

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1837.

AUGUSTA:
SMITH & ROBINSON,.....PRINTERS.

1837.

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SEVENTEENTH LEGISLATURE.

No. 31.

HOUSE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND THIRTY-SEVEN.

AN ACT additional to an Act to organize, govern
and discipline the Militia of this State.

SECTION 1. *Be it enacted by the Senate
2 and House of Representatives, in Legislature
3 assembled, That* when it shall appear to the
4 commanding officer of a regiment, that any com-
5 pany within his command, is without a commis-
6 sioned officer, he shall issue his orders to the
7 clerk of such company, to enrol all persons liable
8 to do duty therein, and to return the roll thereof
9 to him forthwith ; and if there be no clerk of
10 such company, then such commanding officer
11 shall require, in writing, the selectmen of the
12 town or towns in which such company is situated,

13 or some other person, to make out and return to
14 him, within ten days, a list of the names of all the
15 persons liable by law to do military duty in such
16 company ; and if any such clerk, or selectmen,
17 shall fail to comply, they shall forfeit and pay not
18 less than twenty nor more than one hundred
19 dollars.

SECT. 2. *Be it further enacted,* That when-
2 ever any company shall have remained without
3 any commissioned officer for the term of three
4 months, the commanding officer of the regiment
5 to which said company belongs, shall detail
6 some suitable officer of the staff, or of the
7 line, not above the rank of lieutenant, to train
8 and discipline said company, until some officer
9 shall be elected, or appointed by the Commander
10 in Chief, as provided in the second section of the
11 seventh article of the Constitution, and com-
12 missioned ; and such officer so detailed, shall
13 have the same power and authority, and be sub-
14 ject to the same liabilities, as if he were captain
15 of such company ; and he shall keep the records
16 of the company, and prosecute for all fines and
17 forfeitures, in like manner as clerks of companies

18 are authorized and required to do. Whenever
19 the officer so detailed to command such company,
20 or, where no officer shall have been detailed,
21 the commanding officer of the regiment to which
22 such company belongs, shall, in writing, order
23 any non-commissioned officer or private to notify
24 the persons liable to do duty in such company,
25 to appear for any duty required by law, any
26 non-commissioned officer or private who shall
27 neglect or refuse to notify such persons to meet
28 at the time and place and for purposes mentioned
29 in such order as aforesaid, shall forfeit and pay
30 not less than twenty nor more than one hundred
31 dollars.

SECT. 3. *Be it further enacted,* That
2 whenever the office of clerk in any company
3 shall become vacant, and it shall appear to the
4 commanding officer of said company that there
5 is satisfactory evidence that no person will accept
6 the same, he may issue his order in writing to
7 any non-commissioned officer or private in said
8 company, requiring him to perform all the duties
9 of clerk of said company, except keeping the
10 records, for a term not exceeding three months;

11 and if any non-commissioned officer or private
12 so appointed, shall refuse or neglect to perform
13 all or any of the duties of said office during said
14 term, (except keeping the records,) he shall
15 forfeit and pay not less than ten nor more than
16 twenty dollars. And in case of the absence,
17 sickness, or other inability of the clerk of any
18 company the commanding officer thereof may
19 appoint a clerk pro tempore; or upon satisfac-
20 tory evidence that no member of the company
21 will accept the office pro tempore, he may order
22 any non-commissioned officer or private in like
23 manner to perform all the duties of the office of
24 clerk, (except keeping the records,) until the
25 clerk shall be able to perform the same, or some
26 other person be appointed, not exceeding the
27 term of three months; and any person so ordered,
28 refusing or neglecting to perform all the duties
29 of said office, (except keeping the records,) shall
30 forfeit and pay not less than ten nor more than
31 twenty dollars. In all such cases the records of
32 the company shall be kept by the commanding
33 officer as long as such vacancy, absence, sickness
34 or other inability shall continue; and the records

35 so kept shall be competent evidence of such
36 orders and temporary appointments, as well as
37 of all other matters of which such records would
38 be evidence if kept by the clerk.

