

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1825. Fredericton, NB: George K. Lugin, Printer to the King's Most Excellent Majesty, 1825.

6 George IV – Chapter 18

An Act to repeal all the Laws now in force for the organization and regulation of the Militia, and to make further provision for the same. Passed 17th March, 1825

Whereas several Acts are now in force for Organizing and Regulating the Militia of this Province, and it is expedient to alter and amend some of the provisions of the said Acts, and to consolidate and comprise the same Acts in one.

I. Be it therefore enacted by the Lieutenant-Governor, Council and Assembly, That an Act made and passed in the fifty-sixth year of the Reign of His late Majesty King George the Third, intituled "An Act for the Organization, and Regulation of the Militia of this Province," also an Act made and passed in the third year of His present Majesty's Reign, intituled "An Act to alter and amend an Act intituled 'An Act for the Organization and Regulation of the Militia of this Province,'" also an Act made and passed in the fourth year of the Reign of His present Majesty, intituled "An Act to explain and amend the Laws now in force for the Organization, and Regulation of the Militia of this Province," and an Act, intituled "An Act to provide for calling in the Arms issued to the Militia of this Province," be and the same are hereby repealed, saving the right of recovery of such fines, penalties, and forfeitures, as may have been incurred under and by virtue of the same Acts, or any, or either of them.

II. Be it further enacted, That every Male white Inhabitant, or resident within this Province, from sixteen to sixty years of age (except such as are herein after excepted) shall be enrolled, 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 Respective limits thereof, and may in his discretion form two or more Battalions into Regiments, and each company in any 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 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, shall exceed sixty, and not exceed eighty, the whole may be enrolled in one company: And provided also, that the Members of His Majesty's Council, Members of the House of Assembly, established Clergymen, and Licenced Ministers of the Gospel, all persons exercising Commissions Civil or Military under His Majesty, Officers upon half-pay, Supernumerary Militia Officers now in Commission, Officers of His Majesty's Customs, Revenue and Naval Officers, Physicians and Surgeons, licenced by the Governor or Commander-in-chief, to practice as such, one Miller to each Grist Mill, and one Ferryman 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.

III. And be it further enacted, That it shall be the duty of every captain or officer commanding 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, with every other information respecting the company which he may require; and the commanding officers of Battalions shall furnish to the Commander-in-chief when ordered, such rolls, returns and statements of their Battalions as may be required.

IV. 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 consent of the commanding officers of the Battalion to which he may belong, to appoint Serjeants and Corporals for the company under his command and to displace them and appoint others in their stead, and if any person so appointed shall refuse, or neglect to perform his duty, or shall be guilty of any misbehaviour in his office, he shall for every offence forfeit and pay the sum of forty shillings.

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 Regiment or 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 twenty 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 (persons above forty-five years of age excepted) 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 Regiment, in cases where Regiments are formed, and in other cases 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 the notice of the times and places of 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, who is hereby required to attend to that duty, at least ten days before the respective times of meeting, in three of the most public 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 be 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, agreeably to the provisions of this Act, shall be liable to a fine of ten shillings for each and every day 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 he shall be so absent without leave, be liable to a fine of ten shillings: Provided always, that the fines aforesaid shall not extend to persons who were prevented from attending any battalion or company muster, by sickness or lameness of the individual, or extreme sickness of some part of his family, or 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 year in which such actual service shall have been performed.

IX. 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 may hereafter 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 pay a sum or fine of not less than ten shillings, nor more than twenty shillings, to be recovered in the manner and form herein after directed.

X. And be it further enacted, That the commanding officer of any battalion shall, and may once in each year, and oftener if he thinks 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 person's 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 for 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.

XI. 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 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 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 such goods and chattels to commit the offender to the County Goal for the term of four days, unless the fine and costs shall be sooner paid.

