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T H I R D , A N D P R O R O G U E D O N T H E F I F T H D A Y O F A U G U S T F O L L O W I N G .

C H A P . I .

An Act to Repeal part of the Laws now in force for Raising and Training the Militia of this Province, and to make further Provision for the Raising and Training of the said Militia. [Passed 5th of August, 1812.]

WHEREAS a well regulated Militia is of the utmost importance to the defence of this Province, and whereas the Laws now in force are found insufficient for the Training and Regulating thereof, Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "an Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, "an Act for making more effectual provision for the government of the Province of Quebec, in North America, and to make further provision for the government of the said Province," and by the authority of the same,) That all former Acts in any wise relating to the Raising and Training of the Militia within this Province be, and the same are hereby repealed. Provided always, That nothing herein contained, shall extend, or be construed to extend to annul or make void any Militia Commission or Appointment which may now be in force, or to prevent the completing any proceeding commenced in pursuance thereof.

Preamble.

Former Act relating to the raising & training of the Militia repealed—cases to which this Act does not extend,

II. *Provided also, and be it further enacted by the authority aforesaid,* That nothing herein contained shall extend, or be construed to extend to repeal a certain Act of the Legislature of this Province, passed in the fifty-first year of his Majesty's reign, intituled, "An Act to amend an Act passed in the forty-eighth year of his Majesty's reign, intituled, "An Act to explain, amend and reduce to one Act of Parliament, the several Laws now in being for the Raising and Training the Militia of this Province" or any matter or thing therein contained.

51 Geo. 3. c. 7. still in force.

III. *And be it further enacted by the authority aforesaid,* That from and after the passing of this Act, it shall and may be lawful for the Governor, Lieutenant

Gov &c. to appoint officers to command the Militia—also staff officers—rank of Militia Officers with the use of his Majesty's forces.

Governor, or Person administering the Government of this Province, from time to time, to constitute and appoint by Commission under his Hand and Seal, a sufficient number of Officers to train, discipline and command the Militia of the Province, and also such number of Staff Officers as he shall think necessary, and the Officers so appointed for the Militia, shall rank with such of the officers of his Majesty's Forces as may for the time being serve within this Province, as youngest of their respective ranks. Provided always, That Lieutenant Colonels in his Majesty's Army shall command all Militia Officers whatever.

Militia shall be formed into regiments, number of men to each company.

IV. *And be it further enacted by the authority aforesaid,* That in the several Districts, Counties and Ridings, the Militia shall be formed into Regiments, consisting of not more than ten, nor less than five Companies; two of which Companies shall be stiled Flank Companies, and shall be formed in manner hereafter mentioned; which companies (the Flank Companies excepted) shall consist of not more than one hundred, nor less than twenty private men each.

Returns of persons liable to Militia duty how to be made.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Colonel, Lieutenant Colonel, or Officer commanding any Regiment or Battalion, and he is hereby required to order and direct the Adjutant of such Regiment or Battalion, as often as the same may be necessary, to furnish him with complete Returns of all and every person or persons within the limits of such Regiment or Battalion liable to Militia Duty, specifying their age and place of abode, and the more easily to enable the Adjutant so to do, it shall be lawful for him to call upon any Captain or Officer commanding a Company for a Return of the names of the Men of his Company, and also of the names of such persons as may have lately removed to any place within the limits of his Company, and after he shall have been furnished with such Return as aforesaid, to form the Militia men so returned into Companies, in such manner as to him shall seem most conducive to the interests of the service.

Age & enrollment of persons liable to serve in the Militia—when militia man above fifty years of age called upon to bear arms.

VI. *And be it further enacted by the authority aforesaid,* That every Male Inhabitant from the age of sixteen years to sixty, now resident, or who may hereafter become resident within the limits of any Regiment or Battalion as aforesaid, shall be deemed capable of bearing arms, and shall be considered a Militia-man, and shall within eight days after he shall have attained the age of sixteen years, or become resident within the limits of any such Regiment or Battalion, enroll his name with some one Captain or other officer commanding a company of the said Regiment or Battalion, who is hereby authorized and required to transmit the same with all convenient speed, to the Adjutant thereof, for the information of the Colonel. Provided always, That no person above the age of fifty years shall be called upon to bear arms, except on the day of annual meeting, or in time of war or emergency.

Absence shall not prevent enrollment, & the performance afterwards of militia duty—Militia man to prove his own age, when such proof is necessary.

VII. *Provided also, and be it further enacted by the authority aforesaid,* That the neglect of any person so to present himself for enrollment, shall not be construed to prevent the name of such person being enrolled, and such Colonel, or Officer commanding, is hereby required to enter the name of every such person as shall come to his knowledge, upon the Enrollment of the Regiment or Battalion, and when so entered, every such person shall be subject to perform all and every the like Militia Duties, and under the same penalties as if he had personally presented himself for enrollment. Provided also, That if any difference shall arise between any Captain or Officer and any Militia man touching the age of such Militia-man, it shall be incumbent on the said Militia-man to prove his age.

VIII. *And be it further enacted by the authority aforesaid,* That to every Regiment or Battalion now or hereafter to be formed in this Province, there shall be two Flank Companies, to consist of not more than one third of the strength of such Regiment or Battalion, to be selected and formed from among such Militiamen as shall at any meeting or meetings of such Regiment or Battalion, volunteer for that purpose, and who shall not be above the age of fifty nor less than eighteen, and if it should so happen that a sufficient number of persons shall not at any such meeting or meetings, volunteer for the purpose aforesaid, then and in such case, the deficiency shall be made up by ballot from the remaining Militiamen of such Regiment or Battalion, who shall not be under the age of eighteen nor over the age of forty five years. And also, when it shall appear to the Commanding Officer that a widow, aged or infirm person, shall at the time of making the said ballot, depend for his or her maintenance on a son, a grandson or apprentice, such son, grandson, or apprentice may be excused whilst supporting such widow, aged or infirm person.