SECT. 4. *Be it further enacted,* That all
2 fines and forfeitures incurred in neglect of mili-
3 tary duty, by members of any company without
4 officers, (except forfeitures for refusing to give
5 notice when ordered by the officer detailed to
6 command such company, as provided in the
7 second section of this Act, or by the command-
8 ing officer of the regiment; and except forfeitures
9 incurred by clerks in neglecting to return the
10 roll as required by the first section of this Act,)
11 shall be prosecuted and collected by the officer
12 detailed to command said company as provided
13 in the second section of this Act, substantially
14 in the manner that clerks of companies are
15 authorized and required to do by "An Act to
16 organize, govern and discipline the militia of
17 this State," passed March 8, A. D. 1834, to
18 which this is additional; one half of the amount
19 recovered to be to the use of the regiment, and
20 the other half to the use of the officer; and the

21 officer so prosecuting shall be a competent
22 witness in the case. All fines and forfeitures
23 incurred under the first, second and third sec-
24 tions of this Act, shall be recovered by indict-
25 ment, or by action on the case, by any person
26 whatever, one half of the sum recovered to be
27 to the use of the State, and the other half to
28 the use of the prosecutor.

SECT. 5. *Be it further enacted,* That no
2 idiot, lunatic, common drunkard, vagabond,
3 pauper, nor any person convicted of any infa-
4 mous crime, nor any other than white, able
5 bodied, male citizens, shall be eligible to any
6 office in the militia; and whenever it shall appear
7 to the Commander-in-Chief, that any person thus
8 ineligible has received a majority of votes cast
9 at any election of officers, he shall not commission
10 him, but with the advice and consent of the
11 Council, shall declare said election null and void,
12 and appoint some person to fill the vacancy.

SECT. 6. *Be it further enacted,* That so
2 much of the several Acts for regulating, govern-
3 ing and disciplining the Militia of this State as
4 requires that the commanding officers of compa-
5 nies of the Militia shall parade their respective

6 companies for company discipline on any other
 7 day except that of the annual inspection in May;
 8 also so much of said several Acts as requires
 9 the commanding officers of divisions, brigades,
 10 regiments, or battalions, to assemble or order
 11 the assembling of their respective commands, or
 12 any part thereof, for review and inspection in
 13 September, or October in each year; and also
 14 so much of said several Acts as prohibits the
 15 reducing of companies below, or to a less num-
 16 ber than forty effective privates, so far as respects
 17 the standing companies of Infantry, are hereby
 18 repealed. And that so much of the several
 19 Acts aforesaid, as requires the sum of fifty cents
 20 to be paid to the several officers, soldiers and
 21 musicians, as rations, on the day of inspection
 22 and review; and also so much thereof, as pro-
 23 vides for the conditional exemption from military
 24 duty of all persons between the ages of thirty-
 25 five and forty-five years, are hereby repealed.

SECT. 7. *Be it further enacted*, That it
 2 shall be the right of every member of any volun-
 3 teer corps in this State, at any time within eight
 4 months from the passage of this Act, to dissolve
 5 his connexion with such company, provided, he

6 shall signify in writing to the commanding officer of the same, his wish so to do, and shall also notify the commanding officers of the standing company within the bounds of which he may reside, that he has ceased to be a member of such volunteer corps, and it shall be the duty of the commanding officer of said company forthwith to enrol such person in his company.

SECT. 8. *Be it further enacted*, That it shall be the duty of each commanding officer of the several volunteer companies in this State, to parade his company by his own order, for training on two several days in the year between the first Tuesday of May and the annual inspection and review in September or October, in addition to the company inspection on the first Tuesday in May, and on the two several days of training and inspection, to use his best exertions, in instructing and perfecting his men in their company exercise and evolutions. There shall also be an annual review of all the volunteer corps in each division, in brigades, regiments or battalions, as the commanding officer of the Division may order agreeable to the provisions of the thirteenth section of the Act to which this is additional.

SECT. 9. *Be it further enacted, That there*
 2 shall be paid to each brigade and regimental
 3 officer and musician and to each member of the
 4 several companies of light infantry, riflemen,
 5 cavalry and artillery in this State, from the
 6 treasury of the city, town or plantation to which
 7 he may respectively belong, the sum of dol-
 8 lars annually, provided he shall keep himself
 9 constantly armed, uniformed and equipped, and
 10 shall perform all the active duty required by
 11 law. And it shall be the duty of the several
 12 companies of light infantry, riflemen, cavalry
 13 and artillery, and also the several commanding
 14 officers of regiments and battalions in this State,
 15 on or before the first day of November, in each
 16 year, to make out and certify to the mayor and
 17 aldermen of each city, or to the selectmen and
 18 assessors of each town or plantation, a list of
 19 all persons in their respective companies and
 20 officers in their respective regiments or battal-
 21 ions, residing within the said cities, towns or
 22 plantations respectively, who have entitled
 23 themselves, during said year, to the pay provided
 24 in this Act. And the said mayor and alder-
 25 men, selectmen or assessors, shall within ten