XII. And be it further enacted, That all fines and sums which may be imposed by virtue of the fourth, eighth, ninth, tenth and fifty-fifth sections of this Act, shall be recoverable before the captain or commanding officer of the company to which the delinquent shall belong, or within the District of which he shall reside, the said captain or commanding officer, first summoning the delinquent to appear before him, to shew cause if any cause he has, why such fine or fines should not be imposed, which summons shall be in the form hereinafter prescribed, and the officer serving such summons shall in every case be intitled to receive the same fees from the party summoned, as in other similar cases, and if any delinquent when so summoned to appear, shall neglect to attend to such summons, then the fines imposed as aforesaid, shall be levied by distress and sale of the delinquents goods, by an order of the said commanding officer, to the Constables of the City, Town, or Parish wherein such delinquent shall reside, which Constables are hereby authorized and required to execute the same, and also the warrants hereinafter mentioned, taking the same fees as in similar cases, and rendering the overplus, if any after deducting the cost and charges of such distress and sale, to the delinquent, and if no goods or effects shall be found, whereon to levy any of the said fines, the Constable to whom the execution of the said order may be committed, shall make a return thereof on the back of the order, and thereupon the delinquent shall by warrant under the hand and seal of such commanding officer, be committed to the County Gaol, there to remain one day for each and every five shillings which the said fine may amount to, and the keeper of any Gaol, is hereby authorised and required to receive and keep such delinquent during the time specified in such warrant, and then discharge him on payment of the customary fees: Provided always, that such delinquent shall not be kept in Gaol more than two days beyond the time specified in the warrant, for any default in the payment of fees.

XIII. And be it further enacted, That all summons to be issued, orders of distress, and warrants of commitment, by any commanding officer of a company, under and by Virtue of the provisions of this Act, shall be respectively in the form following:

FORM OF SUMMONS.

To the Constables of _____ and each and every of them.
You are hereby required to summons A. B. that he be, and appear before me, on the _____ day
of _____ at _____ between the hours of _____ and _____ of the
same day, to shew cause if any he has, why a fine should not be imposed upon him under and by
virtue of the Militia Law, for (here state the nature of the offence or delinquency.) Given under my
hand this _____ day of _____ 182__.

WARRANT OF DISTRESS.

To the Constables of _____ and each and every of them.
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, unless 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 _____.

Form of warrant to be issued by the commanding officer of any company, for the imprisonment of
any delinquent.

To the Constables of _____ and each and every of them. Whereas a fine of
_____ has been imposed on N. B. for an offence against the Militia Law, these are therefore
to require and command you to take and arrest the said N. B. and convey and deliver him into the
custody of the Keeper of the common County Gaol, and you the said Keeper are hereby required
to receive the said N. B. into your custody in the said Gaol, and him 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 this _____ day of _____ 182__.

XIV. And be it further enacted, That the Constables shall without unnecessary delay collect and
pay over the fines so collected from any delinquent, to the Quarter-Master of the battalion to
which such delinquent shall belong, or in default of payment, shall be liable to an action of debt, at
the suit of such Quarter-Master, in any Court having Jurisdiction of the same.

XV. And be it further enacted, That it shall be the duty of the Adjutants appointed or to be
appointed by the Commander-in-chief 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 upon certificate of any commanding officer of a
battalion to which any Adjutant may belong, that he has faithfully performed his duty to the entire
satisfaction of the said commanding officer, such Adjutant shall then be entitled to receive from
the Treasury, the sum of fifteen pounds in each and every year, so long as he shall so continue
faithfully to perform his duty; and every Serjeant-Major who shall be appointed to any battalion,
shall in like manner attend to all the duties appertaining to the office of Serjeant-Major, and such
other reasonable duty as the commanding officer of the battalion to which he may belong may

order, and upon certificate from such commanding officer of any battalion, that the Serjeant-Major had well and faithfully performed his duty to the entire satisfaction of the said commanding officer, he shall be entitled to receive each and every year that he may so continue faithfully to perform his duty, the sum of seven pounds ten shillings.

XVI. And be it further enacted, That all Foreigners and Aliens 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 and required to proceed for the recovery thereof, with costs of suit, before any one of His Majesty's Justices of the Peace resident within such district; and upon recovery, the said sum of thirty shillings together with all costs of suit, shall be levied by distress and sale of such Aliens goods and chattels, and for want of such goods and chattels, such Justice shall by warrant under his hand and seal, commit such Alien to the common Gaol of the County, there to remain in close custody without bail or mainprize, until the said fine with costs and all customary fees be paid, and the keeper of any Gaol is hereby authorized and required to receive and keep such delinquent Alien according to the tenor of such warrant, provided that if any such Alien be indigent and unable to pay such fine and costs, and shall make the same appear to the satisfaction of any two Justices of the Peace for the County, such Justices shall and may and they are hereby authorized and required by an order in writing under their hands, to discharge such Alien out of custody, and also to grant such Alien a certificate thereof, and such Alien shall not be held liable to the payment of the said sum of thirty shillings, for the year for which he shall have obtained such certificate: And further provided always, that nothing in this section contained, shall extend or be construed to extend, to any person who shall have resided within this Province for the term of seven years, and shall have taken the oath of allegiance before any officer or person authorized by the Governor or Commander-in-chief to administer the same.

