

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1816. Fredericton, NB: George K. Lugin, Printer to the King's Most Excellent Majesty, 1816.

56 George III – Chapter 6

An Act for the organization and regulation of the Militia of this Province. Passed the 7th March, 1816.

Whereas a well-regulated Militia is essential to the security of this Province.

I. Be it therefore enacted by the President, Council and Assembly, 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 Battalions by Counties, or if any County shall be sufficiently populous to admit of more Battalions than one, the Governor or Commander-in-Chief may divide the same County into two or more Battalions, and affix the limits of the Districts composing such Battalions, and each Company in such Battalion shall consist or 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 Battalion to which they belong; and all Captains or Commanding Officers of Companies, are hereby required to take due care from time to time, to enroll 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 neighbourhood 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 licensed by the Governor or Commander-in-Chief to practice as such; one Miller to each grist-mill, and one Ferry-man to 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 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.

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 a return of the state of their Arms and accoutrements; and the Commanding Officers of Battalions shall furnish to the Commander-in-Chief when ordered, such Rolls, Return, and statements of their Battalions 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 eighth section of this Act: Provided always, that no more than three Sergeants and three Corporals shall be appointed 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 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 inspecting 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 each Battalion together, or in divisions within their respective Districts one day in each year: Provided always, 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 the division thereof to which he may belong.

VI. And be it further enacted, That every Battalion, except those persons above fifty years of age, shall be called out and rendezvous by Companies, two days in every year, interfering as little as possible with seed time and Harvest, for the purpose of disciplining and improving in martial exercises; the times and places of such rendezvous to be appointed by the Commanding Officer of the Battalion and arranged on different days, or in such manner that the Field and Staff Officers may have an opportunity of attending the several Companies in order to introduce uniformity in the manoeuvres and discipline of the Battalion; and the Commanding Officer of any Battalion may assemble any two or more of the Companies together as he may judge expedient: Provided that no Company shall be obliged to go more than twelve miles from the usual place of rendezvous of such Company.

VII. And be it further enacted, That notice of the times and places appointed for assembling the Militia by Battalions or divisions thereof, or by Companies as aforesaid, shall be given in writing by the Captains or Officers commanding Companies, who shall cause such notice 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 Districts 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.

VIII. And be it further enacted, That every Non-commissioned Officer and Private, who shall neglect to appear at any Battalion or Company muster, agreeable to the provisions of this Act, shall be liable to a fine of ten shillings for each and every day that he shall so neglect to appear; and every Non-commissioned Officer and Private, who after having appeared at any Battalion or Company muster, shall at any time during the said days herein-before required of him to attend, be absent from his Battalion or Company without leave from his Commanding Officer, shall for each and every time that he shall be so absent without leave, be liable to a fine of ten shillings. 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: And Provided also, That persons other than substitutes, who shall have been embodied and on actual service for the space of twenty days, and also persons who shall have procured substitutes to perform such actual service, shall not be required to attend any such Battalion or Company muster during the same year in which such actual service shall have been performed.

IX. And be it further enacted, That the fines imposed by the next preceding section, shall be recoverable before the Captain or Officer commanding the Company to which the delinquent may belong, and be levied by distress and sale of the delinquent's Goods, by an order of the said Commanding Officer, directed to a Non-commissioned Officer of the same Company, who is hereby empowered to serve and execute the same, (with the like fees as Constables may receive), rendering the overplus if any, after deducting the costs and charges of such distress and sale to the delinquent, and if no Goods or effects shall be found whereon to levy the said fine, such delinquent shall by warrant, under the hand and seal of such Commanding Officer, be committed to the County Gaol, there to remain for the term of two days, for the line of each days delinquency, and the keeper of any Gaol is hereby authorized 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 entitled to receive as herein-before mentioned: Provided always, That any such delinquent may appeal from the sentence of the Commanding Officer of the Company to which he may belong, to the Commanding Officer of the Battalion, who is hereby authorized and empowered to remit the fine imposed upon such delinquent, either in part or the whole, as the circumstances of the case may require.

