

“ An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s reign, entitled ‘ 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 said above recited Acts shall be, and the same are hereby continued, and be and remain permanent.

1. Geo. 4. c. 4. made perpetual.

CHAP. IX.

AN ACT to repeal, alter and amend, the Militia Laws of this Province.

[Passed 11th May, 1839.]

Preamble.

WHEREAS the provisions of an Act passed in the first year of Her Majesty’s reign, entitled, “ An Act to amend and reduce into one Act the Militia Laws of this Province,” have been found insufficient; *And whereas*, it is necessary to make further provision to place the Militia of this Province upon a more efficient footing: *Be it therefore enacted* by the Queen’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, entitled, “ An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s reign, entitled, ‘ 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of the same, That the said Act, and all the Acts mentioned in the last clause thereof, be and the same are hereby repealed.

Militia Act, 1. Vict. c. 8, repealed.

Lieutenant-Governor may divide Militia into Regiments and Battalions and appoint Officers;

Rank of Officers;

Officer commanding removing from the limits of his Regiment, &c. his command in respect of such Regiment, &c. ceases.

II. *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 Lieutenant Governor, from time to time, to divide the Militia of this Province into such number of Regiments or Battalions as he may deem most conducive to the efficiency of the said Militia; and under his hand and seal to appoint a sufficient number of Lieutenant Colonels, Majors, Captains and other Officers, to train, discipline and command, the said Militia, according to such rules, orders and directions, as shall from time to time be issued by him for that purpose; which Officers of Militia shall rank with Officers of Her Majesty’s Forces serving in this Province as junior of their respective rank: *Provided nevertheless*, that any Colonel, Lieutenant Colonel, or Officer in the command of any Regiment or Battalion of Militia in this Province, having removed, or hereafter removing, from the District in

which the limit of such Regiment or Battalion is situated, to which such Colonel, Lieutenant Colonel or Officer in command, respectively belong, that the authority of such Officer shall cease, in as far as relates to the command or any interference with the duties of such Regiment or Battalion.

III. *And be it further enacted by the authority aforesaid,* That the Militia of this Province shall be composed of the male Inhabitants thereof, not less than Eighteen nor more than Sixty years of age.

Militiamen to be not less than eighteen nor more than sixty years of age.

IV. *And be it further enacted by the authority aforesaid,* That the Officers now commanding Regiments or Battalions of Militia, or who shall hereafter command the same, shall require the Captains, or Officers commanding companies or divisions in such Regiment or Battalion, to call upon the Inhabitants liable to serve within the limits of his company or division to enrol their names as Militiamen, at least once in every year, that is to say, on the fourth day of June, or if that day be upon Sunday, then on the following day, in each year; which enrolment shall be made at a place to be appointed by the Officer commanding the Regiment or Battalion: *Provided always,* that no person shall enrol himself as aforesaid unless such person is a natural born Subject of Her Majesty, or a Subject of Her Majesty naturalized by an Act of the British Parliament, or become such by an Act of the Parliament of this Province, or a person who has taken the oath of allegiance.

Persons liable to Militia service to enrol themselves every fourth of June;

At place appointed by Commanding Officer;

Subjects of Her Majesty only required to enrol themselves.

V. *And be it further enacted by the authority aforesaid,* That every person liable to serve in the Militia of this Province, residing within the limits of any Regiment or Battalion, shall appear at the place so appointed by the Officer commanding such Regiment or Battalion, and there enrol his name as a Militiaman, and if a question shall arise as to the age of any person required to enrol himself, it shall be incumbent on him to prove his age.

Incumbent on persons liable to service to appear at place appointed, and if necessary to prove his age.

VI. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the Lieutenant Governor to call out and embody the Militia of this Province, or any portion thereof, in a time of actual War with a Foreign Power; to put down or suppress Rebellion; to repel Invasion; or for any purpose connected with the preservation of the public peace; by Ballot, or in such other manner as to him shall seem best; and to continue the Militia so called out embodied for actual service so long as in his opinion may be necessary, for a period not exceeding Six Months at any one time; and any person refusing to obey such order or command, or absconding from, or neglecting to repair to the place he is ordered to,

Lieutenant-Governor may call out Militia in time of War, Rebellion or Invasion, and continue them embodied so long as necessary;

Not exceeding six months at one time;

