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## BY AUTHORITY.

Acts passed at the last Session of the  
General Assembly.

### CAP. I.

#### An Act for regulating the Militia.

Passed the 3d of March, 1813.

(CONCLUDED FROM OUR LAST.)

XXVIII. *And be it further enacted*, that whenever the Governor or Commander in Chief shall direct any part of the Militia, or the exempts as aforesaid, of any or either of the Counties, to be called out as aforesaid, into real service, a draft by ballot shall be made from each company, in exact proportion according to the number then fit for duty, which shall be on the Oath of the Captain or commanding Officer of such company, to the best of his knowledge if required, of all persons from the age of eighteen to fifty years, which ballot shall take place, and be made in the presence of one or more of His Majesty's Justices of the Peace, or if no such Justice shall be resident near to the place where such ballot shall be made, then and in that case the same shall be made in presence of three or more respectable freeholders, who are exempted by age from being drafted themselves; and on such occasions all the persons within the County, in which any part of the Militia shall be called out as aforesaid, between eighteen and fifty years of age, who are herein before declared to be exempted from being enrolled in the Militia, in manner herein before mentioned (except established Clergymen, and licensed Ministers of the Gospel, one miller to each grist mill, and one ferryman to each established ferry) who shall not have joined any company, shall be formed into a company by and under the direction of the commanding Officer of the Regiment or Battalion, and shall be liable to the same draft by ballot as any other company in such Regiment or Battalion, in proportion to their numbers then fit for duty as aforesaid, and each and every person so drafted, shall go in his own proper person, or find a good and sufficient man in his room; and for his neglect or disobedience herein, he shall be subjected to a fine of ten pounds, which if he neglect or refuse to pay, he shall be committed to the nearest County gaol, where he can be safely kept by warrant from the commanding Officer of the Regiment or Battalion, or if necessary to his safe custody, be removed to any other gaol, at the discretion of the commanding Officer, where he shall remain three months, or until he pays the said fine, and another man shall be drafted as aforesaid, to march in his place, who shall have half of the said fine if he shall not refuse or neglect to go, or find a good and sufficient man in his room as aforesaid, but if he shall so neglect or refuse, then he shall be subjected to the like fine, and a further draft shall be made of another man who shall have half of the fine last mentioned, if he shall not neglect or refuse to go or find a good and sufficient man as aforesaid, and so as often as such case shall happen. Provided always, that in case any part of the Militia or the exempts as aforesaid, shall be called out more than once, no person who has been once drafted as aforesaid, shall be again drafted, until all the others belonging to the same company shall have been drafted. Provided also, that nothing in this Act shall be construed to extend to oblige the Firemen appointed by the Corporation of the City of St. John, to the two Engines in that City, or Firemen that may be appointed to any Engine that may be hereafter established in any other town in this Province, not exceeding fifteen men to each Engine, to do duty beyond the limits of the said City and town respectively. And also further provided, that if any person called and duly certified to be a Quaker, shall upon being drafted refuse to serve, or procure a substitute as aforesaid, it shall and may be lawful for the Captain or Officer commanding the Company to which such Quaker belongs, to procure and hire a substitute for him and at his expence, not to exceed the sum of ten pounds, which if he shall refuse or neglect to pay, the same shall and may be recovered before any two of His Majesty's Justices of the Peace in a summary way, at the suit of the said Captain or commanding officer of the Company, and levied with costs, upon the goods and chattels of such delinquent, or for want thereof, such delinquent shall be committed to Gaol, there to remain for three months, or until he pays the same. Provided also, that those who have already served in the Embodied Militia, and those to be hereafter drafted shall not be liable to be again drafted until all the others belonging to the same Company shall have been drafted.

