

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1865. Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1865.

28 Victoria – Chapter 1

An Act relating to the Militia. Passed 31st May, 1865.

Section.

1. Militia divided into two classes
Active and Sedentary.
ACTIVE MILITIA.
2. What composed of.
3. How divided.
4. Strength and distribution of Companies.
5. Commander in Chief empowered to constitute Regiments, appoint Lieutenant Colonels. &c.
6. Formation of Sea Fencible Companies, and rank of officers therein.
7. Drilling and arming same.
8. An Engineer Company may be formed in each District.
9. Volunteer Companies now in existence may be continued; exceptions.
10. Uniform of the several Companies.
11. Commissioned Officers to furnish their own arms, &c.
12. Commander in Chief to order what arms, &c. to be used, Officers receiving them to give Bonds for safe keeping.
13. Protection of arms, how provided for. Effective member, what constitutes.
14. No Corps or Militiaman shall appear armed except on duty.
15. Ammunition to be supplied for drill and ball practice; proviso.
16. Commander in Chief to appoint Drill Instructors.
17. Officers and men of Volunteer Corps, from what exempted.
18. Officers and men of Volunteer Corps if expelled or discharged, liable for taxes, &c.

Section.

51. When Sedentary Militia and Class B and C Active Militia called out, they shall attend with Provincial arms, &c.
52. Commanding Officer may in case of necessity impress men, horses, &c.
53. men belonging to Merchant vessels may be compelled to do duty on shore.
54. Emergency not requiring the whole, Commander in Chief to regulate who shall serve; Volunteers to be first taken.
55. Further regulations as to same.
56. No drafted Militiaman exempt under penalty of \$10, or providing an approved substitute.
57. No man unfit for duty shall be taken.
58. Deficiency of men in Class B, how supplied.
59. Militia to be embodied into Companies and Battalions, and qualified officers appointed.
60. Regulates service of Militiamen taken or drafted.
61. Volunteer Companies may be embodied into Battalions.
62. Subject to the Articles of War, Mutiny Act, &c.; exceptions.
63. How commanded. Officers of Regular Army senior to Militia Officers of same rank.
64. Arms and accoutrements, except of Volunteers, where to be kept.
65. In case of invasion, what power granted to Commander in Chief.
66. Pay to Officers and men.
67. Additional pay, to whom given.

19. No person belonging to any Company of Class A shall leave without two month's notice, unless legally discharged; period of engagement; proviso.
20. Articles of engagement of Volunteer Corps subject to approval of Commander in Chief. Volunteer Corps to be inspected.
21. Men of Class B and C to be enrolled, and assemble for muster one day in each year.
22. Commander in Chief may dispense with annual general muster.

DRILL AND EXERCISE.

23. Companies of Active Militia to be annually exercised.
24. Commander in Chief to designate the Battalions from which the men are to be drawn; period of service.
25. Battalions and Brigades, how formed.
26. Active Militiaman desirous of service to notify Captain of his Company or Adjutant of Battalion. If sufficient do not volunteer, then draft to be made. Draft, how conducted.
27. Substitutes may be provided; proviso; from what exempt.
28. Strength of Company; pay of officers and men; stoppages from, how made; punishments.
29. Expenses of transport, how paid.
30. Officers and men subject to Articles of War; provisos.
31. Officers and men to take Oath of Allegiance.

SEDENTARY MILITIA.

32. How composed.
33. To be enrolled, but no service required in time of peace.

DISTRICTS AND DIVISIONS.

68. In case of being wounded or disabled, how provided for.

GENERAL PROVISIONS.

69. Appointment of Officers, by whom. Officers to have same authority in Militia as those of similar rank in Her Majesty's Service.
70. Officers must be British subjects by birth or naturalization.
71. Officers and men of Volunteer Companies to take oath of allegiance.
72. Existing Commissions to remain in force. No person bound to serve in a lower grade than he once held; exceptions.
73. Non-commissioned officers, how appointed.
74. Commander in Chief to make certain Rules and Regulations.
75. Publication of Orders in Royal Gazette sufficient evidence.
76. Regimental or Battalion Orders, how notified.
77. Orders not necessary to be in writing.
78. Proof of Commission, &c.
78. Money due, how recovered.
80. Quarter Master to give Bonds.
81. Quarter Master to render Accounts yearly.

EXEMPTS.

82. Exempts from enrollment, &c.
83. Exempts from Muster and drill.

PENALTIES & FORFEITURES

84. Obtaining money from men under false pretences, a misdemeanor; penalty.
85. Making false affidavits, &c., perjury.
86. Penalty for refusing to transmit Roll, or making false statement therein.
87. Penalty for neglecting drill, or refusing to obey lawful orders.
88. Penalty for disobeying orders of superior officer, and for disorderly conduct at drill.

