

860

3

AN ACT

To repeal part of the Laws now in force for Raising and Training the Militia of this Province, and to make further and more effectual provision for the same.

[Passed the 14th March, 1814.]

WHEREAS a well disciplined Militia is necessary for the defence of the Province, Be it enacted by the King'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 the Parliament of Great Britain, entitled "An Act to repeal certain parts of an act passed in the fourteenth year of his Majesty's 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 all former acts in any wise relating to the raising and training of the Militia within this Province, be, and the same are hereby repealed. Provided always that nothing herein contained, shall extend, or be construed to extend to annul or make void any Militia Commission or appointments which may now be in force, or to discharge any Officer, Non-Commissioned Officer, or Private man now on duty, till regularly relieved or discharged according to the present Laws, or to annul and make void that part of the Militia Laws relative to the Incorporated Militia, unless otherwise provided for by this act.

II. *And be it further enacted by the authority aforesaid,* That nothing herein contained shall extend, or be construed to extend, to repeal a certain act of the Legislature of this Province, passed in the fifty-first year of his Majesty's 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 of the Militia of this Province," or any matter or thing therein contained.

III. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, from time to time, to constitute and appoint by commission under his hand and seal, a sufficient number of Officers to train, discipline, and command the Militia of the Province, and also such number of Staff Officers as he shall think necessary, and the Officers so appointed for the Militia shall rank with such of the Officers of his Majesty's Forces as may for the time being serve within this Province as youngest of their respective ranks. Provided always, that Lieutenant Colonels having permanent or brevet rank by commission, or appointments in his Majesty's Regular Forces, shall command all Militia Officers whatever.

IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Colonel, Lieutenant Colonel, or Officer commanding any Regiment or Battalion, and he is hereby required to order and direct the Adjutant of such Regiment or Battalion as often as the same may be necessary, to furnish him with complete Returns of all and every person or persons within the limits of such Regiment or Battalion liable to Militia duty, specifying their age and place of abode, and the more easily to enable the Adjutant so to do, it shall be lawful for him to call upon any Captain, or officer commanding a company, for a return of the names of the men of his company, and also of the names of such persons as may have lately removed to any place within the limits of his company, and after he shall have been furnished with such return as aforesaid, to form the Militia men so returned into companies, in such manner as to him shall seem most conducive to the interests of the service.

V. *And be it further enacted by the authority aforesaid,* That every male inhabitant from the age of sixteen years to sixty, now resident, or who may hereafter become resident within the limits of any Regiment or Battalion as aforesaid, shall be deemed capable of bearing arms and shall be considered a militia man, and shall within eight days after he shall have attained the age of sixteen years, or become resident within the limits of any such Regiment or Battalion, enroll his name with some one Captain or other officer commanding a company of the said Regiment or Battalion, who is hereby authorized and required to transmit the same with all convenient speed, to the Adjutant thereof for the information of the commanding officer of the Regiment or Battalion. Provided always, that no person above the age of fifty years shall be called upon to bear arms except on the day of annual meeting, or in time of war or emergency.

VI. *Provided also, And be it further enacted by the authority aforesaid,* That the neglect of any person so to present himself for enrollment, shall not be construed to prevent the name of such being enrolled, and such Colonel or officer commanding is hereby required to enter the name of every such person as shall come to his know-

ledge upon the enrollment of the Regiment or Battalion, and when so entered, every such person shall be subject to perform all and every the like Militia duties, and under the same penalties as if he had personally presented himself for enrollment. Provided also, that if any difference shall arise between any Captain or officer and any militia man, touching the age of such militia man, it shall be incumbent on the said militia man to prove his age.

VII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the Governor, Lieutenant Governor, or person administering the Government, or the person commanding any Regiment or Battalion, as often as occasion shall require, to employ any and every of the said companies upon any such militia duty as he shall think necessary.

VIII. *And be it further enacted by the authority aforesaid,* That if any non-commissioned officer or private shall refuse to obey the lawful orders of his superior officer when employed on Militia duty, or shall quarrel with or insult by abusive language or otherwise any officer or non-commissioned officer whilst on duty, it shall and may be lawful for the commanding officer then and there present, to order any such offender forthwith to be taken into custody, and tried by a Court Martial, to be composed of three or more officers of the said Militia, who upon proof of the offence by the oath of one or more credible witness or witnesses, shall and may order and sentence every such offender to pay a fine not exceeding, on actual service, twenty pounds, and a sum not exceeding five pounds when the offence shall not be committed on actual service, according to the nature of the offence and the discretion of the Court, and in default of payment when the militia shall be embodied, to commit the offender, or keep him in some safe place of confinement for a term not exceeding six months, or until the amount of such fine be paid; and when the militia shall not be called on actual service, to commit him to the common Gaol of the District for a term not exceeding one month, or until the amount of such fine be paid.

IX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Captain commanding any company of Militia, if he shall think it more conducive to the good of the service and the ease and convenience of the men to divide his company into squads of such number as he shall think proper, and that the Captain or other officer commanding any such company, shall always provide and appoint a proper person to instruct the men to be assembled at each of the said squad meetings.

X. *And be it further enacted by the authority aforesaid,* That if any Captain or other officer commanding any company of Militia, shall refuse, or neglect to call out his company when thereto required by his superior officer, he shall forfeit and pay for every such offence, in time of war, a sum of money not exceeding ten pounds, and in time of peace, a sum not exceeding five pounds, to be recovered upon the oath of one credible witness, in time of war, before a Court Martial, and in time of peace before one or more of his Majesty's Justices of the Peace, and in default of payment, the said Justices or Court Martial may commit him for a time not exceeding two months, or until the fine be paid.

XI. *And be it further enacted by the authority aforesaid,* That in time of war, rebellion, or any other pressing exigency, it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government, to call forth any of the different companies of the Militia, and to march them from their respective counties or ridings, town, townships or parishes, to any part of this Province, there to serve in conjunction with the other Militia, or with his Majesty's Forces, and any person refusing to obey such orders, or commands, or absconding from, or neglecting to repair to the place he is ordered to, being a commissioned officer, shall upon conviction before a Court Martial, or two or more of his Majesty's Justices of the Peace, upon the oath of one or more credible witness or witnesses, forfeit and pay the sum of fifty pounds, and to be held to be unfit to serve his 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, or to some other safe place of confinement 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 or Battalion to which he belongs, that such refusal or neglect arose from sickness, or that he was absent upon leave. Provided that no Militia man shall be so called out who shall be above the age of fifty years, unless that the whole of the Militia of any District or Battalion to which he may belong shall be called out and embodied. Provided also, that it shall not be lawful to order the Militia or any part thereof to march out of this Province, except for the assistance of the Province of Lower Canada, when the same shall be actually invaded or in a state of insurrection, or except in pursuit of an enemy who may have invaded this Province; and except also for the destruction of any vessel or vessels, built or building, or any Depot, or Magazine formed or forming, or for the attack of any enemy who may be embodied or marching for the purpose of invading this Province, or for the attack of any Fortification now erected or which may be hereafter erected to cover the invasion thereof. Provided always, that neither the payment of any fine or any confinement under this act shall extend, or be construed to extend to exempt any person or persons from serving out the full time for which he or they may have been ballotted or ordered.

