

JANUARY, 1840.

At the General Assembly of the State of
Rhode Island and Providence Planta-
tions, begun and holden by adjournment
at Providence, within and for said State,
on the first Monday of January, in the
year of our Lord one thousand eight
hundred and forty, and of Independence
the sixty-fourth.

P R E S E N T :

SAMUEL W. KING,	} <i>SENATORS.</i>
HEZEKIAH BOSWORTH,	
JONATHAN REYNOLDS,	
EZEKIEL FOWLER,	
WILLIAM T. BROWNING,	
OLNEY WHIPPLE,	
HENRY ALDRICH,	

The Secretary.

JANUARY, 1840.

REPRESENTATIVES FROM THE SEVERAL TOWNS.

Newport.

Asher Robbins
Benjamin Hazard
Henry Y. Cranston
Richard K. Randolph
George G. King
George Bowen.

Providence.

John H. Clarke
Thomas J. Stead
John Whipple
Charles Jackson.

Portsmouth.

John Manchester
Clarke Chace
William Almy
Simeon Coggeshall.

Warwick.

Gideon Spencer
Thomas R. Holden
Bennet Low
William Rhodes.

Westerly.

Daniel Babcock, Jr.
Welcome A. Hoxie.

New Shoreham.

George G. Sheffield
Archibald Milliken.

North Kingstown.

George T. Nichols.
Joseph Spink

South Kingstown.

Isaac P. Hazard
Elisha R. Potter

East Greenwich.

J. Shippee.
Jeremiah S. Slocum.

Jamestown.

John J. Watson
Robert H. Weedon.

Smithfield.

Sessions Mowry
Samuel Clarke.

Scituate.

Elisha Mathewson
Wilmarth N. Aldrich.

Glocester.

Charles A. Slocum
Robert Steere

Charlestown.

Joseph Gavitt
George A. Stanton.

The Hon. Henry Y. Cranston, Speaker ; George Rivers and Edward H. Hazard, Esq's Clerks.

West Greenwich

Thomas T. Hazard.
Benjamin R. Hoxie
Coventry.

Elisha Harris
Jeremiah McGregor.
Exeter.

Robert Gardner
Isaac Greene.

Middletown.

Benjamin Weaver
William Taggart.

Bristol.

Joseph M. Blake
Benjamin Hall.

Tiverton.

Joseph S. Bliven.
George W. Humphreys.

Little Compton.

Nathaniel Church
Christopher Brown.

Warren.

Simmons Cole
Alfred Bosworth.

Cumberland.

Jeremiah Whipple
Waldo Earl.

Richmond.

David Clarke
George S. James.

Cranston.

Amasa Sprague.
Seneca Stone

Hopkinton.

Henry M. Wells.
Edward Barber

Johnston.

James F. Simmons
Abraham C. Atwood.

North Providence.

Stephen Randall, Jr.
Edward S. Wilkinson.

Barrington.

Jeremiah S. Drown
James Bowen.

Foster.

Gideon Burgess, Jr.
Burrillville.

Amasa Ballou
Jonathan Lackey.

*State of Rhode Island and Providence Plantations. In
General Assembly, January session, A. D. 1840.*

AN ACT to regulate the Militia.

Be it enacted by the General Assembly as follows :—

Act to
regulate
the mili-
tia.

Section 1. The whole militia of this state shall be arranged in one division ; the militia in the counties of Newport and Bristol shall form the first brigade ; the militia in the county of Providence shall form the second brigade ; the militia in the county of Washington shall form the third brigade ; and the militia in the county of Kent shall form the fourth brigade. The brigade in the counties of Newport and Bristol shall consist of three regiments ; the brigade in the county of Providence, of seven regiments ; the brigade in the county of Washington, of three regiments ; and the brigade in the county of Kent, of two regiments.