34. Province to be divided into Military Districts.
35. Battalion and Regimental Divisions, how formed.
36. Inspecting Officer appointed to every Military District, also Battalion and Regimental Officers.
37. Lieut. Colonel may divide Battalion Division into Company Divisions.
39. Militia Divisions heretofore existing to remain in force until altered.
- ENROLMENT.
40. Certified copy of Roll of Companies in Sedentary and Class B and C Active Militia, shall be transmitted to Adjutant General.
41. Company rolls, how corrected.
- ENROLLING OFFICER. ST. JOHN.
42. Enrolling Officer Eastern side of Harbour St. John; how appointed. Enrolment, when and how taken.
43. General Muster Roll, by whom and how kept.
44. Persons enrolled and unattached may be formed into additional Companies.
45. Disputes, how determined.
46. Penalty for not enrolling.
47. Sums recovered, how disposed of.
- ACTUAL SERVICE.
48. When Commander in Chief may call out Militia.
49. When Lieut. Colonel may call out portion of his command.
50. When local division called out, Volunteers in such division to be included.
89. For not keeping arms, &c. in proper order.
90. Unlawfully disposing of arms and accoutrements, penalty; not to prevent offender being indicted.
91. Purchasing arms, &c.; penalty.
92. Penalties, how recoverd.
93. Enticing or harboring Deserters, penalty.
94. Hindering Militia at drill, penalty therefor.
95. Persosn injuring targets or butts, penalty.
96. Surgeon giving false Certificate, penalty.
97. Violation of Act or Regulations, penalty.
98. For any contravention of this Act not otherwise provided for.
100. Prosecution against Officer, how brought.
101. Time within which prosecution to be brought.
- PROTECTION OF OFFICERS.
102. One month's notice to be given before prosecution.
103. Time when and place where action be brought; Defendant may plead general issue.
104. When Defendant may receive costs.
105. If Plaintiff accepts the money paid into Court, Defendant to pay costs.
106. Officers and men not liable to arrest, exceptions.
- ACCOUNT OF MONEYS.
107. Accounts to be laid annually before Legislature.
- INTERPRETATION CLAUSE.
108. Definition of the word "Corps," &c.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. The Provincial Militia shall be divided into two Classes, Active and Sedentary.

Active Militia.

2. The Active Militia shall consist of all the male inhabitants of the Province of the age of eighteen years and under forty five, not exempt or disqualified by law, and being British subjects by birth or naturalization.
3. The Active Militia shall be divided into three Classes, to be called respectively Class A, Class B, and Class C. Class A shall consist of Volunteer Troops of Cavalry, Field Batteries and Foot Companies of Artillery, and Companies of Infantry armed as Riflemen, to be formed at places to be designated by the Commander in Chief. Class B shall consist of unmarried men and widowers without children; and Class C shall consist of married men and widowers with children.
4. Each Volunteer Troop of Cavalry, and Company of Foot Artillery, shall consist of a Captain, a Lieutenant, a Cornet or second Lieutenant, three Sergeants, three Corporals, three Bombardiers, and not less than forty three Privates. Each Field Battery of Artillery shall consist of a Captain, two first Lieutenants, a second Lieutenant, a Sergeant Major, three Sergeants, three Corporals, three Bombardiers, a Trumpeter, a Farrier, fifty nine Gunners and Drivers,—including Wheelers, Collar Maker and Shoeing Smith, and fifty six horses, exclusive of Officers' horses, and of four spare horses when the Battery is called into actual service. Each Company of Infantry shall consist of a Captain, a Lieutenant, one Ensign, three Sergeants, three Corporals, a Bugler, and not less than forty three Privates.
5. The Commander in Chief shall have power to constitute any number of Volunteer Companies of the Active Militia at any locality, or within any District, (not being less than six nor more than ten Companies,) into a Regiment or Battalion; and to assign or appoint thereto a Lieutenant Colonel, two Majors, one Adjutant, one Paymaster, one Quarter Master, one Surgeon, and one Assistant Surgeon; such Regiment or Battalion shall be subject to the Queen's Regulations for the Army, so far as the same are not inconsistent with the Militia Law of this Province.
6. One or more Volunteer Companies, as Sea Fencibles, may be formed in any County, City, or District, as the Commander in Chief may determine; each Company to consist of a Captain, a Lieutenant, a second Lieutenant, and fifty men; an Officer may be appointed to command the whole, who shall rank as a Lieutenant Colonel of Militia; Captains in the Sea Fencibles shall rank as Majors in the Militia, and first Lieutenants as Captains.
7. The Sea Fencibles shall be armed in such manner as the Commander in Chief may direct, and shall be trained and drilled as well to the use of small arms, as in the management of Gunboats and Vessels, and the working of guns on board of vessels.
8. Volunteer Companies of Engineers may be formed in each Military District; every such Company shall consist of a Captain, a Lieutenant, a second Lieutenant, and such number of men, not exceeding seventy five, as the Commander in Chief may direct; but such Companies shall not be subject to drill or service in time of peace.

9. Every Volunteer Company existing on the twenty second day of April in the present year, shall be held, for the purposes of this Act, to be still existing, and shall be continued as such, subject to all the provisions of this Act, unless its services are dispensed with by the Commander in Chief.

10. The uniforms of the several Troops of Cavalry, Field Batteries, and Volunteer Companies of Infantry, continued or organized under this Act, shall (except when exempted by special order), be of such colour, pattern, and design, as may be ordered by the Commander in Chief; provided that but one, and that a similar colour, pattern, and design, shall be approved for each of them respectively; and such Corps shall conform in all particulars to the orders of the Commander in Chief in reference thereto.

11. Commissioned Officers shall furnish their own arms and accoutrements.

12. The Commander in Chief shall from time to time direct the description of arms and accoutrements to be used by the non-commissioned officers and men of the several Volunteer Companies. Such arms and accoutrements shall be Provincial property, and shall not be taken out of the Province; and the officer or officers receiving them shall give a Bond to the Queen in such sum and with such sureties as the Commander in Chief may direct, for the safe keeping and good order thereof, and for the re-delivery thereof to such officer as may be appointed to receive them, whenever the Commander in Chief may direct such re-delivery.

13. The Commanding officer of every Volunteer Corps shall receive a sum not exceeding two dollars per head for every effective Member of such Corps, to provide for the proper care of such arms and accoutrements, and to meet the expenses of such Corps; but no person not an enrolled Member of the Corps, and who has not attended drill for the space of six months, and not less than fifteen times during that period, shall be considered an effective Member of such Corps.