XII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government, to call out detachments of the Militia, and to limit and fix the number of men to be called out on such detachments, and in cases of emergency by actual invasion, or otherwise, when it may not be practicable to consult the Governor, Lieutenant Governor, or person administering the Government of this Province, it shall and may be lawful for the Officer commanding any Regiment or Battalion, to limit and appoint the number of men that he shall judge necessary to be called out, and for that purpose to issue his order to the several officers, and also to direct and authorize any officer, having first obtained a Warrant for such purpose from one of his Majesty's Justices of the Peace, to imorens such Carriage, Carriages, Horse and Horses as the service may require, for the use of which the owner or owners thereof shall be entitled to receive the sum of Twenty Shillings a day for every Cart or Carriage with two Horses or Oxen and driver, and the sum of Fifteen Shillings a day for every Carriage with two Horses or Oxen, and for every Horse employed singly the sum of Seven Shillings and Six Pence a day during such time as the same shall be employed or detained on public service, and the Officers impressing such carriages or Horses, shall before dismissal of the same, give to the owner or owners thereof a certificate of the time during which the said carriages, horse or horses have been employe d, or been necessarily absent in going from and returning home on such service, and such certificate shall be a sufficient authority for such owner or owners to demand and receive from the Collector of Customs, or Inspector of the District, to be paid out of any public Monies in his possession, the sum mentioned in such certificate; and the said certificate shall be a sufficient voucher for the payment of such monies by the said Collector or Inspector, and shall be received as such by the Receiver General of the Province, and shall be transferable by indorsement, and any indorsee shall be entitled to receive the amount of the same from any such collector of Customs or Inspector, who may have in his possession any public monies. 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, 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 or riding, that otherwise would be obliged to serve in the said part of the Militia called out as aforesaid.

XIII. *And be it further enacted by the authority aforesaid,* That every person who now is enrolled in any Regiment or Battalion of Militia, shall within six months after the passing of this act, and every person who shall hereafter be enrolled of any Regiment or Battalion of Militia, shall within six months after such enrollment, provide himself with a good and sufficient Musket, Fusil, Rifle or Gun, with at least six rounds of Powder and Ball, and shall come provided with the same at each and every time when he shall be called out, either for the purpose of review, exercise or actual service; and that every officer shall provide himself with a good and sufficient sword, and shall come provided with the same whenever he shall appear at every Militia meeting or parade, and if any person so enrolled shall neglect or refuse to provide himself, or to come so provided in the case of review, or exercise, every officer shall forfeit and pay a sum not exceeding ten pounds, and every non-commissioned officer or private the sum of ten shillings, and in the case of actual service, every officer a penalty not exceeding twenty pounds, and every non-commissioned officer and private a penalty of forty shillings, to be levied in manner hereinafter mentioned. Provided always, that when and so often as any officer or militia man shall make it appear to his Captain or officer commanding the Regiment or company, that he has not been able to procure such sword, musket, fusil, rifle, gun or ammunition, it shall and may be lawful for such Captain or officer commanding the regiment or company, to admit of such excuse, and to certify the same in writing accordingly, in which case such officer or militia man shall not be liable to pay any fine whatever.

XIV. *And be it further enacted by the authority aforesaid,* That any person who shall sell, or barter any part of the arms or equipments which may be delivered to him out of his Majesty's Stores, or who shall destroy the same, and every person who shall knowingly buy, or by barter obtain, or who shall destroy such arms or equipments, shall severally and respectively forfeit and pay a sum not exceeding ten pounds for every offence on conviction thereof, by the oath of any one credible witness before any Court Martial, or before one or more of his Majesty's Justices of the Peace, and in case the person or persons so selling any part of his, or their arms or equipments as aforesaid, or the person or persons obtaining the same in manner aforesaid, being thereof convicted as aforesaid, shall refuse or neglect to pay the amount of such fine, it shall and may be lawful for the said Court, Justice or Justices, by a warrant under their hands and seals, to commit such person or persons to the Gaol of the County or District where 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 Court, Justice or Justices to discharge the person or persons so offending any time before the expiration of the said two months, when the person or persons so convicted as aforesaid shall tender to the said Justice or Justices the penalty inflicted by this act.

XV. *And be it further enacted by the authority aforesaid,* That the Justice or Justices of the Peace before whom any person or persons shall be convicted and fined for any offence against this act, are hereby authorized and empowered to levy the amount of such fine or fines, and all reasonable coits and charges incurred, both before and after conviction, by distress and sale of the goods and chattels of such offender or offenders, if the said Justices shall deem such a proceeding expedient and proper. Provided always that if any such offender or of-

fenders shall be convicted before a Court Martial of such offences, and the sentence of such Court Martial shall be, that the offender or offenders shall pay a certain fine or fines, and the costs and charges so incurred, as aforesaid—Then, and in such case, it shall and may be lawful for the officer under whose authority the said Court Martial is called and approved, and he is hereby authorized to transmit such sentence to one or more Justice or Justices of the Peace for the District where the distress is to be levied, which said Justice or Justices is and are hereby directed and required to issue his or their Warrant or Warrants for the levying the amount of such fine or fines, costs and charges, by distress and sale of the goods and chattels of such offender or offenders.

XVI. *And be it further enacted by the authority aforesaid,* That the amount of all fines when collected, shall be paid to the commanding officer of the Regiment to which the offender or offenders shall respectively belong, and the said commanding officer is hereby required to transmit to the Governor, Lieutenant Governor, or person administering the Government, quarterly accounts certified on oath before any one of his Majesty's Justices of the Peace, of all monies so received by him in manner aforesaid, and all such monies shall be disposed of to the use of each Regiment in such manner as the Governor, Lieutenant Governor, or person administering the Government shall direct.

XVII. *And be it further enacted by the authority aforesaid,* That the arms and accoutrements of militia men shall not be liable to be taken or sold under or by virtue of any Writ of Execution whatever.

XVIII. *And be it further enacted by the authority aforesaid,* That in time of peace, every officer commanding a company shall give six days notice to the militia men of such company of the time and place of their meeting for the purposes of exercise and review, unless the said company be called out by order of the commanding officer of the Regiment.

XIX. *And be it further enacted by the authority aforesaid,* That in the several Counties and Ridings where the number of men is sufficient, the militia shall be formed into Regiments, consisting of not more than ten nor less than eight companies, which companies shall consist of not less than twenty, nor more than fifty private men, and the Field Officers of every Regiment of ten companies shall be as follows, one Colonel, one Lieutenant Colonel, and one Major, and no more; and the Field Officers of every Regiment of less than ten companies shall be as follows, one Lieutenant Colonel and one Major and no more; and to each company there shall be one Captain, one Lieutenant and one Ensign.

XX. *And be it further enacted by the authority aforesaid,* That if any person or persons shall presume to disturb, interrupt or molest any body or party of militia whilst on parade, exercise or review, it shall and may be lawful to and for the commanding officer of such body or party to order any such person or persons to be carried before one of his Majesty's Justices of the Peace, who upon proof of the offence by the oath of one or more credible witnesses or witnesses, shall and may order and adjudge every such offender to pay a fine not exceeding five pounds nor less than ten shillings, and in default of payment to commit him or them to the common Gaol of the District, or other safe place of confinement, for a term not exceeding one month nor less than ten days, unless the fine is sooner by him paid.

