

New Zealand.

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. —.

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A BILL INTITULED

AN ACT for the Regulation of the Militia. Title.

WHEREAS it is expedient to amend and consolidate the laws Preamble.
relating to the Militia in the Colony **BE IT ENACTED** by the General
Assembly of New Zealand in Parliament assembled and by the
authority of the same as follows—

I. The Short Title of this Act shall be “The Militia Act 1865.” Short Title.

II. In the interpretation of this Act and of any regulation made Interpretation.
under its authority unless there be something in the subject or context
repugnant to such construction or inconsistent therewith the words
and phrases following shall have the meanings hereby respectively
assigned to them that is to say the word “district” shall mean a district
constituted under this Act the word “militiaman” shall signify a non-
commissioned officer or private in the New Zealand militia as hereafter
constituted and the phrase “officer commanding” shall mean the senior
militia officer in any district.

III. “The Militia Act 1858” “The Militia Act Amendment Act Repeal of Acts.
1860” and “The Militia Act Amendment Act 1862” and all regula-
tions under the authority thereof respectively are hereby repealed
Provided that nothing herein contained shall be construed to relieve
the officers or men of the militia as constituted under any of the Saving existing liabilities and commissions.
abovenamed Acts from any fines penalties or liabilities incurred there-

under but the same may be inflicted and recovered thereunder as if this Act had not been passed Provided also that all commissions of officers of militia and all appointments of non-commissioned officers heretofore made shall be deemed to have been made under the authority of this Act but so nevertheless that the seniority of the several persons appointed before the passing of this Act shall remain and subsist as it would have done if this Act had not been passed.

Officers to be British subjects.

IV. No person shall be an officer of militia unless he is one of Her Majesty's subjects by birth or naturalization nor if he is a subject by naturalization unless he shall have taken the oath of allegiance.

Governor to be Commander-in-chief.

V. The Governor shall be the Commander-in-chief of the Militia and shall have the power of convening general courts martial and of confirming the sentences thereof and of convening or issuing his warrant to convene district courts martial and shall have all the powers and may exercise and discharge all the duties and obligations appertaining to the office of Commander-in-chief respecting the militia or any part thereof when called out for actual service or for training.

New Zealand Militia.

VI. The designation thereof shall be the New Zealand Militia (herein called the Militia.)

Who liable to serve.

VII. The militia shall consist of all the male inhabitants of New Zealand between the ages of sixteen and fifty-five not hereinafter exempted who shall have resided in the colony for the period of three calendar months Provided always that lads between sixteen and eighteen years of age shall be liable to be trained as militiamen but shall not be liable to be called out for actual service.

Exemptions.

VIII. The following persons shall be exempt from training and actual service in the New Zealand Militia—

- The Judges of the Supreme Court
- The Members of the Executive Council
- The Members of the General Assembly
- The Superintendents of Provinces
- Secretaries and Under Secretaries of the Government
- The Judges of the Native Land Court or Compensation Court
- Civil Commissioners
- Resident Magistrates
- Justices of the Peace
- The Clergy and certificated Ministers of all religious denominations
- The Professors in any college or university
- The Speakers of Provincial Councils
- The Members of Provincial Councils during session
- All Sheriffs and Constables
- All Wardens and other officers of a proclaimed gold field
- Medical Practitioners
- The Wardens Keepers and Guards of the common gaols and lunatic asylums and the attendants on the sick in public hospitals
- Postmasters Mail Carriers and Ferry-men
- Masters of Public and Common Schools actually engaged in teaching
- Seafaring Men actually engaged in their calling
- All Volunteers enrolled under any Volunteer Act for the time being in force within the colony
- All persons afflicted with lunacy deafness blindness or with any other disease or infirmity that may render them unfit for service such disease or infirmity being duly certified by a medical practitioner appointed by the Governor.

Further exemptions.

IX. The aboriginal inhabitants of New Zealand and all persons holding licenses to mine or carry on business in any proclaimed gold field shall also be exempt from training and service in the New Zealand militia unless called upon within any district by the Governor by special proclamation in the *New Zealand Gazette*.

