

LAWS
OF THE
STATE OF DELAWARE

PASSED AT THE

One Hundred and Third
Session of the General Assembly

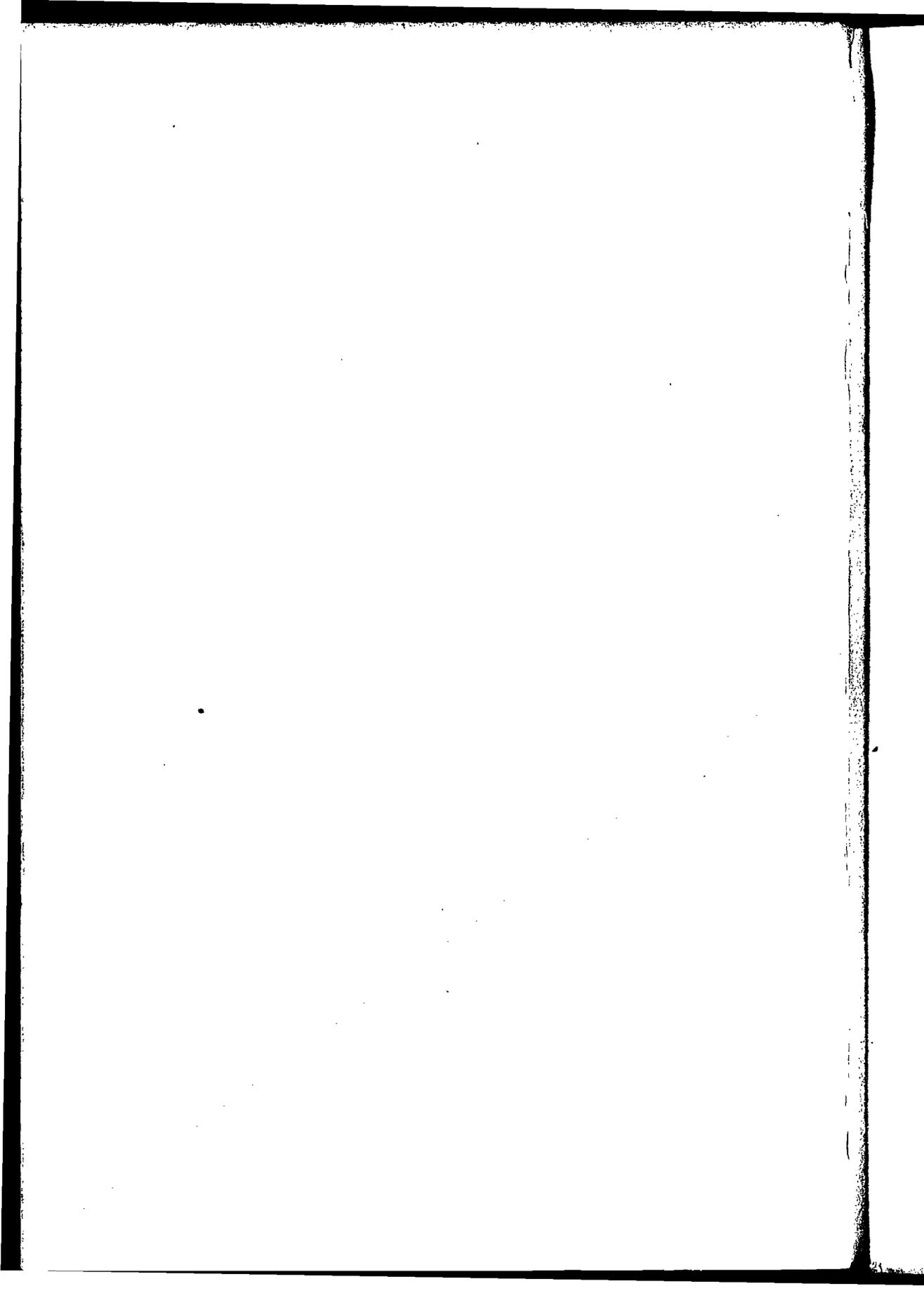
COMMENCED AND HELD AT DOVER

On Tuesday, January 6, A. D. 1931

AND
IN THE YEAR OF THE INDEPENDENCE OF THE UNITED STATES
THE ONE HUNDREDTH AND FIFTY-FIFTH

VOLUME XXXVII

J. LAURANCE BANKS, INCORPORATED
WILMINGTON, DELAWARE
1931



LAWS of DELAWARE

TITLE ONE

Construction of Statutes

CHAPTER 1

AMENDMENT TO CONSTITUTION

AN ACT proposing an Amendment to Section 4 of Article 1 of the Constitution of the State of Delaware, relating to trial by jury.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of all the members elected to each house agreeing thereto):

Section 1. That Section 4 of Article 1 of the Constitution of the State of Delaware be amended by adding to the end thereof the following words:

“Provided, however, that Grand Juries in New Castle County shall consist of fifteen members, one of whom shall be selected from, and shall be a resident of, each representative district in said county, and the affirmative vote of nine of whom shall be necessary to find a true bill of indictment; and Grand Juries in Kent County and in Sussex County shall consist of ten members, one of whom shall be selected from, and shall be a resident of each representative district in the county in which he or she is selected, and the affirmative vote of seven of whom shall be necessary to find a true bill of indictment.”