Penalty for neglecting or refusing to obey such call;

shall as soon as possible be brought to trial before a Court Martial as hereinafter provided, and being a Commissioned Officer shall forfeit and pay the sum of Fifty Pounds, and be held to be unfit to serve Her Majesty as an Officer in any Military capacity, and being a Non-Commissioned Officer or Private shall forfeit and pay a sum not exceeding the sum of Twenty Pounds, in the discretion of the said Court: 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 more than six months, in the discretion of such Court, 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; and that all such penalties shall be levied and collected in the same manner as penalties are authorized to be levied and collected, by the authority of this Act, for disobedience of orders in time of peace: *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, or of any City within the same duly chartered by any Act of the Parliament of this Province, 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, Riding, or City, that would otherwise be obliged to serve in the said part of the Militia called out as aforesaid: *Provided nevertheless*, that Colonels, Lieutenant-Colonels, or Officers in the command of Regiments or Battalions, and all Officers of Militia shall reside within the District in which the Regiment or Battalion is or has been situated, to which such Officers respectively belong; and that any Colonel, Lieutenant-Colonel, or Officer in the command of any Regiment or Battalion of Militia, or any Officer having removed, or hereafter removing from the District in which the limits of the Regiment or Battalion of Militia, under the command of such Colonel, Lieutenant-Colonel, or Officer, is situated, that the authority of such Colonel, Lieutenant-Colonel, or Officer shall cease, in as far as relates to any interference with the command or duties appertaining to the Officer in command of any Regiment or Battalion of Militia in this Province.

Imprisonment for default of payment;

How penalties to be collected;

Person called upon to serve may provide substitute;

Officers to reside within the limits of their respective Regiments, &c.;

Officers leaving the limits of their respective Regiments, &c. cease to command therein.

Militia may be marched for service to Lower Canada or to any other place where preparation making for invading this Province.

VII. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant-Governor to embody the Militia of this Province, or such portion thereof as he may think necessary and expedient, and to march the same into the Province of Lower Canada, at any time when the same shall be actually Invaded, or threatened with Invasion, or in a state of Insurrection, or to march the said Militia, or any

portion thereof, to any place without the limits of this Province, for the attack of any enemy that may have invaded, or may be marching or collected for the purpose of invading this Province, or for the destruction of any Vessel or Vessels built or building, or any Fort, Depot, or Magazine, formed or forming by any Foreign Power at War with our Sovereign Lady the Queen, Her Heirs or Successors, from whence the Invasion of this Province may be apprehended.

VIII. *And be it further enacted by the authority aforesaid,* That the Colonel, or Officer commanding any Regiment or Battalion of Militia within this Province, shall have power and authority to assemble his respective Regiment or Battalion two days in each year, and oftener if thereunto directed by the Lieutenant Governor, at such place or places as he shall appoint, for the purpose of drill and inspection; and that the Captains or Officers in command of Companies, shall cause a verbal or written notice to be given to each Militiaman within the limits of their Companies, either personally, or by leaving the same at their respective places of residence, of the time and place when such drill and inspection is to take place, at least four days previous thereto, which notice shall be served as aforesaid by such Non-Commissioned Officer as the Captain or Officer commanding the Company shall appoint and direct.

Officers commanding may assemble Militia two days in each year for the purpose of drill and inspection;

Notice to Militiamen of time and place of assembling;

Four days previous thereto.

IX. *And be it further enacted by the authority aforesaid,* That all Officers of Militia appointed under and by virtue of this Act, shall hold their Commissions during pleasure.

Officers to hold their Commissions during pleasure.

X. *And be it further enacted by the authority aforesaid,* That on or before the fourteenth day of June, in each and every year, the Colonel or Officer commanding any Regiment or Battalion of Militia, in this Province, shall transmit to the Adjutant General of the Province, a return of the effective strength of the same, the vacancies that may have occurred from any cause among the Officers of such Regiment or Battalion, and the names of persons recommended to fill such vacancies, together with such further information as the Lieutenant Governor shall from time to time, direct to be included in such Return.

Annual Returns to Adjutant-General on or before 14th of June.

XI. *And be it further enacted by the authority aforesaid,* That the Lieutenant Governor shall have full power and authority to appoint persons belonging to his personal Staff or on the Staff of the Militia, to such Militia rank as he may think proper to confer, not exceeding the rank of Lieutenant-Colonel, independent of and apart from any rank that may be held by such person, in any Regiment or Battalion of Militia, in this Province.

Lieutenant-Governor may appoint Officers of his Staff to Militia rank.

Lieutenant-Governor may prescribe uniform.

XII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant Governor, from time to time, to prescribe the Uniform to be worn by the Militia of the Province when on duty, or assembled for drill or inspection.

Officers to provide themselves with uniform, &c. within time limited or be superseded.

XIII. *And be it further enacted by the authority aforesaid,* That any Officer of Militia who shall not, within one year from the time the Lieutenant Governor shall prescribe the Uniform for the respective Regiments or Battalions, provide himself with such Uniform, including a Sword, and who shall appear at any Muster or Inspection of the Regiment or Battalion to which he belongs without being dressed in such Uniform and Sword, or who shall not have provided himself with such books of instruction as may be hereafter required by any Militia General Order, shall be, and he is hereby declared superseded.

Lieutenant-Governor may appoint Regiments, &c. of Dragoons, Artillery or Light Infantry;

XIV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant Governor, in his discretion, to constitute Regiments or Battalions of Dragoons, Artillery or Light Infantry, separate and distinct from other Regiments or Battalions, in the several Districts of this Province, to be selected from the different Regiments or Battalions therein, as the Lieutenant Governor may direct: *Provided nevertheless,* that nothing in this clause contained shall be construed to prevent the formation of Companies of Artillery, or Troops of Dragoons, within the limits assigned to the several Regiments or Battalions of Militia, to be independent of, or attached to such Regiments or Battalions, according to such orders or directions as the Lieutenant Governor may from time to time make in that behalf.

