

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1813.* Saint John, NB: Jacob Mott, Printer to the King's Most Excellent Majesty, 1813.

53 George III – Chapter 1

**An Act for regulating the Militia. Passed the 3rd of March, 1813.**

Whereas the establishment and organization of the Militia of the Province requires other and further provisions rules and regulations for the government thereof, than those already provided in and by an Act of the General Assembly of this Province, made and passed in the fiftieth year of his present Majesty's reign, intituled "An Act for better regulating the Militia in the Province." And another Act made and passed in the fifty-second year of his present Majesty's reign, intituled "An Act to amend and continue for a limited time," an Act, intituled "An Act for better regulating the Militia in this Province."

I. Be it enacted by the President, Council and Assembly, that the said herein before recited Acts be, and the same are hereby repealed, excepting the second Section of the said herein before first recited Act, which Section is to be and remain in full force unrepealed, and to be considered and taken as part and parcel of this Law, and is in the words following, viz;

"And be it further enacted, that every male white inhabitant or resident within this Province, from sixteen to sixty years of age (excepting such as are herein after excepted) shall be enrolled in and liable to serve in the Militia, and the Militia shall be formed into Regiments by Counties, and if any County shall be sufficiently populous to admit of the Regiment being subdivided into two or more Battalions, it shall be lawful for the Governor or Commander in Chief to subdivide such Regiment into Battalions, and to affix the limits of the districts composing such Battalions, and each Company in such regiment or Battalion shall consist of not more than sixty Rank and File and be Commanded by one Captain and two Subalterns; and the extent of the districts of the Companies shall be determined by the Commanding Officer for the time being of the Regiment or Battalion to which they belong, and all Captains or Commanding Officers of Companies are hereby required to take due care to enrol in a book to be by them kept for that purpose, the names of those persons who are liable to serve as aforesaid within their respective districts. Provided always, that in insular and remote situations where the number of persons in the Island or neighborhood liable to serve in the Militia exceeds the number of sixty, but does not exceed the number of eighty the whole may be enrolled in one Company. And Provided also, that the Members of His Majesty's Council, Members of the Assembly, established Clergymen and licensed Ministers of the Gospel, all persons exercising Commissions, Civil or Military under His Majesty, Officers on half-pay, Supernumerary Militia Officers now in commission, Officers of His Majesty's Customs, Revenue and Naval Officers, Physicians and Surgeons, one Miller to each Grist Mill, and one Ferryman, for each established Ferry, shall be exempted, from being enrolled as aforesaid. And Provided also, that every person professing himself to be of the people called Quakers, and producing to the Commanding Officer of the Regiment or Battalion of the district in which he resides, a certificate signed by two people of that persuasion, that such person has been deemed and allowed to be one of the same persuasion, for at least one year before the date of such certificate, shall in like manner be exempted from being enrolled as aforesaid; and saving also the right of recovery of

such fines and penalties as may have been incurred by such Acts, and saving and excepting also so much and such parts of the said recited Acts as may have been carried into execution, or acted upon by the Commander in Chief in calling into actual service any part or parts of the Militia under and by virtue of the same Acts, which part or parts of the Militia so called out shall be in all respects subject to the provisions of this Act in the same manner as any other part which may be called into real service under and by virtue hereof.

II. And be it further enacted, that it shall be the duty of every Captain or Commanding Officer of a Company to furnish the Officer commanding the Battalion to which he may belong, at all times when ordered, a fair written Roll of his Company, and return of the state of their arms and accoutrements; and the Commanding Officers of Battalions shall furnish to the Commanding Officers of Regiments, or to the Commander in Chief, when ordered, such Rolls, Returns and Statements of their Battalions as may be required; and the Commanding Officers of Regiments shall when ordered furnish to the Commander in Chief, or to such other person as he shall appoint, such Rolls, Returns and Statements of their several Regiments as may be required.