Sec. 4, Art. 1,
Constitution
of Delaware
Amended

Grand Juries
N. C. County
to consist of
fifteen mem-
bers

Residence of
Nine votes
necessary for
true bill

Grand Jury
Kent & Sussex
Counties
consist ten
members

Residence
Seven votes
necessary for
true bill

Approved April 22, 1931.

CHAPTER 2

AMENDMENT TO CONSTITUTION

AN ACT proposing certain Amendments to Article IV of the Constitution of the State of Delaware, relating to the Judiciary.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of all the members elected to each house agreeing thereto):

Art. 4.
proposed
amendment to Section 1. That Article IV of the Constitution of the State of Delaware be amended so as to read as follows:

ARTICLE IV—JUDICIARY

Courts of
State
Supreme
General
Sessions
Register's
Orphans'
Justice of the
Peace
other
Courts

Section 1. The judicial power of this State shall be vested in a Supreme Court, a Court of General Sessions, a Court of Chancery, an Orphans' Court, a Register's Court, Justices of the Peace, and such other courts as the General Assembly, with the concurrence of two-thirds of all the members elected to each House, shall from time to time by law establish.

Supreme
Court to be
composed of
three Justices

Presiding
Justice

Section 2. There shall be three Justices of the Supreme Court who shall be citizens of the State and learned in the law. The Senior in length of service shall be the Chief Justice who when present shall preside at all sittings of the Court. In the absence of the Chief Justice the Senior Justice present shall preside. If it is otherwise impossible to determine seniority among the Justices, they shall determine it by lot and certify accordingly to the Governor.

Chancellor

Law Judges

There shall be six other State Judges who shall be citizens of the State and learned in the law. One of them shall be Chancellor, one of them Presiding Judge of the Court of General Sessions and of the Orphans' Court and the other four of them Associate Judges of the Court of General Sessions and of the Orphans' Court. Three of the said Asso-

AMENDMENT TO CONSTITUTION

ciate Judges shall be resident Associate Judges and one of them shall after appointment reside in each County of the State. If it is otherwise impossible to determine seniority of service among the said Associate Judges, they shall determine it by lot and certify accordingly to the Governor.

Resident
Judges
Seniority—
How
determined

Section 3. The Justices of the Supreme Court, the Chancellor, and the Presiding Judge and Associate Judges of the Court of General Sessions and of the Orphans' Court shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for the term of twelve years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. The said appointment shall be such that no more than two of the Justices of the Supreme Court, in office at the same time, shall have been appointed from the same political party, and no more than three of the five Judges of the Court of General Sessions and of the Orphans' Court, in office at the same time, shall have been appointed from the same political party.

Appointment
by Governor,
subject to
confirmation
of Senate

Terms. Oath
required

Vacancy.
Appointment
Considered by
Senate within
thirty days

No more than
two Justices of
Supreme Court
and no more
than three
Judges of
General
Sessions and
Orphans'
Courts to be
of same
political party

Section 4. The Justices of the Supreme Court, the Chancellor, and the Presiding Judge and Associate Judges of the Court of General Sessions and of the Orphans' Court shall respectively receive from the State for their services compensations which shall be fixed by law and paid monthly and they shall not receive any fees or perquisites in addition to their salaries for business done by them except as

Compensation
of Justices
and Judges

To engage in
no other busi-
ness, nor hold
other office for
profit

AMENDMENT TO CONSTITUTION

Court of
General
Sessions
composed of
what Judges

Section 5. The Presiding Judge of the Court of General Sessions and of the Orphans' Court and the four Associate Judges thereof shall compose the Court of General Sessions and the Orphans' Court, as hereinafter prescribed.

Judges to hold
Courts
designated

Except as hereinafter prescribed with respect to the Orphans' Court, the said five Judges shall designate those of their number who shall hold the said courts in the several counties. No more than three of them shall sit together

No more than
three to sit

Presiding
Judge

in either of the said courts. In each of the said courts the Presiding Judge when present shall preside and in his absence the senior Associate Judge present shall preside.