14. No Corps of the Active Militia, and no non-commissioned officer or private thereof, shall at any time publicly appear armed or accoutred, except when *bona fide* at drill or target practice, or at reviews or inspections, or by order of the Commanding officer: provided that nothing herein contained shall be construed to prevent any Corps of Class A from assembling or being ordered out for drill or exercise by the Officer commanding it, according to any articles of engagement or regulations of such Corps approved by the Commander in Chief; and any such articles, so far as they are not inconsistent with this Act, shall be enforced, and the penalties thereby imposed may be recovered, in the manner hereinafter mentioned, by the person designated for that purpose in such articles.

15. Sufficient ammunition for practice at drill and ball practice shall be supplied to the Volunteer Corps, at the expense of the Province; and proper ranges, with targets and butts for Rifle practice, may be provided at the like expense, in such manner and in such places as the Commander in Chief may direct.

16. The Commander in Chief shall from time to time appoint competent persons to instruct and drill the Active Militia, under such regulations as he may direct; which persons shall receive such remuneration as the Governor in Council may order.

17. The officers, non-commissioned officers and men of the Volunteer Corps, while they continue such and perform their duty, shall be exempt from the payment of City, County, and Parish Rates and Taxes for the then current year, to the amount of six dollars; and a certificate under the hand of the Commanding officer of any such Corps, shall be sufficient evidence of the service in his Corps of any officer, non-commissioned officer, or man.

18. If any officer, non-commissioned officer, or man, shall be expelled or discharged from a Volunteer Corps, he shall be liable to the payment of his taxes, and to the performance of all other duties imposed by law, and from which he would have been otherwise exempt; and upon such expulsion or discharge, it shall be the duty of the officer in command of the Corps, to which such expelled or discharged person belongs, to make a return in writing of the name of such person to the proper Collector of Taxes within ten days after such expulsion or discharge, under a penalty of four dollars for each neglect; and it shall thereupon be the duty of such Collector forthwith to collect from such person such sum of money as he would have been liable to pay if he had not belonged to a Volunteer Corps, performing drill and exercise as aforesaid.

19. No officer, non-commissioned officer or man of any Company in Class A, shall in any case, unless legally discharged, leave the same without giving two months notice in writing to the Commanding officer thereof, of his intention so to do; nor shall he at any time leave the same contrary to the engagement contained in any articles of engagement signed by him, under a penalty of twenty dollars in the case of an officer, and five dollars in the case of a non-commissioned officer or private. The term of engagement shall not be less than two years; but the Commanding officer of any Volunteer Corps may at any time expel from his Company any non-commissioned officer or man who shall be guilty of improper conduct or inattention to duty; provided that the person expelled may within six days thereafter appeal in writing to the Lieutenant Colonel or Commanding officer of the Battalion or Regiment to which he belonged at the time of his expulsion; and it shall be the duty of such Lieutenant Colonel, or Commanding officer, without delay, to appoint a Board of three officers, not connected with the Company to which such expelled person belonged, to investigate the matter and report thereon to the Adjutant General; and the decision of such Board shall be final, if approved by the Commander in Chief.

20. The articles of engagement of all Volunteer Corps shall be subject to the approval of the Commander in Chief; and such Volunteer Corps shall be drilled and exercised at such times in each year, not exceeding ten days, and at such places as the Commander in Chief may order; and such Corps shall be subject to inspection, from time to time, by such person or persons as shall be appointed by the Commander in Chief for that purpose.

21. The men of Class B and Class C of the Active Militia shall be carefully enrolled, and shall, when not exempted, assemble for muster upon one day in each year, at such time and place as the

Commanding officer of each Battalion may direct with respect to each Company therein, interfering as little as possible with seed time and harvest; but no person shall be required to travel more than twelve miles from his usual place of residence, to attend such muster.

22. The Commander in Chief may, by a General Order, dispense with the annual muster of the Active Militia, or any part thereof, either in any one year or until further order, and may in like manner again direct such muster to be held; and all persons belonging to the Militia shall be bound to obey such orders.

Drill and Exercise.

23. Companies of the Active Militia, to the number of at least fifteen, shall be annually exercised at such convenient time and place as may be appointed by the Commander in Chief.

24. The Commander in Chief shall, by General Order, designate the Battalions from which the Companies so to be exercised shall be drawn, and shall appoint the time for assembling and dismissal of such Companies; but no Company shall be compelled to serve for a longer period than twenty eight days, and no Battalion shall be obliged to furnish more than one such Company in each year.

25. The Commander in Chief may form such Companies into Battalions, and such Battalions into Brigades, and appoint officers thereto.

26. Any Militiaman of the Active Militia desirous of serving in any Company called out for exercise under the twenty fourth Section of this Act, shall notify the same to the Captain of his Company District, or to the Adjutant of the Battalion to which he belongs, and such Captain or Adjutant shall forthwith report his name to the Commanding officer of the Battalion. If in any Battalion designated as liable to furnish such Company, a sufficient number of men to form such Company should not volunteer to serve, the Company shall be completed by a draft upon the men of Class A and B belonging to the Battalion; such draft to be conducted by ballot, in such manner as may be prescribed by the Commander in Chief; care being taken that the men so to be drawn shall be taken equally from the different Company divisions of the Battalion.

27. Any man drawn under the provisions of the preceding Section may provide a substitute for service in the Company; provided such substitute is a Militiaman of the Active Militia, residing in the same County as the man for whom he serves, and that he is approved as effective and fit for service by the Commanding officer of the Battalion furnishing the Company. Any Militiaman serving in any such Company either voluntarily or by draft, shall be exempt from similar services during the period of seven years.