Flank Companies in every regt and battalion—how to be formed—what persons shall be excused from being balloted into said companies.

IX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the Governor, Lieutenant Governor, or Person administering the Government, or the person commanding any Regiment or Battalion, as often as occasion shall require, to employ any and every of the said Companies upon any such duty as he shall think necessary.

Govr. &c. as the per-on commanding any regiment or battalion may employ the said companies.

X. *And be it further enacted by the authority aforesaid,* That if any non-commissioned officer or private shall refuse to obey the lawful orders of his superior officer, when employed on Militia duty, or shall quarrel with, or insult by abusive language or otherwise, any officer or non-commissioned officer, whilst on duty, it shall and may be lawful for the Commanding Officer then and there present, to order every such offender forthwith to be taken into custody and tried by a Court Martial, to be composed of three or more officers of the said Militia, who upon proof of the offence by the oath of one or more credible witness or witnesses, shall and may order and sentence every such offender to pay a fine not exceeding, on actual service, twenty pounds, and a sum not exceeding five pounds when the offence shall not be committed on actual service, according to the nature of the offence and the discretion of the Court, and in default of payment, when the Militia shall be embodied, to commit the offender, or keep him in some place of confinement for a term not exceeding six months, or until the amount of such fine be paid; and when the Militia shall not be called on actual service, to commit him to the common gaol of the District for a term not exceeding one month, or until the amount of such fine be paid.

Disobedience of orders by a non-commissioned officer or private, or insulting any officer whilst on duty—offender shall be tried by a court martial, and if found guilty fined, and in default of payment of the fine committed.

XI. *And be it further enacted by the authority aforesaid,* That the Captains of the said Flank Companies shall call out their respective companies for the purpose of being trained, exercised and instructed in military discipline, at least six times in every month, until the men shall be sufficiently instructed in their exercise; and after any company shall be reported to the Commanding Officer of such Regiment or Battalion, to be sufficiently instructed in their duty, they shall be called out once in every month, and the Captains commanding the Battalion Companies of any such Regiment or Battalion, shall in time of War call out their companies at least once in every month, and in time of Peace four times in every year.

Regulations for training of flank companies

XII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Captain commanding any company of Militia, if he shall think it more conducive to the good of the service and the ease and convenience of the men, to divide his company into squads of such number as he shall think proper,

Companies may be divided into squads—a proper person to instruct the men at regt meetings

and that the Captain or other Officer commanding any such company, shall always provide and appoint a proper person to instruct the men to be assembled at each of the said Squad meetings.

Penalty incurred by captain or commanding officer for not calling out his company—how to be recovered.

XIII. And be it further enacted by the authority aforesaid, That, if any Captain or other Officer commanding any company of Militia, shall refuse or neglect to call out his company at the times and in manner herein before directed, he shall forfeit and pay for every such offence, in time of War, a sum of money not exceeding ten pounds, and in time of Peace, a sum not exceeding five pounds, to be recovered upon the oath of one credible witness, in time of War before any Court Martial, and in time of Peace before one or more of his Majesty's Justice or Justices of the Peace, and in default of payment, commit him for a term not exceeding two months, or until the fine be paid.

Gov. &c. in time of war or emergency may call out any of the companies of the militia, & march them to any part of the province—Penalty and punishment for refusal or neglect to obey such orders.

XIV. And be it further enacted by the authority aforesaid, That in time of War, Rebellion, or any other pressing exigency, it shall and may be lawful for the Governor, Lieutenant Governor, or Person administering the government, to call forth any of the different companies of the Militia, and to march them from their respective Counties or Ridings, Town, Townships or Parishes to any part of this Province, there to serve in conjunction with the other Militia, or with his Majesty's Forces, and any person refusing to obey such orders or command, or absconding from, or neglecting to repair to the place he is ordered to, being a commissioned officer, shall upon conviction before a court martial, or two or more of his Majesty's Justices of the Peace, upon the oath of one or more credible witness or witnesses, forfeit and pay the sum of fifty pounds, and be held to be unfit to serve his Majesty as an officer in any military capacity; and being a non-commissioned officer or private, shall forfeit and pay the sum of twenty pounds, and in default of payment for such refusal or neglect, such officer, non-commissioned officer or private, shall be committed to the common gaol of the District for any time not less than six nor more than twelve calendar months, except such person shall satisfy the Colonel or Officer commanding such Regiment or Battalion to which he belongs, that such refusal or neglect arose from sickness, or that he was absent upon leave. Provided, That no Militia-man shall be so called out who shall be above the age of fifty years, unless that the whole of the Militia of any District or Battalion to which he may belong shall be called out and embodied. Provided always also, That the Flank Companies of any such Regiment shall be the first to be called upon actual service. Provided also, That it shall not be lawful to order the Militia or any part thereof to march out of this Province, except for the assistance of the Province of Lower Canada, when the same shall be actually invaded, or in a state of insurrection, or except in pursuit of an enemy who may have invaded this Province; and except also, for the destruction of any vessel or vessels built or building, or any depot or magazine formed or forming, or for the attack of any enemy who may be embodied or marching for the purpose of invading this Province, or for the attack of any fortification now erected, or which may be hereafter erected to cover the invasion thereof.

No militia man to be so called out above the age of 50, unless the whole of the militia of his district or the battalion to which he belongs shall be called out & embodied.

Flank companies shall be first called out on actual service—Cases in which the militia may be called out of the province

Gov. &c may call out detachments of militia and limit and fix the numbers of such detachments.