XVII. And be it further enacted, That the captains or commanding officers of companies, shall on or before the first day of June in each year, make out and transmit to the Quarter-Master of the battalion lists of all Aliens within the district of their respective companies, and all such Aliens who have resided two months in the Province, shall report their names and place of residence to the captain or officer commanding the company in the district where they reside, under the penalty of twenty shillings, to be recovered in the manner mentioned in the last preceding section of this Act.

XVIII. And be it further enacted, That the commanding officers of battalions, when thereunto required by the Governor or Commander-in-chief are hereby authorized and required to appoint fit and convenient places within their respective districts, to serve as depots for arms for the use of their respective battalions, and all fines, penalties, and sums of money received under and by virtue of this Act, from any battalion of Militia, shall, after defraying the contingent expences of such battalion, be appropriated by the Commander-in-Chief to such an amount as may be necessary for cleaning and keeping in repair the arms placed in the depots appointed for the use of such Battalion; and in case the said fines, penalties, and sums of money received from any battalion, after paying the contingent expences thereof shall be found insufficient to defray the expence incurred in cleaning and keeping in repair the arms placed in depot for the use thereof, then such further sum as the Commander-in-chief may think proper, shall be paid by the Treasurer

of the Province, to the commanding officer of such battalion, to be by him appropriated to the cleaning and keeping in repair the arms of the same, by warrant of the Governor or Commander-in-chief, by and with the advice of His Majesty's Council; Provided nevertheless, that no greater sum than twenty pounds over and above the fines, penalties and sums of money received from such battalion after deducting the contingent expences thereof, shall be paid to the commanding officer of any battalion in any one year, for the purposes aforesaid.

XIX. And be it further enacted, That every officer shall at all times when ordered out as aforesaid, appear equipped with a sufficient Sword and Belt, under the penalty of forty shillings for each offence, to be recovered by warrant under the hand and seal of any one of His Majesty's Justices of the Peace in the County where the offence shall be committed, upon complaint of the commanding officer of the battalion to which the officer offending shall belong, accompanied with the proof of such officers delinquency.

XX. And be it further enacted, That it shall and may be lawful for the officer commanding any battalion, to appoint a Serjeant-Major, a Quarter-Master-Serjeant, and Clerk for such battalion, who are hereby made liable to a fine not exceeding forty shillings, for any disobedience of orders, or contemptuous and improper behaviour, to be recovered in the same manner as the penalty in the next preceding Section of this Act; and the Serjeant-Major, Quarter-Master, Serjeant, and Clerk, so appointed, shall be exempted from all balloting for actual service.

XXI. 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 without 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.

XXII. 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 by this Act are exempt from being enrolled in the Militia, specifying the age of such persons, and the causes of their respective exemptions, and shall also furnish the Quarter-Master of the battalion with a copy of such list, and 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 the sum of ten shillings, and if not then paid, the Quarter-Master is hereby authorized and required to proceed for the recovery of the Same with costs, before any one of His Majesty's Justices of the Peace where such exempt may reside, who shall levy the same by distress and sale of the offender's goods and chattels, and for want of goods and chattels, commit the offender to the County Goal for the term of two days, unless the said sum and costs shall be sooner paid: Provided always, that any exempt shall be excused from paying the said sum of ten shillings, by

enrolling himself in the company of Militia in the district where he may reside, and when so enrolled, he shall be, and 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.

XXIII. 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 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, to be disposed of as the Commander-in-chief shall from time to time direct, after first paying the contingent expences thereof; and if any Quarter-Master shall neglect to render accounts as aforesaid, or shall neglect to recover the several sums which aliens and exempts are liable to pay yearly under this Act, such Quarter-Master so neglecting his duty, or any other duties required of him under this Act, shall forfeit and pay the sum of Forty shillings for each and every neglect, and in default of Payment of the said sum, shall be liable to an action of debt, at the suit of the commanding officer of the battalion, in any Court having jurisdiction of the same.