III. And be it further enacted, that the Commanding Officer of each Battalion shall have power to appoint from time to time suitable persons as Drummers, Buglers and Fifers to his Battalion, and to displace them and appoint others in their stead, and that the Captain or Commanding Officer of a Company shall have power with the consent of the Commanding Officer of the Battalion to which he may belong, to nominate and appoint Sergeants and Corporals for the Company, under his command, and if any person so to be appointed shall refuse to accept the office to which he shall be appointed, or having accepted shall refuse or neglect to perform his duty, he shall for every offence forfeit and pay the sum of twenty shillings, to be recovered in the same manner as is provided for the recovery of fines in the fifth section of this Law; but there shall not be appointed more than three Sergeants and three Corporals to any one Company, except flank Companies which may have four Sergeants each.

IV. And be it further enacted, that if any Sergeant or Corporal shall be guilty of any misbehaviour in his office, he may be tried by a Regimental Court Martial to consist of not less than three commissioned Officers, and by the sentence of such Court if approved of by the Commanding Officer of the Battalion, be displaced from his office.

V. And be it further enacted, that for the purpose of disciplining and improving the Militia in Martial exercises the Commander in Chief may at such convenient season of the year as he may judge fit, interfering as little as possible with seed time, and harvest, order out and keep together each Battalion, together or in divisions, within their respective districts, those above fifty years of age excepted, for any time not exceeding three days in each year, and every non-commissioned Officer and Private wilfully neglecting to appear at the time and place specified in such order, or who during the said three days shall be absent from his Company without leave from his Commanding Officer, shall for each and every offence be liable to a fine of twenty shillings, to be recovered on complaint of the Officer commanding the Company before any one of His Majesty's Justices of the Peace of the County where such offence may be committed, and levied by distress and sale of the offenders goods and chattels, and for want of goods and chattels belonging to such

offender whereon to levy the same, such offender to be committed to the County Gaol for a term not exceeding four days, for each day's delinquency, or until such fine or fines, together with the costs of prosecution are paid. Provided always, that no excuse shall be admitted for non-attendance, except sickness or lameness of the individual to prevent his attendance or extreme illness of some part of his family; or detention by unforeseen and unavoidable circumstances, to be manifest by legal proof given on the part of the delinquent. Provided also, that no person shall be required to travel more than thirty miles from his usual place of residence to attend the training of the Battalion or Division thereof to which he may belong. And Provided also, that persons who have been embodied and on actual service for the space of twenty days shall not be required to attend such drill during the same year in which they have performed such service.

VI. And be it further enacted, that notice of the times and places appointed for the assembling of the several Battalions or Divisions thereof as aforesaid, shall be given in writing by the Captains or Officers commanding Companies, who shall cause such notices to be posted up by a Non-Commissioned Officer at least ten days before the respective times of meeting, in three of the most public and conspicuous places within the district of the several companies, which notification so given shall be deemed a sufficient warning. Provided always, that five days personal notice to the individual of the time and place of assembling shall in all cases be deemed sufficient without such notice in writing.

VII. And be it further enacted, that every person enrolled as aforesaid, when ordered out as aforesaid, shall appear with such arms, ammunition and accoutrements as have been or hereafter may be issued to him by Government (or if he shall so choose) with arms, ammunition and accoutrements of his own, equally good in complete order, and for appearing without such arms, ammunition and accoutrements, or appearing with a part and not the whole or with any of them which in the opinion of the commanding officer for the time being, at the place where such Militia are ordered to assemble, are not in good and serviceable order, such person shall forfeit and be ordered by the said commanding officer to pay a sum not less than two, nor more than twenty shillings, which if not paid within twenty-four hours after such person is dismissed from his then attendance, shall be by an order of the said commanding officer, directed to one of the non-commissioned officers of the Company to which such person shall belong, levied (with the like fees as constables may receive) upon the goods and chattels of such delinquent, and for want of goods and chattels whereon to levy the same, the said delinquent shall, by warrant under the hand and seal of such commanding officer, be committed to the County Gaol, there to remain not exceeding four days; and the keeper of any Gaol is hereby authorised to receive and keep such delinquent during the time specified in such warrant, and then to discharge him on payment of the customary gaol fees, together with such fees as the non-commissioned officer may be intitled to receive as herein before mentioned.

