officer.

XXIX. *And be it further enacted,* That no Officer under the rank of Captain shall sit upon a Court Martial for the trial of any Field Officer.

Exempts (Justices of
the Peace, persons
above fifty and Ferry-
men excepted) to pay
to the Clerk of the
Regiment, ten days
after enrollment, the
sum of 20s. and an-
nually thereafter 10s.
to be recovered be-
fore a Justice of the
Peace by the Quar-
ter-Master, to form
a fund for keeping
in order arms, &c.
and for purchasing
Powder, an account
of the expenditure to
be laid before the
Officers at their ge-
neral meeting.

XXX. *And be it further enacted,* That all persons exempted by the regulations of this Act, Justices of the Peace, persons above the age of fifty years, and one Ferryman to each established Ferry excepted, shall pay to the Clerk of the Regiment ten days after their enrollment, the sum of *twenty shillings*, and annually thereafter on or before the last day of *March, ten shillings*, to the recovered before any one of His MAJESTY'S Justices of the Peace by the Quarter-Master of the Regiment, the said sums to form a fund for keeping in order the arms and accoutrements in the custody of the Officer commanding such Regiment, and for the purchase of Powder, to be fired on days of muster or rejoicing, and other incidental charges of such Regiment, an account of the expenditure of which, shall be laid before the Officers of the Battalion at their general meeting.

Fines not particular-
ly appropriated to be
paid to Commanding
Officers of Regi-
ments to defray con-
tingencies,

XXXI. *And be it further enacted,* That all fines not herein before particularly appropriated shall be paid to the respective Commanding Officers of Regiments for the purpose of defraying the contingent expences of such Regiments, and that it shall be the duty of the Commanding Officer of the Regiment to see that the fines and forfeitures to be collected by this Act, be laid out for the purposes herein provided for, and that such Commander of every Regiment, render an account to the Commander in Chief every six months of the application of such fines, and what may be remaining in his hands, that the same may be paid into the Province Treasury, if the Commander in Chief shall so direct.

such Officers to ac-
count to the Com-
mander in Chief e-
very six months.

XXXII.

XXXII. *And be it further enacted*, That in all cases where it shall be found necessary, on account of any actual invasion or imminent danger thereof as aforesaid, to call into real service any part of the Militia in any County, it shall and may be lawful for the Colonel or Commanding Officer of the Militia in such County, to cause all the free male Blacks or people of Colour, between sixteen and sixty years of age, to be formed into Companies as nearly as may be of the same strength with the Regimented Companies in the County, and to appoint non-Commissioned Officers thereto, from which Company or Companies shall be drafted by ballot as aforesaid, a proportion exactly according to their numbers then fit for duty, and that the persons so drafted shall serve as Pioneers with the Militia so called out, and shall be entitled to the like pay.

In case of invasion, the free Blacks to be formed into Companies and drafted to serve as Pioneers to the Militia, and entitled to the like pay.

XXXIII. *And be it further enacted*, That if any person be wounded or disabled upon any invasion or attack of the enemy he shall be taken care of and provided for at the expence of the Province during the time of such disability.

Wounded and disabled persons provided for.

XXXIV. *And be it further enacted*, That this Act shall continue and be in force for two Years and no longer.

Limitation.

CAP. II.

An ACT for making Procefs in Courts of Equity effectual against Persons who reside out of this Province and cannot be served therewith. Passed the 30th July, 1808.

WHEREAS sometimes persons have withdrawn themselves out of the limits of this Province, and thereby rendered it impracticable to serve them with Process for their appearance in the Court of Chancery of this Province; for remedy of the inconveniences thence ensuing.

Preamble.

I. *Be it enacted by the President, Council and Assembly*, That if in any suit which hath been or hereafter shall be commenced in the said Court of Chancery, any defendant or defendants against whom any Subpœna or other Process shall issue, shall not cause his, her or their appearance to be entered upon such Process within such time and in such manner as according to the rules of the Court the same ought to have been entered in case such Process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of the said Court that such defendant or defendants is or are out of the limits of this Province, or that upon inquiry at his, her or their usual place of abode he, she or they could not be found so as to be served with such Process, and that there is full ground to believe that such defendant or defendants is or are gone out of this Province, or otherwise abscond to avoid being served with the Process of the said Court, or that such defendant or defendants departed from this Province after the cause of action upon which such suit

Defendant not appearing to Subpœna or other process, and affidavit made that such defendant is out of the Province or cannot be found,

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hath