XXI. *And be it further enacted by the authority aforesaid,* That to every Regiment there shall be in addition to the officers already mentioned, one Adjutant and one Quarter Master, and the commanding officer of every Regiment shall appoint one Sergeant Major and one Quarter Master Sergeant, and shall as occasion may require fix the number of the other non-commissioned officers, and of the Drummers for each company in his Regiment, and the officers commanding companies shall respectively nominate the non-commissioned officers of their companies to the commanding officer of the Regiment, who is hereby authorized to approve or disapprove of such nominations, and as occasion may require to reduce any non-commissioned officer or Drummer to the ranks for incapacity or improper conduct.

XXII. *And be it further enacted by the authority aforesaid,* That the commanding officer of every Regiment shall call out his Regiment at least twice a year for the purpose of exercise and review, and he shall be at liberty whenever he may think proper for the convenience of the militia, to order a part of the Regiment to meet at one place, and the remainder at another place.

XXIII. *And be it further enacted by the authority aforesaid.* That it shall and may be the duty of every Justice of the Peace, Sheriff, Militia Officer, Coroner, Constable and Parish Officer whatever, and they are hereby enjoined to apprehend and secure Deserters from the militia, and to cause such Deserters to be conveyed to the nearest post occupied by his Majesty's regular or militia Forces.

XXIV. *And be it further enacted by the authority aforesaid,* That every officer, non-commissioned officer or militia man not in actual service who shall neglect or refuse to repair to the place of exercise or review, when

thereto required by his superior officer, unless prevented by sickness, or having leave of absence, shall forfeit and pay, if an officer, a sum not exceeding ten pounds, and if a non-commissioned officer or militia man, a sum not exceeding two pounds for every such offence, and in default of payment to be committed to some safe place of confinement for any time not less than ten days, nor more than one month unless the fine and expences be sooner paid.

XXV. *And be it further enacted by the authority aforesaid.* That whenever a Deserter from the militia shall be apprehended, the court before which he may be tried for his Desertion shall have full power and authority to order all expences attending the apprehension and conveyance of such deserter or deserters to his or their company, troop or regiment, to be levied and collected in like manner as fines may be levied and collected under this act.

XXVI. *And be it further enacted by the authority aforesaid,* That when any non-commissioned officer or militia man shall claim any exemption from militia duty, it shall and may be lawful for the commanding officer of the regiment to which he belongs, to call a court of inquiry to examine into the grounds of such claim, the members of which court and the witnesses produced before them, shall be sworn in like manner as is now done in courts martial, other than general courts martial, and to proceed thereupon agreeably to the report of the said court of inquiry.

XXVII. *And be it further enacted by the authority aforesaid,* That when any non-commissioned officer or militia man shall be committed to prison pursuant to the judgement of any Justice or Justices of the Peace, or sentence of any regimental or garrison court martial, it shall and may be lawful for the commanding officer of the Regiment, Detachment or Post, not being under the rank of a field officer of militia, to remit the whole or any part of such offender or offender's punishment, and to release him or them from such imprisonment, or any part thereof.

XXVIII. *And be it further enacted by the authority aforesaid,* That if any non-commissioned officer or militia man be hereafter apprehended and conveyed to any post or garrison conformably to the provision of this act, and shall not have sufficient personal property to pay the incidental expences, the person or persons who shall take and convey such deserter or deserters, may produce an account of such expences to the Justices of the Peace in General Quarter Sessions assembled, for the District in which such deserter or deserters are found, and the said Justices or the major part of them are hereby authorized to allow so much of such account as to them shall appear to be just and proper, and to give to the person or persons producing the same, an order on the collector of customs or Inspector of the District, for the amount so allowed, and the said Collector or Inspector is hereby directed to pay the same out of any monies in his hands, and such order shall be a sufficient voucher for the payment of such monies by the said Collector or Inspector, and shall be received as such by the Receiver General of the Province.

XXIX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the officer commanding any regiment, post or detachment, having first obtained a warrant from a Justice of the Peace, to issue his warrant to impress Carriages or Teams, for the purpose of transporting any of his Majesty's troops, naval or military stores on their passage through this Province, and the owner or owners of such Carriages or Teams shall be paid at the rate of Fifteen Shillings a day for each Carriage and pair of Horses or Oxen furnished, and the further sum of Five Shillings if a Driver be sent with such Team, during the time such Team shall be detained or employed in going from and returning home, and it shall be the duty of every officer or other person having the charge of such detachment or stores, to give a certificate specifying the same, which certificate shall be transferable, if indorsed, and the indorsee shall be entitled to receive the payment for the same. Provided always, and be it further enacted by the authority aforesaid, that if any officer or officers, or other person or persons having charge of such detachment or stores as aforesaid, shall neglect or refuse to give a certificate for the time such team shall have been so employed, on being required so to do, he shall forfeit and pay the sum of ten pounds, to be recovered before any one of his Majesty's Justices of the Peace within the Province, on the oath of one credible witness, together with all reasonable charges both before and after conviction, and in default of payment, to be committed to the Common Gaol of the District for the space of one calendar month, or until such fine and expences shall be paid.

XXX. *And be it further enacted by the authority aforesaid,* That at all times when the Militia may be called out and embodied for actual service, the officers, non-commissioned officers, and private men of the several regiments, battalions or companies of militia from the time of their being drawn out and embodied as aforesaid, and until they shall return to their respective towns, townships, parishes or places of abode, remain under the command of the Governor, Lieutenant Governor, or person administering the Government, or other officers having the command of them, and shall be liable to punishment for mutiny and desertion, as herein after mentioned, that is to say: That every officer, non-commissioned officer, or militia man who shall presume to use trai-

arous or disrespectful words against his Majesty's Royal person, or disrespectful words against any of the Royal Family, if a commissioned officer, shall upon conviction thereof before a General Court Martial, as herein after is directed to be established, be cashiered; if a non-commissioned officer or private, he shall suffer such punishment as by the sentence of any Court Martial shall be awarded, not extending to whipping, or to loss of life or limb.

XXXI. *And be it further enacted by the authority aforesaid,* That any officer, non-commissioned officer or militia man when on militia duty, who shall behave himself with contempt or disrespect, towards the Governor, Lieutenant Governor, or person administering the Government of this Province for the time being, or shall speak words tending to their hurt or dishonor, shall be punished according to the nature of his offence; if an officer, by the judgement of a General Court Martial, and if a non commissioned officer or private, by the judgement of any Court Martial.

XXXII. *And be it further enacted by the authority aforesaid,* That any officer, non-commissioned officer or militia man, who shall begin, excite, cause or join in any mutiny or sedition in the regiment, detachment, troop or company to which he belongs, or in any other regiment, detachment, troop or company, whether of embodied militia, or of his Majesty's regular or Provincial Forces, in any camp or post, or upon any party, detachment, or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a General Court Martial shall be awarded.

