

CONSTITUTION OF DELAWARE—1831.*

We, the people, hereby ordain and establish this constitution of government for the State of Delaware.

Through divine goodness all men have, by nature, the rights of worshipping and serving their Creator according to the dictates of their consciences; of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and, in general, of attaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for the due exercise thereof, power is inherent in them; and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness. And they may for this end, as circumstances require, from time to time, alter their constitution of government.

ARTICLE I.

SECTION 1. Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe, and piety and morality, on which the prosperity of communities depends, are thereby promoted, yet no man shall, or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall, in any case, interfere with, or in any manner control, the rights of conscience in the free exercise of religious worship; nor shall a preference be given by law to any religious societies, denomination, or modes of worship.

SEC. 2. No religious test shall be required as a qualification to any office or public trust under this State.

SEC. 3. All elections shall be free and equal.

SEC. 4. Trial by jury shall be as heretofore.

SEC. 5. The press shall be free to every citizen who undertakes to examine the official conduct of men acting in a public capacity, and any citizen may print on any such subject, being responsible for the abuse of that liberty. In prosecutions for publications investing the proceedings of officers, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels the jury may determine the facts and the law as in other cases.

SEC. 6. The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant to search any place, or to seize any person or things, shall issue without describing them as particularly as may be, nor then, unless there be probable cause supported by oath or affirmation.

SEC. 7. In all criminal prosecution the accused hath a right to be heard by himself and his counsel; to be plainly and fully informed of the nature and cause of the accusation against him; to meet the witnesses in their examination face to face; to have compulsory process in due time, on application by himself, his friends, or counsel, for obtaining witnesses in his favor, and a speedy and public trial by an impartial jury. He shall not be compelled to give evidence against himself; nor shall he be deprived of life, liberty, or property, unless by the judgment of his peers or the law of the land.

SEC. 8. No person shall for any indictable offence be proceeded against criminally by information, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, and no person shall be for the same offence twice put in jeopardy of life or limb; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without compensation being made.

SEC. 9. All courts shall be open; and every man for an injury done him in his reputation, person, movable or immovable possessions, shall have remedy by the due

* This constitution, which is that originally adopted in 1792, with important amendments, was framed by a convention which met November 8, 1831.

course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense; and every action shall be tried in the county in which it shall be commenced, unless when the judges of the court in which the cause is to be tried shall determine that an impartial trial therefor cannot be had in that county. Suits may be brought against the State, according to such regulations as shall be made by law.

SEC. 10. No power of suspending laws shall be exercised, but by authority of the legislature.

SEC. 11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted; and in the construction of jails a proper regard shall be had to the health of prisoners.

SEC. 12. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is positive or the presumption great; and when persons are confined on accusation for such offences, their friends and counsel may at proper seasons have access to them.

SEC. 13. The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

SEC. 14. No commission of oyer and terminer or jail-delivery shall be issued.

SEC. 15. No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate. The estates of those who destroy their own lives shall descend or vest as in case of natural death; and if any person be killed by accident, no forfeiture shall be thereby incurred.

SEC. 16. Although disobedience to laws by a part of the people, upon suggestions of impolicy or injustice in them, tends, by immediate effect and the influence of example, not only to endanger the public welfare and safety, but also in governments of a republican form contravenes the social principles of such governments founded on common consent for common good, yet the citizens have a right in an orderly manner to meet together, and to apply to persons intrusted with the powers of government for redress of grievances or other proper purposes, by petition, remonstrance, or address.

SEC. 17. No standing army shall be kept up without the consent of the legislature: and the military shall, in all cases and at all times, be in strict subordination to the civil power.

SEC. 18. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but by a civil magistrate, in a manner to be prescribed by law.

SEC. 19. No hereditary distinction shall be granted, nor any office created or exercised, the appointments to which shall be for a longer term than during good behavior; and no person holding any office under this State shall accept of any office or title of any kind whatever, from any king, prince, or foreign state.

We declare that everything in this article is reserved out of the general powers of government hereinafter mentioned.

ARTICLE II.

SECTION 1. The legislative power of this State shall be vested in a general assembly, which shall consist of a senate and house of representatives.

SEC. 2. The representatives shall be chosen [for two years] by the citizens residing in the several counties.

No person shall be a representative who shall not have attained the age of twenty-four years, and have been a citizen and inhabitant of the State three years next preceding the first meeting of the legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this State.

There shall be seven representatives chosen in each county, until a greater number of representatives shall by the general assembly be judged necessary; and then, two-thirds of each branch of the legislature concurring, they may by law make provision for increasing their number.

SEC. 3. The senators shall be chosen for four years by the citizens residing in the several counties.

No person shall be a senator who shall not have attained to the age of twenty-seven years, and have, in the county in which he shall be chosen, a freehold estate in two hundred acres of land, or an estate in real or personal property, or in either, of the value of one thousand pounds at least, and have been a citizen and inhabitant of the State three years next preceding the first meeting of the legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this State.