XV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person administering the government, to call out detachments of the Militia, and to limit and fix the number of men to be called out on such detachments, and in cases of emergency by actual invasion or otherwise, when it may not be practicable to consult the Governor, Lieutenant Governor, or Person administering the government of this Province, it shall and may be lawful for the Officer commanding any Regiment

or Battalion, to limit and appoint the number of men that he shall judge necessary to be called out, and for that purpose to issue his orders to the several officers, and also to direct and authorize any officer, having first obtained a warrant for such purpose from one of his Majesty's Justices of the Peace, to impress such carriages and horses as the service may require, for the use of which the owner or owners thereof, shall be entitled to receive the sum of ten shillings per day for every cart or carriage with two horses or oxen and driver, and seven shillings and six pence for every carriage with two horses or oxen, during such time as the same shall be employed or detained on public service, and the officers impressing such carriages or horses, shall before dismissal of the same, give to the owner or owners thereof, a certificate of the time during which the said carriages or horses have been employed, or been necessarily absent in going from and returning home on such service, and such certificate shall be a sufficient authority for such owner or owners to demand and receive from the Collector of Customs, or Inspector of the District, to be paid out of any public monies in his possession, the sum mentioned in such certificate; & the said certificate shall be a sufficient voucher for the payment of such monies by the said Collector or Inspector, and shall be received as such by the Receiver General of the Province, and shall be transferable by indorsement, and any indorsee shall be entitled to receive the amount of the same from any such Collector of Customs or Inspector, who may have in his possession any public monies. Provided always, That whenever it shall happen that only part of the Militia of this Province shall be called out for actual service, it shall and may be lawful for any person, being of the Militia of the County or Riding that may be so called out, to provide and send an able bodied man to serve in the said Militia in his stead, and such able bodied man shall be taken and received as a proper Substitute for such person, living in the County or Riding, that otherwise would be obliged to serve in the said part of the Militia called out as aforesaid.

XVI. And be it further enacted by the authority aforesaid, That every person who now is enrolled in any Regiment or Battalion of Militia, shall within six months after the passing of this Act, and every person who shall hereafter be enrolled of any Regiment or Battalion of Militia, shall within six months after such enrollment, provide himself with a good and sufficient musket, fusil, rifle, or gun, with at least six rounds of powder and ball, and shall come provided with the same at each and every time when he shall be called out either for the purpose of review, exercise, or actual service; and that every officer shall provide himself with a good and sufficient sword, and shall come provided with the same whenever he shall appear at any Militia Meeting or Parade, and if any person so enrolled, shall neglect or refuse to provide himself, or to come so provided in the case of Review or Exercise, every officer shall forfeit and pay a sum not exceeding ten pounds; and every non commissioned officer or private, the sum of ten shillings; and in the case of actual service, every officer a penalty of twenty pounds, and every non commissioned officer and private a penalty of forty shillings, to be levied in manner hereinafter mentioned. Provided always, That when and so often as any Officer or Militia man shall make it appear to his Captain, or Officer commanding the Regiment or Company, that he has not been able to procure such musket, fusil, rifle, gun or ammunition, it shall and may be lawful for such Captain, or Officer commanding such company, to admit of such excuse, and to certify the same in writing accordingly, in which case such Militia man shall not be liable to pay the said fine of ten shillings in case of review or exercise, or forty shillings in case of actual service.

Cases when the officer commanding any regiment or battalion may do so, and having obtained a warrant from a Justice of the Peace, may impress carriages and horses for the service—Rates of payment for such carriages and horses, and mode of receiving the same.

Power of appointing substitutes in the militia.

Persons enrolled in the militia shall provide themselves with arms, powder and ball.

Penalties for neglecting so to do—excuse when to be admitted for not providing arms &c.

Penalty for selling and destroying arms out of his Majesty's stores, or for buying and destroying the same—mode of conviction—

When the Justice may discharge the offender.

Punishment when embodied for service for using traitorous or disrespectful words against his Majesty, or any disrespectful words against the Royal Family.

Punishment when on duty for behaving with disrespect to the Gov. &c. or speaking words tending to his hurt or dishonor.

Death, or such other punishment as a general court martial shall award for beginning, exciting, causing or joining in any mutiny or sedition on any pretence whatsoever.

Punishment for being present at any mutiny or sedition

XVII. *And be it further enacted by the authority aforesaid, That every person who shall sell or barter any part of the arms or equipments which may be delivered to him out of his Majesty's stores, or who shall destroy the same, and every person who shall knowingly buy, or by barter obtain, or who shall destroy such arms or equipments, shall severally and respectively forfeit and pay a sum not exceeding ten pounds for every offence on conviction thereof, by the oath of any one credible witness before any Court Martial, or before one or more of his Majesty's Justices of the Peace, and in case the person or persons so selling any part of his or their arms or equipments as aforesaid, or the person or persons obtaining the same in manner aforesaid, being thereof convicted as aforesaid, shall refuse or neglect to pay the amount of such fine, it shall and may be lawful for the said Court, Justice, or Justices, by a warrant under their hands and seals, to commit such person or persons to the goal of the County or District where the offence shall be committed, for any space of time not exceeding two months. Provided always, That it shall and may be lawful for the said Court, Justice or Justices, to discharge the person or persons so offending any time before the expiration of the said two months, when the person or persons so convicted as aforesaid, shall tender to the said Justice or Justices the penalty inflicted by this Act.*

XVIII. *And be it further enacted by the authority aforesaid, That at all times when the Militia may be called out and embodied for actual service, the Officers, Non-commissioned Officers and private Men of the several Regiments, Battalions or Companies of Militia, from the time of their being drawn out and embodied as aforesaid, and until they shall return to their respective Towns, Townships, Parishes, or places of abode, remain under the command of the Governor, Lieutenant Governor, or Person administering the government, or other Officers having the command of them, and shall be liable to punishment for mutiny and desertion as hereinafter mentioned, that is to say—That every Officer, Non-commissioned Officer, or Militia-man, who shall presume to use traitorous or disrespectful words against his Majesty's Royal Person, or disrespectful words against any of the Royal Family, if a Commissioned Officer shall upon conviction thereof before a General Court Martial, as herein after is directed to be established, be cashiered; if a Non-commissioned Officer or Private, he shall suffer such punishment as by the sentence of any Court Martial shall be awarded, not extending to loss of life, limb, or whipping.*