Sec. 2. The regiments aforesaid shall be constituted as follows ; to wit : the towns of Newport, Portsmouth, Jamestown, and Middletown, shall constitute the first regiment ; the towns of Providence and North Providence, the second regiment ; the towns of Westerly, Charlestown, and Hopkinton, the third regiment ; the towns of Bristol, Warren, and Barrington, the fourth regiment ; the towns of Warwick and East Greenwich, the fifth regiment ; the town of Smithfield, the sixth regiment ; the town of Scituate, the seventh regiment ; the towns of North Kingstown and Exeter, the eighth regiment ; the towns of West Greenwich and Coventry, the ninth regiment ; the towns of Tiverton and Little Compton, the tenth regiment ; the towns of South Kingstown and Richmond, the eleventh regiment ; the towns of Glocester and Burrillville, the twelfth regiment ; the town of Foster, the thirteenth regiment ; the towns of Cranston and Johnston, the fourteenth regiment ; and the town of Cumberland, the fifteenth regiment.

Sec. 3. There shall be four companies of militia in the town of Newport ; six companies in the city of Providence ; three companies in the town of Portsmouth ; four companies in the town of Warwick ; two companies in the town of Westerly ; three companies in the town

of North Kingstown; four companies in the town of South Kingstown; two companies in the town of East Greenwich; one company in the town of Jamestown; five companies in the town of Smithfield; four companies in the town of Scituate; three companies in the town of Glocester; two companies in the town of Charlestown; three companies in the town of West Greenwich; five companies in the town of Coventry; three companies in the town of Exeter; two companies in the town of Middletown; two companies in the town of Bristol; three companies in the town of Tiverton; one company in the town of Little Compton; one company in the town of Warren; four companies in the town of Cumberland; two companies in the town of Richmond; three companies in the town of Cranston; three companies in the town of Hopkinton; two companies in the town of Johnston; two companies in the town of North Providence; one company in the town of Barrington; four companies in the town of Foster; and three companies in the town of Burrillville; and the aforesaid division, brigades, regiments, and companies, shall be officered agreeably to the several acts of Congress, and the provisions of this act, and said officers shall be engaged as herein hereafter provided. And the division of companies as now existing in the several towns and in the city of Providence, shall be continued, subject however, to such alterations as their present number or future increase or diminution may, in the opinion of the field officers of the regiments respectively, or any two of them, from time to time render expedient: and the officers aforesaid are hereby authorized to augment or reduce the number of companies in their several regiments accordingly: giving written notice thereof to the secretary of state, within five days thereafter.

Sec. 4. In addition to the persons exempted from the performance of military duty by the act of Congress, there shall also be exempted from the performance of such duty, the following persons, to wit: all persons who have holden the office of governor, or lieutenant governor; all persons who, after the last day of February, A. D. 1796, shall have holden any military commission or commissions, or staff office, with the rank of an officer of the line, for the space of five years succes-

sively, and who have been engaged thereon according to law, and been honorably discharged; also every person who shall have holden any such military commission or commissions, or staff office aforesaid, for a less term of time than five years, and who have been superseded without their consent: *Provided however*, that any person who shall claim an exemption on account of his having holden any commission or commissions or staff office as aforesaid, shall exhibit to the commanding officer of the company within the bounds of which he shall reside, if required by such commanding officer, his original commission, or evidence of his appointment to such staff office as aforesaid, by virtue of which he shall claim such exemption; and the original certificate of his having been engaged thereon; and shall also, if required, leave a copy of each of them with said commanding officer, and which copies said commanding officer shall deliver to his successor in office.

