

New Zealand.

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. 52.

ANALYSIS.

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|---------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Title. | 22. Training second and third classes. |
| Preamble. | 23. Limitation of distances. |
| 1. Short Title. | 24. Actual service. |
| 2. Interpretation. | 25. Limitation of distances. |
| 3. Repeal of Acts. Saving existing liabilities and commissions. | 26. Oath. |
| 4. Officers to be British subjects. | 27. Volunteering for service and ballot. |
| 5. Governor to be Commander-in-chief. | 28. Exemptions may be purchased. |
| 6. Who liable to serve. | 29. Substitutes may be got. |
| 7. Exemptions. | 30. Provision as to limitation of time for actual service. |
| 8. Further exemptions. | 31. Mutiny Act and articles of war. Proviso as to corporal punishment. |
| 9. Except by consent. | 32. Composed of commissioned officers. |
| 10. Classification of militia. | 33. Permanent staff. |
| 11. Governor to appoint inspector. | 34. Seniority of militia and volunteer officers. |
| 12. Governor to appoint officers. Unattached list. | 35. Regulations as to arms discipline &c. |
| 13. Districts to be constituted. | 36. Recovery of penalties. |
| 14. Officers commanding to be appointed. | 37. Penalty on selling of arms &c. |
| 15. The Governor may make orders for assembling of inhabitants liable to serve for purpose of enrolment only. | 38. Arms of militia exempt from seizure. |
| 16. Officers commanding companies shall take down names &c. | 39. Exemption from tolls &c. |
| 17. Officer commanding district shall classify roll and send in to the Government. | 40. Limitation of actions. |
| 18. Persons leaving a district or coming into one to give notice to officer commanding. | 41. Orders how to be given. |
| 19. Rendezvous to be fixed. | 42. Recovery of debts. |
| 20. Militiaman may choose his rendezvous. | 43. Summary conviction not to be quashed for want of form. |
| 21. Training first class. | 44. Limitation of actions against officers. |
| | 45. Costs. |
| | 46. When Act to come into operation. |

AN ACT for the Regulation of the Militia. Title. **[30th October 1865.]**

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 Acts Amendment Act 1862” and all regula-
tions under the authority thereof respectively are hereby repealed

Militia.

- Saving existing liabilities and commissions. Provided that nothing herein contained shall be construed to relieve the officers or men of the militia as constituted under any of the above named Acts from any fines penalties or liabilities incurred thereunder 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 all other Colonial Forces 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.
- Who liable to serve. VI. The militia shall consist of all the male inhabitants of New Zealand between the ages of eighteen and fifty-five not hereinafter exempted who shall have resided in the Colony for the period of three calendar months.
- Exemptions. VII. 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
 - The Clergy and certificated Ministers of all religious denominations
 - The Professors in any college or university
 - The Members of Provincial Councils during session
 - All Sheriffs and Constables
 - All Wardens and other officers of a proclaimed gold field
 - Duly qualified medical men in practice
 - 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 Ferrymen
 - 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
- Provided always that no officer who has voluntarily retired from Her Majesty's service shall be required to serve in the militia in a lower rank than that which he held in such service.

Militia.

VIII. The aboriginal inhabitants of New Zealand and all persons Further exemptions. while resident in any proclaimed gold field and holding licenses to mine or carry on business in the same 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*.

IX. Provided always that such exemptions shall not prevent any Except by consent. 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.

X. The militia shall be divided into the following classes viz.— Classification of militia.

1st class—Unmarried men and widowers without children between eighteen and forty years of age

2nd class—Widowers with children and married men between eighteen and forty years of age unmarried men who can prove that female relatives are dependent upon them for their support

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

The burthen of proof of his age shall be on the militiaman. The militia may be further classified according to their proficiency in rifle shooting and men who according to the army regulations are qualified as marksmen shall be exempt from training and exercise.

XI. The Governor may in the name and on behalf of Her Majesty Governor to appoint inspector. by commission under the public seal of the Colony from time to time appoint officers to inspect the militia and such officers shall once in each year inspect the militia of each district and annually prepare a report of their proceedings and of the efficiency and condition in all respects of the militia of each district which report shall be presented to each House of the General Assembly within fourteen days from the commencement of each session. Provided always that any officer by virtue of such appointment and while inspecting any corps shall be senior in rank to all officers of such corps.

XII. The Governor may in the name and on behalf of Her Majesty Governor to appoint officers. from time to time by commission under the public seal of the Colony appoint officers to 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 the militia staff or to any 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. Provided always that the names of officers of the Unattached list. 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.

XIII. The Governor in Council may from time to time constitute Districts to be constituted. 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.

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

XV. The Governor may from time to time make orders for the The Governor may make orders for assembling of inhabitants liable to serve assembling at some convenient place of the whole or any part of the inhabitants of any district liable to serve in the militia once in each

Militia.

for purpose of enrolment only. year for enrolment and any man neglecting without good and sufficient reason the sufficiency of which shall rest with the officer commanding to attend for that purpose after notice shall have been posted up in his district at least twenty days before the day fixed for such assembling shall be liable to a penalty not exceeding five pounds for each such offence Provided always that the infliction of any penalty under this section shall not in any way exempt the person upon whom the penalty has been inflicted from training and actual service in the militia.

Officers commanding companies shall take down names &c.

XVI. Upon the assembling of the inhabitants of any district as provided in the last preceding section the officer commanding companies shall take down the names (showing whether married or single) ages and occupations of every person belonging to the company then present and shall transmit the roll so made out to the officer commanding within seven days after such assembling or failing to do so shall be liable to a penalty not exceeding thirty pounds But it is hereby expressly provided that no person liable to be enrolled in the militia shall be relieved from training or service by the omission from or erroneous entry of his name in such roll.

