

Laws of His Majesty's Province of Upper Canada in North America, passed in the year 1808.
York: John Cameron, 1808.

48 George III – Chapter 1

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. Passed 16th March, 1808.

Whereas a well regulated Militia is of the utmost importance to the defence of this Province; and whereas the laws now in force for the training and regulating thereof, are in some respects defective; 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, & to make further provision for the government of the said Province,"* & by the authority of the same; That from and after the passing of this Act, the Governor, Lieutenant Governor, or person administering the government of this Province, shall and may from time to time, constitute and appoint, under his hand & seal, a sufficient number of colonels, lieutenant colonels, majors, and other officers, to train, discipline, and command the militia of this Province, according to the rules, orders, and directions hereinafter mentioned, and the officers so appointed for the militia shall rank with the officers of such of his Majesty's forces, as may for the time being, serve within this Province, as youngest of their respective rank, which said officers reflectively, shall within six months after their several appointments, take the oath of allegiance to his present Majesty, his heirs and successors, before the Magistrates assembled in quarter sessions, within the district to which such officers respectively belong.

II. And be it further enabled by the authority aforesaid, That it shall and may be lawful for the colonel or officer commanding any regiment or battalion of militia, and he is hereby required, to specify to each captain of a company of his regiment or battalion, the limits from within which the militia men of such captains company shall be enrolled.

III. And be it further enacted by the authority aforesaid, That every male inhabitant from fifteen years of age to sixty, shall be deemed capable of bearing arms, and shall enroll his name as a militia man on the first training day on which the said companies shall be drawn out, in the division or limit in which his place of abode may be, and shall at such meeting give in his name, his age, and place of residence, and if he has thereto but lately removed, he shall make the same known, together with the place from whence he removed, and each and every such inhabitant, who shall not attend and give in his name to the captain or officer commanding the company for such division or limit, so that his name may be enrolled as a militia man, shall for such neglect forfeit and pay the sum of ten shillings, to be recovered & applied in manner hereinafter mentioned. Provided nevertheless that no inhabitant shall be convicted of the offence herein described, unless it is proved at the time of trial, that the said inhabitant had been notified, either personally, or by leaving a verbal notice at his usual place of abode, of the time of meeting, at least six days previous

thereto. 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.

IV. Provided always, and be it farther enacted by the authority aforesaid, That the neglect of any person so to present himself for enrollment and exercise, shall not be construed to prevent the captain or officer commanding the company of militia of the limits wherein the place of residence of any such person may be, from entering the name of such person, and such captain or officer commanding such company as aforesaid, is hereby required to enter the name of every such person, as shall come to his knowledge, upon the enrollment of his company, and when so entered, every such person shall be subject to perform all any 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.

V. And be it further enacted by the authority aforesaid, That the colonel or officer commanding each regiment or battalion, shall on the fourth day of June in each and every year respectively, or in case it shall happen on a Sunday, then on the next day, and oftener, if he thinks it necessary, call out the militia of such regiment or battalion, to be reviewed and exercised, and in his absence from the county, or in case of his removal or death, the said militia shall be called out by the next senior officer of such regiment or battalion, and every person liable to serve in such militia, whether officer or private, neglecting or refusing to attend, (except in case of sickness, or having obtained leave of absence) shall forfeit and pay, if an officer, forty shillings, and if a non-commissioned officer or private, ten shillings; but if it shall appear to the colonel, or officer commanding such regiment or battalion, to be more conducive to the interest and convenience of such regiment or battalion, that the militia of the same be reviewed at different times, and in separate bodies, it shall and may be lawful for the colonel or officer commanding such regiment or battalion, to call out a part of the militia at some convenient time and place, and the remaining part at some other convenient time and place, as to him shall seem meet, and at every such review, the captain or officer commanding each company, shall give to the colonel, or in his absence, to the next senior officer, fair written rolls of their respective companies, and the colonels or other commanding officers, shall transmit returns to the Governor, Lieutenant Governor, or person administering the government, within fourteen days after the fourth day of June, in each and every year, under the penalty of five pounds for each captain or other officer commanding a company, and for each colonel or officer commanding a regiment or battalion, ten pounds, for each neglect or refusal.

VI. 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 appoint a proper person to be adjutant general of the said militia, who shall do all matters and things appertaining to the said office of adjutant general.

VII. And be it further Enacted by the authority aforesaid, That the captains of the militia, shall draw out their respective companies not less than twice or more than four times in every year, (giving six days notice thereof) at the most convenient time and place in the county or riding, and

shall inspect their arms, and instruct them in their duties, and every person after such notice as aforesaid, who shall neglect to attend, or shall disobey, (whether subaltern officer or private,) (except in case of sickness or leave of absence) shall forfeit and pay, every officer the sum of forty shillings, and every non-commissioned officer or private, the sum of ten shillings, for every such neglect or disobedience.

