

## HOUSE.....No. 115.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, March 28, 1848.

The Joint Standing Committee on Prisons, instructed by an order of the House, of the 28th of February, "to inquire into the expediency of making some pecuniary remuneration to Zebulon Paine, recently pardoned from the State Prison on the ground of being innocent of the crime for which he was imprisoned," would respectfully submit the following

### REPORT:

That Zebulon Paine, of Conway, was convicted, at the November term, 1846, of the Court of Common Pleas, in the county of Franklin, of having procured, for hire, one Stillman Brownson to set fire to, and cause to be burned, a barn, the property of a Mr. William Bacon, of said Conway, and was sentenced therefor to hard labor in the State Prison, for the term of eight years. In January, of the present year, the Governor and Council, upon satisfactory evidence of his entire innocence, granted him a pardon, and he was discharged from service.

It is deemed necessary, to a full understanding of this singular case, that the circumstances attending it be related here somewhat in detail, not for the purpose of reflecting in the slightest degree upon the administration of the law—for all believe, that those upon whom devolved the unpleasant task of administer-

ing it in this case, have done no more nor less than their duty—but that the reasonableness and justice of the conclusion to which a majority of the committee have arrived, may be more fully understood.

It appeared before the committee that, in August, 1846, when the barn of Mr. Bacon was burned, Zebulon Paine, with a wife and family of children, lived in indigent circumstances in a small house, the property of a relative, about one mile distant from Mr. Bacon, but at personal variance with him. A series of petty mischiefs had been for some time committed upon the premises and property of Mr. Bacon, all of which, in the state of feeling which existed between them, were charged upon Paine. At the time the barn was burned, in the same feeling, Mr. Paine was immediately charged with the commission of the crime; but proving most satisfactorily an *alibi*, no proceedings were instituted against him.

Subsequently, another barn of Mr. Bacon was set on fire under circumstances which fastened suspicion upon Stillman Brownson, a lad of fifteen years of age, a pauper of the town of Buckland, who had resided several years in the family of Mr. Bacon. He was arrested, and shortly afterward confessed, not only that he set fire to both barns, but that he had committed all the petty mischiefs which had been practised upon Mr. Bacon and his property for some time previous.

After his commitment to jail to await his trial, Brownson charged Paine with having hired him to set fire to the barn of Mr. Bacon, and stated that Paine had engaged to pay him therefor the sum of two hundred dollars; and that, at his instigation, all the acts of mischief and crime had been perpetrated. Paine was arrested, and at his trial Brownson was admitted to testify. He told a story so minute, detailed, and apparently artless, that it carried conviction of its truth to the minds of all. Paine was convicted, and the boy discharged. The former was conveyed to Charlestown to work out a sentence of *eight years*, the latter returned to Buckland to suffer the stings of an accusing conscience. Within a few months, Brownson, conscience-stricken, has confessed that the whole story was a sheer fabrication, without the shadow of foundation, got up by himself, to

harmonize with the prejudices which he knew were entertained by Mr. Bacon, and in the hope of thereby escaping himself. He voluntarily went before a magistrate and made oath that the whole accusation was a falsehood, and united with Mr. Bacon and others, in the effort which procured the pardon of Paine.

It further appeared to the committee, that Paine, while in the state prison, suffered much in health, and that, though restored to liberty, he has not, and may never be restored to, that bodily strength and vigor which he possessed before his confinement. He expended his all in making his defence: the means of support and necessaries of life were taken from his family, and his son sold his only cow to provide means to secure the protection of innocence.

With these facts before them, the committee, without imputing any wrong either to those who administered the law, or to those who have executed its sentence, could come to no conclusion other than that the Commonwealth had wrongfully, though unwittingly, deprived one of its own citizens of his property, his liberty, his health, and his character,—his family of his earnings, his society, and his good name. For *all* this, money can make no recompense. The Commonwealth has had, however, his earnings for fourteen months; these she can and should repay,—not stintedly, and as if she grudged it, but freely, amply, and cheerfully; as if she were as ready to repair as redress an injury,—earnest not less to do justice to the innocent than to punish the guilty.

This is believed to be the only instance in this Commonwealth of a pardon granted on the ground of innocence. Let it be seized upon for a precedent, and made to stand out in the face of all who complain of severity in the administration of law, telling them that whenever, from the imperfections of human nature, the delicate scales of justice have failed to detect truth from falsehood, all possible recompense for injury therefrom shall be speedily and cheerfully made. Then will the majesty and true dignity of the law be maintained, and a sacredness, gathered around her tribunals, which will inspire reverence and respect.

The committee, fearing that, should the Commonwealth pay to Mr. Paine any sum of money which should appear to him considerable, the temptations to indulge an appetite which has heretofore done him injury will be greater than the good resolution he is now living up to will be able to resist, respectfully suggest that, if any thing be paid him, it be placed in the hands of the selectmen of Conway in trust for him.

Under this state of facts, and these views, the passage of the accompanying resolve is recommended.

For a majority of the Committee,

H. L. DAWES.

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Forty-Eight.

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### RESOLVE

In Favor of Zebulon Paine.

*Resolved,* That there be paid, out of the treasury of the Commonwealth, to the Selectmen of the town of Conway, Franklin County, the sum of two hundred dollars, to be held by them and their successors in office, in strict trust for Zebulon Paine, and to be paid out by them to the said Paine or his family, in such portions, and in such manner, as they shall deem for his interest, as a remuneration for the services of the said Paine while in the State Prison, under sentence for an offence of which it appears he was not guilty; and that the governor draw his warrant accordingly.

