

## III. THE CONSTITUTION AND FORM OF GOVERNMENT,

38. That every governor, senator, delegate to assembly(t), and member of the council, before he acts as such, shall take an oath, or affirmation(u), that he will not receive, directly or indirectly, at any time, any part of the profits of any office held by any other person during his acting in his office of governor, senator, delegate to assembly (t), or member of the council, or the profits, or any part of the profits, arising on any agency for the supply of clothing or provisions for the army or navy.

39. That if any senator, delegate to assembly(v), or member of the council, shall hold or execute any office of profit, or receive, directly or indirectly, at any time, the profits, or any part of the profits, of any office exercised by any other person, during his acting as senator, delegate to assembly(v), or member of the council, his seat, on conviction in a court of law, by the oath, or affirmation(v), of two credible witnesses, shall be void, and he shall suffer the punishment for wilful and corrupt perjury, or be banished this state for ever, or disqualified for ever from holding any office or place of trust or profit, as the court may adjudge.

40. That the chancellor, clerks of the court of appeals(x), the clerks of the county courts, the registers of the land office, and the registers of wills, shall hold their commissions during good behaviour, removable only for misbehaviour on conviction in a court of law.

41. That there be a register of wills appointed for each county, who shall be commissioned by the governor, on the joint recommendation of the senate and house of delegates; and that upon the death, resignation, disqualification, or removal out of the county, by any register of wills, in the recess of the general assembly, the governor, with the advice of the council, may appoint and commission a fit and proper person to such vacant office, to hold the same until the meeting of the general assembly.

42. That sheriffs shall be elected in each county, by ballot, every third year; that is to say, two persons for the office of sheriff for each county, the one of whom having the majority of votes, or if both have an equal number, either of them, at the discretion of the governor, to be commissioned by the governor for the said office, and having served for three years such person shall be ineligible for the four years next succeeding. Bond with security to be taken every

(t) In the original section, delegates to congress were included; they are now omitted, that body being organized under the constitution of the general government, as stated in the note to the 27th section, and the oath or affirmation prescribed.

(u) See the note to the 18th section.

(v) See the note (t) to the 38th section.

(w) The alternative of an affirmation in this section was given by the act of 1797, ch. 118, confirmed by 1798, ch. 83, and was confined to Quakers, &c. holding it unlawful to take an oath on any occasion. The provisions of which are inserted in a new section, numbered 63. But by 1817, ch. 61, confirmed by 1818, ch. 163, all persons professing the christian religion, who hold it unlawful to take an oath on any occasion, are allowed to make their solemn affirmation in the same manner that Quakers have been allowed to affirm, to be of the same avail as an oath to all intents and purposes whatever; the provisions of which are inserted in a new section, numbered 65.

(x) The original section included all judges, the attorney general, and clerks of the general court. Every part of the constitution which related to the court of appeals and the general court, or the judges thereof, was abolished by the act of 1804, ch. 55, confirmed by 1805, ch. 16, and by the same act the judges therein provided are to hold their commissions during good behaviour, removable for misbehaviour on conviction in a court of law, or shall be removed by the governor, upon the address of the general assembly, provided two thirds of all the members of each house concur in such address. And by the same act the clerks of the court of appeals are to hold their appointments in the manner prescribed in this section, so that they are substituted in the place of the clerks of the general court. By 1816, ch. 247, confirmed by 1817, ch. 69, every part of the constitution relating to the attorney general was annulled.