VIII. 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, towns, 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 order or command, or absconding from or neglecting to repair to the place he is ordered to, being a commissioned officer, shall 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 always, that no part of the militia called forth in the manner aforesaid, shall be obliged to continue in actual service for more than six months at one time and 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 also, that it shall not be lawful to order¹ the militia or any part thereof, to march out of this Province, except for the alliance 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 embodying 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.

IX. 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 senior colonel, or in his absence the lieutenant colonel of the several regiments or battalions, 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 commanding officers, and also to direct and authorize any officer, having first obtained a warrant for such purpose to issue his orders to the several commanding 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 seven shillings and six pence per day, for every cart or carriage with two horses or oxen, during such time as the same shall be employed or detained on public service. 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 would otherwise be obliged to serve in the said part of the militia called out as aforesaid.

X. And be it further enacted by the authority aforesaid, That in the several counties and ridings, where the number of men is sufficient, the militia shall be formed into regiments, consisting of not more than ten, nor less than eight companies, which companies shall consist of not more than fifty, nor less than twenty private men, and the field officers of such regiments shall be as follows, that is to say, one colonel, one lieutenant colonel, and one major, and where the number of companies shall be under eight, and not less than five, such militia shall be formed into a battalion, and the field officers of such battalion shall be one lieutenant colonel and one major, only, and in each regiment or battalion of militia, there shall be one captain, one lieutenant, and one ensign to each company.

XI. And be it further enacted by the authority aforesaid, That to every regiment or battalion of militia, there shall be in addition to the officers already mentioned, one adjutant and one quarter master, and that every field officer commanding a regiment or battalion, shall fix the number of serjeants who shall serve in each company in his regiment or battalion, and the captains of the said companies shall respectively nominate the serjeants thus fixed, and make a return of their names to the field officer commanding such regiment or battalion, who is hereby authorized to approve or disapprove of such nomination.

XII. And be it further enacted by the authority aforesaid, That in the several counties and ridings where the militia men are not in number sufficient to form a regiment or battalion, according to the intent and meaning of this act, the militia of such counties or ridings shall be formed into dependent companies, each company to consist of not more than fifty, nor less than twenty private men, with one captain, one lieutenant, and one ensign to each company, and that the Governor, Lieutenant Governor or person administering the government may, when he shall think proper, join together any number of such independent companies, and form a battalion or battalions, or may incorporate them with any other regiment or battalion of militia, provided the number of companies in any such regiment or battalion be not thereby made to exceed the number of companies of which a regiment or battalion of militia is herein before directed or consist.

XIII. And be it further enacted by the authority aforesaid, that every non-commissioned officer or private who shall refuse to obey the lawful orders of his superior officer or officers when employed on militia duty, or who shall quarrel with, or insult by abusive words or otherwise, any officer or non-commissioned officer, being in the execution of his duty, shall, for every such offence, forfeit and pay a sum of money not exceeding five pounds, nor less than ten shillings

current money of this Province, at the discretion of the justice or justices imposing such fine, and according to the nature of the offence.

XIV. And be it further enacted by the authority aforesaid, That every person who now is enrolled in any regiment, battalion or independent company of militia shall, within six months after the passing of this act, and every person who shall hereafter be enrolled of any regiment, battalion or independent company 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 & every time when he shall be called out either for the purpose of review, exercise or actual service, and if any person so enrolled, shall neglect or refuse to provide himself, or to come so provided, as in the case of review or exercise, he shall for each offence, be liable to a penalty of five shillings, and in the case of actual service, to a penalty of forty shillings, to be levied in manner hereinafter mentioned: Provided always, that when and so often as any militia man shall make it appear to his captain or officer commanding the company that he has not been able to procure such musket, fusil, rifle or gun, 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 five shillings in case of review or exercise, and forty shillings in case of actual service.

XV. 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 buy, or by barter obtain 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 peace, residing within the county where the same has been committed, 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 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 or persons to the gaol 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 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 justices the penalty inflicted by this act.

XVI. 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 and independent companies of militia shall, 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 officer having the command of them, and shall be liable to punishment for mutiny and desertion as herein after 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 the said court martial shall be awarded.

XVII. And be it further enacted by the authority aforesaid, That any officer, non-commissioned officer or militia man who shall behave himself with contempt or disrespectful towards the Governor, Lieutenant Governor or the 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 by the judgement of a general court martial.