XXIV. And be it further enacted, That if any Commissioned officer shall be guilty of disobedience of orders, neglect of duty, of any improper conduct, whether he be in real service or not, he may be tried by a General Court Martial, and it shall and may be lawful for the Governor or Commander-in-chief 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 consist of not less 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 the said Court Martial so ordered, shall have power to administer oaths to witnesses in order to the examination or trial of any of the above offences that shall come before them, and upon conviction, such officer so offending as aforesaid, shall be cashiered by sentence of such Court-Martial, and if any officer, non-commissioned officer or private, shall, when on actual service, begin, excite or join in any mutiny, or knowing any such mutiny begin or intended, shall not give information thereof to his commanding officer, or other superior officer, or shall not when thereunto ordered, use his utmost endeavour 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 goal, as soon as convenient, by order in writing under the hand of the officer commanding the battalion, company, or detachment to which such person so offending, shall belong, and all such offenders shall be tried as soon as convenient by a General Court Martial to be ordered as aforesaid, who shall 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 the imprisonment to exceed 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 any Garrison, Fortress, Post or Guard, to the enemy; 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.

XXV. And be it further enacted, That any non-commissioned officer or private, or exempt, whether on real service or not, who shall disobey orders, or neglect doing his duty, or shall be guilty of any other offence against the provisions of this Act, he shall be confined by the commanding officer of the party or guard to which he may belong; and it shall be lawful for the commanding officer of the battalion, or of any party or command not under the rank of Captain, to order a Court Martial to be forthwith held for the trial of such offender; which Court Martial shall consist of three commissioned officers at least, but when 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 either be stopt out of the pay of such offender, or such offender shall be imprisoned for a term of eight days: Provided always, That no sentence of such Court Martial shall be put in execution, until approved of by the officer ordering the same, and no officer being the accuser shall be a member of it.

XXVI. And be it further enacted, That the Governor or Commander-in-Chief, shall be, and 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 the Act, (Established Clergymen, Licenced Ministers of the Gospel, Millers and Ferry-men excepted) or any part thereof into actual service.

XXVII. 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 Regiment, in cases where Regiments are formed, and in other cases, 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 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 the regiment or battalion as aforesaid 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 reason 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 Goal, 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 Goalers are hereby ordered to receive and safely keep such person so to be committed, during the time herein specified.

XXVIII. And be it further enacted, That 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.

XXIX. 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 attack of the enemy, under the penalty of incurring the forfeiture appointed by this Act, for disobedience of orders.

XXX. 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 of commanding officer of such company to the best of his knowledge, if required, of all persons from the age of eighteen years 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 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 hereinbefore declared to be exempted from being enrolled in the Militia, in manner hereinbefore mentioned (except established Clergymen and licenced 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 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 Goal, 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 Goal, 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 on 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 always, 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 Engines in that City, or Firemen that may be appointed to any Engine already established

or hereafter to be 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 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 Goal, 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.

XXXI. And be it further enacted, that whenever the Governor or Commander-in-Chief shall (for the time being) 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 officer or officers of the regiment or battalion as aforesaid, 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.

XXXII. And be it further enacted, That in all trials by General Courts Martial, the President and every member thereof, before any proceeding 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, 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 twenty shillings per diem during the time he shall be actually 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, 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 bystanders, 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 intitled 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 Lieutenant-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 expences to their usual place 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 two 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 upon 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 Goal 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 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 battalion 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 twelfth 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 his 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 annoying the enemy: Provided that the sum 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 establish one or more artillery companies in any County or District in the Province, and to limit the numbers of which such company shall consist, and 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 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 battalion 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 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 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, battalion, detachment or party, to impress boats, men, horses and teams as the service may require.

XLIII. 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 laying, 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 the Artillery more necessary, the officer commanding any regiment or battalion to which there may be an Artillery Company, may require the service of the whole or part of such Artillery Company as he may judge necessary, although the numbers 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.

XLIV. 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 twenty-fourth section of this Act.

XLV. 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.

XLVI. And be it further enacted, That any person sued for any thing done in the execution of his duty under and by virtue of the Act, may plead the general issue, and under such plea 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.

XLVII. 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 regulation 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 herein before provided for others belonging to the Militia.

