

SENATE....No. 40.

Commonwealth of Massachusetts.

IN SENATE, Jan. 14, 1835.

Ordered, That so much of the Governor's Speech as relates to the Militia, be referred to the Committee on the Militia.

Sent down for concurrence.

CHAS. CALHOUN, *Clerk*.

HOUSE OF REPRESENTATIVES, Jan. 15, 1835.

Concurred.

L. S. CUSHING, *Clerk*.

IN SENATE, Jan. 15, 1835.

Ordered, That the Committee on the Militia be instructed to inquire what further provisions are necessary to enable the Treasurer of the Commonwealth to comply with the provisions of an act in addition to the several acts for regulating, governing and training the Militia of this Commonwealth, passed March 29, 1834.

Sent down for concurrence.

CHAS. CALHOUN, *Clerk*.

HOUSE OF REPRESENTATIVES, Jan. 15, 1835.

Concurred.

L. S. CUSHING, *Clerk*.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Jan. 16, 1835.

Ordered, That the Committee on the Militia be requested to take into consideration the expediency of submitting the subject of a revision of the Militia law to a joint commission, to report to the next Legislature.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

IN SENATE, Jan. 17, 1835.

Concurred.

CHAS. CALHOUN, *Clerk*.

IN HOUSE OF REPRESENTATIVES, Jan. 22, 1835.

Ordered, That the Committee on the Militia be instructed to inquire into the expediency of repealing all or any parts of the laws passed relative to the Militia, since the year 1810, and report by Bill or otherwise.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

IN SENATE, Jan. 23, 1835.

Concurred.

CHAS. CALHOUN, *Clerk*.

Commonwealth of Massachusetts.

The Committee on the Militia, to whom was referred so much of the Governor's Address as relates to that subject, and also the Memorial of General Thomas Davis and others, together with sundry orders of both branches of the Legislature, ask leave to present the following

REPORT.

The Committee would do injustice both to themselves and to those whom they address, if they did not, at the outset, distinctly avow that the propositions suggested in this report are based upon the belief, which they all firmly entertain, that an efficient and well regulated Militia is an essential part of every republican system, essential to the security of private property and public institutions, essential to the maintenance of law and the existence of liberty. In this view they cordially concur in the sentiment of the Governor: "No one who loves the Commonwealth, who cherishes a regard for the Constitution, who desires protection from the laws, and the blessings of equality which they are designed to establish, who joys in the felicity of the past, or casts his hopes forward upon the continuance of our singular happiness as a Free People, can fail to place a high estimate upon a well organized Militia, to honor its use-

fulness, and to uphold it with patriotic ardor, as the strong arm which, in extremities, must save our peaceable institutions from the rude assaults of violence.”

It is then with the professed design not to do away or discourge, but to revive, uphold and sustain an efficient Militia, that the Committee offer to the consideration of the Legislature the result of their own deliberations.

And in furtherance of this design the Committee unanimously recommend a repeal of the Act of 1834 upon this subject. That Act was in its very terms an abolition of the whole Militia of Massachusetts, so far as this Legislature had the power to abolish it; all that remained being dependant for its existence upon the paramount laws of the United States. It did, indeed, provide for something in the shape of compensation to such members of volunteer companies as should not withdraw from the service, within six months after its passage. But this compensation was so merely nominal, so entirely inadequate to its object, that no one can doubt that the Commonwealth is indebted to something besides the provisions of that Act for any remnant of Volunteer militia which has survived its enactment. It is matter of notoriety, as the Governor's address sets forth, that under its operation many of the volunteer companies which it was intended to encourage, have been disbanded, the ranks of many more have been greatly reduced, and your Committee are of opinion that its continuance would result in the almost entire disorganization of this most efficient portion of the Militia.

Entertaining these views, the Committee have annexed to this report a Bill, for the purpose of repealing this Act, with the exception of some few clauses containing

provisions which they think may advantageously be retained, and also with a *Proviso* which will explain itself, and which has been inserted after due consultation with those to whom it relates.

The Committee have taken occasion to introduce into this bill a section, providing against certain abuses in the elections of officers, alluded to by the Governor in the following terms:—

“In many places the legal organization has been defeated substantially, either by a refusal to exercise the elective franchise, or a perversion of it, in the choice of officers to supply vacancies.

“The files of the Adjutant General’s office furnish lamentable proofs of the truth of this declaration. The presiding and returning officers affirm, upon their official responsibility, that persons tottering under the infirmities of old age or imbecility, reputed sots and vagabonds, have been elected in many instances to office.”

A third section has likewise been added, to render penal those mock trainings and burlesque parades, which are becoming not unusual in some portions of the State, which are undoubtedly a breach of the public peace and decorum, and the deliberate design and certain effect of which is to cast upon the Militia a public ridicule and scorn, against which hardly any institution of our Government, however useful or honorable, could long sustain itself.

By the adoption of this Bill the law of 1830, with the foregoing exceptions and additions, will be revived—the duties of those citizens between 31 and 45 years of age will remain as they now are, while those between 31 and 18 years of age will be called upon to attend one company drill and one brigade or regimental parade during

the year, in addition to the annual inspection in May, prescribed by the law of the United States. And these duties your Committee believe to be as light as is consistent with an efficient organization, and much lighter than would be necessary to effect any high degree of discipline.