There shall be three senators chosen in each county. When a greater number of senators shall by the general assembly be judged necessary, two-thirds of each branch concurring, they may by law make provision for increasing their number; but the number of senators shall never be greater than one-half nor less than one-third of the number of representatives.

If the office of representative or the office of senator become vacant before the regular expiration of the term thereof, a representative or a senator shall be elected to fill such vacancy, and shall hold the office for the residue of said term.

When there is a vacancy in either house of the general assembly, and the general assembly is not in session, the governor shall have power to issue a writ of election to fill such vacancy; which writ shall be executed as a writ issued by a speaker of either house in case of vacancy.

SEC. 4. The general assembly shall meet on the first Tuesday of January, biennially, unless sooner convened by the governor.

The first meeting of the general assembly, under this amended constitution, shall be on the first Tuesday of January, in the year of our Lord 1833, which shall be the commencement of the biennial sessions.

SEC. 5. Each house shall choose its speaker and other officers; and also each house, whose speaker shall exercise the office of governor, may choose a speaker *pro tempore*.

SEC. 6. Each house shall judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members in such manner and under such penalties as shall be deemed expedient.

SEC. 7. Each house may determine the rules of its proceedings, punish any of its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, and shall have all other powers necessary for a branch of the legislature of a free and independent State.

SEC. 8. Each house shall keep a journal of its proceedings, and publish them immediately after every session, except such parts as may require secrecy, and the yeas and nays of the members on any question shall, at the desire of any member, be entered on the journal.

SEC. 9. The doors of each house, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

SEC. 10. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 11. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the State; but no law varying the compensation shall take effect until an election of the representatives shall have intervened. They shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 12. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased, during such time. No person concerned in any army or navy contracts, nor member of Congress, nor

any person holding any office under this State, or the United States, except the attorney-general, officers usually appointed by the courts of justice, respectively, attorneys at law, and officers in the militia, holding no disqualifying office, shall, during his continuance in Congress or in office, be a senator or representative.

SEC. 13. When vacancies happen in either house, writs of election shall be issued by the speakers respectively, or in cases of necessity, in such other manner as shall be provided by law; and the persons thereupon chosen shall hold their seats as long as those in whose stead they are elected might have done if such vacancies had not happened.

SEC. 14. All bills for raising revenue shall originate in the house of representatives; but the senate may propose alterations as on other bills; and no bill, from the operations of which, when passed into a law, revenue may incidentally arise, shall be accounted a bill for raising revenue; nor shall any matter or clause whatever, not immediately relating to and necessary for raising revenue, be in any manner blended with or annexed to a bill for raising revenue.

SEC. 15. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published *at least once in every two years*.

SEC. 16. The State treasurer shall be appointed biennially by the house of representatives, with the concurrence of the senate. In case of vacancy in the office of State treasurer in the recess of the general assembly, either through omission of the general assembly to appoint, or by the death, removal out of the State, resignation, or inability of the State treasurer, or his failure to give security, the governor shall fill the vacancy by appointment, to continue until the next meeting of the general assembly. The State treasurer shall settle his accounts annually with the general assembly, or a committee thereof, which shall be appointed at every biennial session. No person who hath served in the office of State treasurer shall be eligible to a seat in either house of the general assembly until he shall have made a final settlement of his accounts as treasurer, and discharged the balance, if any, due thereon.

SEC. 17. No act of incorporation, except for the renewal of existing corporations, shall be hereafter enacted without the concurrence of two-thirds of each branch of the legislature, and with a reserved power of revocation by the legislature; and no act of incorporation which may be hereafter enacted shall continue in force for a longer period than twenty years, without the reenactment of the legislature, unless it be an incorporation for public improvement.*

ARTICLE III.

SECTION 1. The supreme executive powers of the State shall be vested in a governor.

SEC. 2. The governor shall be chosen by the citizens of the State.

The returns of every election for governor shall be sealed up, and immediately delivered by the returning officers of the several counties to the speaker of the senate, or, in case of the vacancy of the office of the speaker of the senate, or his absence from the State, to the secretary of state, who shall keep the same until a speaker of the senate shall be appointed, to whom they shall be immediately delivered after his appointment, who shall open and publish the same in the presence of the members of both houses of the legislature. Duplicates of the said returns shall also be immediately lodged with the prothonotary of each county. The person having the highest number of votes shall be governor; but if two or more shall be equal in the highest number of votes, the members of the two houses shall, by joint ballot, choose one of them to be governor; and if, upon such ballot, two or more of them shall still be equal and highest in votes, the speaker of the senate shall have an additional casting vote.

Contested elections of a governor shall be determined by a joint committee, consisting of one-third of all the members of each branch of the legislature, to be selected by ballot of the house respectively; every person of the committee shall take an oath or affirmation that in determining the said election he will faithfully discharge the trust reposed in him; and the committee shall always sit with open doors.

*Amended in 1875.

SEC. 3. The governor shall hold his office during four years from the third Tuesday in January next ensuing his election, and shall not be eligible a second time to said office.