Without prejudice to the formation of Artillery Companies or Troops of Dragoons within limits of Regiments or Battalions, &c.

Regiments of Dragoons, &c. subject to rules and orders as other Militiamen

XV. *And be it further enacted by the authority aforesaid,* That Regiments or Battalions of Dragoons, Artillery or Light Infantry, so constituted as aforesaid, shall be subject to such orders, rules and regulations, with respect to Drill, Inspection, or other duty, as from time to time, may be issued by the Lieutenant Governor, for their efficient organization for actual service, apart from the other Regiments or Battalions of Militia in the Province.

Penalty on Officers guilty of disobedience, &c. during time of peace.

XVI. *And be it further enacted by the authority aforesaid,* That any Officer of Militia, who, in time of peace shall be guilty of wilful neglect or disobedience of orders, or of any act of insubordination in the performance of his duty, shall, on conviction, be liable to pay a fine, not less than Five Pounds, nor more than Twenty Pounds, besides costs of conviction, or to be dismissed the service, at the discretion of the Court before whom he may be tried.

XVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant Governor, in his discretion, to form Rifle Companies within the limits assigned to the several Regiments or Battalions of Militia, to be independent of or attached to such Regiment or Battalion, according to such orders or directions as the Lieutenant Governor may from time to time make in that behalf.

Lieutenant-Governor empowered to form Rifle Companies.

XVIII. *And be it further enacted by the authority aforesaid,* That any Non-Commissioned Officer or Private Militia-man, who in time of peace shall wilfully refuse or neglect to enrol himself as herein-before provided, or who shall be guilty of wilful neglect or disobedience of orders, or of any act of insubordination or misconduct while on parade or engaged in the performance of Militia duty, shall on conviction, pay a fine of not less than Five Shillings, nor more than Five Pounds, over and above the costs of conviction, and in default of payment, shall be liable to imprisonment in the common Gaol of the District, for a term not less than three days, nor more than one month.

Penalty on Non-Commissioned Officers and Privates for disobedience or neglect of duty in time of peace.

XIX. *And be it further enacted by the authority aforesaid,* That the Colonel or Officer commanding any Regiment or Battalion of Militia in this Province, shall have full power and authority, in time of peace, to assemble a Court Martial, to be composed of not less than three Officers of the Regiment or Battalion under his command, one of whom at least shall be of the rank of Captain, and which Court shall have full power and authority to hear evidence, and investigate all charges that may be brought against any Non-Commissioned Officer or Private Militia-man, for any offence or neglect of duty contrary to the Provisions of this Act, and to give such Judgment thereupon, as they in their discretion shall think just and reasonable, the same being in accordance with and authorized by the enactments herein contained.

Officers commanding may assemble Courts Martial in time of peace for trial of offences against this Act by Non-Commissioned Officers or Privates.

XX. *And be it further enacted by the authority aforesaid,* That the Colonel or Officer commanding any Regiment or Battalion, shall direct a notice to be given to the Captains or Officers commanding Companies under his command, of the time and place where such Court shall be held, at least three days before the time for its assembling.

Notice to Officers of time and place of holding such Court.

XXI. *And be it further enacted by the authority aforesaid,* That after receiving such notice, and at least four days before the meeting of such Court, Captains or other Officers commanding Companies, shall cause a notice in writing to be served on any Non-Commissioned Officer or Private Militia-man belonging to the Company under his command,

Four days notice in writing to persons against whom charges are to be preferred;

against whom it may be intended to prefer any complaint of neglect of duty or misconduct of such Non-Commissioned Officer or Private Militiaman, requiring him to appear to answer such complaint; which notice, signed by the Captain or Officer commanding such Company, may be in the words or to the effect following: "You A. B. are hereby required to attend before the Court appointed for the trial of Militia offenders belonging to the — Regiment of Militia, which will assemble at — on the — day of —, at ten o'clock forenoon, to answer a charge (for not enrolling yourself as a Militiaman, or for not attending Militia muster, or for insubordination, as the case may be.) Dated this — day of —. C. D. Captain or Officer commanding — Company — Regiment, Militia."

Form of notice.

No person to be condemned unless due service of such notice proved.

XXII. *And be it further enacted by the authority aforesaid,* That no Non-Commissioned Officer or Private Militiaman, shall be condemned or be liable to answer any charge preferred against him, unless it be proved at the time appointed for the trial of such charge, that he had been served with a notice as hereinbefore provided, at least four days before the meeting of the said Court, to appear and answer the charge to be preferred against him.

Court may command attendance of witnesses, and commit for neglect.

XXIII. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the said Court to command the appearance and to examine Witnesses upon oath relative to any complaint that may be brought before them, and to commit the person summoned as a Witness for non-attendance, as in ordinary cases of contempt.

