O.

O. C. An abbreviation, in the civil law, for "*ope consilio*," (*q. v.*) In American law, these letters are used as an abbreviation for "Orphans' Court."

O. N. B. An abbreviation for "Old Natura Brevium." See NATURA BREVIUM.

O. Ni. It was the course of the English exchequer, as soon as the sheriff entered into and made up his account for issues, amerciaments, etc., to mark upon each head "*O. Ni.*," which denoted *oneratur, nisi habeat sufficientem exonerationem*, and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paravaile* became debtors to the sheriff, and were discharged against the king, etc. 4 Inst. 116; Wharton.

O. S. An abbreviation for "Old Style," or "Old Series."

OATH. An external pledge or asseveration, made in verification of statements made or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party and to visit him with punishment if they be false.

A religious asseveration, by which a person renounces the mercy and imprecates the vengeance of heaven, if he do not speak the truth. 1 Leach, 430.

The calling upon God to witness that what is said by the person sworn is true, and invoking the divine vengeance upon his head, if what he says is false. 10 Ohio, 123.

Oaths are either *judicial* or *extrajudicial*; the former, when taken in some judicial proceeding or in relation to some matter connected with judicial proceedings; the latter, when not taken in any judicial proceeding, or without any authority of law, though taken formally before a proper person.

An *official* oath is one taken by an officer when he assumes charge of his office, whereby he declares that he will faithfully discharge the duties of the same, or whatever else may be required by statute in the particular case.

An *assertory* oath is one required by law other than in judicial proceedings and upon induction to office; such, for example, as an oath to be made at the custom-house relative to goods imported.

A *corporal* oath is one taken by the form of laying the hand on or kissing a copy of the gospels.

The terms "corporal oath" and "solemn oath" are synonymous; and an oath taken with the uplifted hand is properly described by either term in an indictment for perjury. 1 Ind. 184.

OATH AGAINST BRIBERY. One which could have have administered to a voter at an election for members of parliament. Abolished in 1854. Wharton.

OATH DECISORY. In the civil law. An oath which one of the parties defers or refers back to the other for the decision of the cause.

OATH EX OFFICIO. The oath by which a clergyman charged with a criminal offense was formerly allowed to swear himself to be innocent; also the oath by which the compurgators swore that they believed in his innocence. 3 Bl. Comm. 101, 447; Mozley & Whitley.

OATH IN LITEM. In the civil law. An oath permitted to be taken by the plaintiff, for the purpose of proving the value of the subject-matter in controversy, when there was no other evidence on that point, or when the defendant fraudulently suppressed evidence which might have been available.

OATH OF CALUMNY. In the civil law. An oath which a plaintiff was obliged to take that he was not prompted by malice or trickery in commencing his action, but that he had *bona fide* a good cause of action. Poth. Pand. lib. 5, tt. 16, 17, s. 124.

OATH PURGATORY. An oath by which a person *purges* or clears himself from presumptions, charges, or suspicions standing against him, or from a contempt.

OATH-RITE. The form used at the taking of an oath.

OATH SUPPLETORY. In the civil and ecclesiastical law. The testimony of a single witness to a fact is called "half-proof," on which no sentence can be founded; in order to supply the other half of proof, the party himself (plaintiff or defendant) is admitted to be examined in his own behalf, and the oath administered to him for that purpose is called the "suppletory oath," because it supplies

the necessary *quantum* of proof on which to found the sentence. 3 Bl. Comm. 370.

OB. On account of; for. Several Latin phrases and maxims, commencing with this word, are more commonly introduced by "*in*" (*q. v.*)

OB CAUSAM ALIQUAM A RE MARITIMA ORTAM. For some cause arising out of a maritime matter. 1 Pet. Adm. 92. Said to be Selden's translation of the French definition of admiralty jurisdiction, "*pour le fait de la mer.*" Id.

OB CONTINENTIAM DELICTI. On account of contiguity to the offense, *i. e.*, being contaminated by conjunction with something illegal. For example, the cargo of a vessel, though not contraband or unlawful, may be condemned in admiralty, along with the vessel, when the vessel has been engaged in some service which renders her liable to seizure and confiscation. The cargo is then said to be condemned *ob continentiam delicti*, because found in company with an unlawful service. See 1 Kent, Comm. 152.

