AN ACT [redacted]

TO

W. Gourlay Esqr.
12th Gore Regt.

AMEND, AND REDUCE INTO ONE ACT,

THE MILITIA LAWS

OF THIS PROVINCE.

PASSED 6TH MARCH, 1838.

Printed by order of the Commons House of Assembly.

TORONTO:

R. STANTON, Printer to the QUEEN'S Most Excellent Majesty.

1838.

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AN ACT to amend, and reduce into one Act, the Militia Laws of this Province.

WHEREAS the several laws now in force for embodying, organizing and training the Militia of this Province are, in many instances, defective and inefficient: *Be it therefore enacted*, by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province," and by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for the Lieutenant Governor from time to time, to divide the Militia of this Province into such number of Regiments or Battalions as he may deem most conducive to the efficiency of the said Militia, and under his hand and seal to appoint a sufficient number of Colonels, Lieutenant Colonels, Majors, Captains and other Officers, to train, discipline and command the said Militia, according to such rules, orders and directions, as shall from time to time be issued by him for that purpose; which Officers of Militia shall rank with Officers of Her Majesty's

Preamble.

Lieut. Governor may divide Militia into Regiments or Battalions, and appoint Officers.

Officers to rank as Junior to Her Majesty's Forces.

Forces serving in this Province, as junior of their respective rank.

Militia-men to be not less than 16, nor more than 60 years of age.

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

Militia to enrol themselves once a-year, at place appointed by Commanding Officer.

3. *And be it further enacted by the authority aforesaid,* That the Officers now commanding Regiments or Battalions of Militia, or who shall hereafter command the same, shall require the Captains or Officers commanding companies or divisions in such Regiment or Battalion, to call upon the inhabitants liable to serve as Militia within the limits of his company or division, to enrol their names as Militia-men, at least once in every year, that is to say, on the fourth day of June, or if that day be upon Sunday, then on the following day, in each year, which enrolment shall be made at a place to be appointed by the Officer commanding the Regiment or Battalion.

Incumbent on every Militia-man to prove his age.

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

Notice to be given when Militia are required to train oftener than once a-year.

5. *And be it further enacted by the authority aforesaid,* That if the Militia shall be required to enrol their names oftener than once in each year, as hereinbefore provided, the Captains or Officers in command of Companies shall cause a verbal or written notice to be given to the Militia within the limits of their Companies, of the time and

place where such enrolment is to take place, at least four days before such enrolment is appointed to take place, which notice shall be delivered by such Non-commissioned Officer of the Companies respectively, as the Captain or Officer in command of Companies shall appoint and direct to deliver the same: *Provided always*, that no person shall be obliged to enrol himself as aforesaid, unless such person is a natural-born subject of Her Majesty, or, a subject of Her Majesty, naturalized by an Act of the British Parliament, or become such by an Act of the Parliament of this Province, or a person who has taken the oath of allegiance.

No person required to enrol himself who is not a Subject of Her Majesty.

6. *And be it further enacted by the authority aforesaid*, That it shall be lawful for the Lieutenant Governor to call out and embody the Militia of this Province, or any portion thereof, in a time of actual war with a Foreign Power, to put down or suppress rebellion—to repel invasion—or for any purpose connected with the preservation of the public peace, and to continue the Militia so called out embodied for actual service, so long as in his opinion may be necessary; 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 Her 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

Lieut. Governor can call out Militia in time of war, rebellion or invasion, and continue them embodied so long as necessary.

Persons refusing or neglecting, to be fined or imprisoned.

How penalties are collected.

or Battalion to which he belongs, that such refusal or neglect arose from sickness, or that he was absent upon leave; and that all such penalties shall be levied and collected in the same manner as penalties are authorised to be levied and collected by the authority of this Act, for disobedience of orders in time of peace: *Provided always*, that whenever it shall happen that only part of the Militia of this Province shall be called out for actual service, it shall and may be lawful for any person being of the Militia of the County or Riding that may be so called out, or of any City within the same, duly chartered by any Act of the Parliament of this Province, to provide and send an able-bodied man to serve in the said Militia in his stead, and such able-bodied man shall be taken and received as a proper substitute for such person living in the County, Riding or City, that would otherwise be obliged to serve in the said part of the Militia called out as aforesaid.

Person called upon to serve, may find substitute.

7. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant Governor, to embody the Militia of this Province, or such portion thereof as he may think necessary and expedient, and to march the same into the Province of Lower Canada at any time when the same shall be actually invaded, or threatened with invasion, or in a state of insurrection; or to march the said Militia, or any portion thereof, to any place without the limits of this Province, for the attack of any enemy that may have invaded, or may be marching or collected for the purpose of invading this Province; or for the destruction of any vessel or vessels built or building, or any fort, depot or magazine, formed or forming by any Foreign Power at war with our Sovereign Lady the Queen, her Heirs or Succes-

Militia may be marched to Lower Canada, or to any place where preparation is making to invade this Province.

sors, from whence the invasion of this Province may be apprehended.

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

Officers to hold their Commissions during pleasure.

9. *And be it further enacted by the authority aforesaid,* That the Colonel or Officer commanding any Regiment or Battalion of Militia within this Province, shall have power and authority to assemble his respective Regiment or Battalion two days in each year, and oftener if thereunto directed by the Lieutenant Governor, at such place or places as he shall appoint, for the purpose of drill and inspection.

Officers commanding Regiments, may assemble them two days in each year, or oftener, if required by Lieut. Governor.

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

Officers commanding Regiments to transmit returns to Adjutant General's office.

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

Lieut. Governor may appoint Staff Officers.

Lieut. Governor to prescribe uniform.

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

Officers within one year must provide uniform and sword, or be superseded.

13. *And be it further enacted by the authority aforesaid,* That any Officer of Militia who shall not, within one year from the time the Lieutenant Governor shall prescribe the uniform for the respective Regiments or Battalions, provide himself with such uniform, including a sword, and who shall appear at any muster or inspection of the Regiment or Battalion to which he belongs, without being dressed in such uniform and sword, shall be and he is hereby declared superseded.

Lieut. Governor may appoint Regiments or Battalions of Dragoons, Artillery or Light Infantry.

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

Such Regiments to be subject to orders, as other Regiments of Militia.

15. *And be it further enacted by the authority aforesaid,* That Regiments or Battalions of Dragoons, Artillery or Light Infantry, so constituted as aforesaid, shall be subject to such orders, rules

and regulations, with respect to drill, inspection or other duty, as from time to time, may be issued by the Lieutenant Governor, for their efficient organization for actual service, apart from the other Regiments or Battalions of Militia in the Province.

16. *And be it further enacted by the authority aforesaid,* That any Officer of Militia, who, in time of peace, shall be guilty of wilful neglect or disobedience of orders, or of any act of insubordination, in the performance of his duty, shall, on conviction, be liable to pay a fine, not less than one pound nor more than twenty pounds, besides costs of conviction, and to be cashiered and deprived of his commission and rank in the Militia.

Officers of Militia disobeying or neglecting orders, to be fined and cashiered.

17. *And be it further enacted by the authority aforesaid,* That any non-commissioned Officer or private Militia-man, who, in time of peace, shall wilfully refuse or neglect to enrol himself, as hereinbefore provided, or who shall be guilty of wilful neglect or disobedience of orders, or of any act of insubordination or misconduct, while on parade, or engaged in the performance of Militia duty, shall, on conviction, pay a fine of not less than five shillings nor more than five pounds, over and above the costs of conviction, and in default of payment, shall be liable to imprisonment in the common gaol of the District, for a term not less than three days nor more than one month.

Militia-men neglecting to enrol, or disobeying orders, to be fined, or imprisoned in default of payment.

18. *And be it further enacted by the authority aforesaid,* That the Colonel, or other Officer commanding any Regiment or Battalion of Militia in this Province, shall have full power and authority, in time of peace, to assemble a Court, to be composed of not less than three Officers of the Regiment or Battalion under his command, one of whom at least shall be of the rank of Captain, and

Commanding Officers may assemble Courts Martial.

which Court shall have full power and authority to hear evidence and investigate all charges that may be brought against any non-commissioned Officer, or private Militia-man, for any offence or neglect of duty contrary to the provisions of this Act, and to give such judgment thereupon as they, in their discretion, shall think just and reasonable, the same being in accordance with and authorised by the enactments herein-contained.

Officers commanding, to give notice of time and place of assembling of Court.

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

Person against whom complaint is preferred, to have notice in writing, requiring him to appear.

20. *And be it further enacted by the authority aforesaid,* That after receiving such notice, and at least eight days before the meeting of such Court, Captains or other Officers commanding Companies, shall cause a notice in writing to be served on any non-commissioned Officer, or private Militia-man belonging to the Company under his command, against whom it may be intended to prefer any complaint of neglect of duty or misconduct, of such non-commissioned Officer, or private Militia-man, requiring him to appear to answer such complaint; which notice, signed by the Captain or Officer commanding such Company, may be in the words or to the effect following:—" Mr. A. B. You are hereby required to attend before the Court appointed for the trial of Militia offenders belonging to the —— Regiment of Militia, which will assemble at ———, on the —— day of ——, at ten o'clock, forenoon, to answer a charge—(for not enrolling yourself as a Militia-man, or for not attending Militia muster, or for insubordination, as

Form of notice.

the case may be.) Dated this —— day of ——, C. D., Captain, or Officer commanding —— Company, —— Regiment, Militia."