Quorum

One Judge shall constitute a quorum of the said courts, respectively, except in the Court of General Sessions sitting to try a criminal case involving a charge of capital felony, when three Judges shall constitute a quorum, and except in the Court of General Sessions sitting to try cases of prosecution under Section 8 of Article V of this Constitution, when two Judges shall constitute a quorum, and except in the Orphans' Court sitting to hear appeals from a Register's Court, when two Judges shall constitute a quorum. One Judge may open and adjourn any of said courts.

Number of
Judges to sit

Two or more
sessions of
same Court
may be held

Section 6. Subject to the provisions of Section 5 of this Article, two or more sessions of the Court of General Sessions and of the Orphans' Court may at the same time be held in the same county or in different counties, and the business of the several counties may be distributed and apportioned in such manner as shall be provided by the rules of the said courts, respectively.

Rules to
distribute
business

Jurisdiction of
Court of
General
Sessions

Section 7. The Court of General Sessions shall have jurisdiction of all causes of a civil nature, real, personal and mixed, at common law and all other the jurisdiction and powers vested by the laws of this State in the Superior Court; and also shall have all the jurisdiction and powers vested by the laws of this State in the Court of General

AMENDMENT TO CONSTITUTION

Sessions of the Peace and Jail Delivery; and also shall have all the jurisdiction and powers vested by the laws of this State in the Court of General Sessions; and also shall have all the jurisdiction and powers vested by the laws of this State in the Court of Oyer and Terminer.

Section 8. The phrase "Supreme Court" as used in Section 4 of Article V of this Constitution and the phrases "Superior Court," "Court of General Sessions of the Peace and Jail Delivery," "Court of Oyer and Terminer" and "Court of General Sessions" wherever found in the law of this State, elsewhere than in this amended Article IV of this Constitution, shall be read as and taken to mean, and hereafter printed as, the Court of General Sessions provided for in this amended Article IV of this Constitution; and the phrase "Chief Justice" wherever found in the law of this State, elsewhere than in this amended Article IV of this Constitution, shall be read as and taken to mean, and hereafter printed as, Presiding Judge of the Court of General Sessions and of the Orphans' Court, as provided for in this amended Article IV of this Constitution.

Phrase "Court of General Sessions" includes other Courts

Phrase "Presiding Judge of Court of General Sessions" includes "Chief Justice as used outside of amended Article 4.

Section 9. The Orphans' Court shall have all the jurisdiction and powers vested by the Laws of this State in the Orphans' Court.

Orphans' Court Jurisdiction

The Orphans' Court in each County shall, except as hereinafter provided for, consist of the Presiding Judge of the Orphans' Court and the resident Associate Judge of the County. The Presiding Judge when present shall preside. The Presiding Judge shall have the power to designate any other Associate Judge to sit in the Orphans' Court with the resident Associate Judge of the County at any time when the Presiding Judge will not be present and more than one Judge is required to constitute the court; and shall also have the power to designate any other Associate Judge to sit in the Orphans' Court in any County in place of the resident Associate Judge of the County in case such resident

Judges to compose

Presiding Judge to designate other Judges to sit

AMENDMENT TO CONSTITUTION

Associate Judge should be absent from the County, incapacitated or disqualified to sit by reason of interest; and shall also have the power to designate any Associate Judge to sit in the Orphans' Court in any County as a third Judge of said court in any case where the opinions of two Judges sitting are opposed.

Chancellor to hold Court of Chancery
Jurisdiction of Court

Section 10. The Chancellor shall hold the Court of Chancery. This court shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery.

Presiding Judge to designate acting Vice Chancellor, when Duties of Judge so acting

Upon written request made by the Chancellor to the Presiding Judge of the Court of General Sessions and of the Orphans' Court, or to the senior Associate Judge of said Courts if the said Presiding Judge should be incapacitated or absent from the State, such Presiding Judge or senior Associate Judge, as the case may be, shall be authorized and it shall be his duty to designate one or more of the five Judges of the Court of General Sessions and of the Orphans' Court to sit separately as Acting Vice-Chancellor, or Acting Vice-Chancellors, and hear and decide such causes in the Court of Chancery as the Chancellor may indicate prior to such designation that he desires to be so heard and decided. It shall be the duty of the Judges so designated to serve accordingly as Acting Vice-Chancellors. The Judges hearing and deciding such causes as such Acting Vice-Chancellors shall, upon their decision of a cause, recommend to the Chancellor the decree to be entered therein and all decrees in such causes shall be made by and in the name of the Chancellor.