OB CONTINGENTIAM. On account of connection; by reason of similarity. In Scotch law, this phrase expresses a ground for the consolidation of actions.

OB FAVOREM MERCATORUM. In favor of merchants. Fleta, lib. 2, c. 63, § 12.

Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare, nisi prius convictus fuerit vel confessus in curia. Glan. lib. 14, c. li. On account of evil report, it is not usual, according to the law of the land, for any person to purge himself, unless he have been previously convicted, or confessed in court.

OB TURPEM CAUSAM. For an immoral consideration. Dig. 12, 5.

OBÆRATUS. In Roman law. A debtor who was obliged to serve his creditor till his debt was discharged. Adams, Rom. Ant. 49.

OBEDIENCE. Compliance with a command, prohibition, or known law and rule of duty prescribed; the performance of what is required or enjoined by authority, or the abstaining from what is prohibited, in compliance with the command or prohibition. Webster.

OBEDIENTIA. An office, or the administration of it; a kind of rent; submission; obedience.

Obedientia est legis essentia. 11 Coke, 100. Obedience is the essence of law.

OBEDIENTIARIUS. A monastic officer. Du Cange.

OBIIT SINE PROLE. Lat. [He] died without issue. Yearb. M. 1 Edw. II. 1.

OBIT. In old English law. A funeral solemnity, or office for the dead. Cowell. The anniversary of a person's death; the anniversary office. Cro. Jac. 51.

OBITER. Lat. By the way; in passing; incidentally; collaterally.

OBITER DICTUM. Lat. A remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.

OBJECT, *v.* In legal proceedings, to object (*e. g.*, to the admission of evidence) is to interpose a declaration to the effect that the particular matter or thing under consideration is not done or admitted with the consent of the party objecting, but is by him considered improper or illegal, and referring the question of its propriety or legality to the court.

OBJECT, *n.* This term "includes whatever is presented to the mind, as well as what may be presented to the senses; whatever, also, is acted upon, or operated upon, affirmatively, or intentionally influenced by anything done, moved, or applied thereto." Woodruff, J., 8 Blatchf. 257.

OBJECTION. The act of a party who objects to some matter or proceeding in the course of a trial, (see OBJECT, *v.*;) or an argument or reason urged by him in support of his contention that the matter or proceeding objected to is improper or illegal.

OBJECTS OF A POWER. Where property is settled subject to a power given to any person or persons to appoint the same among a limited class, the members of the class are called the "objects" of the power. Thus, if a parent has a power to appoint a fund among his children, the children are called the "objects" of the power. Mozley & Whitley.

OBJURGATRICES. In old English law. Scolds or unquiet women, punished with the cucking-stool.

OBLATA. Gifts or offerings made to the king by any of his subjects: old debts, brought, as it were, together from preceding years, and put on the present sheriff's charge. Wharton.

OBLATA TERRÆ. Half an acre, or, as some say, half a perch, of land. Spelman.

OBLATI. In old European law. Voluntary slaves of churches or monasteries.

OBLATI ACTIO. In the civil law. An action given to a party against another who had *offered* to him a stolen thing, which was found in his possession. Inst. 3, 1, 4.

OBLATIO. In the civil law. A tender of money in payment of a debt made by debtor to creditor. Whatever is offered to the church by the pious. Calvin.

Oblationes dicuntur quæcunque a piis fidelibusque Christianis offeruntur Deo et ecclesiæ, sive res solidæ sive mobiles. 2 Inst. 389. Those things are called "oblations" which are offered to God and to the church by pious and faithful Christians, whether they are movable or immovable.

OBLATIONS, or obventions, are offerings or customary payments made, in England, to the minister of a church, including fees on marriages, burials, mortuaries, etc., (*q. v.*,) and Easter offerings. 2 Steph. Comm. 740; Phillim. Ecc. Law, 1596. They may be commuted by agreement.

OBLIGATE. To bind or constrain; to bind to the observance or performance of a duty; to place under an obligation. To bind one's self by an obligation or promise; to assume a duty; to execute a written promise or covenant; to make a writing obligatory.