XXXIII. *And be it further enacted by the authority aforesaid,* That any officer, non-commissioned officer or militia man, being present at any mutiny or sedition, who shall not use his utmost endeavors to suppress the same, or coming to the knowledge of any mutiny or intended mutiny, shall not without delay give information thereof to his commanding officer, shall suffer such punishment as by a General Court Martial shall be awarded.

XXXIV. *And be it further enacted by the authority aforesaid,* That any officer, non-commissioned officer or militia man, who shall be convicted of having deserted to the enemy, or from his post, shall suffer death, or such other punishment as shall be awarded by a General Court Martial.

XXXV. *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 when a General Court Martial shall be required, the Governor, Lieutenant Governor, or person administering the Government, upon complaint and application to him made through the Colonel, or Officer commanding the body of militia to which the party accused may belong, shall issue his order to the commanding Officer to assemble a General Court Martial, which said Court Martial shall consist of a President, who shall be a Field Officer, and twelve 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 Governor, Lieutenant Governor, or person administering the Government, 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 that Court, shall take the following Oath before the Judge Advocate, who is hereby authorized 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 Governor, Lieutenant Governor, or person administering the Government of this Province, neither will you 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 so soon as the said oath shall have been administered to the respective members, the President of the Court is hereby authorized 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 said Judge Advocate shall, and is hereby authorized 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 Governor, Lieutenant Governor, or person administering the Government has approved thereof.

XXXVI. *And be it further enacted by the authority aforesaid,* That during the time in which the said militia shall be embodied for actual service, they and every of them as well officers as privates, shall be liable and subject in cases to which the provisions of this act do not extend, 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 and desertion, not contrary to this act. Provided nevertheless that no sentence of any Court Martial so to be constituted and ef-

established, under and by virtue of this act, shall extend to the loss of life or limb, unless for desertion, mutiny, and sedition, traitorous correspondence, or for traitorously delivering up to the enemy any garrison, fortress, post or guard, any thing herein contained, or any statute, law or usage to the contrary notwithstanding. Provided always, that in no case whatsoever shall any non-commissioned officer or private man for any offence by him committed, be subjected to the punishment of being whipped by the sentence of any Court Martial whatsoever.

XXXVII. *And be it further enacted by the authority aforesaid,* That in all cases where a militia officer not on actual service shall be guilty of improper conduct, or do any thing unbecoming his character as such officer, not otherwise provided for in this act, the Governor, Lieutenant Governor or person administering the Government, upon complaint and application made to him through the Colonel, or other field officer of militia commanding the respective regiments or battalions to which the said officer against whom the complaint is made may belong; or in case the said Colonel or other field officer is the party accused, to the next in command to issue his order to assemble a Court of Inquiry, (which Court shall consist of one field officer, who shall be President thereof together with not less than four other commissioned officers) and such Court of Inquiry shall examine witnesses, and take every necessary step to investigate the matter alleged in the complaint against the said militia officer, and report the evidence in that behalf brought before them, to the Governor, Lieutenant Governor or person administering the Government, for his decision thereon.

XXXVIII. *And be it further enacted by the authority aforesaid,* That except in time of war, insurrection or rebellion, the Judges of the Court of King's Bench and Clergy, the members of the Legislative and Executive Councils and their respective officers, the members of the House of Assembly for the time being and the officers thereunto belonging, his Majesty's Attorney-General and Solicitor-General, the Secretary of the Province, and all other civil officers who shall have been or hereafter may be appointed to any civil office in this Province under the great seal of the same, as well as all Magistrates, Sheriffs, Coroners, half pay officers, militia officers, having served by virtue of any militia commission in any part of his 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, Seafaring men actually employed in the line of their calling, Physicians, Surgeons, the masters of 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 and every of the above mentioned person or persons from holding commissions as officers in the militia in this province. Provided always, that it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government, by warrant under his hand and seal, to exempt any of the persons herein before mentioned from being called out on the service aforesaid.

XXXIX. *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 people called Quakers, Menonists or Tunkers, and producing a certificate of his being a Quaker, Menonist or Tunker, signed by the clerk of the meeting of such society, or by any 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 or persons that shall or may be of the people called Quakers, Menonists or Tunkers, from the age of sixteen to sixty, shall on or before the thirty-first day of December in each and every year, give in his name and place of residence to the Treasurer of the District where he or they shall reside, and pay to such Treasurer to and for the public uses of this Province, in time of war or insurrection, or when any part of the militia of that district shall be called out on actual service, the sum of ten pounds, and in default of such payment it shall and may be lawful on information or complaint on oath made by the said Treasurer before any Justice of the Peace of such district, for the said Justice to issue his warrant under his hand and seal, directed to the Sheriff of the district, to levy the same by distress and sale of the offender's goods and chattels, returning so much of the said distress as shall exceed the said sum of ten pounds, deducting therefrom the charges and all other incidental expence of such distress and sale, as well as the expences of summoning such offender before such Justice to answer the said information and complaint, and the said sums so levied by the said Sheriff aforesaid, shall be by him, within the space of two calendar months, paid into the hands of the Receiver General, to be applied to and for the public uses of this Province, and for want of such distress the Justice before whom such person shall have been convicted shall commit him to the common goal of the district until he shall pay and satisfy such sum, together with the reasonable charges incident to such conviction. Provided nevertheless, that no person or persons so convicted, shall in any case be detained in custody longer than the space of one calendar month. Provided always, that if it shall appear to the Justice before whom any such Quaker, Menonist or Tunker as aforesaid shall be summoned, that the said Quaker, Menonist or Tunker is unable to pay the said sum of ten pounds, it shall and may be lawful for the said Justice to report the same to the Colonel or officer commanding the regiment or battalion of militia in the limits of which the said Quaker, Menonist or Tunker shall reside, and it shall and may be lawful for the said officer commanding to remit the payment of the said sum of ten pounds or any part thereof, according

to the circumstances of the case, and the said Colonel or officer commanding shall give a certificate specifying the sum so remitted, which certificate shall be a sufficient discharge for the sum mentioned in the said certificate,

XL. *And be it further enacted by the authority aforesaid,* That in time of war when and so often as occasion may require, it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, to employ the Militia of this Province either upon Land or upon the Lakes Rivers and communications thereof, in such parties or Detachments as by him shall be deemed expedient.

XLI. *And Whereas by a certain clause in this act, it is provided, that it shall and may be lawful for the persons therein mentioned on certain occasions to call out Detachments of the Militia, be it therefore enacted by the authority aforesaid, that the persons to serve on such Detachments shall be regularly taken from time to time as they shall be required by ballot from such Regiment or Battallion.*

XXII. *And be it further enacted by the authority aforesaid,* That when any Detachments are formed and called out for public Service it shall and may be lawful for the Governor Lieutenant Governor or person administering the Government of this Province to divide the same into smaller Detachments or parties and appoint them to serve on board Vessels, Boats or Batteaux upon any of the Lakes, Rivers, or communications by water, of this Province, with great guns or Artillery, as well as with small arms as occasion may require, and shall and may appoint them to be Stationary in any of the Creeks or Harbours of the said Lakes or in any of the Rivers of the province, and also to train and exercise the same to the use of Great Guns and artillery as well by land as by water.