Officer commanding district shall classify roll and send in to the Government.

XVII. The officer commanding shall in the month of January in each year (unless some other month is fixed by the Governor which the Governor is hereby empowered to do) compile and forward to the Commander-in-chief a complete roll of all persons resident in the district liable to be enrolled in the militia and shall classify the persons whose names are on such roll as hereinbefore provided.

Persons leaving a district or coming into one to give notice to officer commanding.

XVIII. Any person who shall have moved out of the limits of his district and any person who shall become liable to serve in the militia after the annual enrolment shall within thirty days thereafter give in his name age and place of residence to the officer commanding or failing to do so shall be liable to a penalty not exceeding five pounds.

Rendezvous to be fixed.

XIX. 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.

XX. 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 shall thereupon give in his name to the officer commanding the company 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.

XXI. 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 of the first class 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.

XXII. 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

Militia.

liable to be trained for more than seventy-two hours or on more than twenty-four days in any one year.

XXIII. 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 be 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. Limitation of distances.

XXIV. 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. Actual service.

XXV. No militiaman when on actual service shall except in case of emergency be liable to march to or serve at any place more distant than twenty miles from the head quarters of his regiment. Provided always that if he be of the second or third class he shall not be liable to march to or serve at any place more distant than five miles from the head quarters of his regiment. Provided also that nothing herein contained shall prevent any person from volunteering to serve in any part of the Colony of New Zealand and any person so volunteering shall be deemed to be on actual service for all the purposes of this Act until released by the Governor's authority. Limitation of distances.

XXVI. 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. Oath.

XXVII. When a part only of the militia are required for actual service such men as may volunteer for service with the approval of the senior officer there present 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. Volunteering for service and ballot.

XXVIII. 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.

XXIX. 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.

XXX. The ordinary time of actual service for a militiaman shall be one year and no militiaman shall be required to serve for a further Provision as to limitation of time for actual service.

Militia.

period until all the men of his class shall have served for a like period unless he shall volunteer for a longer period or unless the whole of his class shall be called out for actual 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.

Mutiny Act and articles of war.

XXXI. During the time that any part of the militia shall be on actual service 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 and the powers thereby created shall be exercised by 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. 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.

Proviso as to corporal punishment.

Composed of commissioned officers.

XXXII. None but officers holding commissions in the Militia or in the Volunteer Force shall sit on any militia court martial.

Permanent staff.

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

Seniority of militia and volunteer officers.

XXXIV. Officers of the militia shall rank with officers of like rank in the volunteer force according to the dates of their commissions. Provided always that officers of the Militia Force shall have precedence over officers of the Volunteer Force when holding commissions of the same rank and date.

Regulations as to arms discipline &c.

XXXV. 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 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 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 for any offence to be therein specified and any such fine shall on proof of its having been inflicted and without inquiring 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.

XXXVI. 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.

XXXVII. 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

Militia.

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 twenty pounds to be recovered in a summary way in addition to the value of such arms or other things so sold or otherwise dealt with as aforesaid.

XXXVIII. The arms and accoutrements of every officer of the militia and of every militiaman and the horses used by any of the same while in discharge of their duties as militiamen shall be exempt from seizure in execution and from distress and assessment. Arms of militia exempt from seizure.

XXXIX. Any duty or toll leviable at any pier wharf quay landing place or bridge ferry or at any turnpike gate or bar or at any other gate or bar on a public road shall not be demanded or taken for— Exemption from tolls &c.

- (1.) Any officer of the militia or any militiaman being on march or duty or going to or returning from the place appointed for and on the day for exercise inspection review or other public duty and being armed or in uniform
- (2.) Any horse when ridden or used by any officer or militiaman as aforesaid on march or duty or going or returning as aforesaid
- (3.) Any cart waggon or carriage public or private employed only in carrying or conveying any officer or militiaman as aforesaid being on march or duty or going or returning as aforesaid and being in uniform with or without any conductor or driver of such cart waggon or carriage or domestic servant of such officer or militiaman
- (4.) Any cart waggon or carriage public or private employed only in carrying or conveying or returning empty from carrying or conveying having been employed only in carrying or conveying any arms or baggage of any officer or militiaman as aforesaid being on march or duty or going to or returning from the place appointed for exercise inspection review or other public duty or any military stores belonging to or for the use of or any gun belonging to or used by the militia
- (5.) Any horse or other beast drawing any such cart waggon or carriage as aforesaid

If any person demands or takes any duty or toll in contravention of the present section or if any person makes any false representation respecting himself or any other person or any animal or thing with intent to obtain for himself or otherwise or fraudulently obtain for himself or otherwise any exemption under the present section he shall for every such offence be liable to a penalty not exceeding five pounds.

XL. 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. Limitation of actions.

XLI. 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. Orders how to be given.

XLII. Every sum of money which any person is under this Act Recovery of debts.

Militia.

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.

Summary conviction not to be quashed for want of form.

XLIII. A summary conviction or adjudication under this Act or under regulations issued under authority of it or an adjudication made on appeal therefrom shall not be quashed for want of form or be removed by *certiorari* and a warrant of commitment on any such conviction shall not be held void by reason of any defect therein if it is therein alleged that the person therein named has been convicted and there is a good conviction to sustain the same.

Limitation of actions against officers.

XLIV. 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.

XLV. 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.

When Act to come into operation.

XLVI. This Act shall come into operation on and after the first day of January one thousand eight hundred and sixty-six in such districts as the Governor may from time to time specify and appoint by proclamation in the *New Zealand Gazette* or by such other notification as he may think fit.