OBLIGATIO. Lat. In Roman law. The legal relation existing between two certain persons whereby one (the creditor) is authorized to demand of the other (the debtor) a certain performance which has a money value. In this sense *obligatio* signifies not only the duty of the debtor, but also the right of the creditor. The fact establishing such claim and debt, as also the instrument evidencing it, is termed "obligation." Mackeld. Rom. Law, § 360.

That legal relation subsisting between two persons by which one is bound to the other for a certain performance. The passive relation sustained by the debtor to the creditor is likewise called an "obligation." Sometimes, also, the term "*obligatio*" is used for the *causa obligationis*, and the contract itself is designated an "obligation." There are passages in which even the document which affords the proof of a contract is called an "obligation." Such applications, however, are but a loose extension of the term, which, according to its true idea, is only properly employed when it is used to denote the debt relationship, in its totality, active and passive, subsisting between the creditor and the debtor. Tomk. & J. Mod. Rom. Law, 301.

Obligations, in the civil law, are of the several descriptions enumerated below.

Obligatio civilis is an obligation enforceable by action, whether it derives its origin from *jus civile*, as the obligation engendered by formal contracts or the obligation enforceable by bilaterally penal suits, or from such portion of the *jus gentium* as had been completely naturalized in the civil law and protected by all its remedies, such as the obligation engendered by formless contracts.

Obligatio naturalis is an obligation not immediately enforceable by action, or an obligation imposed by that portion of the *jus gentium* which is only imperfectly recognized by civil law.

Obligatio ex contractu, an obligation arising from contract, or an antecedent *jus in personam*. In this there are two stages,—first, a primary or sanctioned personal right antecedent to wrong, and, afterwards, a secondary or sanctioning personal right consequent on a wrong. Poste's Gaius' Inst. 359.

Obligatio ex delicto, an obligation founded on wrong or tort, or arising from the invasion of a *jus in rem*. In this there is the second stage, a secondary or sanctioning personal right consequent on a wrong, but the first stage is not a personal right, (*jus in personam*,) but a real right, (*jus in rem*,) whether a primordial right, right of *status*, or of property. Poste's Gaius' Inst. 359.

Obligationes ex delicto are obligations arising from the commission of a wrongful injury to the person or property of another. "*Delictum*" is not exactly synonymous with "tort," for, while it includes most of the wrongs known to the common law as torts, it is also wide enough to cover some offenses (such as theft and robbery) primarily injurious to the individual, but now only punished as crimes. Such acts gave rise to an *obligatio*, which consisted in the liability to pay damages.

Obligationes quasi ex contractu. Often persons who have not contracted with each other, under a certain state of facts, are regarded by the Roman law as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a similarity to a contract obligation, is therefore termed "*obligatio quasi ex contractu.*" Such a relation arises from the conducting of affairs without authority, (*negotiorum gestio;*) from the management of property that is in common when the community arose from casualty, (*communis incidens;*) from the payment of what was not due, (*solutio indebiti;*) from tutorship and curatorship; and from taking possession of an inheritance. Mackeld. Rom. Law, § 491.

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Obligationes quasi ex delicto. This class embraces all torts not coming under the denomination of "*delicta*," and not having a special form of action provided for them by law. They differed widely in character, and at common law would in some cases give rise to an action on the case; in others to an action on an implied contract. Ort. Inst. §§ 1781-1792.

O

OBLIGATION. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing. Civil Code Cal. § 1427; Civil Code Dak. § 798.

The binding power of a vow, promise, oath, or contract, or of law, civil, political, or moral, independent of a promise; that which constitutes legal or moral duty, and which renders a person liable to coercion and punishment for neglecting it. Webster.

"Obligation" is the correlative of "right." Taking the latter word in its politico-ethical sense, as a power of free action lodged in a person, "obligation" is the corresponding duty, constraint, or binding force which should prevent all other persons from denying, abridging, or obstructing such right, or interfering with its exercise. And the same is its meaning as the correlative of a "*jus in rem.*" Taking "right" as meaning a "*jus in personam*," (a power, demand, claim, or privilege inherent in one person, and incident upon another,) the "obligation" is the coercive force or control imposed upon the person of incidence by the moral law and the positive law, (or the moral law as recognized and sanctioned by the positive law,) constraining him to accede to the demand, render up the thing claimed, pay the money due, or otherwise perform what is expected of him with respect to the subject-matter of the right.

