

Laws of Her Majesty's Province of United Canada, passed in the year 1846. Montreal:
Stewart Derbishire & George Desbarats, 1846.

9 Victoria – Chapter 28

An Act to repeal certain Laws therein mentioned, to provide for the better defence of this Province, and to regulate the Militia thereof. 9th June, 1846.

Whereas it is expedient to amend and consolidate the Laws of this Province relating to the Militia thereof, and to the quartering and billeting of Her Majesty's Troops and of the said Militia: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act of the Legislature of Upper Canada, passed in the forty-ninth year of the Reign of King George the Third, and intituled, *An Act for quartering and billeting His Majesty's Troops and the Militia of this Province*; and the Act of the said Legislature, passed in the second year of Her Majesty's Reign, and intituled, *An Act to repeal, alter and amend the Militia Laws of this Province*; and the Ordinance of the Legislature of the Province of Quebec, passed in the twenty-seventh year of the Reign of King George the Third, and intituled, *An Ordinance for better regulating the Militia of this Province, and rendering it of more general utility towards the preservation and security thereof*; and the Ordinance of the said Legislature, passed in the same year of the same Reign, and intituled, *An Ordinance for quartering the Troops upon certain occasions in the Country Parishes, and providing for the conveyance of effects belonging to the Government*; and the Ordinance of the said Legislature, passed in the twenty-ninth year of the Reign of King George the Third, and intituled, *An Ordinance to explain and amend an Act, intituled, 'An Act or Ordinance for better regulating the Militia of this Province, and rendering it of more general utility towards the preservation and security thereof;'* and the Ordinance of the Legislature of Lower Canada, passed in the first year of Her Majesty's Reign, and intituled, *An Ordinance to provide for the defence of this Province, and to regulate the Militia thereof*; and the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to amend the Militia Law of that part of this Province formerly constituting the Province of Upper Canada*; and the Act of the said Legislature, passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to revive and continue, for a limited time, a certain Ordinance therein mentioned, for regulating the Militia in Lower Canada, and to suspend, for a like time a certain provision of the Militia Law of Upper Canada*, shall be and the same are hereby repealed, except in so far as the said Acts and Ordinances, or any of them, repeal any previous Act, Ordinance or provision of Law: Provided always, that nothing in this Act contained shall extend to repeal any Law providing for the performance of any Civil duties by Officers or Non-commissioned Officers of Militia, not inconsistent with this Act.

II. And be it enacted, That the Militia of this Province shall consist of the male inhabitants thereof, over the age of eighteen years, and under the age of sixty years, being natural born

subjects of Her Majesty, or naturalized, and having resided more than six months in this Province; and the men composing the said Militia shall be divided into two classes, and all such persons between the ages of eighteen and forty years shall belong to and from the first class, and those between the ages of forty and sixty years, shall belong to and from the second class: Provided always, and be it enacted, that in time of peace the Privates of each Regiment of Militia, shall consist of men belonging to the first class only.

III. And be it enacted, That the Governor of this Province may, by Commissions under his hand and seal, appoint a sufficient number of Lieutenant-Colonels, Majors, Captains, and other Officers, to train, discipline, and command the Regiments or Battalions of the Militia to be formed under this Act, according to such orders and regulations as shall from time to time be issued by him for that purpose.

IV. And be it enacted, That the proportion of the number of Officers to the number of Privates shall not be greater in the said Militia than in Her Majesty's Army; that every Field Officer and Adjutant in the said Militia shall be resident within the limits of his Regimental Division: And that every other Officer shall reside within the limits of his Battalion Division.

V. And be it enacted, That the Officers of Militia so commissioned and appointed, shall rank with Officers of Her Majesty's other Forces serving in this Province as Juniors of their respective ranks.

VI. And be it enacted, That the Governor of this Province may, when and in such manner, not inconsistent with this Act, as he shall judge best for carrying the same into effect, divide this Province into Regimental Divisions and Battalion Divisions, and may in like manner from time to time alter the said Regimental or Battalion Divisions and establish others: And notice of such divisions and of all alterations thereof shall be given in such manner as the Governor shall direct: Provided always, that the Cities and Towns Corporate named in the Schedule to this Act, shall be considered as Battalion Divisions as far as regards the Officers to be appointed to Battalions within such Cities or Towns.

VII. And be it enacted, That the Lieutenant Colonel of each Battalion of the Militia (including any such Officer commanding a Regiment of only one Battalion) may in like manner divide his Battalion Division into Company Divisions, and may from time to time alter such Company Divisions or any of them, reporting such divisions and alterations forthwith, to the Adjutant General, and giving notice thereof and otherwise proceeding with regard to the same, according to the provisions of this Act and such regulations made under it as may be then in force; and each Company shall be distinguished by a number to be assigned to it.

VIII. And be it enacted, That each and every person belonging to either class of Militiamen, shall enrol himself with the Captain or other Officer commanding the Company within the limits of which such Militiaman shall then reside, on some one of the first twenty days of the month of June in each and every year, and shall in so enrolling himself state his name, age and residence, and whether he is married or unmarried: And the Captain or other Officer commanding each Company shall cause such enrollment to be made, and shall give at least ten days previous public

notice of the day or days (within the period aforesaid) and of the place within the Company Division on and at which he or some other Officer acting under his orders will attend for the purpose of making such enrollment.

IX. Provided always, and be it enacted, That in the present year such enrollment shall be made at such time as the Governor shall by any General Order appoint: Provided always, that all Clerks of the Peace, Assessors and persons employed in taking the Census, shall at all reasonable times allow the Officers or persons engaged in making such Rolls, free access to all public returns and documents in their custody, and afford them all such other official information as may be required for ascertaining what persons ought to enroll themselves as aforesaid.