VIII. And be it further enacted, that painted canvas knapsacks, with proper straps and buckles, and straps for the purpose of carrying a blanket or great coat, and priming wires, and brushes for the muskets be provided by the Government, and paid for out of the Province Treasury, and delivered to the commanding officers of Battalions, who shall cause the same to be lodged with the commanding officers of Companies, and after notice given thereof, each person shall within six

days furnish himself with a sett, and shall pay for the same to the said commanding officer a sum not exceeding seven shillings and six pence, to be recovered by such commanding officer upon refusal or neglect to pay the same, as small debts are recoverable by law, which money when received, shall be paid to the respective Quarter-Masters of the Battalions, to be returned into the Province Treasury. Provided always, that every person who in the opinion of the commanding officer of the Company to which he may belong, and of the commanding officer of the Battalion, is indigent shall be furnished with a sett without paying for the same.

IX. And be it further enacted, that after the said knapsacks, straps, priming wires, and brushes, shall have been provided as aforesaid and deposited with the commanding officers of Companies, and notice thereof given as herein before mentioned, every person who, when ordered out as herein before provided shall appear without having the same, and in good order, shall be liable to the same penalty to be inflicted and recovered in the same manner as the penalty for not appearing with arms and accoutrements as herein before directed.

X. And be it further enacted, that the commanding officer of any regiment or Battalion, shall and may once in the year, and oftener if he deems it necessary, order an inspection of arms, accoutrements, and equipments of such Regiment or Battalion, when the subaltern Officers of the Company (each taking such part as the Captain or Commanding Officer of the Company shall direct) shall call on each and every man of the Company at his usual place of abode, and then and there carefully inspect and examine such person's arms, accoutrements, and equipments, to see whether the same are all in good order, and shall make an exact report to the commanding officer of the Company of the state and condition in which the same were found; which report shall be made in writing and shall be sworn to by the person making it, before some one of His Majesty's Justices of the Peace of the County where such inspection may take place; which oath, such Justice is hereby authorised to administer, and shall certify without fee, and every person who shall refuse to submit to such inspection, or whose arms, accoutrements, or equipments shall be found in unserviceable condition, out of order, or deficient, shall forfeit and pay for each deficiency, the like sum as if such had been the case when ordered out as herein before mentioned, under this law, to be inflicted and recovered by the commanding officer of the Company by warrant under his hand directed to a non-commissioned officer, who is hereby authorised to levy the same as is directed in and by the seventh section of this Act. Provided always, that the commanding Officer of the Company may in all cases inspect the arms, accoutrements, and equipments himself, either with or without an order from the Commanding Officer of the Battalion, and proceed to fine for any deficiency or bad state of the arms, accoutrements and equipments, or any or either of them, and levy the same in the same manner as is herein before provided upon the report of the Subaltern Officers.

XI. And be it further enacted, that it shall be the duty of the Adjutants appointed, or to be appointed to the several Battalions, to attend their respective Battalions when the same or any part thereof shall be ordered out under this Act, and at such and all other times to do and perform and attend to such duty as is incumbent on and appertaining to the proper office of Adjutant, or as they maybe ordered by the respective Commanding Officers of such Battalion, and such Adjutants shall be allowed each, as a full compensation for all the services; he is hereby ordered to perform

(except when on actual service) ten shillings for each day he shall be actually employed, the number of days to be certified by the Commanding Officer of the Battalion, provided that no one Adjutant shall be allowed more than fifteen pounds in any one year.

XII. And be it further enacted, that if any non-commissioned Officer or Private, shall be guilty of drunkenness, contemptuous or riotous behaviour, disobedience of orders, or shall otherwise misbehave himself during the time he shall be ordered out, as herein before provided, it shall and may be lawful for the Commanding Officer for the time being of the Battalion so ordered out, to order such person so offending to be confined under guard; and to be tried by a Court Martial to consist of not less than three Commissioned Officers who may, on conviction, sentence such offender to pay a fine of not less than five, nor more than forty shillings; and unless such fine is paid forthwith, it shall and may be lawful for the commanding officer of the said Battalion for the time being, by a written order to commit such offender to the County Gaol, for such time as such Court shall appoint not to exceed four days, and the keeper of such Gaol is hereby authorized to receive and to keep such delinquent during the time specified in such warrant, and then to discharge him on payment of the accustomed Gaol fees, together with such fees as the non-commissioned Officer may be entitled to receive. Provided always, that such person when so discharged from Gaol shall return again to his battalion, if the same shall not have been previously dismissed, or be considered as a defaulter in his appearance.

