

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1794. Brookville: Christopher Sower, Printer to the King's Most Excellent Majesty, 1794.

34 George III – Chapter 1

An Act for the better Regulating the Militia in this Province.

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 Lieutenant Governor, Council and Assembly, That an act made and passed in the thirty second year of His Majesty's reign, intituled, "An Act for continuing the Establishment of a Militia and for regulating the same," be and the same is hereby repealed.
- 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 inrolled in some independent company, or in 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 Independent or other companies in the several towns or parishes within the province, are hereby required to take due care to inroll 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 a company shall give to his Colonel or in his absence to the next Commanding Officer of the regiment, and such Colonel or next Commanding Officer of the regiment, and the Captains or Commanding Officers of Independent companies shall give to the Captain General or Commander in Chief for the time being, fair written rolls of their respective companies and regiments.
- 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 sixty men rank and file, and that no Independent company, shall consist of more than fifty men rank and file; 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 Sergeants, Corporals, Drummers and Fifers in their respective companies, and to displace them and appoint others in their room as they shall see occasion.
- IV. And be it further enacted, That every regiment shall be called out and rendezvous by companies twice in every year, and that every regiment shall also be called out and rendezvous

twice in every year by regiments, or in such detachments as the Commanding Officers of the respective regiments, from local and other circumstances shall judge fit and direct, for the purpose or training, disciplining and improving in martial exercises; the time and place of rendezvous for the companies, regiments and detachments to be appointed by the Colonel or Commanding Officer of the regiment and arranged on different days, that the Field and Staff Officers may have an opportunity of attending the several companies, regiments and detachments exercised in detail, in order to introduce uniformity in the manoeuvres and discipline of the regiment: And that every independent company shall be called out and rendezvous for the like purposes four times in every year, at such time and place as the Captains or commanding Officers of such companies shall respectively direct and appoint—of all which several and respective days of rendezvous previous notice shall be given at least ten days.

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 place of rendezvous of each company, regiment and detachment of the regiment when called out as aforesaid, then and there to inspect their arms, ammunition and accoutrements, to superintend their exercise and manoeuvres and introduce a proper system of military discipline agreeable to such orders as he shall receive from time to time, from the Colonel or Commanding Officer of the regiment, and to 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 six shillings and three 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, so as that no one Adjutant be allowed more than twenty pounds in any one year.

VI. And be it further enacted, That every Captain or Officer commanding any Independent company, shall when thereunto requested, deliver a copy of his Muster Roll to the Colonel or Commanding Officer of the regiment or battalion of the county where such Independent company may be; and in case of the militia in such county or any part thereof being called out into actual service on account of any invasion or sudden attack made or threatened to be made by His Majesty's enemies, every such Independent company, shall in the absence of the Captain General or Commander in Chief of the province, be under the immediate command and direction of the Colonel and in his absence of the next Commanding Officer of such regiment or battalion.

VII. And be it further enacted, That every person, inrolled as aforesaid, shall at all times when called out under and by virtue of this act, appear with a good Musket, Bayonet and Belt, Cartridge-box containing eighteen rounds of suitable Ball-cartridges and two spare Flints; and for not appearing with such Musket shall for each and every wilful neglect, forfeit and pay the sum of twenty shillings, and for not appearing with the other accoutrements herein before mentioned, shall forfeit and pay the sum of five shillings for each and every wilful deficiency; to be levied by distress and sale of the offenders goods by the Captains or Commanding Officers warrant directed to a Sergeant 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 effects shall be found

whereon to levy the said fines, such offender shall be sentenced to hard labour or imprisonment, not exceeding five days: All which fines shall be applied to defray the contingent expenses of the regiment or independent company to which such offenders may respectively belong—And every Commissioned Officer when called out as aforesaid, shall appear with a Sword or Hanger.