In a limited and arbitrary sense, it means a penal bond or "writing obligatory," that is, a bond containing a penalty, with a condition annexed for the payment of money or performance of covenants. Co. Litt. 172.

Obligation is (1) legal or moral duty, as opposed to physical compulsion; (2) a duty incumbent upon an individual, or a specific and limited number of individuals, as opposed to a duty imposed upon the world at large; (3) the right to enforce such a duty, (*jus in personam,*) as opposed to such a right as that of property, (*jus in rem,*) which avails against the world at large; (4) a bond containing a penalty, with a condition annexed, for the payment of money, performance of covenants, or the like. Mozley & Whitley.

In English expositions of the Roman law, and works upon general jurisprudence, "obligation" is used to translate the Latin "*obligatio.*" In this sense its meaning is much wider than as a technical term of English law. See OBLIGATIO.

Classification. The various sorts of obligations may be classified and defined as follows:

They are either *perfect* or *imperfect.* A perfect obligation is one recognized and sanctioned by positive law; one of which the fulfillment can be enforced by the aid of the law. But if the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called an "imperfect obligation," and creates no right of action, nor has it any legal operation. The duty of exercising gratitude, charity, and the other merely moral duties is an example of this kind of obligation. Civil Code La. art. 1757.

They are either *natural* or *civil.* A natural obligation is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to natural justice. A civil obligation is a legal tie, which gives the party with whom it is contracted the right of enforcing its performance by law. Civil Code La. art. 1757.

They are either *express* or *implied;* the former being those by which the obligor binds himself in express terms to perform his obligation; while the latter are such as are raised by the implication or inference of the law from the nature of the transaction.

They are *determinate* or *indeterminate;* the former being the case where the thing contracted to be delivered is specified as an individual; the latter, where it may be any one of a particular class or species.

They are *divisible* or *indivisible,* according as the obligation may or may not be lawfully broken into several distinct obligations without the consent of the obligor.

They are *joint* or *several;* the former, where there are two or more obligors binding themselves jointly for the performance of the obligation; the latter, where the obligors promise, each for himself, to fulfill the engagement.

They are *personal* or *real;* the former being the case when the obligor himself is personally liable for the performance of the engagement, but does not directly bind his property; the latter, where real estate, not the person of the obligor, is primarily liable for performance.

They are *heritable* or *personal.* The former is the case when the heirs and assigns of one party may enforce the performance against the heirs of the other; the latter, when the obligor binds himself only, not his heirs or representatives.

They are either *principal* or *accessory*. A principal obligation is one which is the most important object of the engagement of the contracting parties; while an accessory obligation depends upon or is collateral to the principal.

They may be either *conjunctive* or *alternative*. The former is one in which the several objects in it are connected by a copulative, or in any other manner which shows that all of them are severally comprised in the contract. This contract creates as many different obligations as there are different objects; and the debtor, when he wishes to discharge himself, may force the creditor to receive them separately. But where the things which form the object of the contract are separated by a disjunctive, then the obligation is *alternative*. A promise to deliver a certain thing or to pay a specified sum of money is an example of this kind of obligation. Civil Code La. art. 2063.

They are either *simple* or *conditional*. Simple obligations are such as are not dependent for their execution on any event provided for by the parties, and which are not agreed to become void on the happening of any such event. Conditional obligations are such as are made to depend on an uncertain event. If the obligation is not to take effect until the event happens, it is a suspensive condition; if the obligation takes effect immediately, but is liable to be defeated when the event happens, it is then a resolutory condition. Civil Code La. arts. 2020, 2021.

They may be either *single* or *penal;* the latter, when a penal clause is attached to the undertaking, to be enforced in case the obligor fails to perform; the former, when no such penalty is added.

OBLIGATION OF A CONTRACT. As used in Const. U. S. art. 1, § 10, the term means the binding and coercive force which constrains every man to perform the agreements he has made; a force grounded in the ethical principle of fidelity to one's promises, but deriving its legal efficacy from its recognition by positive law, and sanctioned by the law's providing a remedy for the infraction of the duty or for the enforcement of the correlative right. See Story, Const. § 1378; Black, Const. Prohib. § 139.

The obligation of a contract is that which obliges a party to perform his contract, or repair the injury done by a failure to perform. 4 Gilman, 277.