X. Provided always that such exemptions shall not prevent any person who is not disabled by bodily or mental disease or infirmity from serving or holding a commission in the militia by his own consent. Except by consent.

XI. The militia shall be divided into the following classes viz.—

1st class—Unmarried men and widowers without children between sixteen and forty years of age Classification of Militia.

2nd class—Widowers with children and married men between sixteen and forty years of age

3rd class—Men between forty and fifty-five years of age.

The burthen of proof of his age shall be on the militiaman.

XII. The Governor may in the name and on behalf of Her Majesty by commission under the public seal of the colony appoint an officer to inspect the militia and volunteers under “The Volunteer Act 1865” who shall once a year at the least inspect the militia and volunteers of each district and annually prepare a report of his proceedings and of the efficiency and condition in all respects of the militia and volunteers of each district which report shall be presented to each House of the General Assembly within fourteen days from the commencement of each session. Governor to appoint inspector.

XIII. The Governor may in the name and on behalf of Her Majesty from time to time by commission under the public seal of the colony appoint officers to command the militia and may confer brevet rank on any such officer in the manner customary in Her Majesty’s regular army and may by notice in the *New Zealand Gazette* attach or cause to be attached such officers or any of them to such regiment battalion or other division thereof as he may think fit and may from time to time cancel or revoke such commissions and annul or vary such appointments. Governor to appoint officers.

Provided always that the names of officers of the militia who have not been appointed to any regiment battalion or division thereof shall be placed on the unattached list of the New Zealand militia but so nevertheless that any officer whose name is so placed shall at any time be liable to serve when so ordered verbally or by writing by the Governor or by his authority. Unattached list.

XIV. The Governor in Council may from time to time constitute districts throughout the colony or in any part thereof and may vary and abolish such districts and constitute new districts in lieu thereof and may designate the militia of any such district by such name as he may think fit. Districts to be constituted.

XV. To each district an officer shall be appointed of such rank as the Governor may deem fit who shall command the militia in such district. Officers commanding to be appointed.

XVI. The officer commanding unless some other month is fixed by the Governor which he is hereby empowered to do shall in the month of January in every year make a roll of all persons within the district liable to serve on the militia and shall classify such roll as in section XI. provided that all officers of militia and militiamen within the district are hereby required to assist him in making such roll. Provided that no person liable to serve shall be relieved from service by the omission from or erroneous entry of his name in such roll. Roll to be made.

XVII. Every person liable to serve in the militia of the district shall send in his name age occupation and residence in writing to the officer commanding during the month of January in each year or the other month so to be fixed as aforesaid and shall at the same time give notice to the officer commanding of his place of rendezvous and afterwards of any change of place of rendezvous and if he shall have moved from one district to another district he shall so send such information to the officer commanding in his new district and anyone offending against this provision shall be liable to a penalty not exceeding ten pounds (£10). Militiaman to send in his name &c.