Allowance to Officers composing the Court;

XXIV. *And be it further enacted by the authority aforesaid,* That the Officers composing the said Courts Martial and Courts of Inquiry authorized to be assembled under and by virtue of this Act, shall be entitled to receive five Shillings for each day they shall be engaged as Members of the said Court; and the person officiating as Judge Advocate shall be entitled to receive twenty Shillings per day for each day he shall be so engaged; and that all Witnesses summoned to attend such Court or Courts shall be entitled to receive two Shillings and Six-pence per day each for their attendance.

And to the Judge Advocate;

And witnesses.

Fees to persons serving notices, &c.;

XXV. *And be it further enacted by the authority aforesaid,* That the person who shall serve notices as hereinbefore required shall be entitled to receive Four-pence for each mile he shall necessarily travel to effect such service; and that for every Fine levied and collected under a Warrant from the said Court, the person levying the same shall be entitled to the same fees as are now paid for services of a like nature to any Constable.

or Peace Officer in this Province: *Provided always*, that it shall be in the discretion of the said Court to appoint such person as they may think fit to execute the Warrants or other Process issued by them.

Court may appoint person to execute process.

XXVI. *And be it further enacted by the authority aforesaid*, That the Judgments of the said Court, upon being approved by the Colonel or Officer commanding the Regiment or Battalion, shall be carried into effect, and the fines imposed by them shall be levied, upon a Warrant signed by the President of the Court, in the same manner as the judgments of the Justices of the Peace are carried into effect under the provisions of an Act passed in the fourth year of His late Majesty's reign, entitled, "An Act to provide for the Summary punishment of Petty Trespasses and other offences."

Judgments to be carried into effect in same manner as judgments under Summary Punishment Act. 4. W. 4. c. 4.

XXVII. *Provided always, and be it further enacted by the authority aforesaid*, That all Officers who may be appointed to compose any Court for the Trial of any offender or offenders under this Act shall before proceeding to the Trial of such offender or offenders take the following Oath: "I do sincerely promise and swear that in all such matters as shall be brought before me under the Militia Laws of this Province I will faithfully act according to the best of my judgment agreeably to the said Laws without favour or partiality to any person; so help me God;" which Oath may be administered by any one Member to the other Members of the said Court.

Officers composing the Court to be sworn:

Form of oath.

XXVIII. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant-Governor, if he thinks proper, when any complaint may be made against any Officer of the Militia, or when any application may be made to him to assemble a Militia General Court Martial according to the provisions of this Act, to appoint a Court of Inquiry consisting of at least three Officers of the Militia to examine into and report upon any such complaint.

Lieutenant-Governor may appoint Court of Inquiry to report on complaints against Officers.

XXIX. *And be it further enacted by the authority aforesaid*, That all monies arising from fines levied and collected under the provisions of this Act shall be paid by the person collecting the same into the hands of the Colonel or Officer commanding the Regiment or Battalion within which the same shall have been imposed, and shall be by him paid into the hands of Her Majesty's Receiver-General for the time being to and for the public uses of this Province, and that all expenses attending the sitting of any Court Martial authorised by this Act shall be paid from and out of the monies of this Province.

Application of fines levied under this Act.

Returns of persons complained against, of judgments and fines levied, &c. to be made to Adjutant-General.

XXX. *And be it further enacted by the authority aforesaid,* That twice in each year, that is to say, on the first day of March and on the first day of September, the Colonels or Officers in command of Regiments or Battalions in this Province shall make a return to the Adjutant-General of Militia of this Province of the number and names of persons complained against, the judgments of the Court, and the amount of fines levied.

Courts Martial in time of peace for trial of Officers;

How constituted;

Appointment of Judge-Advocate, oaths and form of proceeding, to be the same as during war;

Sentence to be approved by Lieutenant-Governor.

XXXI. *And be it further enacted by the authority aforesaid,* That in time of peace and when any charge shall be made against any Officer of the Militia of this Province for disobedience of orders or any act of insubordination or misconduct as an Officer of the Militia, it shall and may be lawful for the Lieutenant-Governor in his discretion to assemble a Court Martial (the President of which shall be a Field Officer) to be composed of seven or more Officers belonging to one or more of the Regiments of Militia organised or embodied within the County or District to which the accused party belongs, to investigate the charges made against such Officer, and to examine witnesses on oath as well in support of as against such charge, and award such sentence as in their opinion may be just and reasonable and not inconsistent with or contradictory to the provisions of this Act: *Provided always,* that in the appointment of Judge-Advocate, the administration of oaths and forms of proceedings to be observed by the said Courts Martial, respect shall be had to the provisions hereinafter contained for the constitution and regulation of Courts Martial, in cases where the same shall be required during the period of actual service by any part of the Militia of this Province: *And provided also,* that such sentence shall before being carried into effect be approved of by the Lieutenant-Governor.

Fines upon Officers, how to be levied and applied.

