

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1805. Saint John, NB: John Ryan, Printer to the King's Most Excellent Majesty, 1805.

45 George III – Chapter 1

An Act for the better Regulating the Militia in this Province. Passed the 5th of March, 1805.

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Forty-second year of His Majesty's reign, intituled, "An Act for regulating the Militia," be, and the same is hereby repealed.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 enrolled in some Independent Company, or in one of the Regimented Companies of Foot, of Troops of Cavalry, in the district where he dwells or resides, the extent of which district shall be determined by the Colonel or the commanding officer of the Militia of the County, and all Captains or commanding officers of Independent or other Companies or Troops of Cavalry 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 a Company shall give to his Colonel, or in his absence to the next commanding officer of the Regiment, and each Colonel or next commanding officer of the Regiment, and the Captains or commanding officers of Independent Companies, shall give to the Brigadier-General or other officers commanding Militia brigades in the Province, 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.

III. And be it further enacted That the Militia shall be formed into Regiments by Counties, and that no Regimented or Artillery Company, Independent Company or Troop of Horse, shall consist of more than Sixty 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 Serjeants, Corporals, Drummers and Fifers, in their respective Companies and Troops, and 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 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 once 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 purposes of 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 or Independent Troop of Horse shall be called out and rendezvous for the like purposes three times in every year, at such time and place as the Captains or commanding officers of such Companies or Troops of Horse shall respectively direct and appoint, 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 Fifteen 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 place of rendezvous of each Company, detachment or Regiment, at least once in every year when called out as aforesaid then and there to inspect their arms, ammunition and accoutrements, 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 do and perform such other duties and services suitable for an Adjutant, as the Colonel or commanding officer 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 of Northumberland, shall not exceed Ten Pounds in any one year; the Adjutant of the County of Westmorland, shall not exceed the sum of Eight Pounds in any one year; the Adjutant of the City of Saint John, shall not exceed the sum of Five pounds in any one year; the Adjutant of the County of Charlotte, shall not exceed the sum of Ten Pounds in any one year; the Adjutant of the County of King's, shall not exceed the sum of Six Pounds in any one year; the Adjutant of the County of Queen's, shall not exceed the sum of Five Pounds in any one year; the Adjutant of the County of Sunbury, shall not exceed the sum of Five Pounds in any one year; and the Adjutant of the County of York, shall not exceed the sum of Ten Pounds in any one year.

VI. And be it further enacted, That every Captain or officer commanding any Independent Company or Troop of Horse, shall deliver in each and every year, and oftener if so required, a copy of his Muster-Roll to the Colonel or commanding officer of the Regiment or Battalion of the County where such Independent Company or Troop of Horse may be, and in case of the Militia of 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 or Troop of Horse 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 enrolled 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-cartridge, and two spare Flints, in complete order, and for not appearing with such arms, accoutrements, and ammunition as aforesaid, shall for each and every wilful neglect forfeit and pay the sum of Twenty Shillings, to be levied by distress and sale of the offender's goods by the Captain or commanding officer's 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 coils and charges of such distress and sale to the offender, and if no effects shall be found whereon to levy the said Fine, such offender shall be sentenced to hard labour or imprisonment not exceeding Ten days, all which Fines shall be applied to defray the contingent expences of the Regiment or Independent Company to which such offender may respectively belong. And every commissioned officer who called out as aforesaid, shall appear with a Sword or Hanger, and for not so appearing shall forfeit and pay for each and every neglect the sum of Forty Shillings, to be recovered as aforesaid.

VIII. And be it further enacted, That every person enrolled as aforesaid; who shall refuse or neglect to appear agreeable 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, 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, licensed Clergymen, 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 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 after mentioned, all which Fines shall be paid into the hands of the Colonel or commanding officer, to defray the contingent expences of the Regiment.

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 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 the certificate, such person so producing such certificate shall be and hereby is exempted from the ordinary duties of training and 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 also the whole or a proportion of those described as exempts in the eighth clause of this Act (licensed Clergymen, Millers and Ferrymen 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 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, and also the exempts as aforesaid, 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 empowered 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 authorized and empowered 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 and the exempts as aforesaid.

XII. And be it further enacted, That the Militia or any part thereof, and the exempts as aforesaid 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 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 or the exempts as aforesaid, of any or either of the Counties to be called out as aforesaid into real service, the part so called out shall be drafted by ballot from each Company or Troop in exact proportion according to the 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 enrolled in the Militia in the

manner herein before mentioned, except licensed Clergymen, one Miller and one Ferryman to each Mill and 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 draft 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 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 drafted 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 draft 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 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.

XIV. 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, the said offender shall be sentenced to imprisonment or hard labour for any 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 sit as a member.

XV. And be it further enacted, That if any officer, non-commissioned officer or private of the Militia or exempts as aforesaid, shall in the Field or 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; all 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 authorized 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 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 commissioned 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 after the same rate as officers of the like rank in His Majesty's troops; to every Serjeant, One Shilling and Six Pence per day; to every Corporal, One Shilling and Three Pence per day; to every Drummer and Fifer, One Shilling and Three Pence per day, and 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 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 intitled to the like pay.

XXII. And be it further enacted, That in case of any emergency any Arms or Accoutrements that have or may hereafter 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 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 of 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 paid into the Province Treasury and 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 Months 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 expence 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.