XLIII. *And be it further enacted by the authority aforesaid,* That at the expiration of three months from the time of any detachment being called out as aforesaid, the Colonel or other Officer commanding the Regiment from which the said detachment may have been taken shall select by ballot from the Militia men of such Regiment a number equal to the said detachment, and the said number so selected shall be forthwith marched to the relief of the said Detachment, and that any body or detachment of Militia, other than the Incorporated Militia now serving shall be relieved within one month after the passing of this act.

XLIV. *And be it further enacted by the authority aforesaid,* That if any sergeant of militia when thereunto required by his superior and proper officer shall neglect or refuse to warn the Militia men of the company to which he belongs, to appear at the place of enrollment or exercise or for any other lawful purpose, he shall for every such neglect or refusal forfeit and pay the sum of forty shillings, to be recovered before any Court Martial or Justice of the peace, and in default of payment to be committed to Goal for one month or until such fine be paid.

XLV. *And be it further enacted by the authority aforesaid,* That if any officer, non-Commissioned officer or private militia man who in any engagement with an enemy or by any accident or casualty which may occur while on or performing any duty in actual service shall be killed and leave a widow or child or children lawfully begotten, his said widow shall be entitled to receive during her widowhood, and in case of the death of such widow then the eldest child or guardian, for the use of the child or children of such officer, non-commissioned officer or private militia man, until the youngest thereof shall have attained the age of sixteen years, an annuity of twenty pounds lawful money of this Province; and also that every officer, non-commissioned officer or private of militia, who in an engagement with an enemy or by any accident or casualty which may occur while on or performing any duty in actual service, shall be wounded or disabled so as to render him incapable of earning his livelihood, shall be allowed an annuity of twenty pounds lawful money of this Province during the time he shall continue under such incapacity.

XLVI. *And be it further enacted by the authority aforesaid,* That any officer commanding any Garrison, Camp or Detachment of His Majesty's regular or militia Forces in any District or place, shall have full power and authority to make such rules and regulations under such penalties and restrictions as he shall think necessary relative to such taverns and Innkeepers or any persons vending or selling Spirituous Liquors as shall reside within one mile of such Garrison, camp or detachment, and as may be necessary for the good government of the said Forces.

XLVII. *And be it further enacted by the authority aforesaid,* That in all trials by any Court Martial, other than general Courts Martial, the person appointed to be President thereof shall administer to each of the other members the following oath. "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 militia Laws of this Province, and the evidence which shall be produced before you, without partiality favor or affection, so help you God," and as soon as the said oath shall have been administered by the President to the other members, any one of the said members shall administer the oath to the President, provided always that no officer shall be tried for any offence except

By a general Court Martial; and provided also that no officer of His Majesty's regular Forces shall sit on any Court Martial for the trial of any officer or militia man serving in the Militia.

XLVIII. *And be it further enacted by the authority aforesaid,* That in any case when the punishment of any offence shall be short of Death or transportation the offender or offenders may be tried by a Garrison or Regimental Court Martial being a non-commissioned officer or private militia man.

XLIX. *And be it further enacted by the authority aforesaid,* That whenever a Court Martial shall sentence any person to suffer the punishment of Death or Transportation it shall and may be lawful for the person having the power to approve of such sentence to alter the punishment and to inflict such other as he may think fit.

L. *And be it further enacted by the authority aforesaid,* That in all cases where any conviction shall be made by any Court of Quarter Sessions or Justice or Justices of the Peace, or Court Martial, for any offence against this act, such offender in addition to the amount of such fine, shall be liable to the payment of all reasonable costs and charges, and such costs and charges shall be received in like manner as the amount of such fine or forfeiture.

LI. *And be it further enacted by the authority aforesaid,* That every militia man who shall be called out and embodied for actual service shall while actually serving be exempted from arrest in any civil case for any sum under twenty pounds, and shall not be liable to serve as a Parish or Town officer, or to perform Statute labour on the Highways.

LII. *And be it further enacted by the authority aforesaid,* That if any person shall knowingly obtain, buy or exchange, or otherwise receive from any soldier, deserter or militia man or from any other person upon any account or pretence whatsoever any arms, clothes caps or other furniture belonging to the King, or any meat, drink or other provision provided under any regulations relating to the army, or any such articles belonging to any soldier deserter or militia man, as are generally deemed Regimental necessaries, or cause the colour of any such clothes to be changed, the person so offending on conviction before two of His Majesty's Justices of the Peace on the oath of one credible witness shall forfeit for every such offence the sum of five pounds, and in default of payment shall be committed to some safe place of confinement for any time not less than ten days nor more than one month.

LIII. *And be it further enacted by the authority aforesaid,* That any non-commissioned Officer or militia man who shall quit, or otherwise absent himself from his regiment, detachment, Troop or company without a furlough from his commanding officer, or who shall withdraw himself from the regiment, detachment, troop or company into which he has been embodied, in order to attach himself to any other regiment detachment, troop or company, then on service, whether of the militia or of His Majesty's regular or Provincial forces, shall on conviction thereof, be punished according to the nature of his offence at the discretion of any court martial, and in case any militia officer shall knowingly receive or entertain any such non-commissioned officer or militia man and shall not after his being discovered to be a deserter immediately confine him and give notice to the officer commanding the regiment, detachment, Troop or company in which he last served, the said officer so offending shall on conviction thereof before a general Court Martial, be cashiered.

LIV. *And be it further enacted by the authority aforesaid,* That if any person shall be convicted on the oath of one credible witness before two or more of His Majesty's Justices of the Peace, or before a Court Martial, of having advised or persuaded any non-commissioned officer or militia man to desert or absent himself from His Majesty's service while on duty, or of having discouraged, dissuaded or prevented, or of having attempted to discourage, dissuade or prevent any non-commissioned officer or militia man from volunteering for actual service, or from obeying the lawful command of his superior officer, or if any person shall be convicted as aforesaid of having received, entertained, harboured, concealed or assisted any Deserter or other person absenting himself without leave from any part of the militia on service, knowing him to be a Deserter or person absenting himself without leave, such offender so convicted shall forfeit and pay a sum not exceeding twenty pounds, nor less than ten pounds, and in default of payment shall be committed to some safe place of confinement for any time not exceeding six months, nor less than three months.

LV. *And be it further enacted by the authority aforesaid,* That every officer of the militia of this Province, shall on or before the first day of May next, and every officer who may after that day be appointed, within ten days after he shall have received his commission or appointment, before one or more of His Majesty's Justices of the Peace for the District to which his regiment or Battalion shall belong, take and subscribe the following oath, to wit, I A. B. do sincerely promise and swear that I will be faithful, and bear true allegiance to His Majesty King George, and him will defend to the utmost of my power against all traitorous conspiracies and

attempts whatsoever which shall be made against his person, Crown or dignity, and I will do my utmost endeavours to disclose and make known to His Majesty, His Heirs and Successors all Treasons and traitorous conspiracies and attempts which I shall know to be against him or them, so help me God.