XIX. *And be it further enacted by the authority aforesaid, That any Officer, Non-commissioned Officer, or Militia-man, when on Militia duty, shall behave himself with contempt or disrespect towards the Governor, Lieutenant Governor, or Person administering the government for the time being, or shall speak words tending to their hurt or dishonor, shall be punished according to the nature of his offence; if an Officer, by the judgment of a General Court Martial, and if a Non-commissioned Officer or Private, by the judgment of any Court Martial.*

XX. *And be it further enacted by the authority aforesaid, That any Officer, Non-commissioned Officer, or Militia-man, who shall begin, excite, cause, or join in any mutiny or sedition in the Regiment, Detachment, Troop, or Company to which he belongs, or in any other Regiment, Detachment, Troop, or Company, whether of embodied Militia, or of his Majesty's regular or Provincial Forces, in any Camp or Post, or upon any Party, Detachment, or Guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a General Court Martial shall be awarded.*

XXI. *And be it further enacted by the authority aforesaid, That any Officer, Non-commissioned Officer, or Militia-man, being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same, or coming to the knowledge of any mutiny or*

invented mutiny, shall not without delay, give information thereof to his Commanding Officer, shall suffer such punishment as by a General Court Martial shall be awarded.

and not endeavoring to suppress the same, or coming to the knowledge thereof and not giving information to the commanding officer.

XXII. *And be it further enacted by the authority aforesaid, That all Officers, Non-commissioned Officers and Militia-men, who shall be convicted of having Deserted to the enemy or from his post, shall suffer death, or such other punishment as shall be awarded by a General Court Martial.*

Punishment for deserting to the enemy.

XXIII. *And be it further enacted by the authority aforesaid, That any Non-commissioned Officer or Militia-man, who shall quit, or otherwise absent himself from his Regiment, Detachment, Troop, or Company without a furlough from his Commanding Officer, or who shall withdraw himself from the Regiment, Detachment, Troop or Company, into which he has been embodied, in order to attach himself to any other Regiment, Detachment, Troop or Company then on service, whether of the Militia or of his Majesty's regular or Provincial Forces, shall upon being convicted thereof, be punished according to the nature of his offence, at the discretion of any Court Martial, and in case any Officer of the Militia shall knowingly receive and entertain such Non commissioned Officer or Militia-man, and shall not after his being discovered to be a deserter, immediately confine him, and give notice to the Regiment, Detachment, Troop or Company in which he last served, he the said Officer so offending, shall on being convicted thereof before a General Court Martial, be cashiered.*

Punishment for absenting without a furlough

for Militia man withdrawing from his own and attaching himself to any other Regt. — for entertaining and not discovering such person.

XXIV. *And be it further enacted by the authority aforesaid, That if any Officer, Non-commissioned Officer or Militia man, shall be convicted of having advised or persuaded any Officer or Militia man to desert his Majesty's service, he shall suffer such punishment as shall be awarded by a Court Martial, not extending to loss of life or limb.*

Punishment for advising to desert.

XXV. *And be it further enacted by the authority aforesaid, That if any person or persons whatever, shall be convicted before two or more of his Majesty's Justices of the Peace, of having discouraged, dissuaded, or prevented, or having attempted to discourage, dissuade, or prevent any Militia-man from volunteering for actual service, or obeying the lawful commands of his superior Officer, when such Militia man has volunteered, or been ballotted for actual service, every person so offending shall for every such offence, if an officer shall be cashiered, and further fined and imprisoned at the discretion of a General Court Martial, and if a Non-commissioned Officer or Private, shall forfeit and pay a sum not exceeding twenty pounds, and in default of payment, shall be committed to the common gaol of the District where the offender shall be convicted, there to remain for any time not exceeding six months, or till such fine shall be paid.*

Punishment for discouraging or preventing any of the Militia from Volunteering for actual service, or from obeying lawful commands after having so Volunteered.

XXVI. *And be it further enacted by the authority aforesaid, That when the Militia of this Province shall be called out on actual service, in all cases when a General Court Martial shall be required, the Governor, Lieutenant Governor or Person administering the government, upon complaint and application to him made through the Colonel or Officer commanding the body of Militia to which the party accused may belong, shall issue his order to the said Commanding Officer to assemble a General Court Martial, which said Court Martial shall consist of a President, who shall be a Field Officer, and twelve other Commissioned Officers of the Militia. Provided always, That in all trials by General Courts Martial to be held by virtue of this Act, the Governor, Lieutenant Governor, or Person administering the government, shall nominate and appoint the person who shall act as Judge Advocate, and that every member of*

Mode of assembling a General Court Martial.

— of the persons who are to constitute that Court.