28. Every Company furnished for exercise by any Battalion under the foregoing provisions, shall be of the following strength, namely,—one Captain, two Subalterns, one Bugler, and sixty rank and file.

1. The officers of such Company shall be selected by the Commanding officer of the Battalion from among the officers thereof, subject to the approval of the Adjutant General.
 2. The pay of any officer shall not exceed that of a Captain in Her Majesty's Infantry Regiments, to be determined by the Governor in Council.
 3. The non-commissioned officers and privates of such force shall receive, besides rations, such rates of pay as may from time to time be fixed by the Governor in Council, provided that the same shall not be less than fifty cents per day for each man during the period of service, to be paid in such manner as the Governor in Council may direct.
 4. Stoppages from such pay may be made by sentence of any General or Battalion Court Martial, in the case of any officer, non-commissioned officer or private wilfully neglecting to perform his duty, or in cases where stoppages of pay are directed by the Articles of War; and no officer or non-commissioned officer while under arrest, and no private while a prisoner, shall be entitled to pay.
 5. The Commanding officer of any Battalion assembled for drill and exercise under the twenty fourth Section of this Act, shall have power to confine to Barracks or Camp for a term not exceeding three days any Militiaman under his command for wilful neglect of duty, and to stop his pay during such confinement.
29. The Commander in Chief may make arrangements for the transport of such Companies to the place of assembly, and for their return thence; and may pay such reasonable expenses of transport as the Governor in Council may direct.
30. Every officer, non-commissioned officer and man belonging to the Companies called out for exercise under the twenty fourth Section of this Act, shall, while proceeding to and from the place of assembly, and during his continuance there, and until his dismissal after the completion of his term of service, be subject to the Articles of War, and to the provisions of the Act for punishing Mutiny and Desertion, so far as the same are not inconsistent with this Act; provided that no Militiaman shall be subject to any corporal punishment except imprisonment, for any violation of such Mutiny Act or Articles; and provided also, that the Commander in Chief may, by General Order, direct that any of the provisions of the said Act or Articles of War shall not apply to the Militia.
31. Every officer, non-commissioned officer and man assembled under the twenty fourth Section of this Act, shall, within three days after arriving at the place of assembly, take the oath of allegiance in the following form:—
- “I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors.—So help me God.”

Such oath may be taken before the officer commanding the Brigade, or the Captain of the Company.

Sedentary Militia.

32. The Sedentary Militia shall consist of all the male inhabitants of the Province of the age of forty five years, and under the age of sixty years, not exempt or disqualified by law, and being British subjects by birth or naturalization.

33. No actual service or drill shall be required of the Sedentary Militia in time of peace, but they shall be enrolled in the manner hereinafter directed.

Districts and Divisions.

34. The Commander in Chief may, from time to time, by any General Order, divide the Province into such number of Militia Districts and Regimental and Battalion Divisions as he thinks proper, and designate the same by names or numbers; and may also, from time to time, alter such Division, and increase or diminish the number of such Districts or Divisions.

35. The Militia resident in each Battalion Division shall form a Battalion of the Regiment of the Regimental Division in which it lies, and all the Battalions in any Regimental Division shall form the Regiment thereof. To each Battalion a Lieutenant Colonel, and such number of Majors and other officers shall be appointed, as may be necessary.

36. In every Militia District there shall be an Inspecting officer, whose duty it shall be to inspect and report upon the efficiency of the several Regiments, Battalions and Companies within his District.

37. Each Lieutenant Colonel may, by any order made with the approval of the Inspecting Officer of the Militia District, from time to time divide his Battalion Division into Company Divisions; and the Militia resident within each Company Division shall form a Company of the Battalion.

38. All Militia Divisions existing on the twenty second day of April in the present year, shall be held to be still existing, and shall remain in force till altered under the authority of this Act.

Enrolment.

39. The enrolment of the Sedentary Militia, and the men of Class B and Class C of the Active Militia, except on the eastern side of the Harbour of Saint John, shall be made in each Company Division by the Captain or senior officer of the Company for the time being, who immediately after receiving the notice of enrolment from the Commanding officer of the Regiment or Battalion, shall cause notices to be posted up in three or more of the most public places in his Company Division, at least twenty days before the time appointed for such enrolment, requiring all persons liable to

be enrolled to appear personally at the time and place in such notice mentioned, and enroll themselves; or in lieu of personal appearance, to send a written statement to such Captain or senior officer, setting forth their names, ages, and places of abode; and every man liable to be enrolled under the provisions of this Act, and not appearing and enrolling, or not sending in the written statement aforesaid within ten days after the time mentioned in the said notice, or within twenty days after he shall become liable to be enrolled by reason of the alteration of any Militia Division, change of residence, or otherwise howsoever, shall be liable to a fine of not less than two dollars and not more than five dollars.

40. The officer commanding a Sedentary Company, or a Company of Class B or C of the Active Militia, shall, on or before the first day of November in each year, make out a correct roll thereof, and transmit a certified copy thereof to the officer commanding the Battalion, who, within twenty days after the receipt of the same, shall transmit a correct return of the Battalion to the Adjutant General.

41. Each Company Roll shall be corrected, from time to time, as changes occur which affect it; and every householder and resident in the Company Division, and every Assessor, Town Clerk, or other Municipal officer, shall be at all times bound to give to the Commanding officer, or any officer or non-commissioned officer of the Company, such information as may be required to make such corrections, and to answer all such questions as any of them may pertinently put to him for the purpose of obtaining such information: and every Militiaman shall be bound to inform the officer commanding the Company, in writing, of any change of residence or other circumstances affecting such Militiaman, by which the Roll of the Company is affected, whether such Militiaman comes into or leaves the Company Division for which the Roll is made; and if any Assessor, Town Clerk, or other Municipal officer, shall wilfully neglect or refuse on reasonable demand, to give to the Commanding officer, or any officer or non-commissioned officer of the Company, the information required of him under this Act, he shall be liable to a fine of not less than two dollars nor more than five dollars for every offence.

