

LAWS

OF THE

STATE OF DELAWARE

ONE HUNDRED AND SIXTH
SESSION OF THE GENERAL ASSEMBLY

COMMENCED AND HELD AT DOVER

On Tuesday, January 5, A. D.

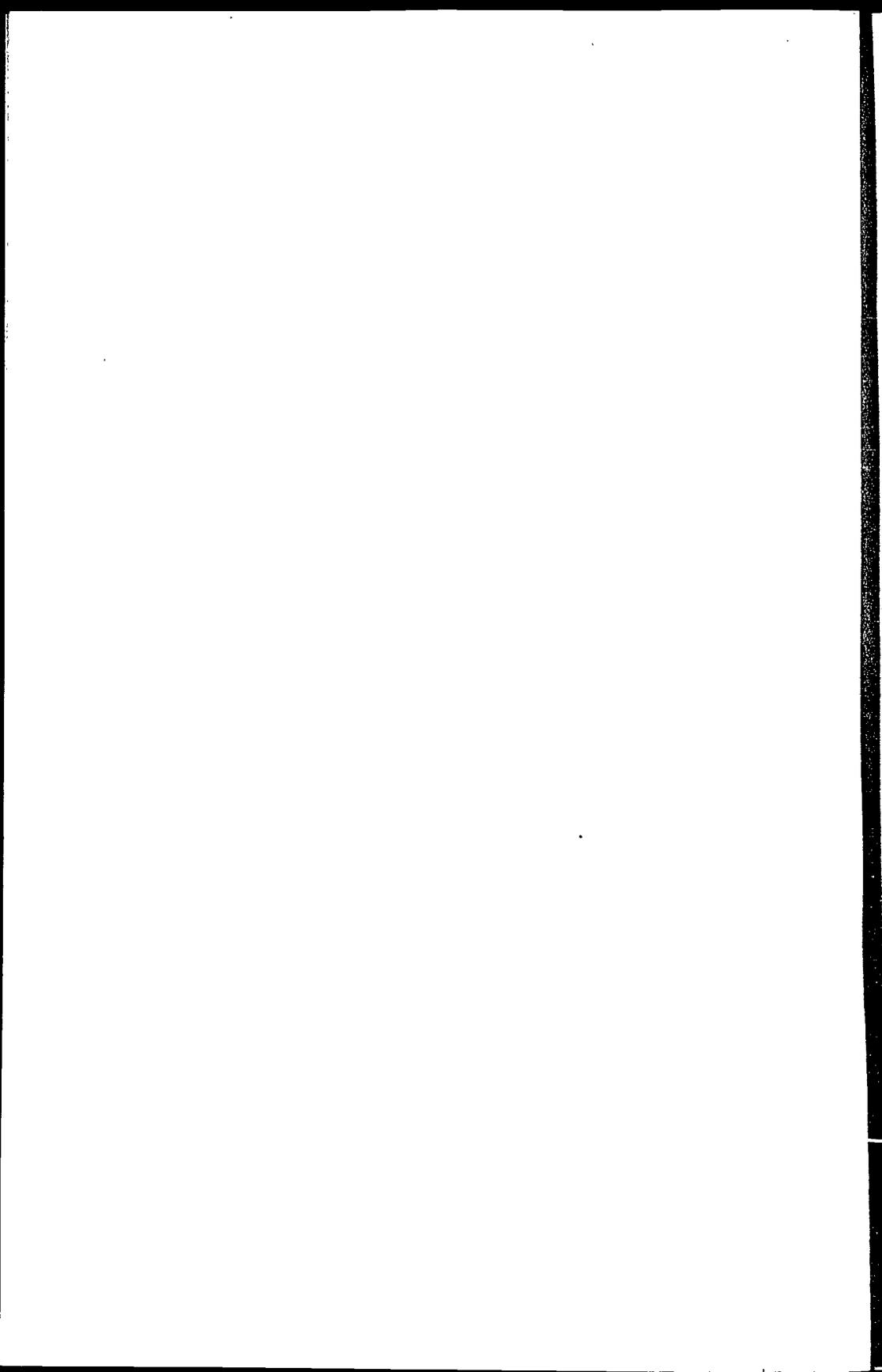
1937

AND

IN THE YEAR OF THE INDEPENDENCE OF THE UNITED STATES
THE ONE HUNDRED AND SIXTY-FIRST

VOLUME XLI

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LAWS of DELAWARE

Constitution of the State of Delaware

CHAPTER 1

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):*

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

ARTICLE IV

Judiciary

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.