X. And be it enacted, That each Officer receiving such enrollment as aforesaid, shall, within eight days after the completion thereof, return the Roll to the Officer Commanding his Battalion, who shall forthwith make a general return of his Battalion to the Adjutant General, and the Adjutant General shall thereupon (in obedience to such order as he shall receive from the Governor,) inform each Officer commanding a Battalion, of the Quota or number of men then required for active service; and the Officer commanding each Battalion shall then inform each Officer Commanding a Company in such Battalion of the number of men for active service then required.

XI. And be it enacted, That on receiving such information as last aforesaid, each Officer commanding a Company shall, by public notice, appoint a place and day at which he shall require all the Militiamen of the first class to attend for the purpose of determining who among them shall be the men for active service.

XII. And be it enacted, That on the day so appointed as last aforesaid such Captain or some Officer under his orders, shall take down the names of all the men of the first class belonging to the Company who shall volunteer for service, and if more than the requisite number shall so volunteer, he shall select such requisite number from those so volunteering, and the men so selected shall be the men for active service: but if less than the requisite number shall volunteer, then the men required to make up such number shall be balloted for, and the Captain or other Officer aforesaid shall proceed to ballot for such men in the manner following, or as nearly so as circumstances will allow, that is to say:

He shall write the name of each of the men who have not volunteered, on a slip of paper, and shall fold up the same (all the slips being as nearly as may be of the same size, and folded alike); and shall put the said slips into a box and shake them, and shall draw them out one by one, shaking them each time, and reading aloud and marking down each name so drawn, until the number sufficient to form the requisite number shall have been drawn, and he shall then stop: and the men whose names shall have been so drawn shall be those for active service during the term for which the ballot shall be made, leaving to each his lawful claim to exemption if any he shall have; but in taking the men to form the Quota, the unmarried men of the first class shall be first taken, and if they be insufficient, then the unmarried men of the second class, and, if these be insufficient, then the married men of the first class, and lastly the married men of the second class:

Provided always, that if part only of the men of any of the descriptions aforesaid be taken, then Volunteers shall be first received and the remainder made up by ballot as aforesaid.

And the Captain or other Officer aforesaid shall make a Return of all his proceedings to the Officer commanding the Battalion, who shall return the same to the Adjutant General, in such form and under such regulations as shall be directed by Militia General Orders: Provided always, that no such selection by volunteering or ballot shall be required, except when the said Militia are called out for active service, according to this Act.

XIII. And be it enacted, That the said Captain or other Officer aforesaid, shall notify the men who are to serve, of their being so ballotted for active service, and of the period for which they are to serve.

XIV. And be it enacted, That, in all cases of emergency, it shall be lawful for the Governor to order and direct the men so taken or ballotted for active service to assemble at such place or places as he shall appoint, for the purpose of being formed into Companies and Battalions: and it shall also be lawful for the Governor to designate by name or number the Battalions so to be formed, and to appoint such and so many Officers to train, discipline and command such Companies and Battalions as he may think fit, in conformity with the provisions of this Act as to the proportion between the number of Officers and Privates: Provided always, that the Captains and Subalterns shall be taken from the Regimental Division from which the privates they are appointed to command shall come, as far as the same may be practicable.

XV. And be it enacted, That if at any time it shall appear that the number of men for active service, volunteering or ballotted for service in the Militia in any Company Division, does not amount to the number which such division ought to furnish, the deficiency shall be supplied by volunteering or ballot from the men on the Roll of such division, to be ordered and made in the manner hereinbefore provided for balloting in other cases, or as nearly so as may be practicable.

XVI. And be it enacted, That the ordinary Quota of Militiamen in this Province shall not exceed thirty thousand men, but it shall be lawful for the Governor from time to time to direct such contingent or Quota to be increased or diminished, as circumstances may require.

XVII. Provided always, and be it enacted, That the period for which the Militiamen so called out for actual service shall be respectively liable to serve, shall be regulated as follows, that is to say; at the end of one year from the time of their being assembled for actual service, one half, to be determined by lot, under the direction of the Officer Commanding the Battallion, shall be permitted to return home, and the other half shall remain for a second year, and then also be permitted to return home; and the place of those returning home shall from time to time, and as often as occasion shall require, be supplied by a new Quota or contingent to be obtained and ballotted for as hereinbefore provided, so that, excepting the first half, the said Militiamen shall be liable to serve for two years at a time, and not longer: Provided that on every selection of a new Quota or contingent, those men who have already served, or who have served most recently, shall

not be balloted for a second term of service until the others of the respective classes have been exhausted.

XVIII. And be it enacted, That in so far as circumstances and the information possessed by the proper authorities will permit, the said Battalion and Company Divisions from which the Quota or contingent for active service is to be taken, shall be so made as that no Battalion shall consist of more than ten nor less than four Companies, and no Company of less than sixty nor of more than one hundred and twenty men, exclusive of Non-commissioned Officers and Drummers.

XIX. And be it enacted, That in addition to the Quotas or contingents actually organized, the Governor may call out and embody the whole or such part as may appear to him expedient of the Militia of any Regiment, Battalion or Company in this Province, in time of actual War with a Foreign Power, to repel invasion, or other pressing exigency, or for any purpose connected with the preservation of the public peace or the safety of the Province, in such manner as shall to him seem, best, and may march the Militia into any part of the Province, and shall also have power to march the Militia or any portion thereof, to any place without the limits of the Province but conterminous therewith, 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 of any Fort, Depôt or Magazine, formed or forming, by any Foreign Power at War with the Queen, Her Heirs or Successors, from whence the invasion of this Province may be apprehended, and in no other case or cases whatever.