XXIX. *And be it further enacted*, that whenever the Governor or Commander in Chief for the time being, shall in consequence of any actual invasion, or imminent danger thereof, think it expedient to order a proportion

of the Militia of any County, to march out of such County, on real service; volunteers who offer themselves for such service, being able of body in the opinion of the Field Officers of the Regiment or Battalion, to which such volunteer shall belong, shall be accepted, and being so accepted, shall be subject to all the provisions of this Act, as though they had been drafted by ballot.

XXX. *And be it further enacted*, that if any Officer, Non-Commissioned Officer, or private of the Militia, or exempts as aforesaid, under arms for real service, on a march, or on guard, or that shall be ordered for any of the duties, or services; herein before mentioned, shall disobey orders, or neglect doing his duty, or shall shew any contemptuous behaviour towards his superior Officer; if an Officer, he shall on conviction thereof before a General Court Martial, to be constituted and appointed, as herein after directed, be cashiered by the sentence of such Court Martial; if a non-commissioned Officer, or private, he shall be confined by the Commanding Officer of the party or guard; and it shall be lawful for the Commanding Officer of the Regiment or Battalion, or of any party or command, not under the degree of a Captain, to order a Regimental Court Martial to be forthwith held for the trial of such offender, the said Court Martial to consist of three commissioned officers at least; but where they can be had, of five, who may give judgment by laying a fine on such offender in any sum, not exceeding forty shillings, and in addition thereto, if a non-commissioned officer, reducing him to the ranks at the discretion of the Court, which fine, so ordered by the Court Martial, if he neglect or refuse to pay, shall be either stopped out of the pay of such offender, or such offender shall be imprisoned or subject to hard labour, for a term not exceeding ten days. Provided always, nevertheless, that no sentence of a Regimental Court Martial shall be put in execution until approved of by the officer ordering such Court Martial, and no officer being the accuser shall be a member.

XXXI. *And be it further enacted*, that if any officer, non-commissioned officer, or private, shall in the field, upon a march, or in quarters, on actual service, begin, excite, or join any mutiny, or knowing of such mutiny begun or intended, shall not give information thereof to his commanding or other superior Officer, or shall not when thereunto ordered use his utmost endeavors to suppress such mutiny, or shall desert the Company or Command to which he belongs, or shall disobey orders; if a Commissioned Officer, he shall be put under arrest by any superior officer; if a non-commissioned officer, or private, he shall be committed to the next County or other Gaol, as soon as convenient, by order in writing under the hand of the Officer commanding the Regiment, Battalion, Company, or Detachment, to which such person so offending, shall belong; and it shall and may be lawful for the Governor or Commander in Chief of the Province, for the time being, to order a General Court Martial, by warrant under his hand and seal, for the trial of such offender, as speedily as the service will admit; which Court Martial shall not consist of a less number than thirteen Commissioned Officers of the Militia, and the President of such Court Martial shall not be under the rank of a Field Officer, and there shall be as many Captains as conveniently may be had, the eldest Subalterns to make up the number; and that such Court Martial shall have power to administer an oath to any witness, in order to the examination, or trial, of any of the above offences that shall come before them, and shall also have power to punish with death, or by fine and imprisonment, in proportion to the enormity of the offence, the fine not to exceed fifty pounds, nor imprisonment six months. Provided always, that no sentence of any Court Martial shall extend to death, unless for desertion, to the enemy, for mutiny and sedition, for traitorous correspondence with, or traitorously delivering up to the enemy, any garrison, fortress, post, or guard, nor shall the sentence of any general Court Martial be carried into execution until it has been approved of by the Governor or Commander in Chief for the time being.