SEC. 4. He shall be at least thirty years of age, and have been a citizen and inhabitant of the United States twelve years next before the first meeting of the legislature after his election, and the last six of that term an inhabitant of this State, unless he shall have been absent on the public business of the United States, or of this State.

SEC. 5. No member of Congress, nor person holding any office under the United States, or this State, shall exercise the office of governor.

SEC. 6. The governor shall, at stated times, receive for his services an adequate salary, to be fixed by law, which shall be neither increased nor diminished during the period for which he shall have been elected.

SEC. 7. He shall be commander-in-chief of the army and navy of the State, and of the militia, except when they shall be called into the service of the United States.

SEC. 8. He shall appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; but no person shall be appointed to an office within a county, who shall not have a right to vote for representatives, and have been an inhabitant therein one year next before his appointment, nor hold the office longer than he continues to reside in the county. No member of Congress, nor any person holding or exercising any office under the United States, shall at the same time hold or exercise the office of judge, treasurer, attorney-general, secretary, prothonotary, register for the probate of wills and granting letters of administration, recorder, sheriff, or any office under this State, with a salary by law annexed to it, or any other office which the legislature shall declare incompatible with offices or appointments under the United States. No person shall hold more than one of the following offices at the same time, to wit: treasurer, attorney-general, prothonotary, register, or sheriff. All commissions shall be in the name of the State, shall be sealed with the great seal, and be signed and tested by the governor.

SEC. 9. He shall have power to remit fines and forfeitures, and to grant reprieves and pardons, except in cases of impeachment. He shall set forth in writing, fully, the grounds of all reprieves, pardons, and remissions, to be entered in the register of his official acts, and laid before the general assembly at their next session.

SEC. 10. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 11. He shall, from time to time, give to the general assembly information of affairs concerning the State, and recommend to their consideration such measures as he shall judge expedient.

SEC. 12. He may, on extraordinary occasions, convene the general assembly; and, in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding three months.

SEC. 13. He shall take care that the laws be faithfully executed.

SEC. 14. Upon any vacancy happening in the office of governor by his death, removal, resignation, or inability, the speaker of the senate shall exercise the office until a governor elected by the people shall be duly qualified. If there be no speaker of the senate, or upon a further vacancy happening in the office by his death, removal, resignation, or inability, the speaker of the house of representatives shall exercise the office until a governor elected by the people shall be duly qualified. If the person elected governor shall die, or become disqualified, before the commencement of his term of office, or shall refuse to take the same, the person holding the office shall continue to exercise it until a governor shall be elected and duly qualified. If upon a vacancy happening in the office of governor there be no other person who can exercise said office within the provisions of the constitution, the secretary of state shall exercise the same until the next meeting of the general assembly, who shall immediately proceed to elect, by joint ballot of both houses, a person to exercise the office until a governor, elected by the people, shall be duly qualified. If a vacancy occur in the office of governor, or if the governor-elect die, or become disqualified, before the commencement of his term, or refuse to take the office, an election for governor

shall be held at the next general election, unless the vacancy happen within six days next preceding the election, exclusive of the day of the happening of the vacancy and the day of the election; in that case, if an election for governor would not have been held at said election, without the happening of such vacancy, no election for governor shall be held at said election in consequence of such vacancy. If the trial of a contested election shall continue longer than until the third Tuesday of January next ensuing the election of a governor, the governor of the last year, or the speaker of the senate, or of the house of representatives, who may then be in the exercise of the executive authority, shall continue therein until a determination of such contested election. The governor shall not be removed from his office for inability but with the concurrence of two-thirds of all the members of each branch of the legislature.

SEC. 15. A secretary shall be appointed and commissioned during the governor's continuance in office, if he shall so long behave himself well. He shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required by either branch of the legislature, lay the same, and all papers, minutes, and vouchers relative thereto, before them, and shall perform such other duties as shall be enjoined him by law. He shall have a compensation for his services, to be fixed by law.

ARTICLE IV.

SECTION 1. All elections for governor, senators, representatives, sheriffs, and coroners shall be held on the second Tuesday* of November, and be by ballot; and in such elections every free white male citizen of the age of twenty-two years or upwards, having resided in the State one year next before the election, and the last month thereof in the county where he offers to vote, and having within two years next before the election paid a county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and every free white male citizen of the age of twenty-one years, and under the age of twenty-two years, having resided as aforesaid, shall be entitled to vote without payment of any tax: *Provided*, That no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot, or insane person, or pauper, or person convicted of a crime deemed by law felony, shall enjoy the right of an elector; and that the legislature may impose the forfeiture of the right of suffrage as a punishment for crime.

SEC. 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from an arrest during their attendance at elections, and in going to and returning from them.

ARTICLE V.

SECTION 1. The house of representatives shall have the sole power of impeaching; but two-thirds of all the members must concur in an impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the evidence. No person shall be convicted without the concurrence of two-thirds of all the senators.

SEC. 2. The governor, and all other civil officers under this State, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law.

SEC. 3. Treason against this State shall consist only in levying war against it, or in adhering to the enemies of the Government, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

*Amended in 1855.