LVI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the Governor Lieutenant Governor or person administering the Government of this Province from time to time, and as often as he shall think it expedient, to order and direct that the non-commissioned officers and privates of any and every regiment, Battalion, company or body of militia in this Province shall be called upon to take and subscribe the said oath, and that upon receiving any orders for that purpose it shall and may be lawful for the commanding officer of any such regiment, Battalion, company or body of Militia, and he is hereby required to call upon every non-commissioned officer or private of his regiment, Battalion, company or body to take & subscribe the said oath before one or more of his Majesty's Justices of the Peace for the District to which such regiment, Battalion, company or body of militia shall belong, and if any officer non-commissioned officer or private shall refuse or neglect (having been required to do so) to take and subscribe the said oath in manner hereby directed; upon conviction before one or more of His Majesty's Justices of the peace every such person or persons, shall be deemed and taken to be an alien enemy, and shall be liable and subject to any Law or Laws, now in force or hereafter to be made respecting or against alien enemies.

LVII. *And be it further enacted by the authority aforesaid,* That every person, other than a Quaker, Menonist, or Tunker, who may be exempted or excused from performing militia duty as a private militia man, or for any cause whatsoever, shall on or before the first day of May next, or if such exemption or excuse should happen after that time, then within ten days after such exemption, give in his name and place of residence to the treasurer of the District in which he shall reside, and pay to such treasurer to and for the public uses of this Province, in time of war or insurrection, or when any part of the militia of that District shall be called out on actual service, the sum of ten pounds, and in default of returning his name or place of residence as aforesaid, or in default of such payment, it shall and may be lawful on information or on complaint on oath made by the said treasurer before any Justice of the Peace of such District, for the said Justice to issue his warrant under his hand and Seal directed to the Sheriff of the District to levy the same by Distress and sale of the offenders goods and chattels, returning so much of the said Distress as shall exceed the sum of ten pounds, deducting therefrom the charges and all other incidental expences of such distress and sale, as well as the expences of summoning such offender before such Justice to answer the said information and complaint, and the said sum so levied by the said Sheriff shall be by him within the space of two calendar months paid into the hands of the receiver general, to be applied to and for the Public uses of this Province, and for want of such Distress the Justice before whom such person shall have been convicted shall commit him to the common Goal of the district until he shall pay and satisfy such sum, together with the reasonable charges incident to such conviction, provided such imprisonment shall not exceed two calendar months, provided always, that when any person as last aforesaid shall make it appear to the commanding officer of his regiment that he is unable to pay the aforesaid sum of ten pounds or any part thereof, it shall and may be lawful for such commanding officer to remit the payment of the said sum of ten pounds or any part according to the circumstances and nature of the case, and to give a certificate thereof to the the person making application as aforesaid.

LVIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Colonel, Lieutenant Colonel, or officer commanding any regiment or battalion of militia, and he is hereby required to order the whole of such regiment or battalion to be formed into divisions or squads of fourteen men each, and to select by ballot from each and every division or squad as aforesaid, one able bodied man for militia duty for a term not less than twelve months; Provided always, that if any of the said divisions or squads as aforesaid shall voluntarily furnish an able bodied man, who shall be accepted and approved of for the purpose and term of service as aforesaid, then and in such case the ballot shall not take place in such division or squad.

LVIII. *And be it further enacted by the authority aforesaid,* That the said militia men so furnished or balloted as aforesaid shall and may be formed into regiments, battalions or companies, as the Governor, Lieutenant Governor or person administering the Government shall deem most expedient.

LX. *And be it further enacted by the authority aforesaid,* That whenever any such division or squad as aforesaid shall furnish an able bodied man for militia duty for one or more years, and who shall be accepted and approved of for that purpose, then and in such case the militia men composing such division or squad shall be exempted from being balloted for militia duty during the time such militia man as aforesaid shall so serve, unless the whole of the regiment or battalion as aforesaid to which such division or squad shall belong, shall be called out into actual service. Provided always, that such division or squad so furnishing a volunteer as aforesaid, shall not be liable to pay any sum of money for such exemption as aforesaid.

LXI. *And be it further enacted by the authority aforesaid,* That each and every Sheriff in the several districts of

this Province shall have a right to retain for his use the sum of three pounds for every hundred pounds so collected and transmitted to the Receiver General, and in the same proportion for any greater or less sum.

LXII. *And be it further enacted by the authority aforesaid,* That it shall be the duty of every Colonel commanding a regiment of militia in this province, or in his absence the next senior officer, to transmit to the Treasurer of the District in which he may reside, on or before the first day of May in each and every year, during the continuance of this act, a return of all Quakers, Menonists and Tunkers, and each and every other person exempted or excused from militia duty, and the said Treasurer shall proceed against such Quakers, Menonists and Tunkers, and every person exempted in the same manner as is directed by this act. Provided always, and be it further enacted, that no person above the age of sixty years shall be considered liable to pay any sum for being so exempted or excused.

LXIII. *And be it further enacted by the authority aforesaid,* That no order of conviction made by any Justice or Justices of the Peace or Court Martial by virtue of this act, shall be removed by Certiorari out of the county, riding, division, or place wherein such order of conviction shall have been made, into any Court whatsoever, and that no Writ of Certiorari shall supercede execution or other proceeding upon any such order of conviction so made in pursuance of this act, but that the execution and other proceedings shall be had and made thereupon, any such writ or writs or allowance thereof notwithstanding.