Sec. 5. Persons of the following descriptions, as long as they shall remain of said descriptions, shall be exempted from the performance of military duty, to wit: the members of the senate; the justices and clerks of the supreme judicial court; the justices and clerks of the courts of common pleas; the secretary of state; the attorney general; the general treasurer; the sheriff of each county; one ferryman at each stated ferry, who usually navigates the boat; the keepers of light-houses within this state; all settled or ordained ministers of the gospel; the president, professors, tutors, students, and steward of Brown university; town and city treasurers; town and city clerks; practising physicians; practising surgeons; not including pupils of either; preceptors and ushers of academies and schools; and engine men; and provided that no engine shall have more than twenty men, unless otherwise provided by special enactment; the members of firehook and ladder companies; every member of a chartered independent company, who shall deliver, once for all, a certificate from the commanding officer of said company, that he is a member thereof, and completely equipped according to law and the rules and regulations of said company; and all persons belonging to the society of friends commonly called quakers: *Provided however*, that each member of such so-

ciety, who would otherwise be liable to do military duty, shall annually procure a certificate from the clerk of any monthly meeting or any two overseers of said society that he is a member thereof; which certificate he shall exhibit to the commanding officer of the company within whose bounds he shall reside, whenever thereto required, not oftener than once in each year; and every person who shall be conscientiously scrupulous against bearing arms: *Provided however*, that such person shall make oath or affirmation before a justice of some court in this state, that he is conscientiously scrupulous against bearing arms, and obtain the certificate of said justice that he has taken such oath or affirmation; and said certificate shall be presented, in the month of April, to the commanding officer of the company, within whose bounds such conscientiously scrupulous person shall reside: and no friend or quaker, and no conscientiously scrupulous person aforesaid, who shall fail to comply with these provisions, respectively, shall avail himself of the privileges of this section.

Sec. 6. Whenever any member of a chartered independent company shall cease, otherwise than by death or removal out of the state, to be a member thereof, it shall be the duty of the commanding officer of such chartered independent company to give notice thereof forthwith to the commanding officer of the militia company, within whose bounds such member shall reside.

Sec. 7. The officers and non-commissioned officers of the militia shall be as follows, to wit: the governor, for the time being, shall be captain-general and commander-in-chief; and he shall command, except when the militia shall be called into the service of the United States; and he shall be entitled to appoint his own aids, not exceeding four, with the rank of colonel. There shall be one major-general; two aids with the rank of major; one division inspector with the rank of lieutenant-colonel; one adjutant-general with the rank of colonel; one quarter-master-general with the rank of colonel. To each brigade there shall be one brigadier-general; one aid with the rank of captain; one brigade inspector, who is also to serve as brigade-major, with the rank of major; one brigade quarter-master, with the rank of captain; and one judge-advocate. To each

regiment there shall be one colonel; one lieutenant-colonel; one major; one adjutant; one quarter-master; one paymaster; the adjutant, quarter-master, and paymaster, each with the rank of lieutenant; one surgeon; one surgeon's mate; one chaplain; one sergeant-major; one sergeant-quarter-master; one drum-major; and one fife-major. To each company of infantry, light infantry, and riflemen, there shall be one captain; one lieutenant; one ensign; four sergeants; four corporals; one or more drummers; and one or more fifers; or buglers.— To each company of artillery there shall be one captain; two lieutenants; four sergeants; four corporals; one or more drummers; one or more fifers, or buglers; and three drivers. To each company of cavalry there shall be one captain; two lieutenants; one cornet; four sergeants; four corporals; one saddler; one farrier; and one or more trumpeters: *Provided nevertheless*, that all chartered companies organized before the first day of January, one thousand eight hundred and forty, shall continue to be officered as before that time.

Sec. 8. Whenever the office of major-general, brigadier-general, colonel, lieutenant-colonel, major-commandant, or captain, shall be vacant, or such officer be sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion, or company, as the case may be, until the vacancy be supplied; and whenever the office of quarter-master-general shall be vacant, the duties thereof shall be performed by the adjutant-general.

Sec. 9. Whenever a company shall have neither commissioned nor non-commissioned officers, the commanding officer of the regiment to which such company belongs, shall appoint suitable persons of said company, to be non-commissioned officers of the same; and the senior non-commissioned officer of a company without officers shall command the same, except upon parade, and except as provided in the following section.