ARTICLE VI.

SECTION. 1. The judicial power of this State shall be vested in a court of errors and appeals, a superior court, a court of chancery, an orphans' court, a court of oyer and terminer, a court of general sessions of the peace and jail-delivery, 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 of both houses, shall from time to time establish.

SEC. 2. To compose the said courts there shall be five judges in the State. One of them shall be chancellor of the State; he shall also be president of the orphans' court; he may be appointed in any part of the State. The other four judges shall compose the superior court, the court of oyer and terminer, and the court of general sessions of the peace and jail-delivery, as hereinafter prescribed. One of them shall be chief-justice of the State, and may be appointed in any part of it. The other three judges shall be associate judges, and one of them shall reside in each county.

SEC. 3. The superior court shall consist of the chief-justice and two associate judges. The chief-justice shall preside in every county, and in his absence the senior associate judge sitting in the county shall preside. No associate judge shall sit in the county in which he resides. Two of the said judges shall constitute a quorum. One may open and adjourn the court, and make all rules necessary for the expediting of business.

This court 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 supreme court or court of common pleas.

SEC. 4. The court of general sessions of the peace and jail-delivery shall be composed in each county of the same judges and in the same manner as the superior court. Two shall constitute a quorum. One may open and adjourn the court. This court shall have all the jurisdiction and powers vested by the laws of this State in the court of general quarter sessions of the peace and jail-delivery.

SEC. 5. The chancellor shall hold the court of chancery. This court shall have all the powers vested by the laws of this State in the court of chancery.

SEC. 6. The court of oyer and terminer shall consist of all the judges except the chancellor. Three of the said judges shall constitute a quorum. One may open and adjourn the court. This court shall exercise the jurisdiction now vested in the courts of oyer and terminer and general jail-delivery by the laws of this State. In the absence of the chief-justice, the senior associate present shall preside.

SEC. 7. The court of errors and appeals shall have jurisdiction to issue writs of error to the superior court, and to receive appeals from the court of chancery, and to determine finally all matters in error in the judgments and proceedings of said superior court, and all matters of appeal in the interlocutory or final decrees and proceedings in chancery. The court of errors and appeals upon a writ of error to the superior court shall consist of three judges at least; that is to say, the chancellor, who shall preside, the associate judge who could not on account of his residence sit in the cause below, and one of the judges who did sit in the said cause. The judges of the superior court to whom it appertains to hold the superior court in each county shall sit alternately in the court of errors and appeals in cases in error brought from the superior court held in such county, according to the following rotation, that is to say: if the judgment below be rendered in the court in New Castle County at the first term of the said court there, the chief-justice shall sit; if at the second term of said court there, the associate judge for Kent County shall sit; and if at the third term of said court there, the associate judge for Sussex County shall sit. If the judgment below be rendered in the court in Kent County at the first term of said court there, the associate judge for Sussex County shall sit; if at the second term of the said court there, the associate judge for New Castle County shall sit; and if at the third term of the court there, the chief-justice shall sit. If the judgment below be rendered in the court in Sussex County at the first term of said court there, the associate judge for New Castle County shall sit; if at the second term of said court there, the chief-justice shall sit, and if at the third term of said court there, the associate judge for Kent

County shall sit; and so from term to term, in every succeeding rotation, the judges beginning and following each other in the same order. But if in any case, in the court of errors and appeals, the judge who sat in the cause below, and ought according to this provision to sit in the court of errors and appeals, be absent, unable, or disqualified, then either of the other judges who sat in the cause below may sit; and the court shall have power to prevent any inconvenience or delay from observing the rotation above described, by making an order or regulation for either of the judges who sat in the cause below to sit in such cause in the court of errors and appeals. If a judge did not sit in the cause below, he shall sit in the said cause in the court of errors and appeals, unless there be a legal exception to him; but the court, if there be three judges present, may proceed in his absence.

Whenever the superior court consider that a question of law ought to be decided before all the judges, they shall have power, upon the application of either party, to direct it to be heard in the court of errors and appeals; and in that case the chancellor and four judges shall compose the court of errors and appeals, the chancellor presiding, and any four of them being a quorum; and, in the absence of the chancellor, the chief-justice shall preside. The superior court in exercising this power may direct a cause to be proceeded in to verdict and judgment in that court, or to be otherwise proceeded in, as shall be best for expediting justice.

Upon appeal from the court of chancery, the court of errors and appeals shall consist of the chief-justice and three associate judges; any three of them shall be a quorum.

SEC. 8. In matters of chancery jurisdiction in which the chancellor is interested, the chief-justice sitting in the superior court without the associate judges, shall have jurisdiction, with an appeal to the court of errors and appeals, which shall consist in this case of the three associate judges, the senior associate judge presiding.

SEC. 9. The governor shall have power to commission a judge *ad litem*, to decide any cause in which there is a legal exception to the chancellor, or any judge, so that such appointment is necessary to constitute a quorum in either 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 a 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*.