42. The Commander in Chief shall appoint a Regimental Enrolling officer for the Eastern side of the Harbour of the City of Saint John; the said officer, with the approbation of the officer commanding the Militia on said Eastern side, shall appoint a time for taking the enrolment of all persons (not Volunteers) liable to do Militia duty; he shall put up printed notices thereof in the most public places of the City ten days before the time appointed, requiring all such persons liable and not enrolled to attend and enroll themselves, or send a written notice of their names, ages, and places of abode.

43. The said Enrolling officer shall keep a General Muster Roll of all persons so liable to do duty in the said City Militia, in order to which the several Captains or officers commanding Companies in said Militia (not being Volunteers) shall furnish him with lists of the persons belonging to such Companies.

44. The persons so from time to time enrolled and unattached, shall be appointed to such Companies in the said Eastern side as the enrolling officer, with the approval of the Commanding

officer, may direct; and such unattached persons, or any of them, may be formed into Companies, as additional Companies of the City Battalions, or to either of them.

45. If any dispute arises as to which Company any man belongs, the officer commanding the Battalion shall determine, and his decision shall be final.

46. Any person on the said Eastern side not enrolled, and liable as aforesaid to do Militia duty, neglecting to enroll or to send a written notice of his name, age and residence to the enrolling officer, after public notice being given for that purpose as aforesaid, shall pay a fine of four dollars, which shall be recovered with costs before the Police Magistrate of said City, on complaint of the said enrolling officer.

47. All sums of money recovered under the last preceding Section, shall be paid over to the Commanding officer of the Battalions on the said Eastern side for the purposes thereof; and such Commanding officer shall allow the Enrolling officer a reasonable sum for his services, and the necessary expenses actually incurred by him.

Actual Service.

48. The Commander in Chief may call out the Militia, or any part thereof, whenever it is in his opinion advisable to do so by reason of war, invasion, or insurrection, or imminent danger of any of them; and when so called out, the Militia may be marched to any part of the Province, or to any place out of the Province but contiguous thereto, from which an attack is apprehended.

49. The officer commanding any Battalion Division may, upon any sudden emergency of invasion, insurrection, or imminent danger of either, call out the whole or any part of the Militia within his command, until the pleasure of the Commander in Chief is known; and the Militia so called out shall march to such place within or beyond the Division as the said commanding officer may direct.

50. When the Militia of any local division are called out in case of war, insurrection, or invasion, or imminent danger thereof, all Companies of Volunteers in such division shall be included in the order, and shall obey the officer issuing it.

51. Each Sedentary Militiaman and men of Class B and C of the Active Militia, called out for actual service, shall attend at such time and place as may be directed by the officer commanding him, with any arms and accoutrements he has received from the Province.

52. The commanding officer of any Regiment, Battalion, Detachment, or party, when the Militia or any part thereof are called into actual service, may impress boats, men, horses, or teams, as the service may require; and where boats are provided, such commanding officer may direct the Militia under his command to proceed to repel the enemy, or to the assistance of any neighbouring district or place, or to be stationed in any place for the defence thereof.

53. The commanding officer of the Militia, when it shall be necessary by any attack made or threatened suddenly in any sea-port town, or any place where merchant vessels may be lying, may compel the persons belonging thereto to do duty on shore, or in any boat or vessel, or with any part of the Militia.

54. When the Commander in Chief calls out the Militia, and the emergency is not such as to require that the whole of the Militiamen in any Division, or of any Class of Militiamen therein, be taken for actual service, he may from time to time direct the number of men to be furnished from the Militia of the whole Province, or of any Militia Division thereof, over and above the Volunteer Companies therein, which shall always be the first taken for actual service.

55. The number of men to be so furnished shall, in the first instance, be taken from Class B of the Active Militiamen in the several Company Divisions in that part of the Province to which the order applies, and in proportion as nearly as may be to the number of such men in each. Volunteers shall be first taken from each Company, but if the number of Volunteers be not sufficient, then such further number as may be required shall be drawn by lot under the superintendence of the commanding officer of the Company, whose certificate that any man has so been drafted, or volunteered, or consented to serve as substitute for a drafted man, shall be evidence of the fact.

56. No Militiaman drafted for actual service shall be exempt from serving, unless he forthwith pays a penalty of forty dollars, which shall be given to any approved man of the same Class who is not drafted himself for service, and will serve in the place of the Militiaman paying such penalty; or such Militiaman may provide an approved substitute of the same Class and not drafted, to serve in his place; and any Volunteer or substitute, by his consent to serve as such, shall become liable in all respects as if drafted.

57. No man drafted and unfit from bodily infirmity to perform his duty, shall be taken for service.

58. If a greater number of men are required than the whole number of men in Class B of the Active Militia, then the requisite number shall be taken from Class C of the Active Militiamen in like manner; if a greater number be still required than the whole number of Class C, then the requisite number shall be taken from the Sedentary Militia in like manner.

59. The said Militiamen so respectively taken or drafted for actual service shall, by such officers as may be detailed for that purpose by the senior officer of the Battalion from which they are taken, be marched to such place within the Province as the Commander in Chief may appoint, and shall there be embodied into Companies and Battalions, and commanded by such officers as he may direct.