XLVIII. 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.

XLIX. 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.

L. And be it further enacted, That the Ferrymen exempted from training in the Militia under this Act, shall upon all occasions when the Militia are called out by regiments, 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 of Ferriage 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 for the County where such offence shall be committed, upon the oath of one credible witness.

LI. And be it further enacted, That no person who has been, or may hereafter be furnished with arms and accoutrements and ammunition by Government, shall use the same for any other purpose than that for which they may have been furnished, under a penalty of ten shillings for each and every offence, to be recovered before any one of His Majesty's Justices of the Peace in the same manner as prescribed in the next preceding section of this Act, and paid to the person prosecuting for the same.

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 or which they are issued, also with a capital letter to denote the company to which they belong, and number to distinguish each firelock to its owner, such brand to be provided by the commanding officer of the regiment or battalion, and all captains, and 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 are 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 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 and 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 whereon 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. And be it further enacted, That when any order shall hereafter be given by or under the direction of the Commander-in-Chief of this Province, for the time being, and for the calling in the arms and accoutrements, or any of them which have been, or may hereafter be issued from His Majesty's Stores for the use of the Militia in any part of this province, and public notice thereof be given by the captains of the companies of the respective battalions to which such order may extend, it shall be the duty of every person or persons having in their possession such arms and accoutrements, forthwith to return all such arms and accoutrements complete, to the Quarter-Masters of their respective battalions in the District where they may reside, and who shall give to such person or person a receipt for the same, and if any person or persons having in their possession such arms and accoutrements as foresaid, shall refuse or neglect to return the same complete, to the Quarter-Master of the battalion in the District where such person or persons may reside, within ten days after such public notice as aforesaid of calling in the same, shall have been given, such person or persons so offending, and also every person or persons persuading, exciting, or endeavouring in any way wilfully to induce any other person so to offend, shall for each and every such offence, forfeit and pay the sum of five pounds, to be recovered upon conviction before any one Justice of the Peace, upon the oath of one or more credible witness or witnesses, and levied by warrant of distress and sale of the offenders goods, rendering the overplus (if any) after deducting the costs and charges of such conviction, distress and sale to the offender, which penalty shall be paid to the Quarter-Master of the battalion in the District where such person or

persons may reside, and to be by him accounted for to the commanding officer of such battalion and applied to the contingent expences of such battalion, and for want of effects whereupon to levy the said fine of five pounds, such offender shall be imprisoned not exceeding twenty days nor less than ten days: Provided always, that no conviction shall take place for any such offence except at the instance and prosecution of the Quarter-Master or Commanding Officer of the battalion to which such arms or accoutrements shall belong.

LIV. And be it further enacted, That it shall and may be lawful for the Governor or Commander-in-chief for the time being, from time to time to commission and appoint proper officers to inspect, instruct and command all the battalions of the Militia throughout the province, or to limit the command and inspection of such officers to a particular number of battalions, or to the inspection and command of all the Militia in particular divisions of the province, or particular Counties or Districts, as may be considered most convenient, fit, and proper; and all such officers when so commissioned and published in General Orders to the Militia, shall be obeyed in all things lawful, and all persons who shall be so placed under their respective command.

LV. And be it further enacted, That every captain or officer commanding a company of Militia, or who may be thereto appointed by the Lieutenant-Governor or Commander-in-Chief, shall as soon as conveniently may be, after the passing of this Act, fix a time and place of meeting for enrolling all the Militia who reside within the limits which shall be assigned for his company, giving due notice publicly, at least ten days before, of the time and place of meeting, and every militia man (not being already enrolled in such company) who, after public notice so given, shall neglect to present himself in person, and give in his name, age and place of residence, or cause the same to be made known in some certain way, to the captain or other officer of the company attending at the time and place so fixed for the meeting of the militia men of the limits of such company, so as that such and every person who shall not within two months after he shall have attained the age of sixteen years, either present himself for enrolment, or cause his name, age, and place of residence to be made known as aforesaid, so that he may be enrolled in the Militia company of the limits wherein his place of residence may be, shall for such neglect, forfeit and pay a fine of ten shillings, and every man within the age hereinbefore described, being a British subject, who shall come to reside in the province, and shall not within four months after his arrival therein, present himself for enrolment, or cause his name, age, and place of residence to be made known as aforesaid, so that he may be enrolled in the Militia company of the limits wherein he shall come to reside, shall for such neglect, forfeit and pay a fine of ten shillings.

LVI. 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.