X. And be it further enacted, That all orders to be issued by any Commanding Officer of a Company, under and by virtue of the provisions of this Act, for the purpose of levying fines, shall be in the form following, to wit:

“To A. B. Sergeant (or Corporal), you are hereby required forthwith to demand of N. B. the sum of _____ being the amount of a fine imposed upon him, under and by virtue of the Militia Law, and on his refusal to pay the same, to levy and distrain the amount thereof of the Goods and Chattels of the said N. B. and to sell and dispose of the Goods and Chattels so to be distrained within six days, un-less the said sum of _____ together with reasonable charges of taking

and keeping such distress shall be sooner paid, and return to me what you shall do by virtue of this order.

“ Given under my Hand this day of _____ ”

And that all warrants' to be issued by the Commanding Offi–cer of any Company for the imprisonment of any delinquent, shall be in the form following, to wit:

“ To A. B. Sergeant (or Corporal.)

“ Whereas a Fine of _____ has been imposed upon N. B. for an offence against the provisions of the Militia Law, which fine has not been paid, these are therefore to require and command you to convey and deliver into the custody of the keeper of the common County Gaol, the body of the said N. B.; and you the said keeper, are hereby required to receive the said N. B. into your Custody in the said Gaol, and him there safely keep for the space of _____ days, unless the said fine with the accustomed fees shall be sooner paid.

“ Given under my Hand and Seal the day of _____ ”

XI. 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 Chattles of such delinquent, and for want of Goods and Chattles 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 authorized 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 entitled to receive as herein-before mentioned.

And be it further enacted, That the Commanding Officer of any Battalion, shall and may once in each year, and oftener if he deem it necessary, order an inspection of arms and accoutrements of such 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 persons arms and accoutrements, 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 authorized to administer, and shall certify without fee, and every person, who shall refuse to submit to such inspection, or whose arms or accoutrements 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, to be in like manner inflicted and recovered: Provided always, That the Commanding Officer of the Company may in all cases inspect the arms and accoutrements 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 and accoutrements, 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.

XII. 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 may be ordered by the respective Commanding Officers of such Battalions, 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.

XIV. 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 to order such person so offending, to be confined under guard during the muster, and such offender shall be liable to the payment of a fine of not less than five, nor more than forty shillings, to be levied and recovered as is directed in and by the ninth section of this Act.

XV. 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 days 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 offender's Goods and Chattels, and for want of such Goods and Chattels to commit the offender to the County Gaol for the term of four days, unless the fine and costs shall be sooner paid.

XVI. 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.

XVII. 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 offenders, by warrant under the hand and seal of such Commanding Officer, directed to the Adjutant of such Battalion.

XVIII. 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.

XIX. 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 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.

XX. 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, accoutrements 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 his 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.

XXI. 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 exempt 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 ferry-man to each established ferry excepted), shall on or before the first day of September in each and every year, pay to the Quarter-Master ten 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 fifteenth section of this Act: Provided always, and be it further enacted, That any person liable as aforesaid to pay the said sum of ten 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.

XXII. And be it further enacted, That the Ferry-men 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.

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 same manner as prescribed in the next preceding section of this Act, 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 line 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 be 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 it 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 Battalion shall have power (if he in his discretion shall think it necessary or expedient) to call out the Militia and the exempts 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 she 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 Battalion to which he belongs, who is hereby required in either case, forthwith to dispatch 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 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 Gaolors 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, 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 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 hereinbefore mentioned (except established Clergymen and licensed Ministers of the Gospel; one Miller to each grist-mill, and one Ferry-man 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 Battalion, and shall be liable to the same draft by ballot as any other Company in such 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 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, or to be appointed by the Corporation of the City of Saint John to the 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 to do 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 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 on real service—volunteers who offer themselves for such service, being able of body in the opinion of the Field Officers of the 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 Battalion, or of any party or command, not under the degree of a Captain, to order a 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 line 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 such 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 begun or intended, shall not give information thereof to his knowing of such mutiny to his superior Officer, or shall not when thereunto ordered, use his utmost endeavours to suppress such mutiny, or shall desert the Company or Command to which he belongs, or shall disobey orders; if a commissioned Officer, he shall be put under arrest by any superior Officer; if a Non-commissioned Officer or Private, he shall be committed to the next County or any other Gaol, as soon as convenient by order in writing under the hand of the Officer commanding the Battalion, Company or detachment to which such persons 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 exceeding 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 authorized to administer the same to wit:—