XX. And be it enacted, That whenever a part only of the Militia shall be so called out, it shall and may be lawful for any person being a private Militiaman to provide and send an approved substitute eligible to serve in the Militia to serve in his stead; and such substitute being accepted and enrolled for service, shall be liable to all the obligations of the man for whom he is substituted.

XXI. And be it enacted, That when the Militia are so called out and embodied, any Officer, Non-Commissioned Officer or Militiaman, belonging to any portion thereof so called out and embodied, 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 Her Majesty's Regular or Provincial Forces, in any Camp or Post, or upon any party, detachment or guard, on any pretence whatever, shall suffer such punishment other than death or corporal punishment as by a General Court Martial shall be awarded.

XXII. And be it enacted, That any Officer, Non-commissioned Officer or Militiaman, who, being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same, or coming to the knowledge of such mutiny or sedition, shall not without delay give information thereof to his Commanding Officer, shall suffer such punishment, other than death or corporal punishment, as by a General Court Martial shall be awarded.

XXIII. And be it enacted, That any Officer, Non-commissioned Officer or Militiaman, 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.

XXIV. And be it enacted, That any Officer, Non-commissioned Officer or Militiaman, 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 Her Majesty's Regular or Provincial Troops, shall, on being convicted thereof, be punished, (excepting by death or corporal punishment,) 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 entertain such Non-commissioned Officer or Militiaman, 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 conviction thereof before a General Court Martial, be cashiered: And be it enacted, that if any Officer, Non-commissioned Officer or Militiaman, shall be convicted of having advised or persuaded any other Officer, Non-commissioned Officer or Militiaman to desert Her Majesty's Service, he shall suffer such punishment as shall be awarded by a General Court Martial.

XXV. And be it enacted, That the Governor shall have the power to form such men, belonging to the Militia, as shall volunteer for that purpose, into Regiments or other Corps of Militia, Dragoons, Artillery, Rifles or Light Infantry, separate and distinct from other Militia Corps, and to be taken from the different Battalion or Company Divisions aforesaid, in any Regimental Division, and from such local portions thereof as the Governor shall appoint with regard to each such Volunteer Corps, and to appoint the necessary Officers; and such Corps so constituted, shall be subject to such orders, rules and regulations, with respect to drill, inspection, or other duties, as from time to time may be issued for their efficient organization for actual service, apart from other Militia Corps in the Province, but shall otherwise be liable to the same duties and obligations as other Militia Corps, and subject to the provisions of this Act in like manner: Provided always, that nothing herein contained shall prevent any approved man from serving in any such Volunteer Corps although he be not then ballotted for service in the Militia, provided he shall take upon himself the same obligations and for the same period as if he were then so ballotted for service; and the obligations so taken upon himself shall then be as valid and binding and may be enforced against him in the same manner as if he had been ballotted for service as aforesaid.

XXVI. And be it enacted, That the Governor may, by Volunteers as aforesaid, and under like provisions, form a Provincial Naval Corps, and may appoint a Commodore, who shall rank with Lieutenant-Colonels of Militia, and also Captains and Lieutenants of a Provincial Navy, who shall rank with Majors and Captains of the Militia, as Seniors of their respective ranks; and the Officers and men of such Corps shall be drilled to the exercise of heavy guns, and to the management of gun-boats, in addition to their duties in the use of small arms as a Militia force.

XXVII. And be it enacted, That in case Her Majesty shall be pleased to appoint Inspecting Field Officers of Militia, holding the rank of Field Officer in Her Majesty's other Forces, for any portion or portions of this Province, such Inspecting Field Officers shall respectively have the rank of Colonel of Militia, and shall command the Militia within the Inspection Districts to which they shall be so appointed; but this grant of the Militia rank of Colonel shall not confer upon these Officers any privilege of rank or authority over any part of Her Majesty's Forces, beyond that which their rank in the Regular Service entitles them to: Provided, that all Colonels serving by Commissions signed by Her Majesty's General Commanding in Chief in British North America, shall, when employed on any duty in conjunction with Colonels serving by commissions from the Governor of this Province, have precedence of such Colonels although the Commissions of the latter be of elder date.

XXVIII. And be it enacted, That the First Class of Militia shall be assembled for muster and discipline, for one day in each year, as shall be directed in each division respectively, and such day shall be the twenty-ninth day of June, unless that day be Sunday, in which case the next following day shall be the day for so assembling: Provided always, that the Governor may, by any General Order, dispense with or forbid such assembling in any year and with regard to any division of Militia.

XXIX. And be it enacted, That in case of any sudden emergency, wherein the aid of the said Militia Forces shall be required for the purposes of repelling any invasion, or any other pressing danger or emergency, when there shall be no opportunity of communication with the Governor, it shall be lawful for the Senior Lieutenant Colonel, or other Officer commanding any Regiment of Militia, to call out and assemble the whole, or any portion of the Militia of the Regimental Division in which such Lieutenant Colonel or other Officer shall command, as the case may be, for actual service, and to keep the said Militia, so called out, assembled for actual service until the pleasure of the Governor shall be known.

XXX. And be it enacted, That the following persons shall be and are hereby excused from actual service in the said Militia, in any case, namely:

The Judges of Her Majesty's Courts of Queen's Bench, or of King's Bench:

The Vice Chancellor:

The Judge of the Court of Vice-Admiralty:

The Judges of the Circuit and District Courts, and Commissioners of Bankrupts:

The Clergy and Ministers of all denominations of Christians:

The Professors in any College or University, and the class of persons known as Les Frères de la Doctrine Chrétienne:

The Keepers and Guards of the Provincial Penitentiary.

