

The Militia Act, chapter 41 of the Revised Statute of Canada, is a re-enactment, with amendments, of the Militia Act passed by the Dominion Parliament in 1867-8 (31 Vict. c. 40). In the old Province of Canada a Militia Act was in force for many years, and eventually became chapter 35 of the Consolidated Statutes of Canada. That Act fully recognized the liability of the population to military service.

By section 75 of that Act military service was limited as follows: The militia, when called out, "may be marched to any part of the province or to any place without the province, but conterminous therewith, where the enemy is." Obviously the service would be confined to North America, and would not extend overseas.

The Act (31 Vict. c. 40) extended the liability; section 61 enacting that "Her Majesty may call out the militia or any part thereof for actual service either within or without the Dominion at any time." Section 69 of R.S.C. (1906) defines the liability as follows: "The Governor-in-Council may place the militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency."

So long as Canada remains a part of the British Empire "the defence thereof" may depend, as it depends at present, on the success of military and naval operations carried on far beyond its borders. If the words "for the defence thereof" are to be construed as meaning a defence of the actual land surface of the Dominion, the force of the enactment is practically the same in its limitations as the old Consolidated Statutes of Canada, that is to say, its force would be confined to North America.

The unhappy word "emergency" used in section 69 leaves an opening for discussion as to what constitutes an "emergency." We have seen in our recent history a denial that at that time an emergency did exist. Whether it did or did not is immaterial, as there is clearly an emergency now.