OBLIGATION SOLIDAIRE. This, in French law, corresponds to joint and several liability in English law, but is applied also to the joint and several rights of the creditors parties to the obligation.

OBLIGATORY. The term "writing obligatory" is a technical term of the law, and means a written contract under seal. 7 Yerg. 350.

OBLIGEE. The person in favor of whom some obligation is contracted, whether such obligation be to pay money or to do or not to do something. Code La. art. 3522, no. 11. The party to whom a bond is given.

OBLIGOR. The person who has engaged to perform some obligation. Code La. art. 3522, no. 12. One who makes a bond.

OBLIQUUS. Lat. In the old law of descents. Oblique; cross; transverse; collateral. The opposite of *rectus*, right, or upright.

In the law of evidence. Indirect; circumstantial.

OBLITERATION. Erasure or blotting out of written words.

Obliteration is not limited to effacing the letters of a will or scratching them out or blotting them so completely that they cannot be read. A line drawn through the writing is obliteration, though it may leave it as legible as it was before. 58 Pa. St. 244.

OBLOQUY. To expose one to "obloquy" is to expose him to censure and reproach, as the latter terms are synonymous with "obloquy." 70 Cal. 275, 11 Pac. Rep. 716.

OBRA. In Spanish law. Work. *Obras*, works or trades; those which men carry on in houses or covered places. White, New Recop. b. 1, tit. 5, c. 3, § 6.

OBREPTIO. Lat. The obtaining a thing by fraud or surprise. Calvin. Called, in Scotch law, "*obreption.*"

OBREPTION. Obtaining anything by fraud or surprise. Acquisition of escheats, etc., from the sovereign, by making false representations. Bell.

OBROGARE. Lat. In the civil law. To pass a law contrary to a former law, or to some clause of it; to change a former law in some part of it. Calvin.

OBROGATION. In the civil law. The alteration of a law by the passage of one inconsistent with it. Calvin.

N

OBSCENE. Lewd; impure; indecent; calculated to shock the moral sense of man by a disregard of chastity or modesty.

O

OBSCENITY. The character or quality of being obscene; conduct tending to corrupt the public morals by its indecency or lewdness.

OBSERVE. In the civil law. To perform that which has been prescribed by some law or usage. Dig. 1, 3, 32.

OBSES. In the law of war. A hostage. *Obsides*, hostages.

OBSIGNARE. In the civil law. To seal up: as money that had been tendered and refused.

OBSIGNATORY. Ratifying and confirming.

OBSOLESCENT. Becoming obsolete; going out of use; not entirely disused, but gradually becoming so.

OBSOLETE. Disused; neglected; not observed. The term is applied to statutes which have become inoperative by lapse of time, either because the reason for their enactment has passed away, or their subject-matter no longer exists, or they are not applicable to changed circumstances, or are tacitly disregarded by all men, yet without being expressly abrogated or repealed.

OBSTA PRINCIPIIS. Lat. Withstand beginnings; resist the first approaches or encroachments. "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be '*Obsta principiis.*'" Bradley, J., 116 U. S. 635, 6 Sup. Ct. Rep. 535.

OBSTANTE. Withstanding; hindering. See NON OBSTANTE.

OBSTRICTION. Obligation; bond.

OBSTRUCT. 1. To block up; to interpose obstacles; to render impassable; to fill with barriers or impediments; as to obstruct a road or way.

2. To impede or hinder; to interpose obstacles or impediments, to the hindrance or frustration of some act or service; as to obstruct an officer in the execution of his duty.

OBSTRUCTING PROCESS. In criminal law. The act by which one or more persons attempt to prevent or do prevent the execution of lawful process.

OBSTRUCTION. This is the word properly descriptive of an injury to any one's incorporeal hereditament, *e. g.*, his right to an easement, or *profit à prendre;* an alternative word being "disturbance." On the other hand, "infringement" is the word properly descriptive of an injury to any one's patent-rights or to his copyright. But "obstruction" is also a very general word in law, being applicable to every hindrance of a man in the discharge of his duty, (whether official, public, or private.) Brown.

Obtemperandum est consuetudini rationabili tanquam legi. 4 Coke, 38. A reasonable custom is to be obeyed as a law.