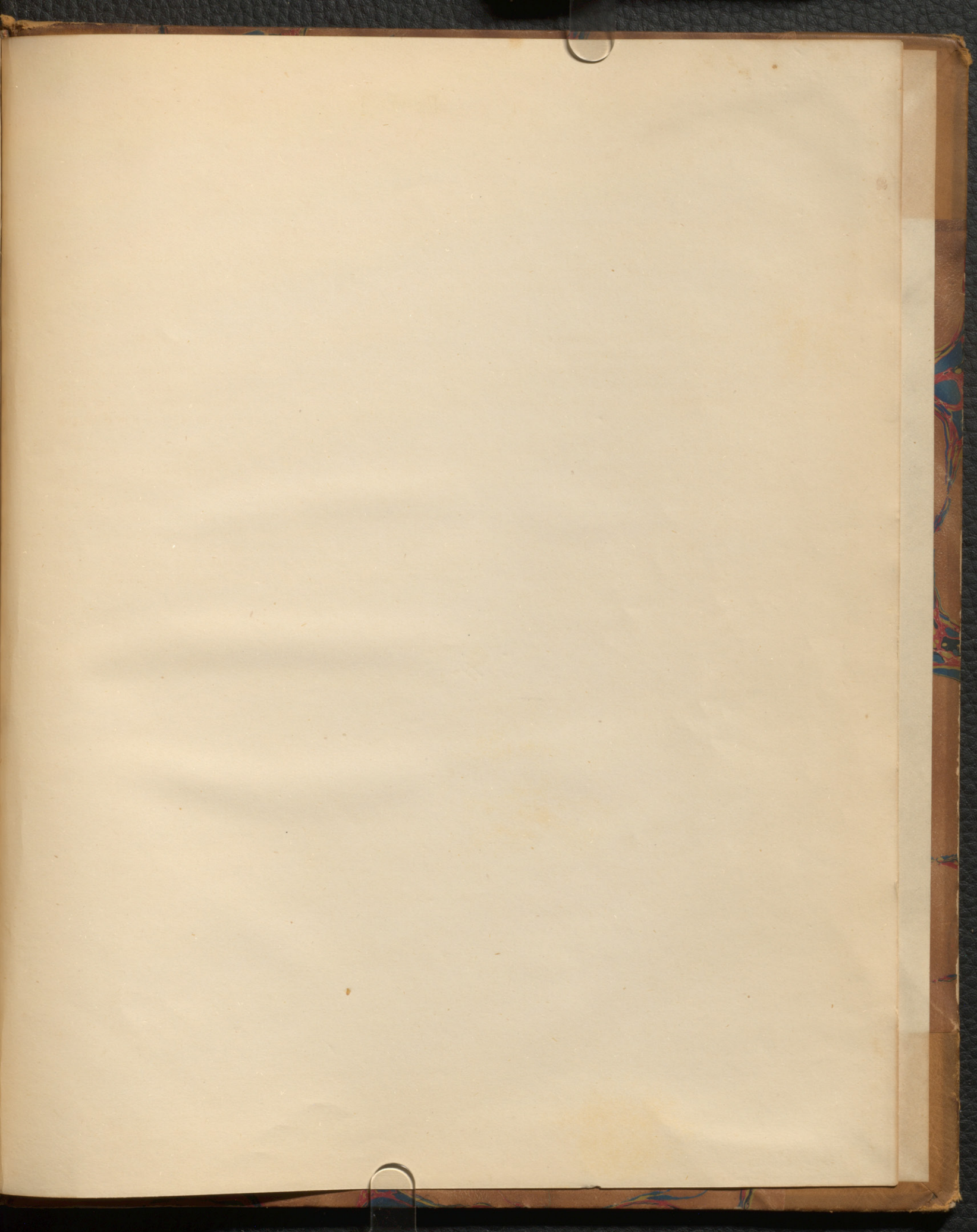
LXIV. *And be it further enacted by the authority aforesaid,* That if any action shall be brought against any person or persons for any thing done in pursuance of this act, such action or suit shall be commenced within six months next after the fact committed, and not afterwards, and shall be laid in the county or place where the cause of complaint did arise, and not elsewhere, and the defendant or defendants in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and if the Jury shall find for the defendant or defendants in any such action or suit, or if the plaintiff or plaintiffs shall be non-suited or discontinue his, her or their action or suit after the defendant or defendants shall have appeared, or if upon demurrer judgement shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have like remedy for the same, as any defendant hath in other cases to recover costs by law.

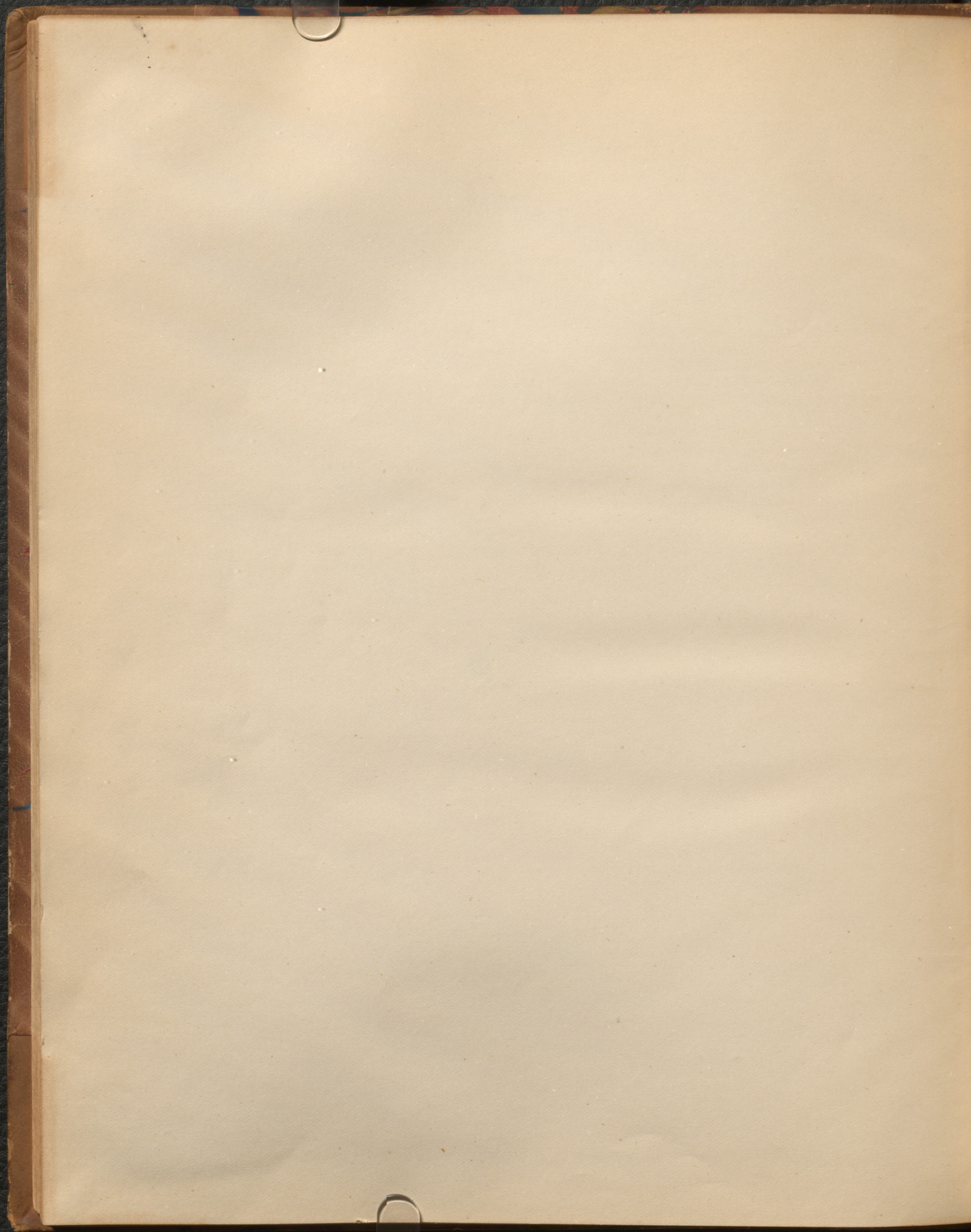
LXV. *And be it further enacted by the authority aforesaid,* That this Act shall be in force until the end of the next ensuing Session of the Provincial Parliament, and no longer.

