

No. XIX.

An Act to provide for the Regulation and Discipline of the Military and Naval Forces in the service of Her Majesty's Government in New South Wales. [10th May, 1871.]

MILITARY
AND NAVAL FORCES
REGULATION.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. This Act may be cited as the "Military and Naval Forces Regulation Act." Short title.

2. In this Act unless the context shall otherwise indicate Interpretation clause. "Governor" means "Governor with the advice of the Executive Council"—"Commanding Officer" the "Officer in command of the Military or Naval Forces engaged under this Act"—"Force"—the "Military and Naval Forces embodied under this Act."

3. It shall be lawful for the Governor in the name and on behalf of Her Majesty to engage the services of and maintain embodied upon the terms and conditions hereinafter prescribed such a number of men to serve in the Military and Naval Forces of New South Wales as the Parliament thereof shall from time to time authorize and provide for And every man engaging to serve as aforesaid and having taken and subscribed the oath hereinafter provided shall thereupon and during the continuance of his term of engagement be subject to the provisions of this Act and to the regulations made thereunder. Governor empowered to engage persons to serve in the Military and Naval Forces of New South Wales.

4. The oath set forth in the first Schedule to this Act shall be taken and subscribed by every man upon engagement to serve in any Military or Naval Corps embodied under this Act before the Commanding or other Commissioned Officer of the Corps in which he so engages such Officer having himself previously before some Justice of the Peace taken the Oath of Allegiance to Her Majesty contained in the Promissory Oaths Act of 1870 which first-mentioned oath hereinafter termed the oath of engagement every such Officer is hereby empowered to administer And every oath of engagement shall have the effect at law of a written agreement with Her Majesty binding the person taking and subscribing the same to serve in the particular force and in the capacity for which he shall have so engaged until he shall be legally discharged or be dismissed or removed from service or his resignation shall have been duly accepted. Oath of engagement—its effect.

5. Every man who shall have taken and subscribed the oath of engagement as aforesaid shall during his term of service and until such service be legally dispensed with remain subject if serving in the Military Forces to the provisions of the Imperial Mutiny Act in force for the time being for Her Majesty's Army and if serving in the Naval Forces of the Colony (and whether within the Colony or not) to the enactments and regulations in force for the time being for the discipline of Her Majesty's Navy And every member whether of the Military or Naval Forces aforesaid shall in like manner during his term of service remain subject to the Queen's Rules and Regulations the Rules and Articles of War and to such other orders rules and regulations Military and Naval Forces to be subject respectively to Imperial Mutiny and Naval Discipline Acts Articles of War and Queen's Regulations.

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regulations of whatever nature or kind to which Her Majesty's Army and Navy are for the time-being respectively subject so far as the same are not inconsistent with the provisions of this Act and the regulations thereunder.

Governor to be
Commander-in-Chief
and to grant Com-
missions—

6. The command-in-chief in Her Majesty's name of the said Military and Naval Forces is hereby vested in the Governor or Officer administering the Government of the Colony who is empowered to exercise from time to time the powers following that is to say—

to appoint Warrant
and Non-commis-
sioned Officers—

(1.) He may appoint the Officers of the said Forces and issue Commissions under his hand and the seal of the Colony to such Officers and may cancel alter or suspend such Commissions.

to fix pay and
allowances.

(2.) He may either in his own name or by any person to whom he may delegate his authority in that behalf appoint the Warrant and Non-commissioned or petty Officers of the said Forces.

(3.) He may fix the scale of pay and allowances to be received by all persons serving in the said Forces but such pay and allowances shall not exceed the respective sums appropriated by Parliament for the said services.

Governor in Council
may make regula-
tions.

7. The Governor may make rules and regulations for the employment removal or dismissal of persons engaged to serve under this Act for billeting cantoning and furnishing them with conveyance and transport whilst on actual service and for the enforcement of order and discipline and generally for the purposes of giving effect to the provisions of this Act and may by such regulations impose fines for disobedience neglect or other violation of the same not exceeding the sum of ten pounds for each offence and imprisonment in default of payment not exceeding seven days And such rules and regulations shall be published in the *Government Gazette* and be judicially noticed by the Judges in all Courts whatsoever and be laid before Parliament within fourteen days after the meeting thereof if Parliament be then sitting and if not then within fourteen days after the commencement of the next Session thereof.

Courts of Enquiry
and Courts-martial.

8. It shall be lawful for the Governor from time to time to convene Courts of Enquiry and to appoint any three or five Commissioned Officers under this Act to be a Court of Enquiry for the purpose of investigating and reporting to him on any matter connected with the government or discipline of the Force embodied under this Act or with the conduct of any Officer Non-Commissioned Warrant or Petty Officer or other member of the said Force and also to convene at any time and to delegate power to convene a Court-martial and to appoint any like number of such Officers as aforesaid to constitute such Court for the purpose of hearing and determining all offences committed against this Act or the regulations made in pursuance thereof Provided that it shall be lawful for the Governor to appoint any Officer of Her Majesty's Navy in command of any of her ships of war then being in Port Jackson to act as President of any Naval Court-martial and to appoint in every case one of the said Officers to be the President of such Court of Enquiry or Court-martial who shall in every case forward the proceedings and sentences of the Court to the Governor for confirmation and the same shall by him be returned on confirmation to the President for transmission to and record in the Office of the Attorney General.

Regulations and
powers of Courts.

9. The regulations for the composition of the said Courts of Enquiry and Courts-martial and the modes of procedure and the powers and privileges thereof shall be so far as applicable those which may at the time-being be in force with respect to Courts of Enquiry and Courts-martial in Her Majesty's Regular Army and Navy respectively and which

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which are not inconsistent with the provisions of this Act and the regulations thereunder and the pay and allowances of officers and others attending such Courts may be fixed by regulations to be made by the Governor.