XIII. And be it further enacted, that if any person shall wilfully interrupt any body of Militia when ordered out under this Act, whilst on duty or at exercise, it shall and may be lawful for the commanding officer for the time being, to confine such person during the performance of such duty, or the continuance of such day's exercise or muster (if he shall think necessary) to prevent the continuance of such insult or wilful interruption, and every person so offending shall forfeit and pay a sum not exceeding twenty shillings, for each and every offence, to be recovered with costs, on conviction before any Justice of the Peace where such offence may be committed, and levied by distress and sale of the offenders, goods and chattels.

XIV. And be it further enacted, that if any Captain or Subaltern Officer of any Battalion, shall be guilty of contemptuous behaviour, disobedience of orders, or otherwise misbehave himself at any time when ordered out as herein before mentioned, it shall and may be lawful for the Commanding Officer for the time being, of such Battalion or Division thereof, to order such officer under arrest, and forthwith to try him by a Court Martial to consist of not less than two Captains, and three Subalterns of the same Battalion, and in case such charge is proved, it shall be the duty of such Court Martial to report their proceedings to the Commanding Officer, who shall report to the Commander in Chief of the Province, and if approved of by him, such Officer so found guilty, shall be cashiered and dismissed.

XV. And be it further enacted, that every Officer (at all times when ordered out under this Act) shall appear equipped with a sufficient sword and belt, under the penalty of twenty shillings for each offence, to be inflicted by the Commanding Officer for the time being, of the Battalion to which he may belong; and if not paid upon an order from the said Commanding Officer, the same shall be levied upon the goods and chattels of such offender by warrant under the hand and seal

of such Commanding Officer, directed to the Adjutant of such Battalion, and paid into the hands of the Quarter-Master.

XVI. And be it further enacted, that the Commanding Officer of every Company shall immediately when required, furnish the Commanding Officer of the Battalion to which he may belong, with the name of every delinquent belonging to his Company who shall at any time neglect to appear when ordered out under this Act, or to perform any of the duties herein required, or in any other manner offend; and if any one is excused from any cause whatsoever, shall assign such excuse to the said Commanding Officer for his approbation; and if not admitted, such delinquent or offender shall be proceeded against according to Law.

XVII. And be it further enacted, that it shall be the duty of the several officers commanding Regiments or Battalions, to order the commissioned officers under their respective commands, at reasonable times and places a part from their men to be drilled and instructed in their several and respective duties; and if any officer shall refuse or neglect to attend such drills and instructions when so ordered, or shall be found imperfect in the opinion of the Commanding and Inspecting Field Officer at the end of six months from the passing of this law, it shall be the duty of such commanding officer, with the concurrence of the Inspecting Field Officer, and he is hereby authorised and required to report such commissioned officer so refusing or neglecting, or being found imperfect to the Commander in Chief, for disobedience of orders or imperfection as the case may be.

XVIII. And be it further enacted, that it shall and may be lawful for the officer commanding any Battalion, to appoint a Sergeant-Major, a Quarter-Master-Sergeant, 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 for the trial of any officer misbehaving when called out on duty, and shall have power to punish by fine, or imprisonment in the County gaol, such fine not exceeding forty shillings, or imprisonment ten days. Provided always, and be it further enacted, that no sentence of any Court Martial shall be put in execution until approved by the Commanding Officer of such Battalion, and the Sergeant-Major, Quarter-Master Sergeant, and Clerk, so appointed shall be exempted from all balloting for actual service.

XIX. And be it further enacted, that the Quarter-Master of every Battalion shall, before he commences the duties of his office, under this Act, give bond to His Majesty with two sufficient sureties in the penal sum of two hundred pounds for the faithful discharge of such duties, and for his duly accounting for and applying all monies he may receive by virtue of this Act, and for all arms, and accoutrements, provisions and stores, he may receive as Quarter-Master of such Battalion, which bond shall be taken by the commanding officer, of such Battalion, and lodged by him in the Secretary's Office of the Province; and that each Quarter-Master shall be allowed in this general account of monies ten per cent, for all sums received and paid over by him; this allowance to cease to be made to any Quarter-Master who may be on actual service, and in receipt of full pay.