XXXII. *And be it further enacted by the authority aforesaid,* That in case any Officer of Militia shall be sentenced to the payment of a fine under the provisions of this Act and shall make default in the payment thereof, the same shall be levied by sale and distress of his effects under a Warrant to be signed by the President of the said Court Martial in the same manner as fines awarded against Non-Commissioned Officers and Private Militiamen are by this Act directed to be levied, and shall be appropriated and accounted for in the same manner as the said last mentioned fines are directed to be appropriated and accounted for.

Militia when embodied subject to the provisions of the Mutiny Act;

XXXIII. *And be it further enacted by the authority aforesaid,* That during the time any portion of the Militia of this Province shall be embodied for actual service under and by virtue of this Act, they and every of them as well Officers as Privates shall be liable and subject 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, Desertion or other crimes in the Army of Her Majesty the Queen, Her Heirs or Successors: *Provided nevertheless*, that no Officer, Non-Commissioned Officer or Private Militiaman shall be sentenced to the loss of life unless for desertion to the enemy, traitorous correspondence, or for traitorously delivering up to the enemy any Garrison, Fortress, Post or Guard, or Vessel either armed or employed in the service of Government, any thing herein contained, or any Statute Law or usage to the contrary notwithstanding: *Provided also*, that no Non-Commissioned Officer or Private of Militia shall be liable to the punishment of being flogged or of being sent to the Provincial Penitentiary by the sentence of any Court Martial.

Punishment of death restricted to certain crimes.

Militiamen not subject to punishment of flogging.

XXXIV. *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 where a General Court Martial shall be required the Lieutenant Governor upon application to him made through the Officer commanding the body of Militia to which the party accused may belong, or in case he be the accuser or accused then through the next senior Officer, shall issue his order to assemble a General Court Martial, which said Court Martial shall consist of a President who shall be a Field Officer and not less than eight 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 Lieutenant-Governor shall nominate and appoint the person who shall act as Judge-Advocate, and that every Member of the said Court Martial before any proceeding be had before the Court shall take the following Oath before the Judge-Advocate who is hereby authorised 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 Lieutenant-Governor, neither will you on any account at any time whatever disclose or discover the vote or opinion of any particular Member of the Court Martial unless required to give evidence thereof as a Witness by a Court of Justice in 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 authorised 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

General Courts Martial during time of actual service;

How constituted;

Appointment of Judge-Advocate;

Oath by members of the Court;

Oath of Judge-Advocate;

Law ; so help you God.” And the Judge-Advocate shall and is hereby authorised 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 finding and 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 Lieutenant-Governor has approved thereof.

Two-thirds of Court must concur; and sentence await Lieutenant-Governor's approbation.

Officers commanding Districts, Garrisons, &c. may assemble Courts Martial in certain cases;

Authority of Court;

Constitution of the Court;

Oath as prescribed by s. 37.

Period from which this clause to operate.

Militia may be called out in case of emergency without previous order of Lieutenant-Governor.

Lieutenant-Governor may issue orders for impressment of horses and teams for the service; and for billeting troops, &c.

XXXV. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for any commanding Officer of a District, Garrison, Post, Regiment or Battalion, to direct a District, Garrison or Regimental Court Martial to assemble to try any Non-Commissioned Officer or Private of Militia called out and embodied for actual service charged with drunkenness, neglect of duty or disobedience of orders, and if such person so charged shall be convicted of the offence or offences alleged against him, it shall and may be lawful for the said Court to imprison him in the common Gaol of the District or in any other place of confinement (except the Provincial Penitentiary) for a period not exceeding two weeks and to reduce any Non-Commissioned Officer to the ranks: *Provided always*, that the said Court shall consist of a President who shall be a Captain and not less than three Commissioned Officers of the Militia, and who shall before proceeding to the trial of such offender take the oath prescribed by the twenty-seventh section of this Act: *And provided also*, that nothing herein contained shall be construed to interfere with or alter the provisions contained in the thirty-third section of this Act except in so far as in this clause is contained: *And provided also*, that the provisions in this clause shall be considered to have been in force from the first day of November next before the passing of this Act.

XXXVI. *And be it further enacted by the authority aforesaid*, That in cases of emergency by actual Invasion, Insurrection or otherwise when it may not be practicable to consult the Lieutenant-Governor, it shall and may be lawful for the senior Officer of Militia of any County or Riding not upon a Retired List or in a Reserved Battalion to call out and embody any number of the Militia he may judge necessary for actual service, and to report the same forthwith to the Lieutenant-Governor.

XXXVII. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant-Governor from time to time, to issue orders and make regulations for the impressment and employment of Horses and Teams for the conveyance of Troops and Stores, or for the performance of any other service during the time the Militia of

this Province or any part thereof shall be called out for actual service, and in like manner to make orders and regulations for the billeting of Troops of the Line and Militia on actual service, not being repugnant to the Act passed in the forty-ninth year of the reign of His late Majesty King George the Third, entitled "An Act for quartering and billeting on certain occasions His Majesty's Troops and the Militia of this Province," and to authorise the Colonels or Lieutenant-Colonels of Militia, Magistrates or other persons to be by the Lieutenant-Governor appointed for that purpose to carry the said orders and regulations into effect.