10. No member of the said Force shall be sentenced to death by any Court-martial except for mutiny desertion to the enemy or for traitorously delivering up to the enemy any garrison fortress post or guard or for traitorous correspondence with the enemy. Sentence of death in certain cases only.

11. No person engaged under this Act shall be entitled to any pay or allowances whilst in confinement under the sentence of any Court or during absence from duty without leave or under any charge of which he shall be afterwards convicted by any Court. When pay to be stopped.

12. All constables and peace officers are hereby directed and required to take cognizance of any written order under the hand of a Commanding Officer under this Act authorizing the apprehension of any deserter or absconder from any corps or vessel raised or commissioned under this Act and his conveyance to any place named in such order and to aid and assist in the execution of such order and to lodge any such deserter or absconder in some place of security until such order can be executed. Apprehension of absconders and deserters.

13. Every gaoler or keeper of a prison or gaol is hereby directed and required to receive into his custody any offender under sentence of imprisonment by a Court constituted under this Act upon delivery to him of a warrant of commitment in the form set forth in the Second Schedule under the hand and seal of the President of the Court or of a Commanding Officer. And such gaoler or keeper shall keep such offender in a proper place of confinement with or without hard labor and with or without solitary confinement according to the sentence of the Court and for the time specified in the said order and shall also receive into his custody any absconder or deserter upon receipt of an order in writing to that effect under the hand of such Commanding Officer. Power to detain.

14. If any Officer or member of the said Force shall be killed or wounded in actual service or whilst on duty the widow or family of the deceased or members so wounded shall be entitled to such pension or gratuity as Parliament may provide in that behalf. Pension &c. to wounded and family of persons killed.

15. No tolls or dues shall be demanded from any Officer or member of the said Force being on actual duty either in respect of himself or of any prisoners under charge or of any conveyances or beasts of burden employed in the service of the said Force passing any toll-gate turnpike-road bridge or ferry under a penalty upon any toll-collector demanding or receiving any such toll or due of a sum not exceeding five pounds for every such offence. No tolls to be demanded.

16. Any person falsely and with intent to defraud representing himself to be an Officer or member of the said Force for the purpose of evading payment of any toll or due to which he would otherwise be liable shall forfeit and pay for every such offence a sum not exceeding five pounds. Penalty on personation in order to avoid tolls &c.

17. Any person not being a member of the said Force who shall be found wearing the uniform or any part thereof of any corps of the said Force shall for every such offence forfeit and pay a penalty not exceeding five pounds. On unauthorized persons wearing uniform of corps.

18. Any person who has ceased to be a member of the said Force who shall refuse or neglect to give up on demand of the Officer in command of the corps or vessel to which such person belonged all arms accoutrements ammunition clothing or appointments or any public property in his possession or control shall forfeit and pay for every such offence a sum not exceeding five pounds in addition to any other liability or penalty he may have incurred in respect of the retention of any of the said articles. On refusal to give up arms &c. on ceasing to belong to corps.

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On buying arms &c.

19. Any person who shall knowingly buy take in exchange conceal or otherwise receive any arms accoutrements clothing appointments ammunition or other public property whatsoever delivered to any member of the said Force for his use or the use of any other member thereof shall for every such offence forfeit and pay a sum not exceeding twenty pounds.

Members of the Force incapable of voting at elections for the Assembly.

20. All members of the said Force are disqualified during their term of service from voting at elections for the Legislative Assembly under a penalty for every act of voting or offering to vote of a sum not exceeding ten pounds or of imprisonment not exceeding one week.

Proceedings of Court not void for form no *certiorari*.

21. No proceedings of any Court constituted or appointed under this Act shall be set aside or deemed void for want of form only or be removed by *certiorari* or otherwise into the Supreme Court.

Plea of general issue.

22. If any action or suit shall be brought against any person for any act done or alleged to be done by him in pursuance of the provisions of this Act he may plead in answer to such action or suit the general issue and give this Act and the special matter in evidence under such plea.

Recovery of penalties.

23. All penalties incurred under this Act or regulations thereunder the mode of recovering which is not hereinbefore specified shall be recoverable with costs in a summary way before any Justice of the Peace in manner directed by the Acts for the time being in force regulating summary proceedings before Justices And the convicting Justice may in default of immediate payment of any such penalty together with costs commit the person convicted and making default to gaol for a period of not more than fourteen days or until sooner payment And every penalty when recovered shall be paid into the Consolidated Revenue Fund.

SCHEDULES.

FIRST SCHEDULE.

Section 4.

I swear that I will well and truly serve Our Sovereign Lady the Queen in the for the term of years or until sooner lawfully discharged dismissed or removed and that I will resist Her Majesty's enemies and cause Her Majesty's peace to be kept both on land and at sea—and that I will in all matters appertaining to my service faithfully discharge my duty according to law.

So help me God.

SECOND SCHEDULE.

Section 13.

To the in the Colony of New South Wales and to the Keeper of the Gaol at in the said Colony. Whereas A.B. was this day duly convicted by Court-martial for that [state offence as in conviction] and it was by the said Court adjudged that the said A.B. for his said offence should be imprisoned in the Gaol at in the said Colony [and there kept to hard labor or solitary confinement] for the space of These are therefore to command you the said to take the said A.B. and him safely to convey to the Gaol at aforesaid and there to deliver him to the Keeper thereof together with this precept And I do hereby command you the said Keeper of the said Gaol to receive the said A.B. into your custody in the said Gaol there to imprison him [and keep him to hard labor or in solitary confinement] for the space of and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of in the year of our Lord 187 .

M.N. (President or Commanding Officer.)