

having criminal jurisdiction, &c., whose duty it shall be to judge of the election and qualifications of the persons returned; and, in case of a tie, &c., to designate which of the persons shall qualify, &c." This provision has been construed to dispense, (so far as relates to the election of State's Attorney,) with the general requirements of Article iv., Sec. 29, which ordains that, "*all* elections of Judges, and *other* officers, provided for in this Constitution, shall be certified, and the returns made, &c., to the Governor, who shall issue commissions to the different persons, for the offices to which they shall have been respectively elected," &c. I construed the fifth Article as simply intending to furnish the *certified evidence*, by which the Judge would be enabled to decide, in the event of a contested election, or to designate the officer, in the event of a tie; just as it is, elsewhere, provided that, the Governor shall send in the returns to the House of Delegates, in certain cases; whereupon, the House proceeds to consider and decide. Without this construction, Articles iv. & v. could not be reconciled; and, the State's Attorney would be the only non-commissioned officer, under the Constitution. I have, therefore, issued commissions to State's Attornies, as to all others. It can, in no manner, prejudice the rights of contestants, (should there be any,) inasmuch as, the Judge can go behind the commission, in this case, just as the House of Delegates can, in cases referred to their decision. A Senator or Delegate, though returned elected, and regularly sworn in, may nevertheless be ousted. Commissions, under the new Constitution, are merely the highest certificates of election, predicated upon the returns; and are not final. It would be well, however, that the Judges should be henceforth required, by law, after each election of such officers, to certify to the Governor the names of the State's Attornies elected in the several Counties of their respective Circuits, by a given day; before which, commissions should not issue.

The Constitution defines, with great clearness, the duties and powers of the Executive. There are, however, a few suggestions, which I desire to make, in relation to this Department. By the thirty-third Article of the old Constitution, the Governor was empowered to "grant reprieves or pardons, for any crime, *except in such cases where the law shall otherwise direct.*" From this submission of the Executive authority to Legislative control, sprung various acts of Assembly, some limiting, and others extending the powers of the Governor, in matters of pardon, reprieve, and the remission of fines, forfeitures and penalties. For example, by the acts of 1787, chapter 17, and 1795, chapter 82, the Governor was authorized to pardon, *on condition*, in cases of capital punishment; which was an enlargement of his discretion. Then again, the acts, which authorized him to remit fines, &c., frequently imposed limitations; such, for instance, as the proviso, contained in the act of 1782, chapter 42, relative to fines, the amount of which is made certain, by law, and not left discretionary with the Courts; where, it is required that, the Court shall recommend, upon a statement in