OBTEMPERARE. Lat. To obey. Hence the Scotch "*obtemper*," to obey or comply with a judgment of a court.

OBTEST. To protest.

OBTORTO COLLO. In Roman law. Taking by the neck or collar; as a plaintiff was allowed to drag a reluctant defendant to court. Adams, Rom. Ant. 242.

OBTULIT SE. (Offered himself.) In old practice. The emphatic words of entry on the record where one party *offered himself* in court against the other, and the latter did not appear. 1 Reeve, Eng. Law, 417.

OBVENTIO. Lat. In the civil law. Rent; profits; income; the return from an investment or thing owned; as the earnings of a vessel.

In old English law. The revenue of a spiritual living, so called. Also, in the plural, "offerings."

OCASION. In Spanish law. Accident. Las Partidas, pt. 3, tit. 32, l. 21; White, New Recop. b. 2, tit. 9, c. 2.

OCCASIO. A tribute which the lord imposed on his vassals or tenants for his necessity. Hindrance; trouble; vexation by suit.

OCCASIONARI. To be charged or loaded with payments or occasional penalties.

OCCASIONES. In old English law. Assarts. Spelman.

Occultatio thesauri inventi fraudulosa. 3 Inst. 133. The concealment of discovered treasure is fraudulent.

OCCUPANCY. Occupancy is a mode of acquiring property by which a thing which belongs to nobody becomes the property of the person who took possession of it, with

the intention of acquiring a right of ownership in it. Civil Code La. art. 3412.

The taking possession of things which before belonged to nobody, with an intention of appropriating them to one's own use.

"Possession" and "occupancy," when applied to land, are nearly synonymous terms, and may exist through a tenancy. Thus, occupancy of a homestead, such as will satisfy the statute, may be by means other than that of actual residence on the premises by the widow or child. 21 Ill. 178.

There is a use of the word in public-land laws, homesteadlaws, "occupying-claimant"laws, cases of landlord and tenant, and like connections, which seems to require the broader sense of possession, although there is, in most of these uses, a shade of meaning discarding any prior title as a foundation of right. Perhaps both uses or views may be harmonized, by saying that in jurisprudence occupancy or occupation is possession, presented independent of the idea of a chain of title, of any earlier owner. Or "occupancy" and "occupant" might be used for assuming property which has no owner, and "occupation" and "occupier" for the more general idea of possession. Judge Bouvier's definitions seem partly founded on such a distinction, and there are indications of it in English usage. It does not appear generally drawn in American books. Abbott.

In international law. The taking possession of a newly discovered or conquered country with the intention of holding and ruling it.

OCCUPANT. In a general sense. One who takes possession of a thing, of which there is no owner; one who has the actual possession or control of a thing.

In a special sense. One who takes possession of lands held *pur autre vie*, after the death of the tenant, and during the life of the *cestui que vie*.

Occupantis fiunt derelicta. Things abandoned become the property of the (first) occupant. 1 Pet. Adm. 53.

OCCUPARE. In the civillaw. To seize or take possession of; to enter upon a vacant possession; to take possession beforeanother. Calvin.

OCCUPATILE. That which has been left by the right owner, and is now possessed by another.

OCCUPATION. Possession; control; tenure; use.

In its usual sense "occupation" is where a person exercises physical control over land. Thus, thelessee of a house is in occupation of it so long as he has the power of entering into and staying there at pleasure, and of excluding all other persons (or all except one or more specified persons) from the use of it. Occupation is therefore the same thing as actual possession. Sweet.

The word "occupation," applied to real property, is, ordinarily, equivalent to "possession." In connection with other expressions, it may mean that the party should be living upon the premises; but, standing alone, it is satisfied by actual possession. 19 Cal. 683; 11 Abb. Pr. 97; 1 El. & El. 533.

A trade; employment; profession; business; means of livelihood.

OCCUPATIVE. Possessed; used; employed.

OCCUPAVIT. Lat. In old English law. A writ that lay for one who was ejected out of his land or tenement in time of war. Cowell.

OCCUPIER. An occupant; one who is in the enjoyment of a thing.

OCCUPY. To hold in possession; to hold or keep for use. 107 U. S. 343, 2 Sup. Ct. Rep. 677; 11 Johns. 214.