Sec. 10. Whenever any company shall be first enrolled, or shall, from any cause, be without officers, and when an election of officers shall be ordered for said company, and such company shall neglect or refuse to elect any officer, or when no person elected shall accept, the commanding officer of the regiment to which such

company belongs, shall detail some officer of the staff, or of the line of the regiment, to train and discipline said company, until some officer shall be elected, or appointed by the commander-in-chief as provided in the nineteenth section; and such officer, so detailed, shall have the same power and authority, and be subject to the same liabilities, as if he were captain of said company; and he shall keep the records of the company; and all meetings of said company shall be notified as is provided in the fifty-third section.

Manner of Elections and Appointments to Office.

Sec. 11. The officers of the line, of the militia, shall be elected as follows, to wit: the major-general, brigadier-generals, field officers of regiments, the adjutant-general, division inspectors, brigade inspectors, and brigade quarter-masters, shall be elected by the general assembly; captains and subalterns of companies, by the written or printed votes of the non-commissioned officers and privates of their respective companies; and all who are liable to be enrolled, shall be legal voters in their respective companies; aids to the commander-in-chief, shall be appointed by the commander-in-chief; aids to the major-general, by the major-general; judge-advocates, by the major-general, with the approval of the commander-in-chief; aids to the brigadier-generals, by the respective brigadier-generals; adjutants, paymasters, quarter-masters, chaplains, surgeons, and surgeon's-mates, of regiments, by the respective colonels.

Appointment of Non-commissioned Officers.

Sec. 12. Non-commissioned officers shall be appointed as follows: sergeant-majors, sergeant-quarter-masters, drum-majors, and fife-majors, of regiments, by the commanding officers of their respective regiments; non-commissioned officers of companies, by the captains of their respective companies; who shall forthwith return the names of the same in writing to the commanding officer of the regiment.

Sec. 13. All commissions for officers shall be signed and issued by the commander-in-chief; warrants for

non-commissioned officers shall be signed and issued by the colonels of the regiments, respectively.

Sec. 14. No idiot, lunatic, common drunkard, vagabond, pauper, nor person convicted of any infamous crime, nor any other than able bodied white male citizens, shall be eligible to any military office; and whenever it shall appear to the commander-in-chief, that any person thus declared ineligible has been elected as commanding or subaltern officer in any company, he shall not commission such person, and shall declare such election null and void, and shall order a new election, or appoint some person to fill the vacancy, as he may judge expedient; and no person shall be eligible to the office of major-general, unless it be one of the acting brigadier-generals; or, if neither of them will accept, then some one who has filled the office of brigadier-general, and been honorably discharged.

Sec. 15. All commissioned officers of the same grade, shall take rank according to the respective dates of their commissions; and when two, or more, of the same grade bear an equal date, their rank shall be determined by lot, to be drawn by them before the commanding officer of the division, brigade, regiment, company or detachment, or the president of a court martial; as the case may be. The day of election or appointment of any officer shall be the date of his commission; and whenever he shall be transferred to another corps or station, of the same grade, the date of his original commission or appointment shall be the date of his commission.

Sec. 16. Whenever any officer shall lose his commission, he shall be entitled to a duplicate commission of the same grade and date, on his affidavit made before a justice of any court in this state, on application to the commander-in-chief.

Sec. 17. Any person elected major-general, shall be forthwith notified of his election by the secretary of state; and shall, within twenty days after such notice, signify to the secretary his acceptance of said office, or shall be considered as having declined.

Sec. 18. Each company shall meet on the first Monday in April in each year, to elect the captain and subaltern officers of said company; and in case of a va-

cancy in either office, it shall be the duty of the colonel or commanding officer of the regiment to which said company belongs, to order a meeting of said company at an early day, to fill said vacancy; and any person elected to either of said offices, shall signify his acceptance of the office to the commanding officer of the regiment, within twenty days of his said election; or he shall be deemed to have refused the appointment. The order of the commanding officer of the regiment for a meeting of the company to fill any vacancy, shall be directed to the highest commissioned or non-commissioned officer in said company; and in case there shall be no commissioned or non-commissioned officer in said company, said order shall be directed to any member of said company, whose power to warn said company shall be valid and lawful; and he shall preside at the election.

