

Laws of His Majesty's Province of Upper Canada in North America, passed in the year 1813. Kingston: Stephen Miles, 1813.

53 George III – Chapter 2

An Act to repeal and amend, certain parts of the Militia Law, and also for the Transporting Naval and Military Stores. Passed the 13th day of March, 1813.

Whereas it is expedient to repeal some parts of the Militia Laws and to introduce certain amendments in lieu thereof, Be it enacted by the King's Most Excellent Majesty, by and with the advice and content 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 entituled "*an act to repeal certain parts of an act passed in the fourteenth year of his Majesty's Reign,*" entituled "*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 Justice or Justices of the Peace before whom any person or persons shall be convicted and fined for any offence against the Militia Laws of this Province or against this act, are hereby authorised and empowered to levy the amount of such fine or fines, and all reasonable costs and charges incurred both before and ,after the conviction, by distress and of the goods and chattels of such offender or offenders, if the said Justice or justices shall deem such a proceeding expedient arid proper. Provided always, that if any such offender or offenders shall be convicted before a Court Martial of such offences, and the sentence of such Court Martial shall be, that the offender or offenders shall pay a, certain fine or fines, and the costs and changes so incurred as aforesaid, then and in such case if shall and may be lawful for she Officer under whose authority the said Court Martial is called and approved, and he is hereby authorized to transmit such Sentence to one or more Justice or Justices of the Peace of the District where the distress is to be levied, which said Justice or Justices, is and are hereby required, to such his or their Warrant or Warrants for the levying the a mount of such fine or fines, costs and charges, by distress and sale of the goods and chattels of such offender or offenders in like manner as if such Sentence or Judgement of the said Court Martial against such offender or offenders had been given by the said Justice or Justices by virtue of this act.

II. And be it further enacted by the authority aforesaid, That the amount of all fines, when collected shall be paid to the Commanding Officer of the Regiment to which the offender or offenders shall respectively belong, and the said Commanding Officer is hereby required to transmit to the Governor, Lieutenant Governor, or Person administering the Government, Quarterly accounts, certified on oath before any one of his Majesty's Justices of the Peace, of all Monies to be received by him in manner aforesaid, and all such Monies shall he disposed of to the use of each Regiment in such manner as the Governor, Lieutenant Governor, or Person administering the Government shall direct.

III. And be it further enacted by the authority aforesaid, That the arms and accoutrements of Militia Men shall not be liable to be taken or fold under or by virtue of any Writ of Execution whatever.

IV. And be it further enacted by the authority aforesaid, That in time of Peace every Officer commanding a Company, shall give Six days notice to the Militia Men of such Company of the time and place of their meeting for the purposes of Exercise and Review, unless the said Company be called out by order of the Commanding Officer of the Regiment.

V. And he it further enacted by the authority aforesaid, That the Fourth, Eighth and Eleventh Clauses of an act entitled "*an act to repeal part of the Laws now in force for raising and training the Militia of this Province and to make further provision for the raising and training of the said Militia*", and passed in the Fifty second year of His Majesty's Reign, so far as the said Clauses relate to the forming, training or exercising flank or other companies in any Regiment, are hereby repealed; Provided always that nothing in this Act shall extend or be construed to extend to discharge any Officer, Non-Commissioned Officer or private man now on duty, but such Officer, Non-Commissioned officer or Private man shall continue to serve till regularly relieved or discharged according to Law.

VI. 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, Conficting of not more than ten nor less than eight companies, which companies shall consist of not less than twenty nor more than fifty Private men, and the Field Officers of every Regiment of ten companies, shall be as follows, one Colonel, one Lieutenant Colonel and one Major, and no more, and the Field Officers of every Regiment of less than ten Companies, shall be as follows, one Lieutenant Colonel and one Major, and no more, and to each Company there shall be one Captain, one Lieutenant and one Ensign.

VII. And be it further enacted by the authority aforesaid, that if any person or persons shall presume to disturb interrupt or molest, any Body or party of Militia whilst on Parade, Exercise or review, it shall and may be lawful to and for the commanding officer of such body or party to order any such person or persons to be carried before any one of His Majesty's Justices of the Peace, who, upon proof of the offence, by the oath of one or more credible witness or witnesses, shall and may order and adjudge every such offender to pay a fine not exceeding Five Pounds nor less than Ten Shillings, and in default of payment, to commit him or them to the common Gaol of the District, or other safe place of confinement, for a term not exceeding One Month, nor less than Ten Days, unless the fine is sooner by him paid.