Jurisdiction of Supreme Court

Section 11. The Supreme Court shall have jurisdiction as follows:

Writs of error to Court of General Sessions
Error in Civil cases

(1) To issue writs of error in civil causes to the Court of General Sessions and to determine finally all matters in error in the judgments and proceedings of said Court of General Sessions in civil causes.

AMENDMENT TO CONSTITUTION

(2) To issue upon application of the accused, after conviction and sentence, writs of error in criminal causes to the Court of General Sessions in all cases in which the sentence shall be death, imprisonment exceeding one month, or fine exceeding \$100. and in such other cases as shall be provided by law; and to determine finally all matters in error in the judgments and proceedings of said Court of General Sessions in such criminal causes; provided, however, that there shall be no writ of error to the Court of General Sessions in cases of prosecution under Section 8 of Article V of this Constitution.

Writs of error
in Criminal
Cases. When

Error in
Criminal
Causes

No writ of
error in cases
under Sec. 8 of
Art. V of State
Constitution

(3) To receive appeals from the Court of General Sessions in cases of prosecution under Section 8 of Article V of this Constitution and to determine finally all matters of appeal in such cases.

Receive
appeals under
Sec. 8 of Art.
V of State
Constitution

(4) To receive appeals from the Court of Chancery and to determine finally all matters of appeal in the interlocutory or final decrees and other proceedings in Chancery.

Receive
appeals from
Court of
Chancery

(5) To receive appeals from the Orphans' Court and to determine finally all matters of appeal in the interlocutory or final decrees and/or judgments and other proceedings in the Orphans' Court.

Receive
appeals from
Orphans'
Court

(6) To issue writs of prohibition, quo warranto, certiorari and mandamus to the Court of General Sessions, the Court of Chancery and the Orphans' Court, or any of the Judges of the said courts, and all orders, rules and processes proper to give effect to the same. The General Assembly shall have power to provide by law in what manner the jurisdiction and power hereby conferred may be exercised in vacation and whether by one or more Judges of the Supreme Court.

To issue writs
of prohibition,
quo warranto,
certiorari and
mandamus, to
what Courts

General
Assembly may
provide how
power
exercised in
vacation, and
by one or
more Judges

Section 12. The Supreme Court shall always consist of the three Justices composing it except in case of a vacancy or vacancies in their number or in case any one or two of them shall be incapacitated or disqualified to sit by reason of interest, in any of which cases the Chief Justice of the

Supreme
Court to
consist of
three Judges

How composed
in case of
vacancy, dis-
qualification

AMENDMENT TO CONSTITUTION

Other State
Judges to act,
when

Supreme Court, or if he be disqualified or incapacitated, the Justice who by seniority is next in rank to the Chief Justice, shall have the power to designate one or more of the said six other State Judges to sit in the Supreme Court temporarily to fill up the number of that court to three Justices and it shall be the duty of those of said six other State Judges, so designated, to sit accordingly, provided, however, that no one of said six other State Judges shall be so designated to sit in the Supreme Court to hear any cause in which he sat below. Three Judges shall constitute a quorum in the Supreme Court. Any one of the Justices of the Supreme Court may open and adjourn court.

Quorum, one
Justice may
open and
adjourn Court

What Judge to
have
jurisdiction in
Chancery
matters where
Chancellor is
interested or
disqualified

Section 13. In matters of chancery jurisdiction in which the Chancellor is interested or otherwise disqualified, the Presiding Judge of the Court of General Sessions and of the Orphans' Court shall have jurisdiction, or, if the said Presiding Judge is interested or otherwise disqualified, the senior Associate Judge not interested or otherwise disqualified shall have jurisdiction.

Presiding
Judge or any
Associate
Judge may
grant
restraining
orders in
absence of
Chancellor

Section 14. The Presiding Judge of the Court of General Sessions and of the Orphans' Court or any Associate Judge shall have power, in the absence of the Chancellor from the county where any suit in equity may be instituted or during the temporary disability of the Chancellor, to grant restraining orders, and the said Presiding Judge or any Associate Judge shall have power, during the absence of the Chancellor from the State or his temporary disability, to grant preliminary injunctions pursuant to the rules and practice of the Court of Chancery; provided that nothing herein contained shall be construed to confer general jurisdiction over the case.

Preliminary
injunctions
granted, when,
by whom. No
general
jurisdiction
conferred

Governor
given power
to Commission
a Judge ad
litem, when

Section 15. The Governor shall have power to commission a judge or judges ad litem to sit in any cause in any of said Courts when by reason of legal exception to the Judges authorized to sit therein, or for other cause, there are not a sufficient number of Judges available to hold such