SEC. 10. The orphans' court in each county shall be held by the chancellor and the associate judge residing in the county, the chancellor being president. Either of them, in the absence of the other, may hold the court. When they concur in opinion, there shall be no appeal from their decision except in matter of real estate. When their opinions are opposed, or when a decision is made by one of them, and in all matters involving a right to real estate, or the appraised value or other value thereof, there shall be an appeal to the superior court for the county, which shall have final jurisdiction in every such case. This court shall have all the jurisdiction and powers vested by the laws of this State in the orphans' court.

SEC. 11. 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.

SEC. 12. 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 courts of oyer and terminer and general jail-delivery, or to the supreme court, or the court of common pleas, or the court of general quarter sessions of the peace and general jail-delivery, or the orphans' court, or to the court of chancery, in any matter, or giving any power to either of said courts. Until the general assembly shall otherwise direct, there shall be an appeal to the court of errors and appeals in all cases in which there is an appeal, according to any act of the general assembly, to the high court of errors and appeals.

SEC. 13. Until the general assembly shall otherwise provide, the chancellor shall exercise all the powers which any law of the State vests in the chancellor besides the general powers of the court of chancery; and the chief-justice and associate judges

shall each singly exercise all the powers which any law of this State vests in the judges singly of the supreme court or court of common pleas.

SEC. 14. The chancellor and judges shall respectively hold their offices during good behavior, and receive for their services a compensation which shall be fixed by law and paid quarterly, and shall not be less than the following sums, that is to say: the annual salary of the chief-justice shall not be less than the sum of one thousand two hundred dollars; and the annual salary of the chancellor shall not be less than the sum of one thousand one hundred dollars; and the annual salaries of the associate judges, respectively, shall not be less than the sum of one thousand dollars each. They shall hold no other office of profit, nor receive any fees or perquisites in addition to their salaries for business done by them. The governor may, for any reasonable cause, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the general assembly. In all cases where the legislature shall so address the governor, the cause of removal shall be entered on the journals of each house. The judge against whom the legislature may be about to proceed shall receive notice thereof, accompanied with the causes alleged for his removal, at least five days before the day on which either house of the general assembly shall act thereupon.

SEC. 15. The general assembly may by law give to any inferior courts by them to be established, or to one or more justices of the peace, jurisdiction of the criminal matters following, that is to say, assaults and batteries, keeping without license a public house of entertainment, tavern, inn, ale-house, ordinary, or victualling house, retailing or selling without license wine, rum, brandy, gin, whiskey, or spirituous or mixed liquors contrary to law, disturbing camp-meetings held for the purpose of religious worship, disturbing other meetings for the purpose of religious worship, nuisances, horse-racing, cock-fighting, and shooting-matches, larcenies committed by negroes or mulattoes, and the offence of knowingly buying, receiving or concealing, by negroes or mulattoes, of stolen goods and things the subject of larceny, and of any negro or mulatto being accessory to any larceny. The general assembly may by law regulate this jurisdiction, and provide that the proceedings shall be with or without indictment by grand jury, or trial by petit jury, and may grant or deny the privilege of appeal to the court of general sessions of the peace. The matters within this section shall be, and the same hereby are, excepted and excluded from the provision of the constitution that "No person shall for an indictable offence be proceeded against criminally by information," and also from the provision of the constitution concerning trial by jury.

SEC. 16. In civil causes, when pending, the superior court shall have the power, before judgment, of directing, upon such terms as they shall deem reasonable, amendments in pleadings and legal proceedings, so that by error in any of them the determination of causes, according to their real merits, shall not be hindered; and also of directing the examination of witnesses that are aged, very infirm, or going out of the State, upon interrogatories *de bene esse*, to be read in evidence, in case of the death or departure of the witnesses before the trial, or inability by reason of age, sickness, bodily infirmity, or imprisonment, then to attend; and also the power of obtaining evidence from places not within this State.

SEC. 17. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the same, and the cost then accrued, and the plaintiff not accepting thereof, it shall be delivered for his use to the clerk or prothonotary of the court; and if, upon the final decision of the cause, the plaintiff shall not recover a greater sum than that so paid into court for him, he shall not recover any costs accruing after such payment, except where the plaintiff is an executor or administrator.

SEC. 18. By the death of any party, no suit in chancery or at law, where the cause of action survives, shall abate, but, until the legislature shall otherwise provide, suggestion of such death being entered of record, the executor or administrator of a deceased petitioner or plaintiff may prosecute the said suit; and if a respondent or defendant dies, the executor or administrator being duly served with a *scire facias*, thirty days before the term thereof, shall be considered as a party to the suit, in

the same manner as if he had voluntarily made himself a party; and in any of those cases, the court shall pass a decree, or render judgment for or against the executors or administrators, as to right appertains. But where an executor or administrator of a deceased respondent or defendant becomes a party, the court, upon motion, shall grant such a continuance of the cause as to the judges shall appear proper.