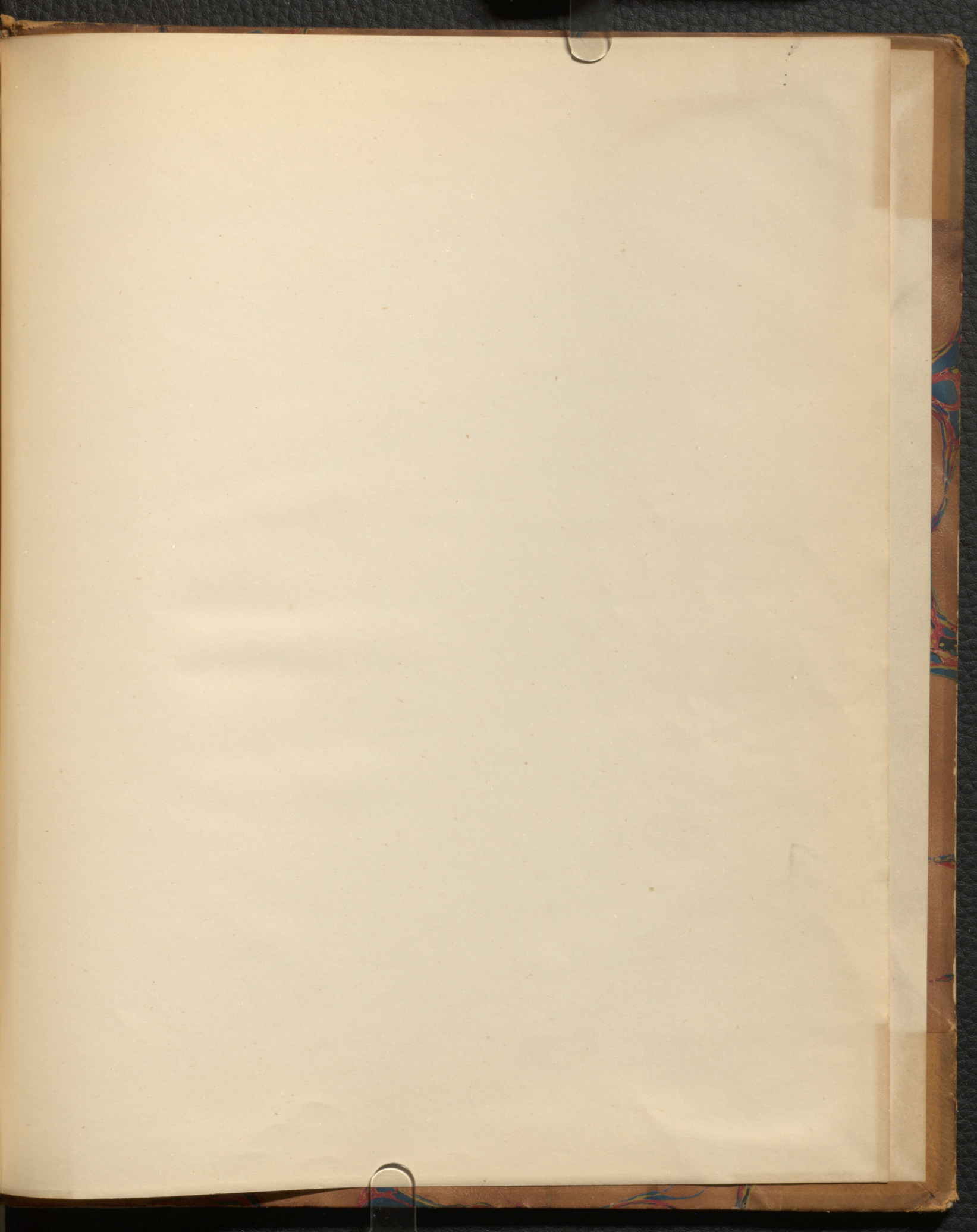
[Faint, mostly illegible text, likely bleed-through from the reverse side of the page. Some words like "The", "and", "of", "the" are barely visible.]

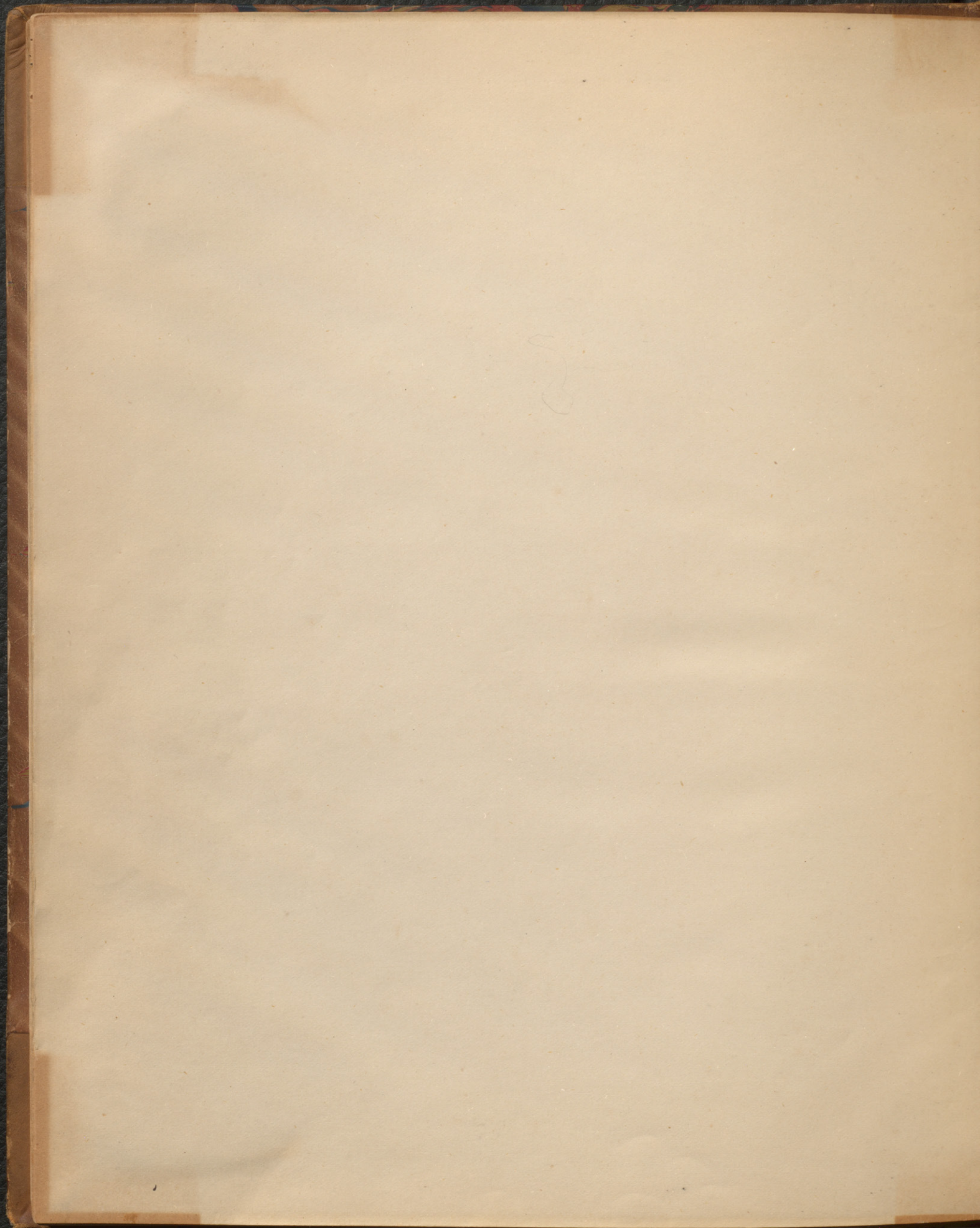
160
20
140

[Handwritten notes at the bottom left corner:]
 June 15
 to sum to have 100
 100
 you sum to have 100
 you sum to have 100









4598409