“I A. B. do swear that I will duly administer justice according to Law without partiality, favour 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.”

XXXII. 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 to Death, shall be executed by either shooting or hanging the offender, as the same may be directed and ordered in the said warrant, which warrant shall be a sufficient justification to the Officer or Officers to whom the same shall be directed, and to all those lawfully employed under them in executing such sentence: Provided always, that previous to any persons being put to death pursuant to the sentence of a general Court-martial, such sentence and 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 a 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 allowance as the Officers, Non-commissioned Officers, Drummers, Fifers, Buglers and Privates of His Majesty’s Regular troops respectively receive, to be received 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 days pay to defray their expence; to their usual places of residence according to the distance, at a 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 harbor 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 three months 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 ninth 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 authorized 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 purpose of transporting the Militia with greater facility to different parts of this Province, as well as for the 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 sea-faring people and such as are principally employed on the water), to belong to and form a part of the 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 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.

XXI. 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 persons other than British subjects, and who shall have resided for the space of two months in this Province, shall pay to the Quarter-Master of the Battalion in the district in which they shall reside, the sum of thirty shillings each, and the Quarter-Master of such Battalion is hereby authorized to demand and receive the same, and upon neglect or refusal to pay the same, the said Quarter-master is hereby authorized and required to proceed for the recovery thereof in the like manner as is provided by the twenty-first section of this Act: Provided always, That no person not being a British subject shall be liable to pay in any one year, during his residence in this Province, more than the said sum of thirty shillings.

XLIII. And be it further enacted, That all fines, penalties and sums of money whatsoever received, or which shall hereafter be received under and by virtue of the Provisions of this Act, shall be paid into the hands of the Quarter-Masters of the different Battalions, and the Quarter-Master of each Battalion shall every six months render an account of all such fines, penalties and sums of money so by him received, to the Commanding Officer of the Battalion, and forthwith pay the amount thereof into the Province Treasury, rendering therewith an account of the same, subject nevertheless to such appropriations as the Commander-in-Chief shall from time to time direct, for the contingent uses of the respective Battalions.

XLIV. 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 Battalion, detachment, or party to impress boats, men, horses and teams, as the service may require.

XLV. 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 authorized 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 Artillery-men 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 Battalion, and so in like manner with any Company of Sea-fencibles, or any or either of the flank Companies.

XLVI. 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 the 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.

XLVII. 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.

XLVIII. 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.

XLIX. 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 regulation as he may deem proper to make, which regulations so made, and under which the persons shall voluntarily enroll 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.

L. 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.

LI. 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 lie arrested, shall amount to the value of twenty pounds.

LII. 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 to 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 entitled 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 onboard 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 offender's 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 the 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.

LIII. Provided always nevertheless, and be it further enacted, That the Battalions of Militia as at present established in this Province, and the Districts of the several and respective Companies

composing the said Battalions, and the enrolments of the men in such Companies shall continue to be the same as they now are, until altered under and by virtue of this Act.

LIV. Provided also, and be it further enacted, That an Act made and passed in the fifty-third year of His Majesty's Reign, entitled "An Act for regulating the Militia," and also an Act made and passed in the fifty-fourth year of His Majesty's Reign, entitled "An Act to continue and amend an Act, entitled 'An Act for regulating the Militia'" be, and the same are hereby repealed, saving the right of recovery of such fines and penalties as may have been incurred under and by virtue of the same Acts or either of them.