OCHIERN. In old Scotch law. A name of dignity; a freeholder. Skene de Verb. Sign.

OCHLOCRACY. Government by the multitude. A form of government wherein the populace has the whole power and administration in its own hands.

OCTAVE. In old English law. The eighth day inclusive after a feast; one of the return days of writs. 3 Bl. Comm. 278.

OCTO TALES. Eight such; eight such men; eight such jurors. The name of a writ, at common law, which issues when upon a trial at bar, *eight* more jurors are necessary to fill the panel, commanding the sheriff to summon the requisite number. 3 Bl. Comm. 364. See DECEM TALES.

OCTROI. Fr. In old French law. Originally, a duty, which, by the permission of the *seigneur*, any city was accustomed to collect on liquors and some other goods, brought within its precincts, for the consumption of the inhabitants. Afterwards appropriated to the use of the king. Steph. Lect. p. 361.

Oderunt peccare boni, virtutis amore; oderunt peccare mali, formidine pœnæ. Good men hate sin through love of virtue; bad men, through fear of punishment.

ODHAL. Complete property, as opposed to feudal tenure. The transposition of the syllables of "*odhal*" makes it "*allodh*," and hence, according to Blackstone, arises the word "*allod*" or "*allodial*," (*q. v.*) "*All-*

odh" is thus put in contradistinction to "*fee-odh*." Mozley & Whitley.

ODIO ET ATIA. A writ anciently called "*breve de bono et malo*," addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder were committed on just cause of suspicion, or only upon malice and ill will; and if, upon the inquisition, it were found that be was not guilty, then there issued another writ to the sheriff to bail him. Reg. Orig. 133.

Odiosa et inhonesta non sunt in lege præsumanda. Odious and dishonest acts are not presumed in law. Co. Litt. 78; 6 Wend. 228, 231; 18 N. Y. 295, 300.

Odiosa non præsumuntur. Odious things are not presumed. Burrows, Sett. Cas. 190.

ŒCONOMICUS. L. Lat. In old English law. The executor of a last will and testament. Cowell.

ŒCONOMUS. Lat. In the civil law. A manager or administrator. Calvin.

OF COUNSEL. A phrase commonly applied in practice to the counsel employed by a party in a cause.

OF COURSE. Any action or step taken in the course of judicial proceedings which will be allowed by the court upon mere application, without any inquiry or contest, or which may be effectually taken without even applying to the court for leave, is said to be "of course."

OF FORCE. In force; extant; not obsolete; existing as a binding or obligatory power.

OF NEW. A Scotch expression, closely translated from the Latin "*de novo*," (*q. v.*)

OF RECORD. Recorded; entered on the records; existing and remaining in or upon the appropriate records.

OFFA EXECRATA. In old English law. The morsel of execration; the corsned, (*q. v.*) 1 Reeve, Eng. Law, 21.

OFFENSE. A crime or misdemeanor; a breach of the criminal laws.

It is used as a *genus*, comprehending every crime and misdemeanor, or as a *species*, signifying a crime not indictable, but punishable summarily or by the forfeiture of a penalty.

OFFER. A proposal to do a thing. A proposal to make a contract. Also an attempt.

OFFERINGS. In English ecclesiastical law. Personal tithes, payable by custom to the parson or vicar of a parish, either occasionally, as at sacraments, marriages, churching of women, burials, etc., or at constant times, as at Easter, Christmas, etc.

OFFERTORIUM. In English ecclesiastical law. The offerings of the faithful, or the place where they are made or kept; the service at the time of the Communion.

OFFICE. "Office" is defined to be a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging, whether public, as those of magistrates, or private, as of bailiffs, receivers, or the like. 2 Bl. Comm. 36.

That function by virtue whereof a person has some employment in the affairs of another, whether judicial, ministerial, legislative, municipal, ecclesiastical, etc. Cowell.

An employment on behalf of the government in any station or public trust, not merely transient, occasional, or incidental. 20 Johns. 493.

The most frequent occasions to use the word arise with reference to a duty and power conferred on an individual by the government; and, when this is the connection, "public office" is a usual and more discriminating expression. But a power and duty may exist without immediate grant from government, and may be properly called an "office;" as the office of executor, the office of steward. Here the individual acts towards legatees or towards tenants in performance of a duty, and in exercise of a power not derived from their consent, but devolved on him by an authority which *quoad hoc* is superior. Abbott.