SEC. 19. Whenever a person, not being an executor or administrator, appeals from a decree of the chancellor, or applies for a writ of error, such appeal or writ shall be no stay of proceeding in the chancery, or the court to which the writ issues, unless the appellant or plaintiff in error shall give sufficient security, to be approved respectively by the chancellor, or by a judge of the court from which the writ issues, that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation-money and all costs, or otherwise abide the decree in appeal, or the judgment in error, if he fail to make his plea good.

SEC. 20. No writ of error shall be brought upon any judgment heretofore confessed, entered, or rendered, but within five years from this time; nor upon any judgment hereafter to be confessed, entered, or rendered, but within five years after the confessing, entering, or rendering thereof; unless the person entitled to such writ be an infant, *feme-covert*, *non compos mentis*, or a prisoner, and then with five years exclusive of the time of such disability.

SEC. 21. An executor, administrator, or guardian shall file every account with the register for the county, who shall, as soon as conveniently may be, carefully examine the particulars with the proofs thereof, in the presence of such executor, administrator, or guardian, and shall adjust and settle the same according to the very right of the matter and the law of the land; which account so settled shall remain in his office for inspection; and the executor, administrator, or guardian shall, within three months after such settlement, give due notice in writing to all persons entitled to shares of the estate, or to their guardians respectively, if residing within the State, that the account is lodged in the said office for inspection. Exceptions may be made by persons concerned, to both sides of every such account, either denying the justice of the allowances made to the accountant, or alleging further charges against him; and the exceptions shall be heard in the orphans' court for the county; and thereupon the account shall be adjusted and settled according to the right of the matter and the law of the land.

SEC. 22. The registers of the several counties shall respectively hold the register's court in each county. Upon the litigation of a cause the depositions of the witnesses examined shall be taken at large in writing, and make part of the proceedings in the cause. This court may issue process throughout the State to compel the attendance of witnesses. Appeals may be made from the register's court to the superior court, whose decision shall be final. In cases where a register is interested in questions concerning the probate of wills, the granting letters of administration, or executors, administrators, or guardians' accounts, the cognizance thereof shall belong to the orphans' court, with an appeal to the superior court, whose decisions shall be final.

SEC. 23. The prothonotary of the superior court may issue process, take recognizances of bail, and enter judgments according to law and the practice of the court. No judgment in one county shall bind lands or tenements in another, until a *testatum fieri facias* being issued, shall be entered of record in the office of the prothonotary of the county wherein the lands or tenements are situated.

SEC. 24. The governor shall appoint a competent number of persons to the office of justice of the peace, not exceeding twelve in each county, until two-thirds of both houses of the legislature shall by law direct an addition to the number, who shall be commissioned for seven years, if so long they shall behave themselves well, but may be removed by the governor within that time on conviction of misbehavior in office, or on the address of both houses of the legislature.

SEC. 25. The style in all process and public acts shall be, "*The State of Delaware.*" Prosecutions shall be carried on in the name of the State.

ARTICLE VII.

SECTION. 1. The members of the senate and house of representatives, the chancellor, the judges, and the attorney-general shall, by virtue of their offices, be conservators of the peace throughout the State; and the treasurer, secretary, prothonotaries, registers, recorders, sheriffs, and coroners shall, by virtue of their offices, be conservators thereof within the counties respectively in which they reside.

SEC. 2. The Representative, and, when there shall be more than one, the Representatives of the people of this State in Congress, shall be voted for at the same places where representatives in the legislature are voted for, and in the same manner.

SEC. 3. The sheriff and coroner of each county shall be chosen by the citizens residing in such county. They shall hold their respective offices for two years, if so long they behave themselves well, and until successors be duly qualified; but no person shall be twice chosen sheriff upon election by the citizens in any term of four years. They shall be commissioned by the governor. The governor shall fill vacancies in these offices by appointments to continue until the next election, and until successors shall be duly qualified. The legislature, two-thirds of each branch concurring, may vest the appointment of sheriffs and coroners in the governor; but no person shall be twice appointed sheriff in any term of six years.

SEC. 4. The attorney-general, registers in chancery, prothonotaries, registers, clerks of the orphans' court and of the peace, shall respectively be commissioned for five years, if so long they shall behave themselves well, but may be removed by the governor within that time on conviction of misbehavior in office, or on the address of both houses of the legislature. Prothonotaries, registers in chancery, clerks of the orphans' court, registers, recorders, and sheriffs, shall keep their offices in the town or place in each county in which the superior court is usually held.

SEC. 5. Attorneys at law, all inferior officers in the treasury department, election officers, officers relating to taxes, to the poor, and to highways, constables and hundred officers, shall be appointed in such manner as is or may be directed by law.

SEC. 6. All salaries and fees annexed to officers shall be moderate; and no officer shall receive any fees whatever without giving to the person who pays a receipt for them, if required, therein specifying every particular, and the charge for it.

SEC. 7. No costs shall be paid by a person accused on a bill being returned ignoramus, nor on acquittal by a jury.