XXXVIII. *And be it further enacted by the authority aforesaid, That* nothing in this Act contained shall extend or be construed to extend to make void any Commission now held by any Officer of Militia in this Province, or to alter or change the organization of the different Regiments of Militia now existing in this Province until otherwise ordered, and directed by the Lieutenant-Governor.

Commissions, &c. now existing not affected by this Act.

XXXIX. *And be it further enacted by the authority aforesaid, That* from and after the passing of this Act the following fees shall be paid upon Commissions issued by the Officers to whom such Commissions shall be issued:—Lieutenant-Colonels, one pound ten shillings; Majors, twenty shillings; Captains, twenty shillings; Lieutenants, fifteen shillings; Ensigns, ten shillings; Paymasters, fifteen shillings; Surgeons, fifteen shillings; Assistant Surgeons, ten shillings; Quarter-Masters, ten shillings, and Adjutant according to his rank.

Fees payable on Commissions.

XL. *And be it further enacted by the authority aforesaid, That* all Commissions to Officers of Militia shall be transmitted by the Adjutant-General of Militia to the Colonel or Officers commanding to be delivered to the respective Officers appointed to his Regiment or Battalion, and to whom the fees as well as the exemption money collected from the Quakers, Menonists, Tunkers and Aliens mentioned in this Act shall be paid, and by him shall be paid into the hands of the Receiver-General of this Province for the public uses of the same.

Commissions to be transmitted to Officers commanding;

By whom fees, &c. are to be received;

And paid to Receiver-General.

XLI. *And be it further enacted by the authority aforesaid, That* the Colonel or Officer commanding any Regiment or Battalion shall make a half yearly Return to the Adjutant-General of this Province of the fees by him received and paid into the hands of the Receiver-General as aforesaid.

Half-yearly returns of fees to be made.

XLII. *And be it further enacted by the authority aforesaid, That* no Officer of Militia shall Muster or be entitled to rank as an Officer should

Officers to obtain their Commissions within six months after being transmitted.

he fail to obtain possession of his Commission and pay the fees thereon within six months after the Commission shall have been transmitted as aforesaid.

Officers, Commissioned and Non-Commissioned, may be called out to drill once a month.

XLIII. *And be it further enacted by the authority aforesaid,* That the Colonel or Officer commanding any Regiment or Battalion shall have full power and authority, and he is hereby authorised to call out the Officers or Non-Commissioned Officers of his Regiment or Battalion for the purpose of drill or exercise one day in each month (if he shall deem it necessary), exclusive of the days appointed by this Act for the purpose of drill or exercise.

This Act to apply to Militia now embodied.

XLIV. *And be it further enacted by the authority aforesaid,* That the provisions of this Act shall apply to such Militia as are now embodied for actual service.

Penalty on persons selling, &c. Arms or Equipments;

Recoverable before two Justices; Imprisonment for default of payment;

Offender may be discharged on tender of penalty.

XLV. *And be it further enacted by the authority aforesaid,* That every person who shall sell, barter or pledge any part of the Arms or Equipments or shall tender them in pledge which may be delivered to him out of Her Majesty's Stores or who shall destroy the same, and every person who shall buy or barter, obtain or receive in pledge such Arms or Equipments, shall severally and respectively forfeit and pay the sum of five pounds for every offence on conviction thereof, by the Oath of any one credible Witness, before two Justices of the Peace residing within the County where the same has been committed; and in case the person so selling any part of his Arms or Equipments as aforesaid, or the person obtaining the same in manner aforesaid being thereof convicted as aforesaid shall refuse or neglect to pay the said sum of five pounds, it shall and may be lawful for the said Justices by a Warrant under their hands and seals to commit such person to the Gaol of the County or District in which the offence shall be committed for any space of time not exceeding three months: *Provided always,* that it shall and may be lawful for the said Justices to discharge the person so offending any time before the expiration of the said three months, when the person so convicted as aforesaid shall tender to the said Justices the penalty inflicted by this Act.

False swearing under this Act perjury.

XLVI. *And be it further enacted by the authority aforesaid,* That if any person shall wilfully swear falsely in any proceeding or matter with respect to which he shall have been sworn under and according to the provisions of this Act, every such person on being lawfully convicted thereof shall be deemed guilty of wilful and corrupt perjury, and shall suffer the like punishment as by law may now be inflicted on persons convicted of wilful and corrupt perjury.

XLVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant-Governor to appoint a Commodore who shall rank with Colonels of Militia, and also Captains and Lieutenants of a Provincial Navy, who shall rank with Majors and Captains of the Militia as senior of their respective rank, to be drilled to the exercise of heavy guns and the management of gun-boats in addition to their duties in the use of small arms as a Militia force.

Lieutenant-Governor may appoint a Commodore, and Officers of a Provincial Navy;

Their rank and duties.

XLVIII. *And be it further enacted by the authority aforesaid,* That there shall be attached to every Regiment of Militia a second or retired Battalion, to which Officers on becoming incapable of actual service by reason of old age, infirmity or otherwise, may be transferred on their own applications or by order of the Lieutenant-Governor, and that all Non-Commissioned Officers and Privates from the age of fifty to sixty years shall also be transferred to the retired Battalion.