Sec. 19. In case any company shall neglect or refuse to elect some person to fill a vacant office, the commander-in-chief shall appoint some suitable person to fill the same, upon being notified by the colonel or commanding officer of the regiment, of such neglect or refusal to elect.

Sec. 20. When a company has been newly enrolled, or, from any cause, is without commissioned officers, the commanding officer of the regiment may order an election of officers for the same.

Sec. 21. All commissions shall be delivered to the major-general, and by him to be delivered, through the proper officers, to the persons for whom they are intended.

Sec. 22. All brigade or field officers to whom commissions shall be sent or delivered, by the major-general, shall signify to him their acceptance or refusal of such office, within thirty days after the receipt of the commission: and in case of refusal, the same shall be communicated to the secretary of state, by the major-general.

Sec. 23. No candidate for election to office in the militia shall treat the electors with ardent spirits, either pending, during, or after said election.

Sec. 24. No officer, non-commissioned officer, or private, shall be arrested on any civil process, while going

to, returning from, or remaining at any place at which he shall have been ordered to attend, for the election of any military officer, or the performance of any military duty.

Officers, how Qualified.

Sec. 25. Each commissioned officer, before he shall enter on the discharge of the duties of his office, shall take and subscribe the following oath and declarations, before some justice of the peace, or other magistrate, or town clerk: on the back of each commission the following form of the oath shall be printed, to wit: "I, do solemnly swear (or affirm) that I will bear true faith and allegiance to the state of Rhode Island and Providence Plantations; that I will support the constitution and laws thereof, and the constitution and laws of the United States; and that I will faithfully and impartially discharge all the duties incumbent upon me as according to my abilities and understanding, according to the laws of this state, and of the United States; so help me God." (Or, "this I promise on the pains and penalties of perjury.") On the back of each commission, the following form of certificate shall be printed, and signed by the person before whom such officer shall be qualified, to wit: "This may certify, that commissioned within named, appeared before me this day of , A. D. , and took and subscribed the oath and declarations prescribed by the laws of this state, and of the United States, before me." Signed, &c.

Officers, how Discharged.

Sec. 26. Any officer who shall have holden any commission or commissions in the militia of this state during the term of five years in succession, and faithfully performed the duties of the same, shall be honorably discharged, on his application to the commander-in-chief, and shall, forever after, be exempt from the performance of military duty; and no officer shall be discharged, unless on his own application, or unless in cases hereinafter provided; and any officer who has held a

commission or commissions, as aforesaid, for a less term of time than five years, and who shall be superseded by the election or appointment of another person over him, shall, on application as aforesaid, be honorably discharged, and forever after be exempt from military duty.

Sec. 27. All resignations shall be in writing; and shall be approved of and certified as follows: the resignation of the major-general, shall be made to and approved of by the commander-in-chief: the resignation of a brigadier-general, shall be approved of by the major-general; the resignation of a field officer, shall be approved of by the brigadier-general of the brigade to which such field officer belongs; and the resignation of a captain or subaltern officer, shall be approved of by the commanding officer of the regiment to which such captain or subaltern shall belong. And the major-general, brigadier-general or commanding officer of a regiment who shall approve of any resignation as aforesaid, shall certify the same to the commander-in-chief, who shall have the power to allow or disallow thereof at his discretion. And no officer shall be considered as having resigned his commission, unless the same shall have been approved of and certified as aforesaid, and allowed by the commander-in-chief.

Discipline, Inspection, Training and Review.

Sec. 28. The system of discipline and field exercise, from time to time ordered for the army of the United States, shall be the system of discipline and field exercise for the militia of this state.