VIII. And be it further enacted by the authority aforesaid, That to every Regiment there shall be in addition to the Officers already mentioned, one Adjutant and one Quarter Master, and the Commanding Officer of every Regiment shall appoint one Sergeant Major and one Quarter Master Sergeant, and shall as occasion may require, fix the number of the other non-commissioned officers and of the Drummers for each Company in his Regiment, and the Officers commanding Companies shall respectively nominate the non-commissioned Officers of his Company to the Commanding Officer of the .Regiment, who is hereby authorized to approve or disapprove of such nomination.

IX. And be it further enacted by the authority, aforesaid, That the Commanding Officer of every Regiment shall call out his Regiment at least twice a year for the purposes of exercise and review, and he shall be at liberty whenever he may think proper for the convenience of the Militia, to order a part of the Regiment to meet at one place, and the remainder at another place.

X. 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 raise and embody one or more Regiment or Regiments, to be styled the Incorporated Militia, and to serve during the present War with the United States of America, for which purpose it shall be lawful for the said Governor, Lieutenant Governor, or person administering the Government, to accept of the voluntary services of Militia Men within the Province, and to nominate and appoint as many Officers as he may think proper to serve in such Incorporated Militia, and it shall and may be lawful for the Governor, Lieutenant Governor or person administering the Government, to make such rules and regulations for the Government of the said Regiment or Regiments so to be raised, as to him shall seem proper and adapted to the nature of the service: Provided always, that no Officer of His Majesty's Regular, Forces shall sit on any Court Martial for the trial of any Officers, Non-Commissioned Officer or Militia Man, serving in the said Incorporated Militia, and that no Private Man serving under this or any other Militia Law, shall be subjected to the Punishment of Whipping by the sentence of any Court Martial, and provided further, that no Militia Officer who shall be appointed to serve in the said Incorporated Militia, shall be liable thereby to lose his standing in the Regiment to which he now belongs.

XI. And he it further enacted by the .authority aforesaid, That during the said War, no Non-Commissioned Officer or Militia Man who may volunteer his services in the said Incorporated Militia, shall during such service, be liable to be sued or arrested for any debt under Fifty Pounds, and that all Writs issued for such purpose shall have no operation and effect, and the Goods and Chattels, Lands and Tenements of any such Non-Commissioned Officer or Militia man, during the time of his service, shall not be seized or fold under or by virtue of any Writ of Execution whatever Provided however, that the Statutes of limitation shall not run against any debt due by such volunteer during the, continuance of such privilege from arrest.

XII. And he it further enacted by the authority aforesaid, That every Non-Commissioned Officer or private man whose services shall be accepted in the said Incorporated Militia, shall not be liable to pay any Taxes, Rates, or Assessments whatever, or to perform Statute Labor on the High Ways, or duty as a Town or Parish Officer, while he shall continue in the said Incorporated Militia, and the said Incorporated Militia or any part of them, shall not be marched out of the Province in any other case or for any other purpose than is now permitted by the Militia Laws.

XIII. And be it further enacted by the authority aforesaid, That if any Officer, non-commissioned officer or Militia man shall offend against the twenty fifth Section of an Act entitled, "*An Act to repeal part of the Laws now in force for raising and training the Militia of this Province and to make further provision for the raising and training of the said Militia*" and passed in the fifty second year of His Majesty's Reign, or against this Act, unless herein otherwise specially provided for he may be tried by a Court Martial, and if any person or persons shall assist or encourage any non-

commissioned officer or militia man to desert from any company, troop or regiment, or shall knowingly receive, or entertain such non-commissioned officer or militia man shall not after his being discovered to be a deserter, give immediate information to the nearest Justice of the Peace or Militia Officer, such person or persons so offending, on conviction before two or more Justices of the Peace, shall forfeit and pay a sum not exceeding Twenty Pound nor less than Five Pounds, and in default of payment, to be committed to some safe place of confinement for any time not less than one nor more than six Months, unless the fine and expences be sooner paid.

XIV. And be it further enacted by the authority aforesaid, that it shall be the duty of every Justice of Peace, Sheriff, Militia Officer, Coroner, Constable and Parish Officer whatever, and they are hereby enjoined, to apprehend and secure Deserters from the Militia and to cause such Deserters to be conveyed to the nearest post occupied by his Majesty's regular, or militia Forces.