And that the following persons shall be exempted from actual service in the said Militia, except in time of War, Invasion, or Insurrection, but not from enrollment:

The Members of the Executive and Legislative Councils:

The Members of the Legislative Assembly:

The Officers of the said Councils and Assembly, respectively:

The Attorneys and Solicitors General:

The Provincial Secretary, and Assistant Secretaries:

All Civil Officers who shall have been appointed to any Civil Office in this Province under the Great Seal:

All persons lawfully authorized to practise Physic or Surgery:

All Advocates, Barristers, Solicitors or Attorneys:

Notaries in Lower Canada:

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

Postmasters and Mail Carriers:

Sea-faring men actually employed in the line of their calling:

Masters of the Public or Common Schools:

Ferry-men:

One Miller for each run of stones in every Grist Mill:

Keepers of Public Toll Gates:

Lock Masters, and Labourers employed in attending to Locks or Bridges on Public Canals:

Members of Fire Companies and of Hook and Ladder Companies:

Constables and Officers of the Courts of Justice, not being such solely by virtue of their office as

Non-commissioned Officers of Militia:

Students attending Seminaries, Colleges, Schools, and Academies, who have been attending such at least six months-previous to the time at which they might be called upon to do Militia duty:

All persons disabled by bodily infirmity.

Provided always, that such exemption shall not prevent, or be construed to prevent any or every of the above-mentioned persons from holding Commissions as Officers of Militia, or from serving in the said Militia if they shall desire so to do; And provided also, that the Governor may exempt any of the above mentioned persons, or any other persons, from actual service at any time in the said Militia; Provided further, that no person shall, in any prosecution under this Act, be entitled to claim such exemption unless he shall before the commencement of such prosecution have served upon the Captain of the Company in which he ought otherwise to serve, a notice of his claim to such exemption, and his affidavit sworn before some Justice of the Peace, of the facts on which such claim shall be founded; and in every case where exemption shall be claimed, as well on the ground of age as otherwise, the burden of proof shall lie upon the person making such claim.

XXXI. And be it enacted, That the persons called Quakers, Mennonists or Tunkers, who, from scruples of conscience, decline bearing arms, shall, on certain conditions, be exempt from actual service in the Militia, that is to say: every person who would otherwise be liable to serve in the Militia aforesaid, and who shall profess to be one of the people called Quakers, Mennonists or Tunkers, and shall produce to the Captain of the Company in which he ought otherwise to serve, a certificate of his being a Quaker, Mennonist or Tunker, signed by the Clerk, Pastor, Minister or Elder of such Society, or by three or more of the said people called Quakers, Mennonists or Tunkers, shall be exempt from actual service in the said Militia for one year, on payment to the said Captain of the sum of five shillings, currency, in time of Peace, and in case of War, Invasion, or other emergency, when the Militia aforesaid shall be under orders for actual service, of a sum not exceeding twenty pounds, currency; and that in case any such person shall neglect or refuse so to obtain such exemption, he shall be liable to the provisions of this Act, and to the same pains and penalties for any contravention thereof, as if he were not such Quaker, Mennonist or Tunker; But nothing herein contained shall be construed to exempt any such person as aforesaid, from the obligation to enrol himself in his Company Division as hereinbefore provided, or from the penalty for not so enrolling himself.

XXXII. And be it enacted, That within one month after receiving any fine or pecuniary penalty under this Act, the Officer receiving the same shall pay over to the Receiver General of this Province, for the public uses thereof, the monies he shall have so received; and if he shall wilfully neglect or refuse so to do, he shall be liable, upon trial and conviction for such offence, by General Court Martial, to be cashiered; and upon such trial the burden of proof of having paid over such sum shall be upon the person charged before such Court Martial.

XXXIII. And be it enacted, That no person who shall have been an Officer or Non-commissioned Officer in Her Majesty's Regular service, or in the Militia in any part of this Province, or an Officer in the Militia in any part of Her Majesty's Dominions, shall be obliged to serve in any inferior station

in the Militia of this Province, unless he shall have been reduced by sentence of a Court Martial, or other lawful authority, or unless, having been offered the rank he may have theretofore held as aforesaid, he shall have refused or neglected to accept the same; and that every Officer and Non-commissioned Officer of Militia shall be exempt from the obligation of serving as Constable during the time he shall be such Officer or Non-commissioned Officer.

XXXIV. And be it enacted, That it shall be lawful for the Governor to appoint by Commissions under his hand and seal, one Adjutant General of Militia, and two Deputy Adjutants General, who shall respectively be stationed in such place and places as the Governor from time to time shall order and direct, and who shall attend to the issuing of Militia General Orders, the preparation and issuing of Commissions of Militia Officers, to the organization, training, discipline and management of the said Militia, and perform the other duties appertaining to the office of Adjutant General of Militia, in obedience to such orders and regulations as shall be from time to time issued and made by the Governor of this Province.

XXXV. And be it enacted, That the Adjutant General of Militia shall have the rank of Colonel of Militia, and the Deputy Adjutants General shall have the rank of Lieutenant-Colonels of Militia.

XXXVI. And be it enacted, That the Governor may appoint persons belonging to his Personal Staff, 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.

XXXVII. And be it enacted, That the Governor may from time to time prescribe the uniforms to be worn by the Militia of the Province when on duty upon actual service, and may require Officers of Militia to provide themselves with such books for instruction in their duty as he shall see fit.