Sec. 29. Each commanding officer of a company shall order out his company on the third Monday of April annually, at one o'clock in the afternoon, for inspection; and shall inspect, examine, and take an exact account of the equipments of his men, note all delinquencies of appearance, and deficiencies of equipments, and correct his company roll, in order that a thorough inspection may be made, of all the militia in the state; and every commanding officer of a company, shall train and discipline his company on said day, as well as inspect them. All persons now holding commis-

sions as captains or subaltern officers in the militia, shall exercise the duties of their said office, at the company trainings herein ordered on the third Monday of April next: and at the said company training, after the exercise and drill, the company shall proceed to the election of officers; and return of said election shall be made as herein required. And the same proceedings for the election of officers shall be had on the said third Monday of April in each succeeding year.

Sec. 30. The militia of this state shall in the year one thousand eight hundred and forty, and in every second year thereafter, in the month of September, meet by regiment or battalion, for the purpose of training, disciplining and improving them in martial exercise: the places of regimental and battalion rendezvous shall be appointed by the commandants of the regiments respectively: and the days of the regimental or battalion rendezvous, by the respective brigadiers. In the year one thousand eight hundred and forty-one, and in every second year thereafter, in the month of September, the commissioned officers belonging to each brigade shall be called together for the purpose of disciplining and improving them in martial exercise: the time for calling out said officers shall be designated by the major-general; and the place of meeting shall be designated by the brigadier-general of each brigade; and the officers of said brigade shall be under the immediate command of the brigadier-general when so assembled: *Provided*, that the militia in the town of Jamestown, and that portion of the militia of the town of Portsmouth residing on the island of Prudence, may muster with the regiment to which they belong, or by company in their respective towns, on the same day with their regiment; and in the latter case, the commanding officers of said companies respectively, shall inspect and review their companies, and make return to the commander of the regiment: *Provided also*, that the inhabitants of the town of New Shoreham shall be exempt from all military duty.

Sec. 31. Each brigade and regiment, when in the field, shall take rank according to its number, as in the first and second sections of this act, beginning at the lowest number as highest in rank; and the companies

in each regiment shall form according to the rank of the officers present commanding them; and when distinct corps shall parade, join or do duty together, the senior officer present shall command, without regard to corps.

Sec. 32. Whenever any company destitute of commissioned officers, shall parade with other troops, the commanding officer present shall detail some officer of the regiment to discipline and command them, unless the officer be present, detailed for that purpose according to the provision of the tenth section.

Sec. 33. Every commanding officer, when on duty, is hereby authorized to ascertain and fix necessary bounds and limits to his parade, not including any road on which people travel, so as to obstruct the same, or prevent their passing, within which, no spectator shall have a right to pass or enter, without leave from such commanding officer; and the commanding officer of any battalion or company may put under guard any spectator or bystander who shall abuse, molest or strike any one when on parade, or under arms; and every person who shall encroach on the parade ground.

Sec. 34. Brigade-majors and brigade-inspectors shall attend the inspections and reviews of their respective brigades, whether the same be by brigade or regiments; and if by regiments, shall inspect their arms, ammunition, and equipments, superintend their exercises and evolutions, and introduce and enforce the system of discipline required by law and by the orders of the commander-in-chief; and shall make return as provided in the forty-first section.

Sec. 35. No non-commissioned officer or private shall, unnecessarily, or without orders from his superior officer, come on to any place of parade, with his musket, rifle, or pistol, loaded with ball, slugs, or shot, or shall so load the same while on parade, under the penalty provided in such cases in the seventy-second section.

Sec. 36. The ball cartridges required by this act shall be inspected at such place as the commanding officer may appoint.

Sec. 37. No officer, non-commissioned officer, or private, shall be compelled to do military duty on any day appointed for town, city, or ward meetings, or for the election of any civil officer, in the town or city in which