XV. And be it further enacted by the authority aforesaid, that every Officer, non-commissioned Officer or militia man, not in actual service, who shall neglect or refuse, to repair to the place of exercise or review when thereto required by his superior Officer, unless prevented by sickness or having leave of absence, shall forfeit and pay, if an Officer, a sum not exceeding Ten Pounds, and if a non-commissioned officer or militia man, shall forfeit and pay a sum not exceeding Two Pounds for every such offence, and in default of payment to be committed to some safe place of confinement for any time not less than ten days, nor more than one month, unless the fine and expences be sooner paid.

XVI. And be it further enacted by the authority aforesaid, that whenever a Deserter from the militia shall be apprehended, the Court before which he may be tried for his Desertion, shall have full power and authority to order all expences attending the apprehension and conveyance of such Deserter or Deserters to his or their company, troop or regiment, to be levied and collected in like manner as fines may be levied and collected under, this or any other Militia Act.

XVII. And be it further enacted by the authority aforesaid, that when any non-commissioned officer or militia man shall claim any exemption from Militia duty, it shall and may be lawful for the Commanding Officer of the Regiment to which he belongs, to call a Court of Enquiry to examine into, the grounds of such claim, the Members of which Court and the Witnesses produced before them, shall be sworn in like manner, as is now done in Courts Martial other than General Courts Martial, and to proceed thereupon, agreeably to the report of the said Court of Enquiry.

XVIII. And be it further enacted by the authority aforesaid, that when any non-commissioned officer or militia man shall be commuted, to Prison pursuant to the judgement of any Justice or Justices of the Peace or sentence of any Regimental or Garrison Court Martial, it shall be lawful for the Commanding Officer of the regiment, detachment or post not being under the rank, of a field officer of Militia, to remit the whole or any part of such offender or offender's punishment, and to release him or them from such imprisonment or any part thereof.

XIX. And be it further enacted by the authority aforesaid, that if any non-commissioned officer or militia man be hereafter apprehended and conveyed to any Post or Garrison conformably to the Fourteenth Section of this Act and shall not have sufficient personal property to pay the incidental expences, the person or persons who shall take and convey such Deserter or Deserters may produce an account of such expences to the Justices of the Peace in General Quarter Sessions assembled for the District in which such Deserter or Deserters are found, and the said Justices or the major part of them, are hereby authorized to allow so much of such account as to them shall appear to be just and proper, and to give to the person or persons producing the same, an order on the Collector of Customs or Inspector of the District for the amount so allowed, and the said Collector or Inspector is hereby directed to pay the same out of any monies in his hands.

XX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Officer Commanding any Regiment, Post or Detachment, having first obtained a Warrant from a Justice of the Peace, to issue his order to impress carriages or Teams for the purpose of transporting any of His Majesty's Naval or Military Stores on their passage through this Province, and the owner or owners of such carriages or teams shall be paid at the rate of Twelve Shillings and Six Pence a day for each carriage and pair of horses or oxen furnished, and the further Sum of Two Shillings and Six Pence if a Driver be sent with such team.

XXI. And be it further enacted by the authority aforesaid, That all militia men from the age of Sixteen years to Fifty, shall be liable to be selected by ballot for the relief of any company, body or detachment of Militia on Duty, and when any militia man shall regularly serve in any detachment, the time prescribed by Law, he shall not be balloted to serve in any other detachment till all the men of the regiment to which he belongs, liable to be called out in detachments and capable of being obtained, shall have first been called out, unless there shall not be a sufficient number of persons in such regiment who have not so served to form the detachment required, and also unless the whole regiment be called out on Duty.

XXII. And he it further enacted by the authority aforesaid, That no order or conviction made by any Justice or Justices of the Peace or Court Martial by virtue of this Act, shall be removed by Certiorari out of the County, Riding, Division, or place wherein such order or conviction shall have been made, into any Court whatsoever, and that no Writ of Certiorari shall supercede execution or other proceedings upon any such order or conviction so made in pursuance of this Act, but that 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 such order or conviction shall not exceed the sum of Twenty Pounds.

XXIII. 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 three Months next after the fact committed and not afterwards, and shall be said in the county or place where the cause of complaint did arise, and not elsewhere, and the Defendant or Defendants in every such Action or Suit may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon: and if the Jury shall find for the Defendant or Defendants in any such Action or Suit, or if the Plaintiff or Plaintiffs

shall be 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.

XXIV. And be it further enacted by the authority aforesaid, That this Act shall be in force for and during the term of one year, and from thence to the end of the then next ensuing Session of the Provincial Parliament, and no longer, except that part of the same which relates to the Incorporated Militia, which part shall be in force for and during the present War with the United States of America, and no longer.