XX. And be it further enacted, that the Captains or Officers commanding Companies, shall on or before the first day of June in each year, make out and transmit to the officer commanding the Battalion, lists of all persons residing within the districts of their Companies respectively, who are by this Act exempted from being enrolled in the Militia, specifying the ages of such persons, and the causes of their respective exemptions, which lists shall be entered by the Clerk of the Battalion in a book to be by him kept for that purpose; and that all persons so exempted (one ferryman to each established ferry excepted) shall on or before the first day of September in each and every year pay to the Quarter-Master twenty shillings, and if not then paid the same to be forthwith recovered with costs, by and at the suit of such Quarter-Master, in the like manner as is provided by the fifth section of this Act. Provided always, and be it further enacted, that any person liable as aforesaid, to pay the said sum of twenty shillings, shall be excused from paying the same by enrolling himself in the Company of Militia of the district in which he resides; and that when such person has so enrolled himself he shall be, and he is hereby made liable to do and perform all and singular the duties required of other men belonging to the Company, and under and subject to the same penalties and forfeitures in every respect.

XXI. And be it further enacted, that the ferryman excepted by the next preceding Section, shall upon all occasions when the Militia are called out by Battalions or Detachments for general training, carry over their respective ferries the said Militia, and each and every of them in going out and returning home without any demand for ferryage whatever, under the penalty of ten shillings, for each and every offence, to be recovered by the party complaining before any one of His Majesty's Justices of the peace, upon the oath of one credible witness.

XXII. 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, and such as may hereafter be issued, be it further enacted, that such arms so issued or which may hereafter be issued, shall be branded distinctly on the broad part of the butt with the letter M and the name of the County of the Militia of which they are issued, also with a capital letter to denote the Company to which they belong, and a number to distinguish each firelock to its owner, such brand to be provided by the commanding officer of the Battalion; 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 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 the 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 and 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 and accoutrements, 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 two Justices 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 penalty shall be paid to the person who shall prosecute for the same, and the other half into the hands of the Quarter-Master of the Battalion to which such arms, and accoutrements belong; and for want of effects, whereupon to levy the said fine of ten pounds, such offender shall be imprisoned not exceeding six, nor less than three months; 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. Provided always, and be it further enacted, that nothing herein contained shall be construed to render void the bonds heretofore given for any arms, and accoutrements under and by virtue of any act heretofore passed, but that the same bonds shall be and remain in full force and effect.

XXIII. And be it further enacted, that no person who has been, or may hereafter be furnished with arms, accoutrements and ammunition, by Government, shall use the same for any other purpose, than that for which they may have been supplied, under a penalty of ten shillings for each and every offence, to be recovered before any one Justice of the Peace, in the same manner as prescribed in the next preceding Section, and when recovered, to be paid to the person who shall prosecute for the same, and for want of effects whereon to levy the said fine of ten shillings, such offender shall be imprisoned two days.

XXIV. And be it further enacted, that the Governor or Commander in Chief shall be and he is hereby authorized and empowered in case of any actual invasion, or imminent danger thereof, if he in his discretion shall think it necessary or expedient, to call out the Militia of the Province, and the exempts as described in the first Section of this Act, (established Clergymen, licensed Ministers of the Gospel, Millers and Ferrymen, excepted) or any part thereof, into actual service.

XXV. And be further enacted, that in case of any actual invasion or imminent danger thereof, in any County or District, where the Commander in Chief cannot in time be consulted, the commanding officer of the Regiment or Battalion of Militia in such County, or District, shall have power (if he in his discretion shall think it necessary or expedient) to call out the Militia in such County or District, and the ex-empts as aforesaid, or any part thereof, into real service; and in case of any such actual invasion, or imminent danger thereof, in any Town, Parish or Company District, where the commanding officer of the Regiment or Battalion cannot in time be consulted, the



Officer Commanding the Militia in such Town, Parish or Company District, shall have power (if he in his discretion shall think it necessary or expedient) to call out the Militia under his command, and also the exempts as aforesaid, within the same, 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 officer commanding the Regiment or Battalion to which he belongs, who is hereby required in either case forthwith to despatch an express to the Governor or Commander in Chief, notifying the danger and the strength and motions of the enemy, and every person liable to be so called, who shall when called on refuse to go, shall pay the sum of ten pounds, or forthwith be committed to the County Gaol by a written order of the commanding officer of the Regiment, Battalion or Company to which he may belong, or if necessary for safe custody be sent to any other place of confinement at the discretion of such commanding officer, and such offender shall remain in imprisonment three months, or until such fine be paid; and all Gaolers are hereby ordered to receive and safely keep such person so to be committed during the time herein specified.