- Rendezvous to be fixed. XVIII. Immediately after the constitution of a district the Commander-in-chief shall appoint for every regiment of the militia of such district a convenient place to be the head-quarters of such regiment and the officer commanding shall appoint convenient places to be the places of rendezvous of the several companies or other divisions of every regiment within his district.
- Militiaman may choose his rendezvous. XIX. Subject to the limitation hereinafter contained every militiaman may select such one of the places of rendezvous appointed for companies or other regimental divisions within his district as may be most convenient to himself and may from time to time with the approval of the officer commanding alter such selection after one fortnight's notice to the officer commanding the company or other division which assembles at such first-named rendezvous.
- Training first class. XX. The Commander-in-chief shall cause the whole of the militia of the first class to be trained as a military force and for this purpose shall cause such days times and places to be appointed in every district as to him shall seem fit Provided always that no militiaman shall be trained for more than one hundred and sixty-eight hours or on more than twenty-four days in any one year.
- Training second and third classes. XXI. The Governor may from time to time by proclamation in the *New Zealand Gazette* or by such other notification as he may think fit call out the second and third class militia in any district for the purpose of training and such proclamation or notification shall be a sufficient notice to all persons to whom it may relate Provided always that no militiaman of the second and third classes shall be liable to be trained for more than seventy-two hours or on more than twenty-four days in any one year.
- Limitation of distances. XXII. No militiaman when called out for training shall be compelled to march more than five miles from his place of residence to the place appointed for such training except as hereafter mentioned that is to say any regiment or other division of the militia of the first class may be marched to and encamped for training at any place not being more than ten miles distant from the head quarters or point of rendezvous of such regiment or other division.
- Actual service. XXIII. The Governor may from time to time by proclamation in the *New Zealand Gazette* or by such other notification as he may think fit call out the whole or any part of the militia in any district for actual service and such militia shall continue on actual service until released by the Governor's authority.
- Limitation of distances. XXIV. No militiaman when on actual service shall be liable to march to or serve at any place more distant than fifty miles if he be of the first class or five miles if he be of the second or third class from the head quarters of his regiment.
- Oath. XXV. Every militiaman who shall be taken or drafted for actual service shall when required by the officer commanding or by some other commissioned officer on his behalf take an oath in the form following—"I, A. B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria and that I will faithfully serve in the militia until I shall be lawfully discharged" Provided that any person objecting from conscientious scruples to take an oath may make a solemn affirmation to the same effect as the oath.
- Volunteering for service and ballot. XXVI. When a part only of the militia are required for actual service such men as may volunteer for service with the approval of the officer who according to military rules shall be in command shall be first taken and if the number so volunteering shall be insufficient the whole of the first class shall be taken before any are taken from the second class and the whole of the second class before any of the third Provided that where a part only of one class are required the officer in command shall draw the requisite number or the number required beyond those volunteering as aforesaid by lot taken in public and his certificate of the drafting of any militiaman shall be sufficient evidence thereof.

XXVII. The Governor may allow any militiaman drafted for actual service to purchase exemption from such service for the term of one year by payment of the sum of twenty pounds to the officer commanding or to such other person as the Governor may from time to time appoint in that behalf.

Exemptions may be purchased.

XXVIII. Any militiaman drafted for actual service who shall produce as a substitute a man approved by the officer commanding shall upon the swearing in of such substitute be exempt from service for the term of one year unless the whole of the class to which such substitute belongs shall be drafted for actual service before the expiration of such term and every such substitute shall by his consent to serve become liable in every respect as though he had been drafted for actual service.

Substitutes may be got.

XXIX. The ordinary time of actual service for a militiaman shall be one year and no militiaman shall be required to serve for a further period until all the men of his class shall have served for a like period unless the whole of his class shall be called out for active service. Provided that whenever any part of a class which has already served for one period or more shall be required to serve for a second or any further period those shall be taken first who have served the shortest time and among those who have served the same time the drafting shall be determined if necessary by lot in manner aforesaid.

Provision as to limitation of time for actual service.

XXX. During the time that any part of the militia shall be on actual service or be out for training all things contained in any Act of the Imperial Parliament which shall then be in force for punishing mutiny and desertion and for the better payment of the army and their quarters and in the articles of war made in pursuance of such Act shall apply to such part of the militia in all cases not otherwise provided for in this Act or in any regulations that may from time to time be issued under its authority and to all other persons. Provided that no militiaman shall be liable to any corporal punishment except death or imprisonment for any offence against any such Act of Parliament or articles. Provided further that in any case where punishment of any sort whatever shall be ordered on a militiaman whilst out for training such case shall be reported at once by the officer punishing to the Governor or to a person to be appointed by him in this behalf for any part of the colony and the Governor or such person so appointed shall in such manner as shall seem to him sufficient enquire into the circumstances may instantly remit such punishment if he shall see fit. Any officer having ordered any punishment and failing to report the same as aforesaid at the earliest possible time shall be liable to forfeit a sum not exceeding ten pounds (£10) to the person punished to be received in a summary way.

Mutiny Act and articles of war.

Proviso as to corporal punishment.

XXXI. None but officers holding commissions in the militia or in the volunteer force shall sit on any militia court martial.