No person to be condemned, unless proved that he was served with written notice.

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

Court may commit Witnesses summoned for not attending.

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

Officers composing Court to receive five shillings per day.

23. *And be it further enacted by the authority aforesaid,* That the Officers composing the said Court, shall be entitled to receive the sum of five shillings each, for each day they shall be engaged as members of the said Court.

Fees to be received for serving notice.

24. *And be it further enacted by the authority aforesaid,* That the person who shall serve notices as herein before required, shall be entitled to receive four-pence for each mile he shall necessarily travel to effect such service, and that for every fine levied and collected under a warrant from the said Court, the person levying the same shall be entitled to the same fees as are now paid, for service of a like nature, to any Constable or Peace Officer in this Province: *Provided always,* that it shall be in the discretion of the said Court to appoint such person as they may think fit to execute the warrants or other process issued by them.

Court to appoint the person to execute warrant.

Judgment of said Court not subject to appeal.

25. *And be it further enacted by the authority aforesaid,* That the judgments of the said Court shall, without appeal, be carried into effect, and the fines imposed by them, shall be levied upon a warrant signed by the senior member of the Court, in the same manner as the judgments of the Justices of the Peace are carried into effect under the provisions of an Act passed in the fourth year of His late Majesty's reign, entitled, "An Act to provide for the summary punishment of petty trespasses and other offences."

Officers composing Board to be sworn.

Oath.

26. *Provided always, and be it further enacted by the authority aforesaid,* That all Officers who may be appointed to compose any Board for the trial of any offender or offenders under this Act, shall, before proceeding to the trial of such offender or offenders, take the following oath :—"I do sincerely promise and swear, that in all such matters as shall be brought before me under the Militia Laws of this Province, I will faithfully act according to the best of my judgment, agreeably to the said Laws, without favor or partiality to any person.—So help me God." Which oath may be administered by any one member to the other members of the said Board.

How monies to be disposed of which are collected by fines.

27. *And be it further enacted by the authority aforesaid,* That all monies arising from fines levied and collected under the provisions of this Act, shall be paid into the hands of the Colonel or Officer Commanding the Regiment or Battalion within which the same shall have been imposed, and shall be applied under the direction of the Field Officers of such Regiment or Battalion—first, to the payment of the allowance to the members of the Court and other incidental expenses, the payment of which is not otherwise provided for—and secondly, to the purchase of

colors, musical instruments, or other purposes tending to advance the discipline and efficiency of the Regiment or Battalion.

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

Officers commanding Reg'ts. to make returns to Adjutant General of persons complained against, &c.

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

Lieut. Governor may assemble Courts Martial.

tion and regulation of Courts Martial, in cases where the same shall be required during the period of actual service by any part of the Militia of this Province: *And provided also*, that such sentence shall before being carried into effect, be approved of by the Lieutenant Governor.

Sentence to be approved by Lieut. Governor.

How fines to be levied, and how appropriated.

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

Militia embodied to be subject to Acts of British Parliament for certain crimes

31. *And be it further enacted by the authority aforesaid*, That during the time any portion of the Militia of this Province shall be embodied for actual service, under and by virtue of this Act, they and every of them, as well Officers as Privates, shall be liable and subject to all the rules, regulations, pains and penalties, of any Act or Acts of the British Parliament that are or may be in force for the punishment of mutiny, desertion, or other crimes, in the Army of Her Majesty the Queen, Her Heirs or Successors: *Provided, nevertheless*, that no Officer, Non-commissioned Officer or Private Militia-man, shall be sentenced to the loss of life, unless for desertion to the enemy, traitorous correspondence, or for traitorously delivering up to the enemy any garrison, fortress, post, or guard, or vessel, either armed or employed in the service of Government, any thing

When Militia-man may be sentenced to loss of life.

herein contained, or any statute, law or usage, to the contrary notwithstanding; *Provided also*, that no Officer, Non-commissioned Officer or Private of Militia, shall be liable to the punishment of being flogged, by the sentence of any Court Martial.

Militia not to be flogged.