XXVI. 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, or which may have been called into real service under and by virtue of the said herein before recited 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.

XXVII. And be it further enacted, that when the Militia or any part thereof shall be upon real service, every officer or person so called into 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.

XXVIII. And be it further enacted, that whenever the Governor 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 draft 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, which ballot shall take place, and be made in the presence of one or more of His Majesty's Justices of the Peace, or if no such Justice shall be resident near to the place where such ballot shall be made, then and in that case the same shall be made in presence of three or more respectable freeholders, who are exempted by age from being drafted themselves; 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 established Clergymen, and licensed Ministers of the Gospel, one miller to each grist mill, and one ferryman to each established ferry) who shall not have joined any company, shall be formed into a company by and under the direction of the commanding officer of the Regiment or Battalion, and shall be liable to the same draft by ballot as any other company in such Regiment or Battalion, 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 the nearest County gaol, where he can be safely kept by warrant from the commanding officer of the Regiment or Battalion, or if necessary to his safe custody, be removed to any other gaol, at the discretion of the commanding officer, where he shall remain three months, or until he pays the said fine, 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 and sufficient man in his room as aforesaid, but if he shall so neglect or refuse, then he shall be subjected 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 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 the exempts as aforesaid, 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 also, that nothing in this Act shall be construed to extend to oblige the Firemen appointed by the Corporation of the City of St. 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 duty beyond the limits of the said City and town respectively. And also further provided, that if any person called and duly certified to be a Quaker, shall upon being drafted refuse 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 him and at his expence, not to exceed the sum of ten pounds, which if he shall refuse or neglect to pay, the same shall and may be recovered before any two of His Majesty's Justices of the Peace in a summary way, at the suit of the said Captain or commanding officer of the Company, and levied with costs, upon the goods and chattels of such delinquent, or for want thereof, such delinquent shall be committed to Gaol, there to remain for three months, or until he pays the same. 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.

XXIX. And be it further enacted, that whenever the Governor 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 or Battalion, to which such volunteer shall belong shall be accepted, and being so accepted, shall be subject to all the provisions of this Act, as though they had been drafted by ballot.

XXX. 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 Battalion, 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, and in addition thereto, if a non-commissioned officer, reducing him to the ranks at the discretion of the Court, 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 such offender shall be imprisoned or subject to hard labor, 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.

XXXI. And be it further enacted, that if any officer, non-commissioned officer, or private, 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, or shall not when thereunto ordered use his utmost endeavors 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 private, 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, Battalion, Company, or Detachment, to which such person so offending, shall belong; and it shall and may be lawful for the Governor 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 offenders, 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 may 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 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 the sentence of any general Court Martial be carried into execution until it has been approved of by the Governor or Commander in Chief for the time being.

XXXII. And be it further enacted, that in all trials by General Court 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 at any time whatever, 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 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 fifteen shillings per diem, during the time he shall actually be employed in such service; which Judge Advocate, so appointed, shall previous to any proceedings had on the trial of any prisoner, take the following oath to be administered by the President of the Court, to wit: “I (A. B.) do swear, that I will not upon any account, at any time, whatever, disclose or discover the vote or opinion of any particular member of this 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.”

XXXIII. 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 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 person’s being put to death pursuant to the sentence of a General Court Martial, such sentence and 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.