— Judge Advocate to be appointed—Oath to be taken by the Members of the Court Martial—by the Judge Advocate—and by witnesses giving evidence

the said Court Martial before any proceeding be had before that Court, shall take the following Oath before the Judge Advocate, who is hereby authorized to administer the same. viz " You A. B. do swear that you will administer justice to the best of your understanding in the matter now before you, according to the evidence and the Militia Laws now in force in this Province, without partiality, favour or affection; and you further swear, that you will not divulge the sentence of the Court until it shall be approved by the Governor, Lieutenant Governor, or Person administering the government of this Province, neither will you upon any account, at any time whatsoever, 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 due course of Law. So help you God." And so soon as the said Oath shall have been administered to the respective Members, the President of the Court is hereby authorized and required to administer to the Judge Advocate or the person officiating as such, an oath in the following words, " You A. B. do swear that you will not upon any account at any time whatsoever, 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 due course of Law. So help you God." And the said Judge Advocate shall, and is hereby authorized to administer to every person giving evidence before the said Court, the following Oath, " The evidence you shall give to this Court Martial, on the trial of A. B. shall be the truth, the whole truth, and nothing but the truth. So help you God." Provided always, That the judgment of every such Court Martial shall pass with the concurrence of two thirds of the Members, and shall not be put in execution until the Governor, Lieutenant Governor, or Person administering the government has approved thereof.

judgment shall pass with the concurrence of two thirds of the Court Martial, and shall not be put in execution, but by the approbation of the Governor, &c.

When, and in what cases, the Militia to be subject to British mutiny acts

The sentence of any Court Martial shall extend to the loss of life or limb, except in some excepted cases.

Non-commissioned officer or private not subject to the punishment of being whipped.

XXVII. *And be it further enacted by the authority aforesaid,* That during the time in which the said Militia shall be embodied for actual service, they and every of them, as well Officers as Privates, shall be liable and subject in cases to which the provisions of this Act do not extend, to all the rules, regulations, pains and penalties of any Act or Acts of the British Parliament, that are or may be in force for the punishment of mutiny and desertion, not contrary to this Act. Provided nevertheless, That no sentence of any Court Martial so to be constituted and established under and by virtue of this Act, shall extend to the loss of life or limb, unless for desertion, mutiny and sedition, traitorous correspondence, or for traitorously delivering up to the enemy any garrison, fortress, post or guard, any thing herein contained, or any statute, law or usage to the contrary notwithstanding. Provided always, That in no case whatsoever, shall any Non commissioned Officer or private Man, for any offence by him committed, be subjected to the punishment of being whipped by the sentence of any Court Martial whatsoever.

XXVIII. *And be it further enacted by the authority aforesaid,* That in all cases where a Militia Officer not on actual service, shall be guilty of improper conduct, or do any thing unbecoming his character as such officer, not otherwise provided for in this Act, the Governor, Lieutenant Governor, or Person administering the government, upon complaint and application made to him through the Colonel, or other Field Officer of Militia, commanding the respective Regiments or Battalions to which the said Officer against whom the complaint is made may belong, or in case the said Colonel or other Field Officer is the party accused, to the next in command, to issue his order to assemble a Court of Enquiry, (which Court shall consist of one Field Officer, who shall be President thereof, together with not less than four other Commissioned Officers)

Court of enquiry, when to be assembled, in what manner to be conducted.

and such Court of Enquiry shall examine witnesses, and take every necessary step to investigate the matter alleged in the complaint against the said Militia Officer and report the evidence in that behalf bro't before them to the Governor, Lieut. Governor, or Person administering the government, for his decision thereon.

—report to the Governor, &c.

XXIX. *And be it further enacted by the authority aforesaid,* That except in time of actual service, the Judges of the Court of King's Bench and Clergy, the Members of the Legislative and Executive Councils and their respective Officers, the Members of the House of Assembly for the time being, and the Officers thereto belonging, his Majesty's Attorney General, Solicitor General, the Secretary of the Province, and all other Civil Officers who shall have been or hereafter may be appointed to any civil office in this Province under the Great Seal of the same, as well as all Magistrates, Sheriffs, Coroners, half-pay Officers, Militia Officers, having served by virtue of any militia commission in any part of his Majesty's dominions (who may not have been removed for any offence as an Officer of Militia, or who may have obtained leave to resign his commission.) the Surveyor General and his Deputies duly appointed, Seafaring Men actually employed in the line of their calling, Physicians, Surgeons, the Masters of Schools, Ferry-men, and one Miller to every grist mill, shall be, and are hereby excused from serving in the said Militia: Provided always, That this Act and the exceptions herein contained, shall not prevent, and it is hereby declared that the same shall not be construed to prevent any and every of the abovementioned person or persons from holding commissions as Officers in the Militia in this Province: Provided always, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person administering the government of this Province, by warrant under his hand and seal, to exempt any of the persons herein before mentioned from being called out on the service aforesaid.

Exemptions from the Militia excepting in time of actual service.

—not to prevent persons so exempted from holding Commissions as Officers of the Militia
Governor &c. may grant exemptions from serving.

XXX. *And be it further enacted by the authority aforesaid,* That the persons called Quakers, Minonists and Tunkers, who from certain scruples of conscience decline bearing arms, shall not be compelled to serve in the said Militia, but every person professing that he is one of the people called Quakers, Minonists or Tunkers, and producing a certificate of his being a Quaker, Minonist or Tunker, signed by the Clerk of the Meeting of such Society, or by any three or more of the people called Quakers, Minonists or Tunkers, shall be excused and exempted from serving in the said Militia: Provided nevertheless, That every such person or persons that shall or may be of the people called Quakers, Minonists or Tunkers, from the age of sixteen to sixty, shall on or before the first day of December in each and every year, give in his name and place of residence, to the Treasurer of the District where he or they shall reside, and pay to such Treasurer to and for the public uses of this Province, in time of war or insurrection, or when any part of the Militia of that District shall be called out on actual service, the sum of five pounds, and in default of such payment, it shall and may be lawful on information or complaint on oath made by the said Treasurer, before any Justice of the Peace of such District, for the said Justice to issue his warrant under his hand and seal, to levy the same by distress and sale of the offender's goods and chattles, returning so much of the said distress as shall exceed the said sum of five pounds, deducting therefrom the charges and all other incidental expences of such distress and sale, as well as the expences of summoning such offender before such Justice, to answer the said information and complaint, and the said sums so levied by the said Justice aforesaid, shall be by him, within the space of two calendar months paid into the hands of the Receiver General, to be applied to and for the public uses of this Province, and for want of such distress, the Justice before whom such person

Quakers, Minonists & Tunkers not to be compelled to serve, but to pay for said exemption,
—proof of being such Quakers, Minonists, and Tunkers.