Composed of commissioned officers.

XXXII. The Governor may appoint for any district a paid permanent staff.

Permanent staff.

XXXIII. Officers of the militia shall rank with officers of like rank in the volunteer force according to the dates of their commissions.

Seniority of militia and volunteer officers.

XXXIV. The Governor in Council may from time to time make and alter regulations respecting the enrolment discipline training exercise arms accoutrements clothing equipment conveyance pay rations lodging and pensions of the militia or any part thereof and generally for the more effectual carrying out of this Act and may appoint penalties for any breach of the provisions of this Act or of such regulations not exceeding five pounds (£5) for one offence or in default of payment imprisonment for any time not exceeding fourteen days for each offence. And all such regulations shall have the same force and effect as though they formed a part of this Act and shall affect and govern all persons whom they may purport to affect and govern whether in the militia or not. Provided always that the regulations

Regulations as to arms discipline &c.

so to be made shall not be in any way repugnant to the provisions of this Act Provided also that it shall be lawful for the Governor in Council in any such regulations to authorize any officer of militia to inflict a fine not exceeding five pounds (£5) for any offence to be therein specified and any such fine shall on proof of its having been inflicted and without enquiring into the merits of such infliction or of the offence be levied with costs by any Justice of the Peace to whom such officer shall apply and such Justice is hereby required to issue his warrant accordingly.

Recovery of penalties. XXXV. All penalties incurred under this Act or under any regulations lawfully made under it shall be recoverable in a summary way before two or more justices of the peace upon the information of any commissioned officer of militia or volunteers except as is herein otherwise provided.

Penalty on selling of arms &c. XXXVI. If any militiaman shall sell pawn or lose any of his arms clothes accoutrements or ammunition or neglect or refuse to return the same in good order to his Captain or to the person appointed to receive the same or remove the same out of his district or if any person shall knowingly and wilfully buy take in exchange conceal or otherwise receive any militia arms clothes accoutrements or ammunition whatever every such offender shall forfeit and pay for every such offence any sum not exceeding ten pounds (£10) to be recovered in a summary way in addition to value of such arms or other things so sold or otherwise dealt with as aforesaid.

Limitation of actions. XXXVII. No action or information under this Act shall be commenced or laid after the expiration of six months from the commission of the offence charged unless it be for unlawfully buying selling or having in possession arms or accoutrements delivered to the militia.

Orders how to be given. XXXVIII. All orders by the Commander-in-chief or by any officer authorized to be given by this Act or given in execution of this Act shall be valid and effectual if verbally given on parade or issued in any other manner customary in Her Majesty's military service unless in cases where this Act specially requires any such order to be in writing and the production of an order in writing purporting to be made according to the provisions of this Act shall be *prima facie* evidence of such order without proving the signature thereto or the authority of the person making such order.

Recovery of debts. XXXIX. Every sum of money which any person is under this Act liable to pay or repay to the Government or which is equivalent to the damages done to any arms or other property of the Government used for militia purposes may be recovered in a summary way by any person authorized by the Governor in this behalf.

Limitation of action against officers. XL. No action or prosecution against any officer or person for anything done in pursuance of this Act shall be commenced after the end of three months from the doing of such act nor until one month's notice in writing of the action and of the cause thereof has been given to the defendant And in any such action the defendant may plead the general issue and give the Act and this special matter in evidence at the trial And no plaintiff shall recover in any such action if a tender of sufficient amends was made before the action was brought or if a sufficient sum of money has been paid into court by the defendant after the action was brought.

Costs. XLI. If a verdict passes for the defendant in any action referred to in the next preceding section or the plaintiff becomes nonsuit or discontinues the action after issue joined or if on demurrer or otherwise judgment is given against the plaintiff the defendant shall recover his full costs as between attorney and client and shall have the same remedy therefore as any defendant hath in other cases And though a verdict is given for the plaintiff he shall not have costs against the defendant unless the judge before whom the trial has been had certifies his approbation of the action and the verdict therein.

Act to come into operation. XLII. This Act shall come into operation the first day of January one thousand eight hundred and sixty-six.