SEC. 8. The rights, privileges, immunities, and estates of religious societies and corporate bodies shall remain as if the constitution of this State had not been altered. No ordained clergyman or ordained preacher of the gospel of any denomination shall be capable of holding any civil office in the State, or of being a member of either branch of the legislature while he continues in the exercise of the pastoral or clerical functions.

SEC. 9. All the laws of this State existing at the time of making this constitution, and not inconsistent with it, shall remain in force, unless they shall be altered by future laws; and all actions and prosecutions now pending shall proceed as if this constitution had not been made.

SEC. 10. This constitution shall be prefixed to every edition of the laws made by direction of the legislature.

SEC. 11. The legislature shall, as soon as conveniently may be, provide by law for ascertaining what statutes and parts of statutes shall continue to be in force within this State; for reducing them and all acts of the general assembly into such order, and publishing them in such manner that thereby the knowledge of them may be generally diffused; for choosing inspectors and judges of elections, and regulating the same in such manner as shall most effectually guard the rights of the citizens entitled to vote; for better securing personal liberty, and easily and speedily redressing all wrongful restraints thereof; for more certainly obtaining returns of impartial juries; for dividing lands and tenements in sales by sheriffs, where they will bear a division, into as many parcels as may be without spoiling the whole, and for advertising and making the sales in such manner and at such times and places as may

render them most beneficial to all persons concerned; and for establishing schools and promoting arts and sciences.

SEC. 12. No property qualification shall be necessary to the holding of any office in this State, except the office of senator in the general assembly, and the office of assessor, inquisitor on lands, and levy-court commissioner, and except such offices as the general assembly shall by law designate.

ARTICLE VIII.

Members of the general assembly and all officers, executive and judicial, shall be bound by oath or affirmation to support the constitution of this State, and to perform the duties of their respective offices with fidelity.

ARTICLE IX.

The general assembly, whenever two-thirds of each house shall deem it necessary, may, with the approbation of the governor, propose amendments to this constitution, and at least three, and not more than six months before the next general election of representatives, duly publish them in print for the consideration of the people; and if three-fourths of each branch of the legislature shall, after such an election and before another, ratify the said amendments, they shall be valid to all intents and purposes as parts of this constitution. No convention shall be called but by the authority of the people; and an unexceptionable mode of making their sense known will be for them at a special election on the third Tuesday of May in any year to vote by ballot for or against a convention, as they shall severally choose to do; and if thereupon it shall appear that a majority of all the citizens in the State, having right to vote for representatives, have voted for a convention, the general assembly shall accordingly at their next session call a convention, to consist of at least as many members as there are in both houses of the legislature, to be chosen in the same manner, at the same places, and at the same time that representatives are by the citizens entitled to vote for representatives, on due notice given for one month, and to meet within three months after they shall be elected. The majority of all the citizens in the State having right to vote for representatives shall be ascertained by reference to the highest number of votes cast in the State at any one of the three general elections next preceding the day of voting for a convention, except when they may be less than the whole number of votes voted both for and against a convention, in which case the said majority shall be ascertained by reference to the number of votes given on the day of voting for or against a convention; and whenever the general assembly shall deem a convention necessary, they shall provide by law for the holding of a special election for the purpose of ascertaining the sense of the majority of the citizens of the State entitled to vote for representatives.

SCHEDULE.

That no inconveniences may arise from the amendments of the constitution of this State, and in order to carry the same into complete operation, it is hereby declared and ordained as follows:

SECTION 1. The offices of the present senate and representatives shall not be vacated by any amendment of the constitution made in this convention, nor otherwise affected, except that the terms of the representatives and the terms of the senators which will expire on the first Tuesday of October, in the year of our Lord one thousand eight hundred and thirty-two, are hereby extended to the second Tuesday of November in that year; and the terms of the senators which will expire on the first Tuesday of October, in the year of our Lord one thousand eight hundred and thirty-three, are hereby extended to the second Tuesday of November in that year. And the terms of the senators which will expire on the first Tuesday of October, in the year of our Lord one thousand eight hundred and thirty-four, are hereby extended to the second Tuesday of November in that year.

The general assembly shall meet on the first Tuesday of January next, and shall not be within the amended provision respecting biennial sessions, which biennial sessions shall commence with the session of the general assembly on the first Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-three.

SEC. 2. The offices of the present sheriffs and coroners shall not be vacated by any amendment to the constitution made in this convention, nor otherwise affected, except that the term of office of the sheriff of Sussex County is hereby extended to the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-two, and until a successor be duly qualified; and on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-two, shall be the first election for sheriff in Sussex County, under this amended constitution. And the term of the present coroner for Sussex County is hereby extended to the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-four, and until a successor shall be duly qualified; and on the said last-mentioned day shall be the first election for coroner in Sussex County under this amended constitution.