XXXII. *And be it further enacted*, that in all trials by General Court Martial, the President and every member thereof, before any proceedings be had, shall take the following oath, and the Judge Advocate is hereby authorized to administer the same, to wit: "I (A. B.) do swear that I will duly administer justice according to the laws of this Province now in force for the better regulating the Militia, without partiality, favor or affection; and I do further swear that I will not divulge the sentence of this Court, until it shall be approved by the Commander in Chief of this Province; neither will I on any account at any time whatever, disclose or discover the vote or opinion of any particular member of the Court Martial unless required to give evidence thereof as a witness by a Court of Justice, in a due course of

law: so help me God," and no sentence of death shall be given by any such General Court Martial, unless twelve Officers present shall concur therein; and the Governor or Commander in Chief shall have power to appoint any fit person to act as Judge Advocate at any such General Court Martial, who shall be allowed for his services fifteen shillings per diem, during the time he shall actually be employed in such service; which Judge Advocate, so appointed, shall previous to any proceedings had on the trial of any prisoner, take the following oath to be administered by the President of the Court, to wit: "I (A. B.) do swear, that I will not upon any account, at any time whatever, disclose or 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, in a due course of law: so help me God!"

XXXIII. *And be it further enacted*, that no person shall be put to death under the sentence of a General Court Martial, until a warrant under the hand and seal of the Governor or Commander in Chief, shall issue for the execution of such sentence, which warrant shall direct the time and place; when and where the person sentenced to death, shall be executed; and all sentences of death, shall be executed by either shooting, or hanging the offender, as the same may be directed and ordered in the said warrant, which warrant shall be a sufficient justification to the Officer or Officers to whom the same shall be directed, and to all those lawfully employed under them in executing such sentence. Provide always, that previous to any person's being put to death pursuant to the sentence of a General Court Martial, such sentence and warrant for the execution thereof, shall be publicly read in the hearing of the bystanders, at the time and place appointed for such execution.

XXXIV. *And be it further enacted*, that no Officer under the rank of Captain, shall sit upon a Court Martial for the trial of any Field Officer.

XXXV. *And be it further enacted*, that whenever the whole or any part of the Militia of this Province shall be called out into actual service, the Officers, non-commissioned Officers, Drummers, Fifers, Buglers and Privates shall be entitled to the same pay and allowances as the Officers, non-commissioned Officers, Drummers, Fifers, Buglers and Privates of His Majesty's Regular troops, respectively receive, to be reckoned from the day that they march from the rendezvous of their respective Companies, to go on actual service, until they shall be dismissed by order of the Governor or Commander in Chief; and at the time of their dismissal they shall be allowed respectively a number of day's pay to defray their expences to their usual places of residence, according to the distance, at the rate of fifteen miles per day, together with a bounty to each man of the non-commissioned Officers, Drummers, Fifers, Buglers and Privates who shall have served faithfully during the time or times they shall so have continued on actual service, at and after the rate of thirty shillings per month, for every calendar month which they shall respectively have been and remained on actual service, but not to exceed in the whole the sum of five pounds for each separate time, or occasion on which they shall so have respectively been called out into actual service as aforesaid; which bounty shall be provided for and paid out of the Province Treasury.

XXXVI. *And be it further enacted*, that every person who shall entice or encourage a Militia man when on service to desert, or aid, or assist, or harbour and conceal any deserter, knowing him to be such, shall forfeit and pay for every offence the sum of ten pounds, to be recovered on conviction before any one of His Majesty's Justices of the Peace for the County where such offence may be committed, upon the oath of any one or more credible witness or witnesses, or the confession of the party offending; and on the failure of the payment of such fine by the party offending, he shall be committed to the County gaol by warrant under the hand and seal of such Justice, there to remain for the space of forty days or until such fine is paid.

XXXVII. *And be it further enacted*, that all the male Blacks and people of Colour, between sixteen and fifty years of age, within each and every of the Counties within this Province, shall be formed into one or more Companies as may be thought expedient, and attached to the several Battalions within the district of which they may respectively reside, and shall have such Officers to command them as the Governor or Commander in Chief for the time being may think fit to appoint, and shall be considered as the Pioneers of the Battalions to which they may respectively belong, or otherwise as the Commander in Chief may direct, and be subject to the same or the like drafts for actual service as the Militia in general are liable to in times of invasion or imminent danger thereof; and also be liable to perform the same duties and under the same penal,