60. The Militiamen so taken or drafted for actual service from Class B and C of the active Militia, shall serve during one year, unless sooner disbanded, and may then be replaced by others taken as aforesaid, and shall not be liable to be again taken until all others of the same class be taken. But the men in Volunteer Militia Corps shall serve for the time for which they have engaged to serve, subject however to be determined on two months' notice as hereinbefore mentioned;

provided that no Volunteer shall leave the service either with or without notice, at any time when the Militia are called out, unless he is regularly discharged or has served out the time for which he engaged.

61. Volunteer Companies so called out for actual service, may be embodied into Battalions, if the Commander in Chief thinks fit so to order.

62. The Militia so called out, and every officer and man belonging to it shall, from the time he has been ordered, taken, or drafted for actual service, be subject to the Articles of War, and to the Act for punishing Mutiny and Desertion, and all other Laws then applicable to Her Majesty's Troops in this Province and not inconsistent with this Act; except that no Militiaman shall be subject to any corporal punishment except death or imprisonment for any contravention of such laws; and except also, that the Commander in Chief may direct that any provision of the said Laws shall not apply to the Militia.

63. Any body of Militia so called out shall be commanded by the officer highest in rank then present, or the senior of two or more officers of equal rank; but officers of Her Majesty's Army shall always be reckoned senior to all Militia officers of the same rank, whatever be the dates of their respective Commissions.

64. The arms and accoutrements for the Militia (except those in actual use by Volunteers,) shall, when such Militia is not called out for actual service, be kept in armories at such places as the Commander in Chief may from time to time direct; and such arms shall be delivered out to the Militia when called into actual service, in such way as the Commander in Chief shall appoint.

65. In ease of actual or threatened invasion, the Commander in Chief may direct the building of such a number of boats for transporting the Militia as he may deem necessary, the expense of building not to exceed four hundred pounds.

66. When the Militia, or any part thereof, are called out into actual service, they shall be entitled to the same pay, according to their respective ranks, as Her Majesty's Regular Troops respectively, to be reckoned from the day of march from rendezvous for actual service until dismissed by the Commander in Chief, each man to receive one day's pay for every fifteen miles travel to his usual place of residence.

67. Each non-commissioned officer, drummer, fifer, bugler and private shall, in addition to the pay prescribed by the last preceding Section, receive from the Provincial Treasury six dollars per month for every month they shall respectively have remained on actual service, not exceeding twenty dollars for each time they shall have been called into actual service, to be paid out of the Treasury.

68. If any Militiaman be wounded or disabled when on actual service, he shall be provided for at the expense of the Province during his disability.

General Provisions.

69. The Commander in Chief shall appoint the officers of the Militia, with such rank as he shall from time to time think necessary; and such officers shall have such rank and authority in the Militia as are held by officers of the corresponding rank in Her Majesty's Service; and their duties shall be the same for the Militia as are prescribed for officers of the army by the Queen's Regulations. Before any person shall be so appointed, he may be required to undergo such examination as to his education and fitness as the Commander in Chief may direct.

70. No person shall be an officer in the Militia unless he is a British subject by birth or naturalization; and every such officer shall, before receiving his Commission, take and subscribe the oath of allegiance; which oath may be taken before the officer commanding the Battalion, and shall be by him transmitted to the Adjutant General.

71. Every officer, non-commissioned officer and private of every Volunteer Corps, shall take and subscribe the oath of allegiance within one month after he shall become a member of such Corps; such oath of allegiance shall and may be administered by the commanding officer of such Corps, (he having previously taken such oath before a Justice of the Peace.)

72. All Commissions in the Militia, and appointments of non-commissioned officers existing on the twenty second day of April, in the present year, shall remain in force, subject in the case of Commissions to be cancelled by the Commander in Chief, and in case of such appointments, by the officer commanding the Battalion; but no person shall be bound to serve in the Militia in a lower grade than he has once held, unless he has resigned his Commission, or has been reduced by sentence or order of some lawful Court or authority; nor shall any person who has been a non-commissioned officer in Her Majesty's Army be bound to serve in the Militia in a lower grade than he held in the Army, unless he has been reduced as aforesaid.

73. All non-commissioned officers in the Militia shall be appointed by the officer commanding the Battalion to which they belong, except in Volunteer Corps, where they shall be appointed by the commanding officer thereof; and such officers shall have power to reduce non-commissioned officers to the ranks.

74. The Commander in Chief shall have power from time to time to make Rules and Regulations for artillery and rifle practice in the Active Militia, and for awarding prizes; for enforcing due discipline in every branch of the Militia, and for defining the details of Regiments, Battalions, Troops, Batteries, and Companies.

75. All Militia Orders issued through or by the Adjutant General, shall be held to be sufficiently notified to all persons whom they may concern, by their insertion in the Royal Gazette, and a copy of the said Gazette, purporting to contain them, shall be *prima facie* evidence of such Orders.

76. All Regimental or Battalion Orders shall be held to be sufficiently notified to all persons, by their insertion in some Newspaper published in the Division, or if there be none, then in some

neighbouring Division, and by posting a copy thereof on the door of any Church, or of some Court House, Mill, or other public place in each Company Division in such Regimental or Battalion Division.

77. It shall not be necessary that any order or notice under this Act be in writing, unless it is herein required that it shall be so, provided it be communicated to the person who is to obey or be bound by it in person, either directly by the officer or person making or giving it, or by some other by his order.

78. The production of a Commission, or appointment, warrant, or order, in writing, purporting to be granted or made according to the provisions of this Act, or of the Act relating to the Militia made and passed in the twenty fifth year of Her Majesty's Reign, shall be prima facie evidence of such Commission, or appointment, warrant, or order, without proving the signature or seal thereto, or the authority of the person granting or making the same.