26 days thereafter, examine said lists, and order
27 the treasurer of their city, town or plantation,
28 to pay to each person the sum to which he is
29 entitled by the provisions of this Act; and upon
30 the refusal of any treasurer to pay the same on
31 demand, the person entitled thereto shall have
32 an action of the case in assumpsit against the
33 city, town or plantation whose treasurer shall
34 refuse to pay the same, for the recovery thereof.
35 And if any commanding officer shall wilfully
36 refuse to certify as aforesaid, or shall intention-
37 ally make a false certificate, or if the mayor and
38 aldermen of any city, or the selectmen of any
39 town, or the assessors of any plantation, shall
40 refuse to perform their duties as is herein pro-
41 vided, he or they so offending shall forfeit and
42 pay a sum not less than twenty, nor more than
43 one hundred dollars, to be recovered by indict-
44 ment in any Court of competent jurisdiction, to
45 the use of the person or persons injured by such
46 neglect or misconduct. And the amount of
47 money paid, according to the provisions of this
48 Act, from the treasury of any city, town or
49 plantation, shall be reimbursed to the city,
50 town or plantation from the treasury of the
51 State.

SECT. 10. *Be it further enacted,* That all
2 non commissioned officers, musicians and pri-
3 vates of companies of cavalry, artillery, light
4 infantry and riflemen, who shall have equipped
5 themselves, and shall have been constantly
6 equipped with the arms and uniform of the seve-
7 ral corps, and shall have performed seven years'
8 duty between the ages of eighteen and forty-five
9 years, in any company aforesaid, and shall have
10 attended regularly all the regimental and com-
11 pany musters required by law, sickness and una-
12 voidable accidents excepted, and shall have
13 performed all such military duties as may have
14 been lawfully required of them, and shall also
15 notify the commanding officer of the companies
16 of infantry within whose bounds they severally
17 reside, that they cease to be members of such
18 volunteer companies, and being enroled in said
19 companies of infantry, such non commissioned
20 officers, musicians and privates shall from thence-
21 forth be exempted from all further military duty,
22 except that of being detailed or called forth to
23 execute the laws of the United States or of this
24 State, to suppress insurrection and to repel
25 invasion.

SECT. 11. *Be it further enacted,* That
 2 nothing in this Act or in that to which this is
 3 additional shall be so construed as to prevent
 4 officers of the standing companies from being
 5 members of the companies of light infantry and
 6 riflemen, and all members of light infantry and
 7 riflemen who hold commissions in any standing
 8 company, are hereby exempted from duty in
 9 such volunteer companies on the first Tuesday
 10 of May in each year.

SECT. 12. *Be it further enacted,* That
 2 whenever any company shall be paraded, the
 3 commanding officer thereof is hereby authorized
 4 verbally to notify the men so paraded, to appear
 5 on some future day not exceeding thirty days
 6 from the time of such notification, for any mili-
 7 tary duty required by law, and such notification
 8 shall be legal as it respects the men present.

SECT. 13. *Be it further enacted,* That all
 2 commanding officers, subaltern officers, and all
 3 clerks of companies be and they hereby are made
 4 competent witnesses in law, to testify to all or
 5 any facts within their knowledge, in any suit
 6 commenced by said clerk or commanding officer,
 7 for the collection of any fine or forfeiture named

8 in this Act, or in the several Acts to which this
9 is additional.

SECT. 14. *Be it further enacted*, That
2 whenever any action shall have been commenced
3 for any fine or forfeiture by any clerk of any
4 company, and said clerk shall die, resign or re-
5 fuse to prosecute said suit so commenced, it shall
6 be lawful and is hereby made the duty of the
7 commanding officer of the company to assume
8 and prosecute said suit to final judgment and
9 execution, and whenever any fine or forfeiture
10 shall have been incurred by any private or non
11 commissioned officer of any company and there
12 shall be no clerk or the clerk shall resign or die,
13 it shall be lawful for any clerk appointed after
14 said fine or forfeiture has been incurred to sue
15 for and recover the same; *provided*, said action
16 shall be commenced within the time prescribed
17 by law.