XXXVIII. And be it enacted, That any Officer of Militia who shall not, when called out for actual service in time of war, provide himself with such uniform, including a sword, or who shall when on such actual service appear at any Muster or Inspection of the Battalion or Corps to which he shall belong, 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 to be superseded.

XXXIX. And be it enacted, That any Officer of Militia who, in time of peace, shall be guilty of wilful neglect or disobedience of orders, or any act of insubordination, in the performance of his duty, shall, on conviction, be liable to pay a fine not less than two pounds, ten shillings, nor more than twenty pounds, besides costs of conviction, or to be dismissed the service, at the discretion of the Court before whom he shall be tried.

XL. And be it enacted, That any Militiaman who, in time of peace, shall be guilty of wilful neglect or disobedience of orders at any time, or of any act of insubordination or misconduct, while on parade or engaged in the performance of Militia duty, shall, on conviction, incur a fine of not less than five shillings nor more than ten shillings over and above the costs of conviction; and in default

of payment, and if sufficient distress be to found, shall be liable to imprisonment in the Common Gaol of the District for a term not less than six days, nor more than one month, unless the fine be sooner paid.

XLI. And be it enacted, That any Officer or Militiaman, who, in time of War, or when the Regiment, Detachment, or Corps to which he shall belong, shall be ordered out for actual service, or any such danger or pressing emergency as aforesaid, shall wilfully refuse or neglect to obey any order, or shall abscond from, or neglect to repair to the place he is ordered to, shall, unless he shall satisfy the Lieutenant Colonel or Officer commanding the Battalion or Corps to which he belongs, that such refusal or neglect arose from sickness, or that he was absent upon leave, as soon as possible be brought to trial before a Court Martial, as hereinafter provided, and shall be liable to be punished by fine, imprisonment or otherwise in the discretion of the Court Martial by whom he shall be tried; Provided that no such Militiaman shall be flogged in any case whatever.

XLII. And be it enacted,. That every person whether he be or be not in the Militia, and although he be also liable to be tried for the offence by Court Martial, who, at any time whatever, shall sell, barter or pledge, or tender in sale, barter or pledge, or unlawfully make away with any part of the arms or equipments of the said Militia force, or any ammunition or stores, and every person who shall buy or by barter or pledge obtain, or who shall otherwise unlawfully receive, take or detain any portion of the said arms or equipments, or ammunition or stores, shall be deemed guilty of a misdemeanor upon conviction for such offence before any Court of competent jurisdiction, and be liable to be punished accordingly.

XLIII. And be it enacted, That all Officers charged with any offence or offences against the provisions of this Act in time of peace, shall be tried by General Court Martial; and that the Governor of this Province shall have authority by any Militia General Orders, to assemble such General Court Martial,—the same to consist of one Field Officer of Militia as President, and at least six other Commissioned Officers; provided that when a Field Officer cannot conveniently be had for such service, a Captain may act as President.

XLIV. Provided always, and be it enacted, That no Officer under the rank of Captain shall sit upon the trial of any Field Officer; and that the Senior Officer on any Court Martial shall be the President thereof.

XLV. And be it enacted, That the Governor may appoint a Judge Advocate for every General Court Martial, who shall be entitled to receive for each day upon which the Court Martial shall sit the sum of twenty-five shillings.

XLVI. And be it enacted, That every Militiaman, charged with any offence or offences against the provisions of this Act in time of peace, shall be tried by Regimental Court Martial.

XLVII. And be it enacted, That the Officer commanding the Battalion or Corps to which the offender shall belong, shall have full power and authority, in time of peace, to assemble an Ordinary Court Martial, to be composed of not less than three Officers of the Battalion or Corps,

one of whom shall be of the rank of Captain, and upon which Court the Officer who shall assemble the same shall not sit; and such Court shall have authority to hear and determine all charges that may be brought against any Militiaman for any offence or neglect of duty, contrary to the provisions of this Act.

XLVIII. And be it enacted, That the Officer who shall assemble any such Ordinary Court Martial, in time of peace, shall order the Captain or other Officer in command of the Company to which the Militiaman charged with any offence against the provisions of this Act shall belong, to cause notice in writing to be given to the person so charged, requiring him to appear and answer to any such charge, which notice shall be signed by the Captain or Officer commanding such Company, and may be in the words, or to the effect following:

“You, A. B., are required to attend before an Ordinary Court Martial of the ___ of Militia, which will assemble at ___ on the ___ day of ___ at ___ o’clock in the forenoon, to answer to a charge which will be then and there preferred against you, for (setting forth the offence briefly, as the case may be.)

Dated this _____ day or _____ 18_____.

(Signed,) C.D. Captain of (or Officer commanding) the ___ Company of the ___ of Militia.”

XLIX. And be it enacted, That no such Militiaman shall be condemned or liable to answer any charge preferred against him, unless it be proved at the time appointed for the trial of the charge, that he was served with a notice as herein before provided, at least four days before the meeting of the Court; and that if any such Militiaman, on whom such notice shall have been served, shall not appear to answer to the charge preferred against him, the Court may proceed to the trial of the said charge, and pronounce judgment as if the person so charged were present and answering to such charge.

L. And be it enacted, That the person who shall serve notices as required by this Act, shall be entitled to receive four pence for each mile he shall necessarily travel, to effect such service, and one shilling and three pence for such service; and every person who shall arrest and convey to prison any Militiaman, in pursuance of the sentence of any such Court Martial, shall receive the sum of one shilling and three pence for such arrest, and four pence for each mile he shall necessarily travel to make the same.