79. Every sum of money which any person or Corporation is, under this Act, liable to pay or re-pay to the Crown, or which is equivalent to the damages done to any arms or other property of the Crown used for Militia purposes, shall be a debt due to the Crown, and may be recovered in any manner in which such debts may be recovered.

80. The Quarter Master of any Battalion, before commencing his duties, shall give a Bond to the Queen in the sum of eight hundred dollars, with two sufficient sureties to be approved by the Commander in Chief, conditioned for the faithful discharge of his duties, and duly accounting for and applying all moneys and stores received by him as such.

81. The Quarter Master of every Battalion shall, on or before the twentieth day of October in each year, render an account to the Adjutant General of all moneys received and paid out by him during the preceding twelve months, and shall pay over any balance in his hands to the Adjutant General, or as he may direct.

Exempts.

82. The following persons between the ages of eighteen and sixty years shall be exempt from enrolment and from actual service in the Militia, viz:—

The Judges of the Supreme Court:

The Judge of the Court of Vice-Admiralty:

The Clergy and ordained or licensed Ministers of all religious denominations:

The Professors of any College or University recognized by Law:

The Keepers and Guards of the Provincial Penitentiary and Lunatic Asylum.

83. The following persons, although enrolled, shall be exempt from attending muster or drill, except in case of war, invasion, or insurrection, viz:—

The Sedentary Militia:

Members of the Executive Council:

Members of the Legislature:

The Provincial Secretary and Assistant Secretaries:

All persons appointed to any Civil Office in the Province under the Great Seal, except Notary Publics:

Persons duly authorized to practice Physic or Surgery:

Half pay and retired Officers of Her Majesty's Army and Navy:

Postmasters and Mail Carriers:

One Ferryman to each established Ferry:

One Miller to each run of Stones in every Grist Mill:

The Superintendent and Clerks, Station Masters, Baggage Masters, Telegraph Operators, Conductors, Track Masters, Car Inspectors, Locomotive and Car Foremen, Brakemen, Switchmen, Engine Drivers, and Firemen, connected with Railways in use in this Province:

Members of Fire Companies, and of Hook and Ladder Companies, in any City or Town, shall be exempt from duty beyond the limits of the same respectively:

All persons disabled by bodily infirmity, certified by any duly authorized Physician or Surgeon. But such exemption shall not prevent any person from holding a Commission or serving in the Militia if he desires it, and is not disabled by bodily infirmity; and whenever exemption is claimed, whether on the ground of age or otherwise, the burden of proof shall be upon the claimant.

Penalties and Forfeitures.

84. Any officer or non-commissioned officer of Militia of this Province, appointed or to be appointed to the Active Force, or to the Sedentary Militia, who obtains under false pretences, or who retains or keeps in his own possession, with intent to apply to his own use or benefit any of the pay or moneys belonging to any non-commissioned officer or private of any Corps, shall be

guilty of a misdemeanor, and be fined or imprisoned as the Court shall direct, and shall also be dismissed from the Militia.

85. Any person making an affidavit or declaration required in and by this Act, and swearing or declaring falsely therein, shall be guilty of perjury.

86. Any officer refusing or neglecting to make or transmit any roll or return, or copy thereof, required by this Act or by any lawful authority, or wilfully making any false statement in any such roll or return, or copy, shall thereby incur a penalty not exceeding forty dollars for each offence.

87. Any officer or man not exempt from attending drill, exercise, and muster, who neglects or refuses to attend the same at the place and hour appointed therefor, or refuses or neglects to obey any lawful order at or concerning such drill, exercise, or muster, or is guilty of insubordinate or disorderly conduct, shall thereby, (if an officer) incur a penalty of not more than twenty dollars nor less than eight dollars for each offence; and if a non-commissioned officer or private, shall incur a penalty of not less than two dollars nor more than five dollars for each offence.

88. If any officer, non-commissioned officer, or Militiaman, shall, during the hours of drill, exercise, or muster, or of his being under arms, or wearing the arms or accoutrements of the Corps, and going to any place of exercise or assembly of the Corps, under the command of an officer, conduct himself in a disorderly manner, or shall disobey the lawful commands of the officer or officers commanding, he may be ordered by such officer into the custody of any person belonging to such Corps, during the time such Corps shall there remain under arms.

89. If any officer, non-commissioned officer or man shall fail to keep any arms or accoutrements delivered or intrusted to him, in proper order, or shall appear at any drill, parade, or muster with his arms or accoutrements out of order, unserviceable, or deficient in any respect, he shall incur a penalty of not exceeding four dollars for each such offence.

90. If any person shall unlawfully dispose of or remove any arms or accoutrements, or other articles belonging to the Crown, or to the Provincial Government, or refuse to deliver up the same when lawfully required, or shall have the same in his possession, except for lawful cause, (the proof of which shall lie upon him,) he shall be liable to a penalty of twenty dollars for each offence; but this shall not prevent such offender from being indicted and punished for any greater offence if the facts amount to such, instead of being subject to the penalty aforesaid.

91. Any person purchasing any arms, accoutrements, or ammunition belonging to or issued by the Provincial Government, shall for each offence pay a fine of twenty dollars.

92. Any person charged with any Act subjecting him to the penalties imposed by the ninetieth and ninety first Sections of this Act, may be arrested by order of the Magistrate before whom the complaint is made, upon affidavit, shewing that there is reason to believe that such person is about to leave the Province, carrying any such arms, accoutrements or articles with him.