To give in their names and place of residence to the Treasurer of the District where they reside.

—payments to him to what amount and how to be made and applied.

Punishment for want of such distress.

Proviso for such Quakers, Mennonists and Tunkers as have attained the age of 50 years.

In War, Governor, &c. may employ the militia upon Land or upon the lakes, rivers, & communications in such detachments as he shall think fit
Persons shall be taken by ballot for such detachments.

Governor, &c. may appoint smaller detachments to serve on board of vessels, &c. with great guns and small arms, and station them in any of the Creeks, rivers, &c. and train them to the use of great guns by land and by water.

Governor, &c. may embody Troops of Cavalry and companies of Rifle men.

Method of relieving detachments of Militia and of replacing the same,
Duty to be performed by the Officer Commanding the Regiment from whence such detachments may have been taken.

shall have been convicted, shall commit him to the common gaol of the District until he shall pay and satisfy such sum, together with the reasonable charges incident to such conviction. Provided nevertheless, That no person or persons so convicted, shall in any case be detained in custody longer than the space of one calendar month. Provided also, and it is hereby further enacted, That each and every of the persons usually called Quakers, Mennonists and Tunkers, that have attained the age of fifty years, shall not be liable to the payment of such sum, but in time of war or other emergency, they shall be liable to serve or to the payment of five pounds for being exempted, for every year until they shall have attained the age of sixty years.

XXXI. And be it further enacted by the authority aforesaid, That in time of War when and so often as occasion may require, it shall and may be lawful for the Governor, Lieutenant-Governor or person administering the government of this Province, to employ the Militia of this Province either upon land or upon the lakes, rivers and communications thereof, in such parties or detachments as by him shall be deemed expedient.

XXXII. And whereas by a certain clause in this Act it is provided that it shall and may be lawful for the persons therein mentioned on certain occasions to call out detachments of the Militia, be it therefore enacted by the authority aforesaid, That the persons to serve on such detachments shall be regularly taken from time to time as they shall be required by ballot from such Regiment or Battalion.

XXXIII. And be it further enacted by the authority aforesaid, That when any detachments are formed and called out for public service, it shall and may be lawful for the Governor, Lieutenant-Governor or person administering the government of this Province to divide the same into smaller detachments or parties and appoint them to serve on board Vessels, Boats or Bateaux upon any of the Lakes, Rivers or communications by water of this Province, with great Guns or Artillery as well as with small Arms, as occasion may require; and shall and may appoint them to be stationary in any of the Creeks or harbours of the said Lakes, or in any of the Rivers of the Province, and also to train and exercise the same to the use of great Guns and Artillery as well by land as by water.

XXXIV. And whereas it may be convenient to form one or more Troop or Troops of Cavalry, and companies of Rifle and Artillery-Men, Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant-Governor or person administering the Government of this Province, to form and embody such Troop or Troops of Cavalry, and companies of Rifle and Artillery Men, and to employ the same on such duties as the necessity of the Service may require.

XXXV. And be it further enacted by the authority aforesaid, That at the expiration of five Months from the time of any detachment being called out as aforesaid, the Colonel or other Officer commanding the Regiment from which the said detachment may have been taken shall select by ballot from the Militia-Men of such Regiment a number equal to one third of such detachment, and at the expiration of six Months the said number so selected shall be forthwith marched to the relief of one third of the said detachment, which said one third of such detachment shall be selected by ballot from such detachment so serving as aforesaid at the expiration of six Months from the time of every such detachment being called out; and at the end of six Months from the time of calling out such detachment the Colonel or other Officer commanding such Regiment as aforesaid, shall select by ballot from the Militia Men a number equal to another third of such detachment, and at the expiration of seven Months the number so selected as last aforesaid shall be forthwith marched to the relief of an equal number

of said detachment so to be selected by ballot as aforesaid; and at the end of seven Months from the time of calling out such detachment, the Colonel or other Officer commanding as aforesaid shall select by ballot from the said Militia-Men of such Regiment or Battalion a number equal to the remaining third of such detachment, and at the end of eight Months from the time of calling out such detachment, the number selected as last aforesaid shall be forthwith marched to the relief of the remaining third of said detachment; and that any body or detachment of Militia now serving shall be relieved in like manner; and that after the said Militia Men shall have been selected as aforesaid for the relief of such portion of the said detachments from time to time as aforesaid, they shall be placed on duty and trained and disciplined for not less than eight days previous to their being ordered to march to relieve such detachment as aforesaid; and if any Colonel or any other Commanding-Officer of any Regiment shall neglect or refuse to perform his duty as herein last before-mentioned, he shall on conviction, forfeit and pay the sum of fifty Pounds to be recovered before any Court of general Quarter Sessions for the District in which the offence may be committed, by information to be filed for that purpose.

XXXVI. *And be it further enacted by the authority aforesaid,* That no persons who have been discharged from His Majesty's service as non-commissioned Officers, shall be obliged to serve in any station in the Militia of this Province in time of Peace inferior to that which they held in His Majesty's service, unless having been non-commissioned Officers in the said Militia they may have been reduced according to law.

XXXVII. *And be it further enacted by the authority aforesaid,* That if any Sergeant of Militia when thereunto required by his superior and proper Officer shall neglect or refuse to warn the Militia-Men of the Company to which he belongs to appear at the place of enrollment or exercise, or for any other lawful purpose, he shall for every such neglect or refusal forfeit and pay the sum of forty Shillings to be recovered before any Court-Martial or Justice of the Peace, and in default of payment, to be committed to Gaol for one month, or until such fine be paid.