Section 2. There shall be three Justices of the Supreme Court
who shall be citizens of the State and learned in the law. One of
them shall be the Chief Justice who shall be designated as such by
his appointment and who when present shall preside at all sittings
of the Court. In the absence of the Chief Justice the Justice pres-
ent who is senior in length of service shall preside. If it is other-

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wise impossible to determine seniority among the Justices, they shall determine it by lot and certify accordingly to the Governor.

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 President 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 Associate 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.

Section 3. The Justices of the Supreme Court, the Chancellor, and the President 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 three 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.

Section 4. The Justices of the Supreme Court, the Chancellor, and the President Judge and Associate Judges of the Court of General Sessions and of the Orphans' Court shall respectively re-

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ceive 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 provided by law. They shall hold no other office of profit.

Section 5. The President 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.

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

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.

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 in the several counties may be distributed and apportioned in such manner as shall be provided by the rules of the said courts, respectively.

Section 7. The Court of General Sessions shall have jurisdiction of all causes of a civil nature, real, personal and mixed, at

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common law and all other the jurisdiction and powers vested by the laws of this State in the formerly existing Superior Court; and also shall have all the jurisdiction and powers vested by the laws of this State in the formerly existing Court of General 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 formerly existing Court of General Sessions; and also shall have all the jurisdiction and powers vested by the laws of this State in the formerly existing 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 existing at the time this amended Article IV of this Constitution becomes effective, elsewhere than in this amended Article IV of this Constitution, shall be read as and taken to mean, and hereafter printed as, President Judge of the Court of General Sessions and of the Orphans' Court, as provided for in this amended Article IV of this Constitution.

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

The Orphans' Court in each County shall, except as hereinafter provided for, consist of the President Judge of the Orphans' Court and the resident Associate Judge of the County. The President Judge when present shall preside. The President 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 President 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

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the Orphans' Court in any County in place of the resident Associate Judge of the County in case such resident 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.

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.

Upon written request made by the Chancellor to the President Judge of the Court of General Sessions and of the Orphans' Court, or to the senior Associate Judge of said Courts if the said President Judge should be incapacitated or absent from the State, such President 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.

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

(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.

(2) To issue upon application of the accused, after conviction and sentence, writs of error in criminal causes to the Court of

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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.

(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.

(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.

(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.

(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 Justices of the Supreme Court.

(7) To issue such temporary writs or orders in causes pending on appeal, or on writ of error, as may be necessary to protect the rights of parties and any Justice of the Supreme Court may exercise this power when the court is not in session.

(8) To exercise such other jurisdiction by way of appeal, writ of error or of certiorari as the General Assembly may from time to time confer upon it.

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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, 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 Justices shall constitute a quorum in the Supreme Court. Any one of the Justices of the Supreme Court may open and adjourn court.

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

Section 14. The President 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 President 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.

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

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therein, or for other cause, there are not a sufficient number of Judges available to hold such Court. The commission in such case shall confine the office to the cause and it shall expire on the determination of the cause. The judge so appointed shall receive reasonable compensation to be fixed by the General Assembly. A member of Congress, or any person holding or exercising an office under the United States, shall not be disqualified from being appointed a judge ad litem.

Section 16. The jurisdiction of each of the aforesaid courts shall be co-extensive with the State. Process may be issued out of each court, in either county, into every county. No costs shall be awarded against any party to a cause by reason of the fact that suit is brought in a county other than that in which the defendant or defendants may reside at the time of bringing suit.

Section 17. The General Assembly, notwithstanding anything contained in this Article, shall have power to repeal or alter any act of the General Assembly giving jurisdiction to the former Court of Oyer and Terminer, the former Superior Court, the former Court of General Sessions of the Peace and Jail Delivery, the Court of General Sessions, the Orphans' Court or the Court of Chancery, in any matter, or giving any power to either of the said courts. The General Assembly shall also have power to confer upon the Court of General Sessions, the Orphans' Court and the Court of Chancery jurisdiction and powers in addition to those hereinbefore mentioned. Until the General Assembly shall otherwise direct, there shall be an appeal to the Supreme Court in all cases in which there is an appeal, according to any act of the General Assembly, to the former Court of Errors and Appeals or to the former Supreme Court of this State.

Section 18. Until the General Assembly shall otherwise provide, the Chancellor shall exercise all the powers which any law of this State vests in the Chancellor, besides the general powers of the Court of Chancery, and the President Judge of the Court of General Sessions and of the Orphans' Court and the Associate Judges of said Courts shall each singly exercise all the powers which any