XVIII. 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.

XIX. And be it further enacted by the authority aforesaid, That any officer, non-commissioned officer or militia man, who being present at any mutiny or sedition shall not use his utmost endeavors to suppress the same, or coming to the knowledge of any mutiny or intended 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.

XX. 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, shall suffer death, or such other punishment as shall be awarded by a general court martial.

XXI. 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 in 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 a general court martial, and in case any officer of the militia shall knowingly receive and entertain such non-commissioned officer or militia man, or 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.

XXII. And be it further enacted by the authority aforesaid, That if any officer, non-commissioned officer or militia man shall be convicted of his having advised or persuaded any other officer or

militia man to desert his Majesty's service, he shall suffer such punishment as shall be awarded by a general court martial.

XXIII. 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 a judge advocate, and that every member of the said court martial, before any proceedings be had before that court, shall take the following oath before the said 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, favor 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, 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 a due course of law— So help you God And so soon as the said oath shall have been administered to the respective member, the president of the court is hereby authorized and required to administer 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 a due course of law— So help you God. And the said judge advocate shall, and he 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. Provided always, that no officer serving in any of his Majesty's other forces shall sit in any court martial upon the trial of any officer or private man serving in the militia.

XXIV. 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 to all and every the provisions, regulations, matters and things in this act contained, respecting the said militia, and also 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.

XXV. 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 regiment or battalion to which the said officer against whom the complain 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 in rank superior to the officer accused, who shall be president thereof, together with not less than four other commissioned officers, and such court of enquiry shall examine witnesses, and take every necessary step to investigate the matter alledged in the complaint against the said militia officer, and report the evidence in that behalf brought before them, to the Governor, Lieutenant Governor or Person administering the government, for his decision thereon.

XXVI. 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 reign 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 public 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 or every of the above mentioned 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 seal, to exempt any of the persons hereinbefore enumerated, from being called out on the service aforesaid.

XXVII. 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 or tunkers, and producing a certificate of his being a quaker, menonist, or tunker, signed by the clerk of th emeeting of such society or by any 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 or persons that shall or may be of the people called quakers, menonists, 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 such district, in time of peace the sum of twenty shillings, and in time of actual invasion 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 offenders goods and chattels, returning so much of the said distress as shall exceed the sum of twenty shillings per annum in time of peace, and five pounds per annum in time of actual invasion or insurrection, or when any part of the militia of that district shall be called out on actual service, 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 as aforesaid, shall be by him, within the space of two calendar months, paid into the hands of the colonel, or in his absence, the next senior officer of the regiment, battalion or independent company of the division where the offence has been committed, to be applied for the like purposes as the fines, forfeitures and penalties imposed by this act, and for want of such distress, the justice before whom such person 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, that it is hereby further enacted, that each and every of the persons usually called quakers, menonists and tunkers, that have attained the age of fifty years, shall not be liable to the payment of such sum of twenty shillings for being exempted from serving in the said militia in time of peace, but that 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.

XXVIII. 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.

XXIX. 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 detachment, shall be regularly taken, from time to time, as they shall be required, from a roster or list to regulate the turn of duty, to be first formed by ballot of each and every person in each respective battalion, regiment, or independent company, and that after the same has been formed, when any person shall be enrolled as a militia man in any battalion, regiment or independent company the same of such man shall be inserted, & follow the last person in the said

roster the initial of whose surname corresponds with the initial of the surname of the man so to be inserted, and when any detachment shall be called out for service, the adjutant or officer commanding each regiment, battalion, or independent company, shall give notice to the persons of their turn of duty.

XXX. 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 of parties, and appoint them to serve on board vessels, boats, or batteaux, 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.

XXXI. And whereas it may be convenient to form one or more troop or troops of cavalry; 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, and to employ the same on such duties as the necessity of the service may require.

XXXII. And be it further enacted by the authority aforesaid, That all detachments to be called and employed as aforesaid, shall and may, if need require, be detained on such service for and during the space of six months at one time, & no longer; provided that every such detachment be relieved by the arrival of a fresh detachment sufficient for the indispensable occasions of the service at such period, for which purpose it shall and may be lawful for the proper officer, one week at least before the expiration of the said period of service, to call together the remaining parts of the regiment, battalion, or independent company, or so many as may be necessary, according to their several turns, to be regulated by the roster as aforesaid, to relieve such detachment.