XXXIV. 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.

XXXV. And be it further enacted, that whenever the whole or any part of the Militia of this Province shall be called out into actual service, the Officers, non-commissioned Officers, Drummers, Fifers, Buglers and Privates shall be entitled to the same pay and allowances as the Officers, non-commissioned Officers, Drummers, Fifers, Buglers and Privates of His Majesty’s Regular troops respectively receive, to be reckoned from the day that they march from the rendezvous of their respective Companies, to go on actual service, until they shall be dismissed by order of the Governor or Commander in Chief; and at the time of their dismissal they shall be allowed respectively a number of day’s pay to defray their expences to their usual places of residence, according to the distance, at the rate of fifteen miles per day, together with a bounty to each man of the non-commissioned Officers, Drummers, Fifers, Buglers and Privates who shall have served faithfully during the time or times they shall so have continued on actual service, at and after the rate of thirty shillings per month, for every calendar month which they shall respectively have been and remained on actual service, but not to exceed in the whole the sum of five pounds for each separate time, or occasion on which they shall so have respectively been called out into actual service as aforesaid; which bounty shall be provided for and paid out of the Province Treasury.

XXXVI. And be it further enacted, that every person who shall entice or encourage a Militia man when on service to desert, or aid, or assist, or harbour and conceal any deserter, knowing him to be such, shall forfeit and pay for every offence the sum of ten pounds, to be recovered on conviction before any one of His Majesty's Justices of the Peace for the County where such offence may be committed, upon the oath of any one or more credible witness or witnesses, or the confession of the party offending, and on the failure of the payment of such fine by the party offending, he shall be committed to the County gaol by warrant under the hand and seal of such Justice, there to remain for the space of forty days or until such fine is paid.

XXXVII. And be it further enacted, that all the male Blacks and people of Colour, between sixteen and fifty years of age, within each and every of the Counties within this Province, shall be formed into one or more Companies as may be thought expedient, and attached to the several Battalions within the district in which they may respectively reside, and shall have such officers to command them as the Governor or Commander in Chief for the time being may think fit to appoint, and shall be considered as the Pioneers of the Battalions to which they may respectively belong, or otherwise as the Commander in Chief may direct, and be subject to the same or the like drafts for actual service as the Militia in general are liable to in times of invasion or imminent danger thereof; and also be liable to perform the same duties and under the same penalties as required and appointed by the fifth section of this Act.

XXXVIII. And be it further enacted, that it shall and may be lawful for the Governor or Commander in Chief for the time being, and he is hereby authorised in case of actual invasion or imminent danger thereof, to direct the building of such a number of boats as in his judgment and discretion may appear requisite, and on such a construction as he shall judge most proper for the purposes of transporting the Militia with greater facility to different parts of this Province, as well as for annoying the enemy; provided that the sum or sums to be expended in building such boats shall not exceed the sum of four hundred pounds.

XXXIX. And be it further enacted, that it shall and may be lawful for the Governor or Commander in Chief for the time being, in any place or places where he may judge it to be necessary or expedient, to cause one or more Company or Companies of Sea Fencibles to be formed, (to be composed of the seafaring people and such as are principally employed on the water,) to belong to and form a part of the Regiments or Battalions of Militia, respectively in the districts in which the same may be formed, and to direct the mode of drilling and instructing the Officers and men, of the same Companies, provided that the time required of the Officers and men thereof shall not exceed that required by this Act, of other persons belonging to the Militia, and for neglect or refusal on the part of either the Officers or men of either of the said Companies of Sea Fencibles to discharge the duty required of them, in compliance with such direction of the Commander in Chief, they shall severally incur the like penalty and penalties as other persons of the like rank in the Regiments or Battalions to which they may belong, and to be recovered and applied in like manner as is herein provided.

XL. And be it further enacted, that whenever the Commanding Officer of the Militia, in any County or District where such boats are provided, shall find it necessary to order the boats so

provided or any other boats or vessels with which he may be furnished, to proceed in repelling the enemy, or to the assistance of any neighbouring district or place, or to be stationed as a watch for the defence of any such place, the Militia of any such County, and particularly the Sea Fencibles, shall on the orders of such Commanding Officer, proceed in such boats accordingly.

XLI. And be it further enacted, that if any Captain or Officer Commanding a Company, shall refuse or neglect to collect within six months after the commission of the offence for which the party shall have become liable, or refuse or neglect to pay into the hands of the Quarter Master, any fine or penalty by him imposed, or any sum or sums by him received, it shall in any such case or cases, be the duty of the Commanding Officer of the Battalion to which such Officer may belong to order and direct such Officer to be prosecuted by the Quarter Master, as well for the money by him received, as that which he has neglected to collect, before any one of His Majesty's Justices of the Peace, provided the same shall not exceed the sum of five pounds; and when the same shall exceed the sum of five pounds; then before any two of His Majesty's Justices of the Peace, and that it shall be the duty of such Quarter Master forthwith to proceed for the recovery of the same.