XXXVIII. *And be it further enacted by the authority aforesaid,* That any non-commissioned Officer or Private Militia-Man who in any engagement with an enemy, or by any accident or casualty which may occur while on or performing any duty in actual service shall be killed and shall leave a widow or child, or children lawfully begotten, his said widow shall be entitled to receive during her widowhood and in case of the death of such widow then the eldest child or guardian for the use of the child or children of such non-commissioned Officer or Private Militia Man until the youngest thereof shall have attained the age of sixteen years an annuity of twenty Pounds lawful money of this Province; and also that every non-commissioned Officer or private of Militia who in an engagement with an enemy or by any accident or casualty which may occur while on or performing any duty in actual service shall be wounded or disabled so as to be rendered incapable of earning his livelihood shall be allowed an annuity of twelve Pounds ten Shillings lawful money of this Province during the time he shall continue under such incapacity.

XXXIX. *And be it further enacted by the authority aforesaid,* That when any part of this Province shall be actually invaded by an enemy, or in case of insurrection or rebellion in any part of the Province it shall and may be lawful for the Governor, Lieutenant-Governor or person administering the government or Officer commanding the Forces for the District or commanding any regiment or detachment, to order any person or persons whom he may have good grounds to suspect of being guilty of treason or treasonable practices and who may be re-

The times of balloting and the numbers to be chosen by ballot.—Penalty if the said Officer shall neglect or refuse the performance of that duty.

Non-commissioned officer discharged from his Majesty's service shall not serve in an inferior station in the Militia.

Penalty if a sergeant neglect to warn a Militia man of his Company to appear at the place of enrollment.

Provision for the widows and children of non-commissioned officers and privates in the Militia when killed in actual service—also for such as are wounded and thereby rendered incapable of earning their livelihood.

In case of invasion, insurrection or rebellion, suspected persons may by order of the Governor, &c. be arrested and carried before three or more of the Justices

of the Peace, &c. who are to examine into the grounds of suspicion, and to discharge such persons, or to commit them to remain in Gaol, until, &c. unless sooner bailed (if bailable) or discharged, &c.

ding within the District where such invasion shall take place, or such insurrection or rebellion exists, to be arrested and detained, and the commanding Officer in any such District shall with all convenient speed convey or cause to be conveyed the person or persons so arrested before three or more of His Majesty's Justices of the peace for the District in which such arrest shall be made if practicable, but if impracticable then before three or more of His Majesty's Justices of the peace for the nearest District in which no invasion shall exist, which said Justices shall have full power and authority and are hereby required to send for such witness or witnesses as the said Justices may deem necessary, and to examine into the grounds of complaint or suspicion against such person or persons so arrested, and to discharge him her or them or by their unanimous voice by warrant under their hands and seals to commit him her or them to the Gaol of the District or other safe place of confinement there to remain without bail or mainprise till the end of the next Sessions of the Provincial Parliament unless sooner permitted to be bailed (if bailable) or discharged by order in writing of one or more of His Majesty's Executive-Council.

Regulations may be made by the Officer Commanding any Garrison, &c. in any District invaded, respecting Inn-keepers, &c. residing in a mile of such Garrison.

XI. *And be it further enacted by the authority aforesaid,* That any Officer commanding any Garrison, Camp, or detachment of His Majesty's Regular or Militia Forces in any District or place which shall be invaded by the enemy, shall have full power and authority to make such rules and regulations under such penalties and restrictions as he shall think necessary relative to such Tavern and Inn-keepers or any persons vending or selling spirituous Liquors as shall reside within one mile of such Garrison, Camp or detachment, and as may be necessary for the good government of the said Forces.

Oath to be administered to the President and Members of Courts Martial other than General Courts Martial—no officer shall sit in any Court Martial unless 21 years of age—no Officer shall be tried but by a General Court Martial—no officer of the Regulars shall sit on any Militia Court Martial.

XLI. *And be it further enacted by the authority aforesaid,* That in all trials by any Court Martial, other than General Courts Martial, the person appointed to be President thereof, shall administer to each of the other Members the following Oath:—"You A. B. do swear that you will administer justice to the best of your understanding, in the matter now before you, according to the Militia Laws of this Province, and the evidence which shall be produced before you, without partiality, favour, or affection. So help you God." And as soon as the said oath shall have been administered by the President to the other Members, any one of the said Members shall administer the oath to the President. Provided always, That no Officer shall sit on any Court Martial who shall not be of the full age of twenty-one years. And provided also, That no officer shall be tried for any offence except by a General Court Martial. And provided also, That no officer of his Majesty's Regular Forces shall sit on any Court Martial for the trial of any Officer or Militia-man serving in the Militia.

No conviction by Justices of the Peace or Courts Martial under this Act, shall be removed by certiorari.

XLII. *And be it further enacted by the authority aforesaid,* That no order of conviction made by any Justice or Justices of the Peace, or Court Martial, by virtue of this Act, shall be removed by certiorari out of the County, Riding, Division, or place wherein such order or conviction shall have been made, into any Court whatsoever, and that no writ of certiorari shall supercede execution or other proceedings upon any such order or conviction so made in pursuance of this Act; but that the execution and other proceedings shall be had and made thereupon, any such writ or writs, or allowance thereof notwithstanding. Provided always, That fines, forfeitures, or penalties to be levied by such order or conviction, shall not exceed the sum of twenty pounds.

Limitation of actions, &c.—General issue may be pleaded &c.