32. *And be it further enacted by the authority aforesaid*, That when the Militia of this Province shall be called out on actual service, in all cases where a General Court Martial shall be required, the Lieutenant Governor, upon application to him made through the Officer commanding the body of Militia to which the party accused may belong, or in case he be the accuser or the accused, then through the next Senior Officer, shall issue his order to assemble a General Court Martial, which said Court Martial shall consist of a President, who shall be a Field Officer, and not less than eight other Commissioned Officers of the Militia: *Provided always*, that in all trials by General Courts Martial to be held by virtue of this Act, the Lieutenant Governor shall nominate and appoint the person who shall act as Judge Advocate; and that every member of the said Court Martial, before any proceeding be had before the Court, shall take the following oath before the Judge Advocate, who is hereby authorised to administer the same, viz:—"You, A. B., do swear, that you will administer justice to the best of your understanding, in the matter now before you, according to the evidence and the Militia Laws now in force in this Province, without partiality, favor or affection; and you further swear, that you will not divulge the sentence of the Court, until it shall be approved by the Lieutenant Governor; neither will you upon any account, at any time whatever, disclose or discover the vote or opinion of any particular member of the Court

When Lieutenant Governor shall issue order for assembling General Court Martial.

Of whom General Court Martial to consist.

Lieut. Governor to appoint Judge Advocate.

Oath to be taken by members of Court.

Martial, unless required to give evidence thereof as a witness by a Court of Justice, in due course of law: So help you God": And so soon as the said oath shall have been administered to the respective Members, the President of the Court is hereby authorised and required to administer to the Judge Advocate, or the person officiating as such, an oath in the following words :—" You, A. B. do swear, that you will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular Member of the Court Martial, unless required to give evidence thereof as a witness by a Court of Justice, in due course of law—So help you God": And the Judge Advovocate shall, and is hereby authorised, to administer to every person giving evidence before the said Court, the following oath :—" The evidence you shall give to this Court Martial, on the trial of A. B. shall be the truth, the whole truth, and nothing but the truth—So help you God": *Provided always*, that the Judgement of every such Court Martial shall pass with the concurrence of two-thirds of the Members, and shall not be put in execution until the Lieutenant Governor has approved thereof.

Oath to be taken by Judge Advocate.

Two-thirds of members to concur with judgment.

33. *And be it further enacted by the authority aforesaid*, That in cases of emergency, by actual invasion, insurrection or otherwise, when it may not be practicable to consult the Lieutenant Governor, it shall and may be lawful for the Senior Officer of Militia of any County or Riding, to call out and embody any number of the Militia he may judge necessary, for actual service, and to report the same forthwith to the Lieutenant Governor.

When Militia may be embodied by Senior Officer, without consulting Lieutenant Governor.

34. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant Governor, from time to time to issue

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

Lieut. Governor may order impressment of Horses & Teams for conveyance of Troops & Stores, &c., and for billetting of Troops of Line & Militia.

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

Commissions now held, not made void.

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

Fees to be paid for Commissions

Commissions to be transmitted to Officer commanding.

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

Fees—how disposed of.

Half-yearly returns to be made of Fees.

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

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

39. *And be it further enacted by the authority aforesaid,* That no Officer of Militia shall muster, or be entitled to rank as an Officer, should he fail to obtain possession of his Commission, and pay the fees thereon, within six months after he shall have been Gazetted.

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

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

This Act to apply to Militia now embodied.

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

42. *And be it further enacted by the authority aforesaid,* That every person who shall sell or bar-

ter any part of the arms or equipments which may be delivered to him out of Her Majesty's stores, or who shall destroy the same, and every person who shall buy or 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 the Peace, residing within the County where the same has been committed; and in case the person so selling any part of his arms or equipments as aforesaid, or the person obtaining the same in manner aforesaid, being thereof convicted as aforesaid, shall refuse or neglect to pay the said sum of five pounds, it shall and may be lawful for the said Justices, by a warrant under their hands and seals, to commit such person to the gaol of the County or District in which the offence shall be committed, for any space of time not exceeding two months: *Provided always* that it shall and may be lawful for the said Justices to discharge the person so offending any time before the expiration of the said two months, when the person so convicted, as aforesaid, shall tender to the said Justices the penalty inflicted by this Act.

Persons selling or purchasing arms or equipments, to be fined on conviction, and on refusing to pay, may be committed.

Offenders may be discharged from imprisonment by tendering fine.

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

Wilful false swearing, perjury.

44. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant Governor to appoint a Commodore,

Lieut. Governor may appoint Officers of Provincial Marine.

who shall rank with Colonels of Millitia; and also Captains and Lieutenants of a Provincial Marine, to be drilled to the exercise of heavy guns and the management of gun-boats, in addition to their duties in the use of small arms as a Militia force.

Non-commissioned Officers and Privates from 50 to 60 years of age, to be transferred to Retired Battalion.