VIII. And be it further enacted, That every person, inrolled as aforesaid, who shall refuse or neglect to appear agreeable to the provisions of this act when called upon, 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 ten shillings to be recovered and applied as aforesaid—Provided always, That the members of His Majesty's Council, members of the Assembly, Justices of the Peace, High Sheriffs, Coroners, all persons who have held any commission civil or military, under His Majesty, 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 Ferryman to each Ferry, shall be free and exempted from being inrolled in the Militia in manner herein before mentioned: Provided always nevertheless, That each and every person so declared to be exempted, except one Ferryman to each Ferry, shall be required and obliged to appear in manner herein before directed, except Licensed Clergymen, Physicians and Surgeons, who may appear without such arms attached, to some Independent or Regimented company, or in a separate company composed of such persons so declared to be exempted as they and each of them shall choose, at least four times in each year, on four of the days that some company, detachment or regiment shall be called out and rendezvous as aforesaid, within the county where such persons so declared to be exempted respectively reside upon pain of forfeiting for every neglect the sum of twenty shillings to be recovered by warrant from the Colonel or Commanding Officer of the Militia within the county, directed to some Sergeant belonging to his regiment or battalion and levied in manner aforesaid, and applied to defray the contingent expenses of the regiment: All which fines shall be paid into the hands of the Colonel or Commanding Officer of the regiment, and if the said fines shall not be sufficient to provide Fifes and Drums for each company, the same shall be furnished by such Colonel or Commanding Officer at the expense of the province.

IX. 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 of the principal people of such profession, that such person has been deemed and allowed one of the people called Quakers for the space of one whole year or more before the date of the certificate, such person so producing such certificate shall be, and hereby is exempted from the ordinary duties of training or mustering unless upon an invasion or sudden attack made or threatened by the enemy as herein after mentioned.

X. And be it further enacted, That in case of any invasion or sudden attack made or threatened to be made 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 of such county or

any part thereof into real service, and in case of any such invasion or sudden attack being made or threatened to be made in any town, parish or district in any county where the Colonel or Commanding Officer of the Militia 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, or any part thereof, into real service; and such Officer last mentioned, shall 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 impowered to impress boats, men and horses as the service may require.

XI. And be it further enacted, That the Captain General or Commander in Chief shall be, and he is hereby authorised and impowered in case of any invasion or sudden attack made or threatened 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.

XII. And be it further enacted, That the Militia or any part thereof, so called into real service by virtue of the provisions in 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 any such invasion or sudden attack made or threatened as aforesaid.

XIII. And be it further enacted, That when the Captain General or Commander in Chief, shall direct any part of the Militia of any or either of the counties to be called out as aforesaid into real service, the part so called out shall be draughted, by ballot, from each company in exact proportion according to their numbers then fit for duty, which shall be on the oath of the Captain or Commanding Officer to the best of his knowledge, if required, and on such occasions all the persons within the county in which any part of the Militia shall be called out as aforesaid, who are herein before declared to be exempted from being inrolled in the Militia in the manner herein before mentioned, except one Ferryman to each 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 draughted, shall go in his own proper person or find a good man in his room, and for his neglect or disobedience herein, he shall be confined by the Commanding Officer and shall pay a fine of ten pounds or remain in Gaol three months, and another man shall be draughted as aforesaid, to march in his place who shall have half of the said fine, if he shall not refuse or neglect to go or find a good 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 man in his room as aforesaid,—and so as often as such case shall happen. Provided always, That in case any part of the Militia in any county shall be called out more

than once, no person, who has been once draughted as aforesaid, shall be again draughted until all the others belonging to the same company shall have been draughted.

XIV. And be it further enacted, That if any Officer, Non-commissioned Officer or Private of the Militia 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 tryal 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, the said offender shall be sentenced, to imprisonment or hard labour for any time not exceeding ten days: Provided nevertheless, That no sentence of a Regimental Court Martial shall be put into execution until approved of by the Officer ordering such Court Martial; and no Officer being the accuser shall sit as a member.