XLIII. *And be it further enacted by the authority aforesaid,* That if any action shall be brought against any person or persons for any thing done in pursuance of this Act, such action or suit shall be commenced within six months next after the fact committed and not afterwards, and shall be laid in the County or place where the cause of complaint did arise, and not elsewhere, and the defendant or

defendants in every such action or suit, may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and if the jury shall find for the defendant or defendants in any such action or suit, or if the plaintiff or plaintiffs shall be non-sued, or discontinue his, her, or their action or suit, after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have the like remedy for the same as any defendant hath in other cases to recover costs by law.

If Plaintiff nonsued, &c. defendant to recover treble costs.

XLIV. And be it further enacted by the authority aforesaid, That every Officer of the Militia of this Province shall, on or before the first day of October next, and every Officer who may after that day be appointed, within ten days after he shall have received his commission, before one or more of his Majesty's Justices of the Peace for the District to which his Regiment or Battalion shall belong, take and subscribe the following Oath to wit, *I A. B. do sincerely promise and swear that I will be faithful and bear true Allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his Person, Crown or Dignity, and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or them. So help me God.*

Oath of Allegiance to be taken by every Officer of the Militia.

XLV. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the Governor, Lieutenant Governor, or Person administering the government of this Province, from time to time, and as often as he shall think it expedient, to order and direct that the Non-commissioned Officers and Privates of any and every Regiment, Battalion, Company, or Body of Militia in this Province, shall be called upon to take and subscribe the said Oath, and that upon receiving any orders for that purpose, it shall and may be lawful for the Commanding Officer of any such Regiment, Battalion, Company, or Body of Militia, and he is hereby required to call upon every non-commissioned Officer or Private of his Regiment, Battalion, Company or Body, to take and subscribe the said Oath before one or more of his Majesty's Justices of the Peace for the District to which such Regiment, Battalion, Company or Body of Militia shall belong, and if any Officer, Non-commissioned Officer or Private, shall refuse or neglect (having been required so to do) to take and subscribe the said Oath in manner hereby directed, upon conviction before one or more of his Majesty's Justices of the Peace, every such person or persons shall be deemed and taken to be an alien enemy, and shall be liable and subject to any law or laws now in force or hereafter to be made respecting or against alien enemies.

Governor &c. may order the Non-commissioned Officers & Privates of the Militia to take the Oath of Allegiance.

Penalty of neglecting or refusing to take the said Oath.

XLVI. And be it further enacted by the authority aforesaid, That in all cases, where any conviction shall be made by any Court of Quarter Sessions, or Justice or Justices of the Peace, for any offence against this Act, such offender, in addition to the amount of such fine, shall be liable to the payment of all reasonable costs and charges, and such costs and charges shall be recovered in like manner as the amount of such fine or forfeiture.

Persons convicted by the Quarter Sessions or Justices, shall be liable to costs.

XLVII. And be it further enacted by the authority aforesaid, That every Militia man who shall be called out and embodied for actual service, shall while actually serving, be exempted from arrest in any civil case for any sum under twenty pounds, and shall not be liable to serve as a Parish or Town Officer, or to perform Statute Labour on the Highways.

Militia man when embodied for actual service, shall not be arrested for any sum under £20 nor obliged to serve as a Parish or Town Officer, or to perform Statute labour on the Highways.

XLVIII. And be it further enacted by the authority aforesaid, That whenever a

Officers to pay all costs

When sentence of death shall be pronounced by any court martial, the person having power to approve of the same may inflict such other punishment as he may think fit.

Continuance of this Act.

When punishment short of death, the offender, if a non-commissioned Officer or private, may be tried by a Garrison or Regimental Court Martial.

Court Martial shall sentence any person to suffer the punishment of death, it shall and may be lawful for the person having power to approve such sentence, to alter the punishment, and to inflict such other as he may think fit.

XLIX. *And be it further enacted by the authority aforesaid,* That this Act shall be and continue in force for two years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

L. *And be it further enacted by the authority aforesaid,* That in any case where the punishment of any offence shall be short of death, the offender or offenders may be tried by a Garrison or Regimental Court Martial, (being a Non-commissioned Officer or private Militia-man.)

CHAP. II.

An Act to repeal an Act passed in the fifty-second year of his Majesty's reign, intituled, "An Act for granting to his Majesty a certain sum of Money out of the Funds applicable to the uses of this Province, to defray the expences of Amending and Repairing the Public Highways and Roads, and building Bridges in the several Districts thereof."

[Passed 5th August, 1812]

WHEREAS an Act passed in the fifty second year of his Majesty's reign intituled, "An Act for granting to his Majesty a certain sum of Money out of the Funds applicable to the uses of this Province, to defray the expences of Amending and Repairing the Public Highways and Roads, and building Bridges in the several Districts thereof," is found unnecessary and inexpedient, Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province," and by the authority of the same, That the above recited Act be, and the same is hereby repealed.

52 Geo. 3d, ch. 2d, repealed.

Commissioners under 52d Geo. 3d, to pay to the Receiver General the Monies in their hands unexpended, together with a Statement on Oath of such Monies as they have laid out. — said Commissioners may retain all such Monies as they have obliged themselves to pay for labour performed on the highways, or for labour already begun but not completed.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the Receiver General to call upon any Commissioner or Commissioners of highways, requiring him or them to return and pay over to the said Receiver General any such sum or sums of money as he or they may have received as such Commissioners, and as shall remain in his or their hands unexpended, and such Commissioner or Commissioners is and are hereby required and directed forthwith to return and pay over such sum and sums of money as shall remain in his or their hands as aforesaid, together with an Account or Statement on oath, of the expensiture of such sum or sums of money as he or they shall state to have been laid out. Provided always nevertheless, That nothing herein contained shall prevent any such Commissioner or Commissioners from retaining in his or their hands, such sum or sums of money as he or they have promised or obliged themselves to pay for any work or labour performed on the highways, and which may at the time of the passing of this Act have been performed, and any work or labour already begun but not completed.