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

Lieut. Governor may sanction Volunteer Companies of Provincial Marine.

46. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Lieutenant Governor, or Person Administering the Government, to sanction the formation of Volunteer Companies, to serve as a Provincial Marine, and to be stationed at the different harbours along the coast: each of the said Companies to consist of a Captain, a Lieutenant, an Ensign, and not less than fifty men, nor more than one hundred men.

Persons molesting the Militia, may be confined.

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

Persons exempted from Militia service.

48. *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 Mem-

bers of the House of Assembly for the time being, and the officers thereto belonging; Her Majesty's Attorney and Solicitor Generals; the Secretary of the Province; and all Civil officers who shall have been or may hereafter be appointed to any Civil office in this Province, under the Great Seal of the same; as well as all Magistrates, Coroners, Sheriffs and Half-pay Officers; Militia Officers having served by virtue of any Militia commission in any part of Her Majesty's Dominions, who may not have been removed for any offence as an Officer of Militia, or who may have obtained leave to resign his commission; the Surveyor General, and his deputies duly appointed, and actually engaged in public service; Deputy Post-masters, and Mail-carriers; Seafaring men actually employed in the line of their calling; Physicians, Surgeons; the Masters of public or common 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 persons from holding Commissions as Officers in the Militia in this Province: *Provided always*, that it shall and may be lawful for the Lieutenant Governor of this Province, by warrant under his hand and seal, to exempt any of the persons hereinbefore enumerated from being called out in the service aforesaid.

Persons exempted may hold Commissions.

Lieut. Governor may exempt any person from service as a Militiaman.

49. *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 peo-

Quakers, Menonists & Tunkers, exempt from serving in the Militia, on producing certificate.

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

Above persons to give in their names and residence to Officers commanding Regiments, and pay to them [as the case may be.]

In default of return or payment to the tried by Regimental Court.

50. *And be it further enacted by the authority aforesaid*, That if any plaint shall be brought or commenced against any person for any thing done or to be done, in pursuance of this Act, or in execution of the powers and authorities, or the orders and directions herein before given or granted, every such suit shall be brought or commenced within three calendar months next after the fact committed, and the defendant in such action or suit, shall and may plead the general issue, and give this Act and the special matter in

Complaints to be brought within three calendar months next after fact committed.

evidence at any trial to be had thereon, and that the same was done in pursuance and by the authority of this Act, and if it shall appear to be done so, or if any action or suit shall be brought after the time herein before limited for bringing the same, then a verdict shall be given for the defendant.

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

Lieut. Governor may appoint Adjutant General.

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

Persons having, been Sergeants in regular Service, not to serve in inferior stations.

53. *And be it further enacted by the authority aforesaid,* That every Sergeant of Militia, duly appointed, shall be exempt from serving as Constable for and during such time as he shall hold such appointment as Sergeant.

Sergeants exempt from serving as Constables.

54. *And be it further enacted by the authority aforesaid,* That an Act of the Parliament of this Province, passed in the forty-eighth year of the reign of King George the Third, entitled, "An Act to explain, amend and reduce to one Act of Parliament, the several Laws now in being for raising and training the Militia of this Province;" and also "An Act passed in the fiftieth year of the said reign, entitled, 'An Act for the relief of minors of the Societies of Menonists and Tunkers;" and also an Act passed in the fifty-third year of the said reign, entitled, "An Act to amend an Act passed in the forty-ninth year of His Majesty's

Acts repealed.

reign, entitled, 'An Act for quartering and billeting, on certain occasions, His Majesty's Troops and the Militia of this Province, and to repeal part of the same;" and also so much of the first section of the said Act, passed in the forty-ninth year of the said reign, entitled, "An Act for quartering and billeting, on certain occasions, His Majesty's Troops and the Militia of this Province," as relates to the payment of the owners of horses, carriages and oxen; and also an Act passed in the fifty-sixth year of the said reign, entitled, "An Act to amend an Act passed in the forty-eighth year of His Majesty's reign, entitled, '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 in this Province;" and also an Act passed in the fifty-ninth year of the said reign, entitled, "An Act to repeal part of and amend an Act passed in the forty-eighth year of His Majesty's reign, entitled, '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;" and also an Act passed in the fourth year of the reign of King George the Fourth, entitled, "An Act to repeal part of the tenth clause of an Act passed in the forty-eighth year of His late Majesty's reign, entitled, '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;" and also part of an Act passed in the last Session of the present Parliament, entitled, "An Act to repeal part of and amend the laws now in force for the raising and training the Militia of this Province, and to increase the strength of the Companies of Militia,"—shall from and after the passing of this Act be and the same are hereby repealed. cf. 2.

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