

The committee on the Militia, to whom was referred the memorial of Tench Tilghman, of Talbot county, asking the Legislature to enquire into the correctness of the allegation contained in the proclamation of the Governor, issued on the 5th of May, 1861, viz: That the said Tench Tilghman does not hold a lawful commission in the 2nd Division of the Maryland Militia; and also to enquire whether a military officer can be deprived of his commission by Executive Proclamation, or in any other mode than by the sentence of a Court Martial, beg leave to submit the following report:

That on the 27th day of July, 1860, a commission was issued by the Governor of Maryland to Tench Tilghman, of Talbot county, as Major General of the 2nd Division of Maryland Militia. That on the 15th of August, 1860, the said Tench Tilghman notified the Adjutant General, by letter, of the acceptance of said commission. That the official oath was endorsed on said commission at the request of General Tilghman, by the Clerk of the Circuit Court for Talbot county, and should have been administered by said officer; but owing to want of information on the part of said clerk, (in common with many other officers of the State, both civil and military,) in obedience to this requirement of the new Code, said oath was taken before a Magistrate in accordance with the previous custom in this State.

That on ascertaining the existence of that provision of the Code, and before there had been any official objection to the validity of his commission, viz: on the 23rd day of April 1861, the said Tilghman proceeded to qualify before the clerk, and that the only informality in said commission consists in the fact, that said qualification was not made within thirty days after the said commission was received.

Your committee think that it was the duty of the clerk to have known this provision, he being the officer by whom it was to be administered, and who had been furnished by the State with a copy of the Code—and that the said Tilghman should not be held accountable for the want of such information, as the law in reference to oaths had never been published in the newspapers and was unknown at that time to most of the military and many of the civil officers of the State.

The Legislation of the State contains numerous instances of the existence of similar defects and their correction by the Legislature, the most recent of which is an act passed by this body on the 10th of January, 1860, in reference to Levi Rice, who had been elected a Commissioner in Allegany county, and failed to qualify within the term required by law.