93. If any person shall entice or encourage any Militiaman to desert when on service, or assembled for drill and exercise under the twenty fourth Section of this Act, or shall aid, assist, or harbor any such deserter, knowing him to be such, every such person shall for each offence be liable to a penalty of forty dollars; and on failure of payment shall be committed to gaol for three months, unless the said fine is sooner paid.

94. If any person shall wilfully interrupt or hinder any Militiaman at drill or on duty, or at target practice, or shall trespass upon any lands or range marked out or set apart for that purpose, and refuse to leave on being required so to do, every such person shall be liable to a penalty not exceeding three dollars for each offence, and may also be taken into custody by verbal order of the commanding officer, and detained until such drill, duty or practice is performed for that day.

95. If any person shall wilfully deface or injure any target or butt used or intended to be used for artillery or rifle practice by the Militia, he shall be liable to a penalty not exceeding twenty dollars for each offence.

96. If any Physician or Surgeon shall wilfully give a false certificate under this Act, or if any person shall falsely represent himself to be a Physician or Surgeon in giving any such Certificate, or any writing purporting to be such, he shall be liable to a penalty of twenty dollars.

97. If any person shall wilfully violate any of the provisions of this Act, or any regulation or order lawfully made under it, he shall, when no other penalty or punishment is imposed therefor, be liable to a penalty not exceeding twenty dollars for each offence; provided that instead of proceeding for the penalty, such person may be indicted and punished for any greater offence if the facts amount thereto; and provided also, that nothing herein contained shall exempt any officer, non-commissioned officer or man from being proceeded against and punished in the manner directed by the thirtieth Section of this Act when the Militia is assembled for drill and exercise, or in the manner directed by the sixty second Section hereof when the Militia is called out for actual service.

98. All penalties incurred under this Act, or any regulations, orders, or articles of engagements lawfully made or entered into under it, or under the Act made and passed in the twenty fifth year of Her Majesty's Reign, intituled *An Act relating to the Militia*, when no other mode is prescribed for the recovery thereof, shall be recovered with costs on the evidence of one credible witness, before one Justice of the Peace if the amount does not exceed twenty dollars, and before two Justices of the Peace if the amount exceeds that sum, and in the manner directed by the Revised Statutes, Title xxxvii, Chapter 138, 'Of Summary Convictions;' and any officer, non-commissioned officer or private of any Volunteer Militia Corps, shall be a competent witness in any such case, although the penalty may be applicable to the purposes of such Corps.

99. Penalties when recovered shall, if the offender belongs to the Active or Volunteer Militia, be paid over to the officer commanding the Corps, for the purposes thereof, and shall be applied by him to such purposes, and accounted for to the Adjutant General; and if the offender belongs to the Sedentary Militia, then the same shall be paid over to the Adjutant General for the use of the

Militia: provided that nothing herein contained shall apply to fines and penalties collected under the forty sixth Section of this Act.

100.No prosecution against any officer of Militia for any penalty under this Act shall be brought, except on the complaint of the Adjutant General, or of some officer authorized by him in writing to make such complaint; and no such prosecution against any non-commissioned officer or private of the Sedentary Militia, or of Class B and C of the Active Militia, shall be brought, except on the complaint of the commanding officer or Adjutant of the Battalion, or Captain of the Company to which such non-commissioned officer or private belongs; and no such prosecution against any private or non-commissioned officer of a Volunteer Corps shall be brought, except on complaint of the Captain or commanding officer thereof.

101.No such prosecution shall be commenced after the expiration of six months from the commission of the offence charged, unless it be unlawfully buying, selling, or having in possession, arms or accoutrements delivered to the Militia.

Protection of Officers, &c.

102.No action or prosecution shall be brought against any officer or person, for any thing purporting to be done under the authority of this Act, until at least one month after notice in writing of such action or prosecution has been served upon him, or left at his usual place of abode; in which notice the cause of action, and the Court in which it is to be brought, shall be stated, and the name and place of abode of the Attorney endorsed thereon.

103.Every such action and prosecution shall be commenced within six months after the cause thereof, and shall be tried in the County where the act complained of was done; and the defendant may plead the general issue, and give the special matter in evidence on the trial. If a tender of sufficient amend is made before the action brought, or if a sufficient sum of money is paid into Court before issue joined, the plaintiff shall not recover.

104.If in any such action a verdict is given for the defendant, or the plaintiff becomes non-suit, or discontinues the action, or judgment is given against the plaintiff in any other manner, the defendant shall recover costs as between attorney and client.

105.If the plaintiff elects to accept the money paid into Court in satisfaction of the cause of action, the defendant shall pay the costs up to the time of such acceptance; and in case of non-payment within ten days after demand the plaintiff may sign judgment and issue execution for such costs.

106.No non-commissioned officer or private in the Militia shall be arrested upon any process, (except for a crime or offence punishable by summary conviction,) while attending any training or muster of his Battalion, Division, or Company, or when he is called out for drill and exercise under the twenty fourth Section of this Act, or on actual service, or while marching to or returning from the place appointed for such training, muster, or duty, unless the sum due for which he may be arrested shall amount to eighty dollars.

Account of Moneys.

107. A detailed account of all moneys received and expended under this Act, shall be laid before each Branch of the Provincial Legislature within fifteen days after the opening of the then next Session.

Interpretation Clause.

108. The word "Corps" shall, for the purposes of this Act, mean any troop of cavalry, field battery or foot company of artillery, or volunteer company of infantry, engineers, or sea fencibles, or any Battalion or Regiment of the Militia, whether volunteers or otherwise; and the word "man" or "Militiaman" shall mean any person enrolled or liable to be enrolled in the Militia, under the rank of a commissioned officer.