SECT. 15. *Be it further enacted*, That the
2 fine or forfeiture named in the twenty-sixth ar-
3 ticle of the forty-fourth section of the Act to
4 which this is additional, be and the same is
5 hereby established at eight dollars, instead of
6 the sum therein named. And the fines or for-
7 feitures named in the twenty-seventh and twenty

8 eighth articles of said section and law, be, and
9 they are severally fixed at six dollars instead of
10 the sum therein named.

SECT. 16. *Be it further enacted,* That a
2 copy of the record of any Court Martial, certi-
3 fied by the President of such Court, together
4 with a duly authenticated copy of the order
5 convening said Court, shall be conclusive and
6 sufficient evidence to sustain in any Court any
7 action commenced for the recovery of any fine
8 and costs, or part costs, or either, agreeably to
9 the provisions of an Act to which this is
10 additional.

SECT. 17. *Be it further enacted,* That if
2 any captain or commanding officer shall neglect
3 or refuse to make, or cause to be made, a return of
4 the state of his company as it existed on the
5 day of the annual inspection in May, to the
6 commanding officer of the regiment, on or be-
7 fore the first day of June annually, and shall so
8 continue to neglect for fifteen days thereafter,
9 being notified by the adjutant of the regiment
10 to which such company belongs, that said return
11 has not been received, he shall forfeit and pay
12 a fine of ten dollars, one half thereof to the use

13 of the State, and the remainder to the adjutant
 14 of said regiment, who shall be required to collect
 15 said fine by an action of debt in any Court pro-
 16 per to try the same.

SECT. 18. *Be it further enacted*, That any
 2 action or complaint for any fine or forfeiture
 3 provided for by this Act, or by that to which
 4 [this] is additional, may be brought before any
 5 Justice of the Peace where the officer, non
 6 commissioned officer, or private, parent, master,
 7 or guardian, who may be liable therefor, may
 8 reside, any law to the contrary notwithstanding.

SECT. 19. *Be it further enacted*, [That] all
 2 Courts Martial for the trial of officers of and
 3 below the rank of captain, including the regimen-
 4 tal staff officers, shall be detailed by the respec-
 5 tive Major Generals of Divisions, from the Di-
 6 vision to which the officer to be tried belongs :
 7 and the Court so constituted shall have and
 8 possess, all the powers, and be subject to all the
 9 duties defined and prescribed in and by the Act
 10 to which this is additional ; *Provided however*,
 11 that the judgment or sentence of said Court,
 12 shall as soon as may be, be certified by the
 13 President thereof, under the seal of the Court,
 14 to the Major General by whom said Court was

15 detailed, instead of the Commander-in-Chief
16 as in said Act is provided.

SECT. 20. *Be it further enacted*, That all
2 the duties required to be performed by the
3 Division Advocate in the respective Divisions, in
4 and by the Act to which this is additional, shall
5 be done and performed in the manner therein
6 provided ; excepting and providing that all com-
7 plaints, charges and specifications against the
8 officers of the rank mentioned in the foregoing
9 section, shall be by him transmitted to the orderly
10 officer of the division, to which the officer against
11 whom such complaint is made, belongs, for the
12 consideration of the Major General thereof.

SECT. 21. *Be it further enacted*, That the
2 compensation of the members of the Court de-
3 tailed in pursuance of this Act, of the Division
4 Advocate and other officers, and of witnesses
5 attending the same, shall be the same as is
6 allowed in and by the Act to which this Act is
7 additional and shall be made up, certified and
8 filed, in the manner therein described.

SECT. 22. *Be it further enacted*, That the
2 Major Generals in their respective divisions,
3 shall have power to appoint an officer to make

4 summary enquiry into the truth and circumstan-
5 ces of any matter, contained in any complaint
6 or allegation against any officer not above the
7 rank of captain, whose duty it shall be to report
8 the result of such inquiry and investigation to
9 the respective Major Generals, as soon as may
10 be, after he shall have completed such investi-
11 gation, and file his account for such services in
12 the Adjutant General's Office, to be presented
13 to the Legislature for allowance and payment.

SECT. 23. *Be it further enacted,* That all
2 Acts and parts of Acts, inconsistent with the
3 provisions of this Act, be, and the same are
4 hereby repealed.

STATE OF MAINE.

**HOUSE OF REPRESENTATIVES, }
March 9, 1837. }**

**Read twice, laid on the table, and 1000 copies ordered
to be printed for the use of the Legislature.**

(Extract from the Journal.)

Attest: CHARLES WATERHOUSE, Clerk.