Retired Battalions to be formed of persons incapable of actual service.

XLIX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant-Governor of this Province, to sanction the formation of Volunteer Companies to serve as Provincial Marine and to be stationed at the different harbours along the coast, each of such Companies to consist of a Captain, a Lieutenant, an Ensign, and not less than fifty or more than one hundred men.

Volunteer Marine Companies may be formed.

L. *And be it further enacted by the authority aforesaid,* That if any person shall wilfully interrupt or molest any Regiment, Battalion, Company or Detachment of Militia whilst on any duty prescribed by the laws of this Province, it shall be lawful for the Commanding Officer of such Regiment, Battalion, Company or Detachment, to confine such person for any time not exceeding three days.

Persons interrupting Militia on duty, may be confined by commanding Officer.

LI. *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, the Vice-Chancellor 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, Her Majesty's Attorney and Solicitor Generals, the Secretary of the Province, and all Civil Officers who shall have been or may hereafter be appointed to any Civil Office in this Province under the Great Seal of the same, as well as all Magistrates, Coroners, Sheriffs and half-pay and retired Officers, Militia Officers having served by virtue of any Militia commission in any part of Her Majesty's dominions who may not have been removed for any offence as an Officer of Militia or who may have obtained leave

Persons generally exempt from Militia service;

to resign his commission, the Surveyor-General and his Deputies duly appointed and actually engaged in public service, Deputy Post Masters and Mail Carriers, Sea-faring men actually employed in the line of their calling, Physicians, Surgeons, the Masters of public or common schools, Ferrymen, and one Miller to each run of stones in every grist-mill, the keepers of public toll-gates, lock-masters and labourers employed in attending locks or bridges on the Rideau, Welland and other public Canals, 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 or every of the above-mentioned persons from holding commissions as Officers in the Militia of this Province: *Provided always*, that it shall and may be lawful for the Lieutenant-Governor of this Province by Warrant under his hand and seal, to exempt any of the persons hereinbefore enumerated or any other person in his discretion from being called out in the service aforesaid.

Exemption not disable the parties from holding Commissions;

Lieutenant-Governor may grant special exemption.

Quakers, Menonists and Tunkers exempted;

On producing certificates;

And reporting their names and residences annually, and paying at the time 20s;

And in time of actual Invasion or Rebellion £10;

Duty of commanding Officer in default of such returns and payments.

LII. *And be it further enacted by the authority aforesaid*, That the persons called Quakers, Menonists 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, Menonists and Tunkers, and producing a certificate of his being a Quaker, Menonist or Tunker, or being the son of a Quaker, Menonist or Tunker, brought up and educated in the principles of the Quakers, Menonists or Tunkers, and under the age of twenty-one years, signed by the Clerk of the meeting of such Society or by three or more of the people called Quakers, Menonists or Tunkers, shall be excused and exempted from serving in the said Militia: *Provided nevertheless*, that every such person who may be so excused as aforesaid shall on or before the fourth day of June in every year give in his name and place of residence to the Colonel or Officer commanding the Regiment within the limits of which he may reside, and pay at the same time to the said Colonel or Officer commanding the sum of twenty shillings currency, and in time of actual Invasion, Insurrection or Rebellion, when any portion of the Militia are called upon for actual service the sum of ten pounds, and in default of such return and payment as aforesaid, such Colonel or Officer commanding shall be required immediately to complain of such neglect or refusal and to summon and try the party so offending, and to decide and determine upon every such case by a Regimental Court in the same manner and form as is provided for the trial of other offenders against this Act.

LIII. *And be it further enacted by the authority aforesaid,* That all persons not natural-born subjects of Her Majesty, or not subjects of Her Majesty naturalized by an Act of the British Parliament, or who have not become such by an Act of the Parliament of this Province, or who have not taken the oath of allegiance and having been resident in this Province for the period of one year, shall on or before the fourth day of June in every year give in his name and place of residence to the Colonel or Officer commanding the Regiment within the limits of which he may reside, and pay at the same time to the said Colonel or Officer commanding the sum of ten shillings, and in default of such return and payment as aforesaid such Colonel or Officer commanding shall be required immediately to complain of such neglect and refusal, and to summon and try the party so offending by a Regimental Court Martial, and upon conviction before the said Court such offender shall forfeit and pay the sum of ten shillings besides the costs and charges of conviction, to be levied in the manner pointed out in the nineteenth section of this Act; and if it shall become a question on any trial whether such person is a natural-born subject of Her Majesty, or a subject of Her Majesty naturalized by an Act of the British Parliament or become such by an Act of the Parliament of this Province, or whether he has taken the oath of allegiance, it shall be incumbent on him to prove the fact.

Aliens who are not required to enrol themselves to report their names and residences annually to the Officer commanding within the limit, and pay at the same time 10s.;

Duty of Officer in default of such return and payment;

Proof of allegiance, &c. lies on party accused.