LI. And be it enacted, That the persons who shall be employed in the summoning witnesses, and in serving notices, and others who shall be entitled under this Act to remuneration for any service relating to such Court Martial, shall be entitled to receive the same from the President of such Court Martial, to whom it shall be paid by the Adjutant General, out of such monies as shall be from time to time advanced to him (by warrant of the Governor addressed to the Receiver General) for the purpose of defraying the contingent expenses lawfully incurred under this Act; and such Adjutant General is hereby authorized and required to pay the same, upon receiving a

Pay List signed by the President of such Court Martial, and shall charge the said amount in account with the Government of this Province.

LII. And be it enacted, That no Officer serving in the Militia shall sit on any Court Martial upon the trial of any Officer or Soldier serving in any of Her Majesty's other Forces; nor shall any Officer serving in any of Her Majesty's other Forces sit in Court Martial upon the trial of any Officer or Soldier serving in the Militia.

LIII. And be it enacted, That no sentence of any General Court Martial shall be carried into effect until the same shall be approved by the Governor of this Province; and no sentence of any Ordinary Court Martial shall be carried into effect until the same, shall be approved by the Officer who shall have assembled such Ordinary Court Martial.

LIV. And be it enacted, That every such Militia Court Martial (General as well as Ordinary) shall have power to summon witnesses, and to examine such witnesses upon oath, relative to any charge which such Court Martial shall be assembled to try; and if any witness so summoned shall neglect or refuse to give his attendance or being in attendance shall refuse to give evidence, he may, by such Court Martial, be committed to the Common Gaol of the District in which such Court Martial shall be held, for any term not exceeding eight days.

LV. And be it enacted, That in all trials by Militia General Courts Martial, the Judge Advocate, or person officiating as such, shall administer to each Member the oath hereinafter inserted; and in trials by all other Militia Courts Martial, the same oath shall be administered by the President to the other Members, and afterwards, by any sworn Member, to the President:

"You shall well and truly try, and determine according to the evidence, the matter now before you, and you shall duly administer justice therein, according to law, without partiality, favour, or affection: you shall not divulge the sentence of the Court until it shall be approved by the Governor, (or in case of an Ordinary Court Martial, by the Officer to whom such approval shall lawfully belong,) neither shall you at any time or on any account whatsoever disclose or discover the vote or opinion of any particular member of the Court Martial, unless required to give evidence thereof in due course of Law; So help you God."

And as soon as the said oath shall have been administered to the respective members, the President of the Court shall administer to the Judge Advocate, or person officiating as such at a General Court Martial, an oath in the following words:

"I, A. B., do swear, that I will not, on any account whatsoever, discover the vote or opinion of any particular Member of this Court Martial, unless required to give evidence thereof as a witness, by a Court of Justice or a Court Martial, in due course of Law. So help me God."

LVI. And be it enacted, That all persons who shall give evidence before any Court Martial, shall be examined on oath in the following words:

“The evidence which you shall give before the Court, shall be the truth, the whole truth, and nothing but the truth. So help you God.”

LVII. And be it enacted, That any person who shall use menacing words, signs or gestures in presence of any Court Martial, or shall cause any disorder or riot so as to disturb its proceedings, shall be liable to be imprisoned, upon the warrant of the President of the Court, in the Common Gaol of the District in which such Court shall sit, for any period not exceeding eight days, at the discretion of such Court Martial.

LVIII. And be it enacted, That the Governor may, if he shall think proper, when any complaint shall be made against any Officer of the Militia, or when any application shall be made to him in that behalf, assemble a Militia General Court Martial, or may, at any other time, appoint a Court of Inquiry, to consist of at least three Militia Officers, to examine into and report upon such complaint, or upon the grounds of any such application, or cause of inquiry.

LIX. And be it enacted, That all persons imprisoned under sentence or order of any Court Martial in time of peace, shall, by the Warrant of the President of such Court Martial, under his hand and seal, specifying the cause of the committal of such persons, be committed to the Common Gaol of the District in which the Court Martial shall be held, and upon such Warrant shall be received and kept by the gaoler for the period therein mentioned.

LX. And be it enacted, That if any person shall wilfully interrupt or molest any portion of the said Militia Force whilst on any lawful duty, it shall be lawful for the Officer present and in command thereof, to cause such person to be arrested and taken under guard of any One or more Militiamen, before any one of Her Majesty's Justices of the Peace, who, after complaint made upon oath, shall, upon summary conviction, sentence such offender to pay a fine not exceeding ten shillings, or in default of payment and of sufficient distress, may commit the offender for a period not exceeding eight days, to the Common Gaol of the District, if the fine be not sooner paid.

LXI. And be it enacted, That when Her Majesty's Regular Forces, or the Militia aforesaid, shall be on a march within this Province, and billeted as hereinafter mentioned, each and every householder therein shall, when required, furnish them with house-room, fire and utensils for cooking, and candles; and in cases of emergency, by actual invasion or otherwise, it shall and may be lawful for the Officer commanding the Regiment, Battalion or Detachment of Troops or Militia, to direct and empower any Officer or Non-commissioned Officer of the same, or other person, having first obtained a Warrant for such purpose from a Justice of the Peace, to impress and take such horses, carriages, or oxen as the service may require, the use of which shall be thereafter paid for at the usual rate of hire for such horses, carriages or oxen.