XXXIII. Provided always, and be it further enacted by the authority aforesaid, That if such detachments cannot be replaced by an equal number of men of the remaining part of such regiment, battalion or independent company, respectively, then, and in such case, every such detachment to be relieved as aforesaid, shall ballot or draw lots for such a number of men as may be wanting to make the succeeding detachment equal to the detachment to be relieved, and the parties whose names shall be drawn, shall be liable to serve with the said detachment, but in case of a partial relief, they shall be the first to be relieved, either wholly or by ballot, according to the number to be relieved.

XXXIV. And be it further Enacted by the authority aforesaid, That when any person shall have been convicted of any offence against this act, and shall refuse to pay the fine, forfeiture, or penalty imposed on such offender, it shall and may be lawful to and for the justice or justices before whom such person shall have been convicted, to commit such offender to the common gaol of the district, until he shall pay and satisfy such fine, forfeiture, or penalty together with the

reasonable charges attending such conviction; Provided nevertheless that no person or persons so committed, shall in any case be detained in custody longer than the space of one calendar month, except in such cases as are otherwise provided for by this act.

XXXV. 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, 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.

XXXVI. And be it further enacted by the authority aforesaid, That no person enrolled in the militia shall absent or withdraw himself from any place of review or exercise, without having first obtained leave of his commanding officer so to do, under the penalty of forty shillings if a commissioned officer, and ten shillings if a non-commissioned officer or private.

XXXVII. And be it further enacted by the authority aforesaid, That if any serjeant of the 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, he shall for every such neglect or refusal, forfeit and pay the sum of forty shillings.

XXXVIII. And be it further enacted by the authority aforesaid, That every serjeant of the militia, duly appointed, shall be exempt from serving as constable, for and during such time as he shall hold such appointment as serjeant.

XXXIX. And be it further enacted by the authority aforesaid, That if any person be wounded, or shall be disabled, when employed on actual service, upon an invasion insurrection, or rebellion, he shall be taken care of and attended during the time of such disability, agreeably to his rank.

XL. And be it further enacted by the authority aforesaid, That when any person shall be summoned before two of his Majesty's justices of the peace as aforesaid, for having neglected or refused to do such things as by this act are required of him to be performed, and shall upon the oath of any one credible witness before such justices be duly convicted of such offence, such person shall pay the charges and expences of and incident to such conviction, and that all fines, penalties and forfeitures, by this act imposed, on default of payment, shall be levied by distress sale of the goods and chattels of the offender, by warrant under the hands and seals of the justices before whom the said offender shall be convicted, rendering the overplus (if any) to the said person whose goods and chattels shall have been so distrained and sold, after deduction therefrom the charges of such distress and sale, and within two months after such conviction and recovery, the sums so recovered shall be transmitted by the justices before whom such information shall have been laid, to the colonel, or in absence, to the next senior officer of the regiment, battalion or independent company, and the said colonels and other officer respectively, shall and they are hereby required, out of the several sums of money which they shall receive for fines, forfeitures or penalties, or otherwise, by virtue of this act, to provide for the regiments in their respective counties or ridings, drums, fifes, colours, banners, regimental books, and for the

discharge of other incidental expences, and in case any overplus of such movies shall remain in the hands of any such colonel or other officer, after providing such articles as aforesaid, such surplus shall be disposed of in premiums to the person who shall make the best shot at a target or mark, upon days of training, and in such proportions as at a meeting the colonels or officers commanding regiments, battalions or independent companies, shall order and direct, and each colonel, or in his absence the next senior officer of the regiments, battalion or independent company, shall render a certified account thereof in detail, to be transmitted to the Governor, Lieutenant Governor or person administering the government, as soon after the thirty-first day of December annually, as practicable.

XLl. And be it further enacted by the Authority aforesaid, That no order of conviction made by any justice or justices of the peace, by virtue of this act, shall be removed by certiorari out of 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 supersede execution or other proceedings upon any such order or conviction, so made in pursuance of this act, but that execution and other proceedings shall be had and made thereupon, any such writ or writs, or allowance thereof notwithstanding; Provided always that the fines, forfeitures or penalties, to be levied by virtue of such order or conviction, shall not exceed the sum of twenty pounds.

XLII. 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, & not afterwards, and shall be laid in the county, riding 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 plaintiff or plaintiffs shall be nonsuited 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.

XLIII. And be it further enacted by the authority aforesaid, That all former acts relating to the raising of the militia within this Province, shall from and after the passing of this act be, and are hereby repealed; Provided nevertheless, that nothing in this act contained shall in any wise extend or be construed to extend to annual or make void any militia appointment which may have taken place in pursuance of the former acts relating to the militia forces, or to prevent the completing any proceedings commenced in pursuance thereof, until new commissions are issued under and by virtue of this act.