The terms of the present sheriffs and coroners for Kent County and New Castle County are hereby extended to the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-three, and until successors to them respectively be duly qualified; and on or after the first Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-three, the governor shall have power to appoint a sheriff and a coroner for New Castle County, and a sheriff and coroner for Kent County, to continue in office until the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-four, and until successors to them respectively be duly qualified. And on the said last-mentioned day shall be the first election for sheriff and for coroner in New Castle County and in Kent County under this amended constitution, unless a vacancy happen in the office of sheriff or coroner of New Castle or Kent County, or of coroner for Sussex County, before the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-two; in which case an election shall be held on that day for a sheriff or a coroner under this amended constitution, in place of the sheriff or coroner whose office had become vacant.

SEC. 3. The first election for representatives under this amended constitution shall be held on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-two, which shall be the commencement of biennial elections. At this election one senator shall be chosen in each county for four years. Also, at the biennial election to be held in the several counties on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-four, two senators shall be chosen in each county for four years each. But as the term of one senator in each county will expire on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-three, when no election will be held to provide for this special case, a senator shall be chosen in each county, at the election held on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-two, for one year, to succeed the senator for such county whose term shall expire on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-three, and to continue in office until the second Tuesday in November, in the year of our Lord one thousand eight hundred and thirty-four, when two senators shall be chosen in each county as afore provided.

SEC. 4. The term of office of the present governor shall not be vacated nor extended by amendment made to the constitution in this convention; but the said office shall continue during the original term thereof; but the ninth and fourteenth sections of the third article of this constitution shall be immediately in force as amended. An election for governor shall be held on the second Tuesday of November, in the year of our Lord one thousand eight hundred and thirty-two.

SEC. 5. This constitution as amended, so far as shall concern the judicial department, shall commence and be in operation from and after the third Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-two. All the

courts of justice now existing shall continue with their present jurisdiction, and the chancellor and judges and the clerks of the said courts shall continue in office until the said third Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-two; upon which day the said courts shall be abolished, and the offices of the said chancellor, judges, and clerks shall expire. All writs of error and appeals and proceedings which, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-two, shall be depending in the high court of errors and appeals, and all the books, records, and papers of said court, shall be transferred to the court of errors and appeals established by this amended constitution; and the said writs of errors, appeals, and proceedings shall be proceeded in, in the said court of errors and appeals, to final judgment, decree, or other determination.

All suits, proceedings, and matters which, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-two, shall be depending in the supreme court, or court of common pleas, and all books, records, and papers of the said courts, shall be transferred to the superior court established by this amended constitution, and the said suits, proceedings, and matters shall be proceeded in to final judgment or determination in the said superior court. All indictments, proceedings, and matters which, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-two, shall be depending in the court of general quarter sessions of the peace and jail-delivery, shall be transferred to and proceeded in to final judgment and determination in the court of general sessions of the peace and jail-delivery established by this amended constitution, and all books, records, and papers of said court of general quarter sessions of the peace and jail-delivery shall be transferred to the said court of general sessions of the peace and jail-delivery. All suits, proceedings, and matters which, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and thirty-two, shall be depending in the court of chancery or in the orphans' court, and all records, books, and papers of said courts, respectively, shall be transferred to the court of chancery or orphans' court, respectively, established by this amended constitution, and the said suits, proceedings, and matters shall proceed in to final decree, order, or other determination.

SEC. 6. The registers' courts and justices of the peace shall not be affected by any amendments of the constitution made in this convention; but the said courts and the terms of office of registers and justices of the peace shall remain the same as if said amendments had not been made.

SEC. 7. The general assembly shall have power to make any law necessary to carry into effect this amended constitution.

SEC. 8. The provision in the twentieth section of the sixth article of this amended constitution (being the thirtieth section of the sixth article of the original constitution) of limitation of writs of error, shall have relation to, and take date from, the twelfth day of June, in the year of our Lord one thousand seven hundred and ninety-two, the date of said original constitution.

SEC. 9. The governor shall have power to issue writs of election to supply vacancies in either house of the general assembly that have happened or may happen.

SEC. 10. It is declared that nothing in this amended constitution gives a writ of error from the court of errors and appeals to the court of oyer and terminer, or court of general sessions of the peace and jail-delivery, nor an appeal from the court of general sessions of the peace and jail-delivery.

The acts of the general assembly, increasing the number of justices of the peace, shall remain in force until repealed by the general assembly; and no office shall be vacated by the amendment to this constitution, unless the same be expressly vacated thereby, or the vacating the same is necessary to give effect to the amendments.

AMENDMENTS TO THE CONSTITUTION OF 1831.

RATIFIED JANUARY 30, 1855.

ART. IV. SECTION 1. Strike out the date, and insert "on the Tuesday next after the first Monday in the month of November of the year;" so that it will read:

"All elections for governor, senators, representatives, sheriffs, and coroners shall be held on the Tuesday next after the first Monday in the month of November of the year in which they are to be held, and be by ballot."

RATIFIED JANUARY 28, 1875.

ARTICLE 1. Add SEC. 17. The legislature shall have power to enact a general incorporation act to provide incorporation for religious, charitable, literary, and manufacturing purposes, for the preservation of animal and vegetable food, building and loan associations, and for draining low lands; and no attempt shall be made, in such act or otherwise, to limit or qualify the power of revocation reserved to the legislature in this section.