But your Committee are of opinion that this is by no means all the legislation that is called for in relation to the Militia. The laws upon this subject have long required, as they think, and as public opinion has emphatically pronounced, a thorough revision and amendment. Scattered as they are over the pages of the Statute book, it is a task of no inconsiderable magnitude to examine their bearings upon each other, and to discover the precise obligations which they impose. But this task will soon be made easy. When the First Part of the Revised Statutes shall come from the hands of the Commissioners, this portion of our laws will have assumed the same connected and condensed shape which other portions already exhibit. And in this shape, it would be comparatively an easy matter to examine and amend them.

It is hardly, however, to be anticipated, that the Commissioners themselves, selected, as they appropriately were, for their eminent legal abilities only, will attempt to make any improvements in laws of this peculiar kind, with whose practical operations they are probably but little conversant. Nor can it be expected that the Committee on the Revised Statutes will find time, even supposing it to be a part of their duty, to consider and mature a new Militia System. Yet it would seem to your Committee a matter much to be deplored, that these laws in their present unequal and unsatisfactory condi-

tion, should go forth to the citizens of the Commonwealth as part and parcel of a deliberately Revised Code.

Under these impressions your Committee would respectfully recommend, and they have subjoined Resolutions to that effect, that a select Joint Committee be appointed, of two on the part of the Senate and three on the part of the House, whose duty it shall be to examine that part of the Revised Statutes relating to the Militia as soon as the same shall be published, and to report such amendments thereto, modifications thereof, or substitute therefor, as they shall judge expedient, whenever said subject shall come before this Legislature.

All of which is respectfully submitted.

DANIEL MESSINGER,

For the Committee.

Commonwealth of Massachusetts.

In the Year of our Lord One Thousand Eight Hundred
and Thirty Five.

AN ACT

In addition to the several acts for regulating, governing,
and training the Militia of this Commonwealth.

1 SEC. 1. **BE** it enacted by the Senate and House
2 of Representatives, in General Court assembled, and
3 by the authority of the same, That the act of 1834,
4 chapter 152, of the same title as this act, and ex-
5 cepting only so much thereof as exempts the Select-
6 men of the several towns from furnishing cartridges
7 for review days, and so much thereof as discontinues
8 the drills of Regimental or Battalion officers, and so
9 much thereof as prohibits the remission of poll taxes,
10 and also so much thereof as reduces and regulates

11 the pay of certain Staff officers, be, and the same
12 hereby is repealed: *Provided*, that nothing herein
13 contained shall operate to destroy the organization
14 of the volunteer companies which has already taken
15 place under said act, but every such organization
16 may be retained or abolished by the Commander-in-
17 Chief, with the advice and consent of Council, ac-
18 cordingly as it shall be made to appear best for the
19 interest of the volunteer companies, and the public
20 good.

1 SEC. 2. *Be it further enacted*, That whenever it
2 shall appear to the Commander-in-Chief that at any
3 election of Militia officers within this Common-
4 wealth, any person known by the electors to be in-
5 eligible, imbecile, infirm, intemperate, or otherwise
6 incapable, has been purposely chosen to office, with
7 intent to defeat the prescribed organization, and thus
8 to evade the duties of the Militia, the election of such
9 person shall be considered null and void, and the
10 Commander-in Chief, with the advice and consent of
11 council, shall have the same power to appoint some
12 suitable person to fill the vacancy, as he now has in
13 case of the entire neglect and refusal to elect, by
14 statute 1809, chapter 108, section 6, agreeably to the
15 Constitution of this Commonwealth.

1 SEC. 3. *Be it further enacted*, That any mock-pa-
2 rade, being an open and public assembly of persons,
3 with or without arms, who by their dress, carriage,
4 actions or organization, shall attempt and intend to
5 bring the Militia, or any part thereof, into public rid-
6 icule and contempt, shall be deemed and taken to be
7 a riotous and tumultuous assembly; and the liabili-

8 ties of all persons concerned in such attempt, and the
9 duties of all public officers in relation thereto, shall
10 be the same which they now are, or hereafter shall
11 be, by any laws heretofore or hereafter enacted in re-
12 lation to riotous and tumultuous assemblies.

Commonwealth of Massachusetts.

In the Year of Our Lord One Thousand Eight Hundred
and Thirty-Five.

RESOLVES

For the Revision of the Militia Laws.

Resolved, That an efficient and well-regulated Militia is necessary to the security of a free State.

Resolved, That the Militia Laws of this Commonwealth require a thorough revision and reform.

Resolved, That a select Joint Committee of two on the part of the Senate and three on the part of the House, be appointed, whose duty it shall be to examine said laws as soon as the first part of the Revised Statutes shall be published, and to report to this Legislature whenever that subject shall come before them, such amendments, modifications or substitute, as in their judgment may be expedient.

Resolved, That said Committee have liberty to sit not exceeding three weeks in the recess.

