

XV. AND BE IT ENACTED, That in all cases where a militia-man may be draughted to perform a tour of duty under this act, he shall be considered as a soldier, and liable to all the duties as such, unless he shall furnish a substitute; and the commanding officer of the regiment or extra battalion, as the case may be, to which he may belong, shall be the sole judge of the qualifications of said substitute, and may receive or reject him at his discretion.

CHAP. CXXVIII.
Men draughted considered as soldiers, &c.

XVI. AND BE IT ENACTED, That all able bodied male white persons in this state, between eighteen and forty-five years of age, shall stand their draught, except as herein excepted, provided that quakers, menonists, tunkers, and persons conscientiously scrupulous of bearing arms, are not to be exempt by virtue of this exemption, from standing their draught; and when any part or parts of the militia shall be draughted or called out of the state into actual service, every liable to draught as aforesaid, who is not a commissioned officer, shall have it in his choice either to serve in person, or to find a sufficient person for a substitute, which said substitute shall be approved of by the commanding officer of the regiment, or extra battalion, as the case may be, to which he shall belong; but if any persons, not being disabled by sickness, shall neglect or refuse to serve, or find such sufficient substitute in his place within ten days after notice given to him, the commanding officer of the regiment or extra battalion, as the case may be, to which such delinquent belongs, shall and he is hereby required to provide, hire or procure, on as reasonable terms as may be, a substitute for such person so refusing or neglecting, and to charge such sum or sums, together with reasonable expenses for procuring the same, to such delinquent, to be recovered by distress and sale of his goods and chattels, lands or tenements, by warrant, under his hand, directed to the sheriff of the county where such person resides; and in all cases where it shall be necessary to recover any fine or forfeiture, or other money, wherewith any person or persons may become chargeable under and by virtue of this clause, by distress and sale, or execution of the property of such person or persons, it is hereby declared to be the duty of the sheriff, or person executing for the same, to take such property as shall be offered or shewn to such sheriff or person executing, amounting to such debt and cost, and if no property shall be shewn or offered, such sheriff or person executing, shall not take in execution any negro or other valuable property, to satisfy a small or trifling fine or sum, if property of small value can be found, but he shall take such property, if any can be found, as will pay the sum due, with the cost of levying the same, as nearly as may be, and no more; any person offending herein, shall forfeit and pay treble the sum so levied, to be recovered by the party grieved by indictment, or action of debt, in the county court of the county where the offence shall have been committed; provided, that no commanding officer of the regiment or extra battalion, as the case may be, shall be obliged to provide a substitute for any delinquent, unless he is of opinion that such delinquent has sufficient property to pay the expenses of procuring a substitute, and if such commanding officer of the regiment or extra battalion, as the case may be, shall be of opinion that any delinquent has not sufficient property to pay the expense of procuring a substitute, he shall make application to a justice of the peace of the county where such delinquent resides, who, upon such application, shall issue his warrant to the sheriff of the county to arrest the delinquent, and imprison him in the common gaol, there to remain for a certain time, to be specified in the warrant, not exceeding twenty days, and the sheriff shall be obliged to keep such delinquent in the common gaol, agreeable to the command of the said warrant, unless he shall agree to serve or find a sufficient substitute in his place; provided also, that no militia-man having personally, or by substitute, served in the militia, shall be obliged to serve again until by rotation it comes to his turn.

All persons to stand their draught, &c.

XVII. AND BE IT ENACTED, That no militia-man shall leave the company to which he belongs, except as hereafter excepted, under the penalty of twenty dollars, unless by consent of the commanding officer of the company, or unless he shall remove to some other district, and in such case he shall apply to the commander of such company, who shall give him a certificate of his being discharged, under the penalty of a sum not exceeding fifty dollars, and if the said militia-man had been in actual service, shall also certify the time thereof, and how long he had continued therein, under the like penalty.

No militia-man to leave his company, &c.

XVIII. AND BE IT ENACTED, That no person serving as a substitute for another, shall thereby be excused from standing a draught himself.

Substitutes not excused, &c.

XIX. AND BE IT ENACTED, That no officer or private of the militia in his attendance at, going to, or returning from, muster, shall be subject to arrest for any civil matter.

Officers, &c. not subject to arrest, &c.

XX. AND BE IT ENACTED, That if any suit or suits shall be brought or commenced against any person or persons for any thing done in execution of the provisions of this act, the action shall be

Actions, where to be brought, &c.