XLII. And be it further enacted, that all fines not herein before particularly appropriated, shall be paid to the respective Quarter Masters of Battalions, for the purpose of defraying the contingent expences of such Battalions, and that it shall be the duty of the respective Commanding Officers of such Battalions to see that the fines and sums to be collected by this Act be laid out for the purposes herein provided for, and that the Commander of every Battalion, render an account to the Commander in Chief every six months of the application of such fines, and sums of money, and what may be remaining in the hands of the Quarter Master, that the same may be paid into the Province Treasury, if the Commander in Chief shall so direct.

XLIII. And be it further enacted, that whenever the Militia, or any part thereof shall be called into actual service, it shall and may be lawful for the Officer Commanding any Regiment, or Battalion, detachment, or party, to impress boats, men, horses, and teams, as the service may require.

XIV. And be it further enacted, that whenever it shall be rendered necessary by any attack, made or threatened suddenly to be made in any sea port. City, Town, or other place, at or in the harbour of which any Merchant ships or vessels may be lying, the Officer Commanding the Militia is hereby authorised and fully empowered to compel the persons belonging to such ships or vessels to do duty on shore with the Militia Artillery, if any such there be or in any boats or vessels, or with any part of the Militia where they can be the most usefully employed in resisting the attack of the enemy; and that in case of any great emergency which may render the service of Artillerymen necessary, the Officer Commanding any Battalion to which there may be an Artillery Company may require the service of the whole, or a part of such Artillery Company, as he may judge necessary although the numbers required may exceed the proportion of men wanted or required from the rest of the Regiment or Battalion, and so in like manner with any Company of Sea Fencibles or any or either of the flank Companies.

XLV. And be it further enacted, that the Commissioned Officers of the Militia, when on actual service, and doing duty in garrison or in the field, with His Majesty's Regular or Fencible forces,

shall rank with the Officers of such forces as the youngest of their degree, and that the said Officers of the Regular and Fencible forces in this Province, and the Officers of Militia, shall be entitled reciprocally to command, and be subject to be commanded in the same manner as is provided by the Laws of Great-Britain, and the Articles Of War, for the Government of the Regular and Militia forces thereof, and subject to the like pains and penalties on the part of the Officers of Militia, as are herein before prescribed by the thirty first and thirty second sections of this Act. XLVI. And be it further enacted, that if any person be wounded or disabled when on actual service, he shall be taken care of and provided for at the expence of the Province during his disability. XLVII. And be it further enacted, that any person sued for any thing done in the execution of his duty under and by virtue of this Act, may plead the general issue, and under such be at liberty at the time of trial to give any special matter in evidence in like manner as if such matter had been fully and specially pleaded, and that no action whatever shall be maintainable against any such person for any such cause, unless commenced within six months from the time of the act done for which any such action may be brought.

XLVIII. And be it further enacted, that the Governor or Commander in Chief, may at his pleasure constitute and establish one or more troops, or such a number of Cavalry as he may judge expedient for the good of the service, and under such regulations as he may deem proper to make, which regulations so made, and under which the persons shall voluntarily enrol themselves, shall be equally binding as if the same were inserted in this Act, and subject to the like pains and penalties for breach of the same as are herein before provided for others belonging to the Militia.

XLIX. And be it further enacted, that Clerks employed in the Military Offices who have been announced as such in General Orders, shall be altogether exempt from doing Militia duty, and also from the payment of the exempt money.

L. And be it further enacted, that no non-commissioned Officer or Private, shall be liable to be arrested upon any process or execution whatsoever (other than for some criminal matter) while attending any training of the Battalion or Division thereof, to which he may belong, or doing duty upon real service, or marching to or returning from the place appointed for such training or duty, except the original sum due for which he may be arrested, shall amount to the value of twenty pounds.

LI. And be it further enacted, that this Act shall continue and be in force until the end of the next Session of the General Assembly of this Province and no longer.