LXII. And be it enacted, That when the said Troops of Her Majesty, or Militia, or any Regiment, Battalion, or Detachment of the same, are on a march as aforesaid, the Officer or Non-commissioned Officer commanding such Troops of Militia, of such Regiment, Battalion or Detachment thereof, shall present to a Justice of the Peace a requisition in writing to such Justice to billet, who shall immediately thereupon so billet the said Troops or Militia as to facilitate their

march, and in such manner as may be most commodious to the inhabitants; and that every inhabitant householder who shall refuse to receive the said Troops or Militia, so billeted upon them as aforesaid, or to furnish them with the lodging and articles mentioned in the next preceding section, shall, for every such offence, forfeit and pay a sum not exceeding forty shillings; And no Officer shall be obliged to pay for his lodging where he shall be regularly billeted; but each householder upon whom such soldiers are billeted, shall receive from Government for each Non-commissioned Officer, Drummer and Private of Infantry, a daily rate of four pence, and for each Cavalry soldier, whose horse shall be also provided with stabling and forage, a daily rate of ten pence; and every Officer or Non-commissioned Officer to whom it belongs to receive, or who does actually receive the pay for any Officers or Soldiers shall, every four days, or before they shall quit their quarters, if they shall not remain so long as four days, settle the just demands of all householders, victuallers, or other persons upon whom such Officers and Soldiers are billeted, out of their pay and subsistence money, before any part of the said pay or subsistence money be distributed to them respectively, provided such demands do not exceed in amount their pay and subsistence money for the time, credit beyond which is not to be granted.

LXIII. And be it enacted, That when the safety of this Province shall require that the said Troops of Her Majesty, or Militia, or any Regiment, Corps or Detachment of the same should be cantoned in any part or parts of this Province, then and in such case it shall and may be lawful for any Justice of the Peace in the respective Districts where such Troops or Militia may be cantoned, upon receiving an order from the Commander of the said Troops or Militia, or on a requisition from the Officer commanding any such cantonment, to quarter and billet, and the said Justice is hereby required to quarter and billet the Officers, Non-commissioned Officers, Drummers and Privates of the said Troops or Militia, upon the several inhabitant householders, as near as may be to the place of cantonment, avoiding as much as possible to incommode the said inhabitants, and taking due care to accommodate the said Troops or Militia; and if any inhabitant householder shall refuse to receive such Troops or Militia, so billeted on him as aforesaid, and to furnish them with the lodging and articles hereinbefore mentioned, he shall for each and every offence forfeit and pay a sum not exceeding forty shillings; and if any inhabitant shall consider himself aggrieved by having a greater number of the said Troops or Militia billeted upon him than he ought to bear in proportion to his neighbours, by the said Justice, then on complaint being made to two or more Justices of the District where such Troops or Militia shall be cantoned, it shall and may be lawful for such Justices, and they are hereby authorized to relieve such inhabitant, by ordering such and so many of the said Troops or Militia to be removed and quartered upon such other person or persons as they shall see cause, and such other person or persons shall be obliged, under a penalty not exceeding forty shillings, to receive such Troops or Militia accordingly: Provided that no Justice or Justices of the Peace, having any Military Office or Commission in the said Troops or Militia, shall directly or indirectly be concerned in the quartering or billeting of any Officer, Non-commissioned Officer, Soldier or Soldiers of the Regiment, Corps or Detachment under the immediate command of such Justice or Justices: Provided always, that nothing in this Act contained shall be construed to authorize the quartering or billeting of any Troops or Militia, either on a march or in cantonment, in any Convent or Nunnery of any Religious Order of Females, or to oblige any such Religious Order to receive such Troops or Militia, or to furnish them with lodging or house-room.

LXIV. And be it enacted, That when the said Troops of Her Majesty, or Militia, or any part of them, shall be so cantoned as aforesaid, any Justice of the Peace of and in the District where such cantonment is made, upon receiving an order from the Commander of the said Troops or Militia in that behalf, or a Requisition in writing from the Officer commanding that cantonment, for such and so many carriages as may be requisite and necessary for the said Troops or Militia, shall and may, and he is hereby required to issue his Warrant to such person or persons as may be possessed of carriages, horses or oxen within his jurisdiction, requiring him or them to furnish the same for the service aforesaid; and if any such person or persons shall neglect or refuse, after receiving such Warrant, to furnish his or their carriage or carriages, horses, or oxen for that service, each and every such person or persons shall forfeit and pay a sum not exceeding forty shillings: and the said carriages, horses or oxen may be impressed and taken for such service; Provided always, that such carriage or carriages, horses or oxen, or the carriage or carriages, horses or oxen mentioned in the previous clauses or sections of this Act, shall not be compelled to proceed more than thirty miles, unless in cases where other carriages, horses or oxen cannot immediately be had to replace them; and such carriages, horses or oxen shall be paid for at the usual rate of hire.

LXV. And be it enacted, That in cases of emergency, when it may be necessary to provide proper and speedy means for the conveyance by water of the said Troops of Her Majesty, or Militia, and also of their ammunition, stores, provisions and baggage, any Justice of the Peace of and in the District where such Troops or Militia may be either on a march or in cantonment, upon receiving a Requisition in writing from the Officer commanding such Troops or Militia, for such boats or other craft as may be requisite for the conveyance of the said Troops or Militia, and their ammunition, stores, provisions and baggage, shall and may and he is hereby required to issue his Warrant to such person or persons as may be possessed of such boats or other craft, within his jurisdiction, requiring him or them to furnish the same for that service, at and after the rate of payment to be allowed by the said Justice, not exceeding the usual rate of hire for such boats or other craft; and if any such person or persons shall neglect or refuse, after receiving such Warrant, to furnish his or their boats or craft for that service, such and every such person or persons shall forfeit and pay a sum not exceeding five pounds, and such boats or other craft may be impressed and taken for such service.