LIV. *And be it further enacted by the authority aforesaid,* That when the Lieutenant-Governor shall call out any portion of the Militia of this Province in a time of actual war with a Foreign Power to put down or suppress Rebellion, to repel Invasion or for any purpose connected with the preservation of the public peace, the Officer commanding the Regiment out of which they may be so called may cause the number appointed to serve out of his Regiment, to be chosen by Ballot in the following manner:—The names of all persons liable to serve as Militiamen within the division of his Regiment shall be written upon slips of white paper and folded up and put into a box or glass, out of which the number required to serve shall be drawn by the Adjutant of the Regiment in the presence of at least three Captains of the Regiment: *Provided always,* that nothing herein contained shall be construed to prevent the Lieutenant Governor from calling out the Militia or any portion of them for the purposes aforesaid, without resorting to the Ballot.

Where part only of Militia required for actual service, they may be selected by Ballot;

Manner of Balloting.

LV. *And be it further enacted by the authority aforesaid,* That after any Ballot shall take place for the purposes aforesaid, the Officer commanding the Regiment shall appoint a meeting within three weeks and issue an order to the Adjutant to direct a notice to be given to every man

Notice of meeting after selection by Ballot.

so chosen, by giving or leaving the same at his place of abode three days previously, to appear at such meeting.

Limitation of actions;

General issue may be pleaded.

LVI. *And be it further enacted by the authority aforesaid,* That if any plaintiff shall be brought or commenced against any person for any thing done or to be done in pursuance of this Act, or in the execution of the powers and authorities or the orders and directions hereinbefore given or granted, every such suit shall be brought or commenced within three calendar months next after the fact committed; and the defendant in such action or suit shall and may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereon, and that the same was done in pursuance and by the authority of this Act, and if it shall appear to be done so, or if any action shall be brought after the time hereinbefore limited for bringing the same, then a verdict shall be given for the defendant.

Lieutenant-Governor may appoint Adjutant-General with rank of Colonel.

LVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant-Governor to appoint a proper person to be Adjutant-General of the Militia of this Province, who shall have the rank of Colonel and do all matters and things appertaining to the said Office of Adjutant-General.

Persons, having been Serjeants in the regular service, when not liable to serve in inferior stations.

LVIII. *And be it further enacted by the authority aforesaid,* That no person who shall have been discharged from Her Majesty's service as a Serjeant shall be obliged to serve in any inferior station in the Militia of this Province, unless having been such Non-Commissioned Officer in the said Militia he may have been reduced according to law.

Officers not liable to serve as Constables.

LIX. *And be it further enacted by the authority aforesaid,* That every Officer or Non-Commissioned Officer of Militia duly appointed, shall be exempt from serving as Constable for any period during such time as he shall hold such appointment.

Persons dismissed Her Majesty's service not eligible to hold Commissions in Militia.

LX. *And be it further enacted by the authority aforesaid,* That any person who shall have been dismissed from Her Majesty's Army by sentence of a General Court Martial or otherwise, shall not be allowed to hold a commission in the Militia of this Province.

Proceedings commenced under 1. Vict. c. 8. not made void by the repeal of that Act.

LXI. *And be it further enacted by the authority aforesaid,* That nothing in this Act contained shall extend or be construed to extend to make void or in any wise affect any proceedings heretofore commenced and prosecuted under the said Act of the first Victoria, Chapter eight, hereinbefore recited or referred to and intended to be hereby repealed, except

that it shall be lawful for the Lieutenant-Governor to reduce, mitigate or remit any fine or penalty heretofore adjudged against any person or persons for any offence against the said last mentioned Act.

CHAP. X.

AN ACT to provide for the advancement of Education in this Province.

[Passed 11th May, 1839.]

WHEREAS it is very desirable to afford every encouragement to the advancement of Education throughout the Province: *And whereas* His late most Gracious Majesty George the Third was pleased to direct, that a quantity of the Waste Lands of the Crown should be set apart for the endowment of Grammar Schools and also of a University: *And whereas* a Royal Charter has been granted incorporating the University of King's College which has been endowed by a grant of Lands from the Crown: *And whereas* Upper Canada College has by an Act of the Legislature been incorporated with and now forms an appendage to such University: *And whereas* the advancement of Education will be better promoted by devoting a portion of the annual Revenues of King's College to the support of Upper Canada College and of Grammar Schools for several years to come, than by the erection of a University in the present state of Education in the Province: *And whereas* Upper Canada College, with some changes easily effected, would afford sufficient accommodation to the public as a Provincial seat of learning until it should be deemed requisite to erect the University: *And whereas* it is expedient to appoint Trustees for each Grammar School in the several Districts to superintend the Schools to be established under the provisions of this Act, and to see to the application of the monies appropriated to their support: *Be it therefore enacted* by the Queen'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, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Québec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the several District Schools in this Province shall be and are hereby declared to be Grammar Schools, as contemplated by His late most Gracious Majesty

Preamble.

District Schools declared to be Grammar Schools with a view to the endowment of Geo. III.