XV. And be it further enacted, That if any Officer, Non-commissioned Officer or Private of the Militia, shall in the field, upon a march, or in quarters on actual service, desert the troop, company or command to which he belongs, or shall disobey orders, if a Commissioned Officer he shall be put under arrest by the Commanding Officer, if a Non-commissioned Officer or Private, he shall be sent to the next county Gaol, or other Gaol, as soon as convenient; and it shall and may be lawful for the Captain General or Commander in Chief of the Province to order a General Court Martial, by a 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 degree 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 such of the above offences as shall come before them, and shall also have power to punish by fine and imprisonment, the fine not to exceed twenty pounds, nor the imprisonment to be more than six months. And which fines, not herein before otherwise disposed of, shall be appropriated to such military uses as the Captain General or Commander in Chief of the province for the time being shall think fit.

XVI. Provided always, and be it further enacted, That in all trials by General Courts Martial, every Officer before any proceeding be had, Shall take the following oath, and the Judge Advocate is hereby authorised to administer the same:

“You shall well and truly try and determine according to Your evidence, in the matter now before You, between our Sovereign Lord the King’s Majesty, and the prisoner to be tried.”

And the Captain General or Commander in Chief of the province 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 day during the time he shall be actually employed in such service.

XVII. And be it further enacted, That no sentence of any such General Court Martial, shall be put in execution, before the same be approved by the Captain General or Commander in Chief of the province for the time being.

XVIII. And be it further enacted, That when 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 Commissioner and Non-commissioned Officers, Drummers and Private Men, for so long time as they shall remain on such service, at and after the rates following, that is to say: To the Commissioned Officers at and after the same rate as Officers of the like rank in His Majesty's troops; to every Sergeant one shilling and six pence per day; to every Corporal one shilling and three pence per day; to every Drummer one shilling and three pence per day; to every Private one shilling per day.

XIX. And be it further enacted, That in any county of the province, exposed and subject to the attacks of an enemy by water, where the same shall be found absolutely necessary, it shall and may be lawful for the Colonel or Commanding Officer of the Militia in such county, to provide and furnish, at the expense of the province, such and so many armed boats, not exceeding two without the consent and approbation of the Captain General or Commander in Chief of the province, as shall be necessary for the protection and defence of the places so exposed: Which boats shall be under the conduct and direction of such Colonel or Commanding Officer of the Militia in such county.

XX. And be it further enacted, That whenever the Colonel or Commanding Officer of the Militia in any county where such boats are provided, shall find it necessary to order the boats so provided to proceed in repelling the enemy, or to the assistance of any neighbouring district or place, the Militia of such county shall, on the orders of such Commanding Officer, proceed in such boats accordingly.

XXI. And be it further enacted, That in all cases where it shall be found necessary on account of any invasion or sudden attack of the enemy made or threatened 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 fifty 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 draughted by ballot, as aforesaid, a proportion exactly according to their numbers then fit for duty; and that the persons so draughted shall serve as pioneers with the Militia so called out, and shall be intitled to the like pay.

XXII. And be it further enacted, That if in case of any emergency, any arms or accoutrements shall be furnished to any person belonging to the Militia in this province, by Government, by reason that such person shall not have had it in his power before that time to have provided the same for himself, if in any such case any person so furnished with arms or accoutrements by Government shall sell or dispose of the same or any part thereof, 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 or any part thereof to be conveyed on board any boat, ship or vessel with intent to have the same carried out of the province, every person so offending, shall for each and every offence forfeit and pay the sum of ten pounds, to 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 to the use of the Poor of the town or parish where the offence shall be committed, the other half to the person who shall prosecute for the same; and for want of effects whereon to levy such fine, such offender shall be imprisoned not exceeding six nor less than three months.

XXIII. 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 expense of the province during the time of such disability.

XXIV. And be it further enacted, That this act shall continue and be in force during the present war, and no longer.