LXVI. Provided always, and be it enacted, That if any Officer of Militia shall be guilty of partiality in having exempted any person or persons from such service as aforesaid, without being legally authorized so to do, or in having commanded others to perform such service out of their turn of duty, or shall in any way misuse the power in the five next preceding sections vested in him, he shall for such offence incur a penalty not exceeding five pounds, to be recovered before any two Justices of the Peace, or may be tried by Court Martial and punished in the discretion of the Court.

LXVII. And be it enacted, That no person who shall have been dismissed from Her Majesty's Army or from the Militia, by sentence of a General Court Martial, shall be allowed to hold a Commission in the Militia of this Province.

LXVIII. And be it enacted, That the penalties imposed by this Act, and for the recovery of which special provision is not hereinbefore made, may be recovered and enforced before any two or

more Justices of the Peace nearest to the place wherein the offence shall have been committed or the offender shall be found, and on the oath of any credible witness or witnesses, or of the informer or prosecutor, to whom no part of the penalty shall in any case belong: and all such penalties, when not otherwise provided for, may be received by such Justices or one of them, and shall be accounted for and paid over for public uses, in the same manner as other penalties received by Justices of the Peace.

LXIX. And be it enacted, That all pecuniary penalties and forfeitures by this Act inflicted, or authorized to be imposed, shall be levied and recovered by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the Justice of the Peace or of one of the Justices of the Peace, or under the Warrant of the Court, before whom the offender shall have been convicted; and such Justice or Court is hereby empowered and required to issue such Warrant, and in default of sufficient distress, to commit the offender to Gaol by a like Warrant for the period hereinbefore provided in the case; and every Sheriff, Gaoler or other Officer to whom any such Warrant shall be addressed shall obey the same according to the tenor thereof; and the overplus, if any, of the money arising by any such distress and sale shall be returned, upon demand, to the owner or owners of such goods and chattels, deducting therefrom the costs and charges of such distress and sale; and the said penalties and forfeitures shall be paid into the hands of the Receiver General, for the public uses of this Province.

LXX. And be it enacted and declared, That the Governor of this Province may issue Her Majesty's pardon for any offence or offences against the provisions of this Act, and may remit any fines or other penalties incurred for any such offence or offences.

LXXI. And be it enacted, That if the statement in any oath or affirmation taken or made in pursuance of this Act, shall, to the knowledge of the person making the same, be false, such person shall be guilty of wilful and corrupt perjury; and whenever an oath is required by this Act, a solemn affirmation may be made instead thereof, if the party of whom the oath would be required be one of those entitled by law to make affirmation.

LXXII. And be it enacted, That no complaint or prosecution shall be brought against any person or persons for any fine or penalty hereinbefore imposed, unless the same be commenced within six months next after the offence committed, except in cases of desertion, or harbouring, concealing, aiding or abetting Deserters, or buying, taking in exchange or concealing arms or accoutrements delivered to Militia.

LXXIII. And be it enacted, That if any action shall be brought against any person or persons for anything done in pursuance of this Act, the same shall be commenced within six months next after the fact committed, and not afterwards: 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: And if judgment shall be given for the Defendant or Defendants in any such action or suit, or if the Plaintiff or Plaintiffs shall be nonsuited or discontinue his or their action or suit, after the Defendant or Defendants shall have appeared, 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.

LXXIV. And be it enacted, That all Commissions to Officers of Militia shall be transmitted by the Adjutant General, or one of the Deputy Adjutants General of Militia, to the Lieutenant Colonel or Officer commanding any Corps, to be delivered to the respective Officers appointed to such Corps.

LXXV. And be it enacted, That it shall be the duty of the Adjutant General to cause to be prepared and printed and transmitted to the several Officers of Militia, who may, under the provisions of the Act, have occasion for the same, proper Blank Forms for all Returns and other proceedings required under this Act.

LXXVI. And be it enacted, That when, and so often as the words "Governor," or "Governor of this Province," are used in this Act, the same shall be held to mean and signify the Governor, Lieutenant Governor or person administering the Government of this Province, or any Deputy by him lawfully appointed to perform the function to which the enactment may relate; and the word's "Lower Canada," shall mean all that part of this Province formerly constituting the Province of Lower Canada, and the words "Upper Canada" shall mean all that part of this Province formerly constituting the Province of Upper Canada; and the words "Militiaman," or "Militiamen," shall include Non-commissioned Officers, Drummers and Privates of the Militia; and any duty hereby assigned to any Officer, may, if there be them no such Officer, be performed by the Officer next in rank on whom his command or duties shall have for the time devolved, unless in either case there be some thing in the subject or context inconsistent with such construction; and whenever power is given to any Officer or person to do any act or perform any duty, all such powers shall be understood to be given as shall be requisite for the proper doing or performance thereof; and generally all words, phrases and provisions herein contained shall receive such fair and liberal construction as shall be best calculated to give full effect to this Act, according to its true intent, spirit and meaning.

LXXVII. And be it enacted, That this Act shall remain and be in force for the period of three years, and thence to the end of the next ensuing Session of Parliament, and no longer: Provided always nevertheless, that if at the time this Act would accordingly expire there shall be War between Her Majesty, Her Heirs or Successors and the United States of America, then and in such case this Act shall continue and be in force until the end of the Session of Parliament next ensuing the Proclamation of Peace and no longer.

Schedule.

Cities and Towns Corporate referred to in the sixth Section of this Act.

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|-----------|-----------|----------|
| Quebec, | Montreal, | Toronto, |
| | Hamilton, | |
| Kingston, | Bytown, | London, |