Offices may be classed as civil and military; and civil offices may be classed as political, judicial, and ministerial. Political offices are such as are not connected immediately with the administration of justice, or the execution of the mandates of a superior officer. Judicial are those which relate to the administration of justice. Ministerial are those which give the officer no power to judge of the matter to be done, and require him to obey the mandates of a superior. It is a general rule that a judicial office cannot be exercised by deputy, while a ministerial one may. 12 Ind. 569.

"Office" is frequently used in the old books as an abbreviation for "inquest of office," (*q. v.*)

OFFICE-BOOK. Any book for the record of official or other transactions, kept under authority of the state, in public offices not connected with the courts.

OFFICE-COPY. A copy or transcript of a deed or record or any filed document

made by the officer having it in custody or under his sanction, and by him sealed or certified.

OFFICE FOUND. In English law. Inquest of office found; the finding of certain facts by a jury on an inquest or inquisition of office. 3 Bl. Comm. 258, 259. This phrase has been adopted in American law. 2 Kent, Comm. 61.

OFFICE GRANT. A designation of a conveyance made by some officer of the law to effect certain purposes, where the owner is either unwilling or unable to execute the requisite deeds to pass the title; such, for example, as a tax-deed. 3 Washb. Real Prop. *537

OFFICE HOURS. That portion of the day during which public offices are usually open for the transaction of business.

OFFICE OF JUDGE. A criminal suit in an ecclesiastical court, not being directed to the reparation of a private injury, is regarded as a proceeding emanating from the office of the judge, and may be instituted by the mere motion of the judge. But, in practice, these suits are instituted by private individuals, with the permission of the judge or his surrogate; and the private prosecutor in any such case is, accordingly, said to "promote the office of the judge." Mozley & Whitley.

OFFICER. The incumbent of an office; one who is lawfully invested with an office. One who is charged by a superior power (and particularly by government) with the power and duty of exercising certain functions.

OFFICER DE FACTO. As distinguished from an officer *de jure*, this is the designation of one who is in the actual possession and administration of the office, under some colorable or apparent authority, although his title to the same, whether by election or appointment, is in reality invalid or at least formally questioned.

An officer *de facto* is one who exercises the duties of an office under color of right, by virtue of an appointment or election to that office; being distinguished, on the one hand, from a mere usurper of an office, and, on the other, from an officer *de jure*. 17 Conn. 585; 3 Bush, 14; 37 Me. 423; 48 Id. 79; 55 Pa. St. 468; 7 Jones, (N. C.) 107.

The true doctrine seems to be that it is sufficient if the officer holds the office under some power having color of authority to appoint; and that a statute, though it should be found repugnant to the constitution, will give such color. 21 Ohio St. 618.

An officer *de facto* is one whose acts, though he was not a lawful officer, the law, upon principle of policy and justice, will hold valid so far as they involve the public and third persons. 38 Conn 449.

A *de facto* officer is one who goes in under color of authority, or who exercises the duties of the office so long or under such circumstances as to raise a presumption of his right. 73 N. C. 546.

OFFICERS OF JUSTICE. A general name applicable to all persons connected with the administration of the judicial department of government, but commonly used only of the class of officers whose duty is to serve the process of the courts, such as sheriffs, constables, bailiffs, marshals, sequestrators, etc.

Officia judicialia non concedantur antequam vacent. 11 Coke, 4. Judicial offices should not be granted before they are vacant.

Officia magistratus non debent esse venalia. Co. Litt. 234. The offices of magistrates ought not to be sold.

OFFICIAL, *adj.* Pertaining to an office; invested with the character of an officer; proceeding from, sanctioned by, or done by, an officer.

OFFICIAL, *n.* An officer; a person invested with the authority of an office.

In the civil law. The minister or apparitor of a magistrate or judge.

In canon law. A person to whom a bishop commits the charge of his spiritual jurisdiction.

In common and statute law. The person whom the archdeacon substitutes in the execution of his jurisdiction. Cowell.

OFFICIAL ASSIGNEE. In English practice. An assignee in bankruptcy appointed by the lord chancellor to co-operate with the other assignees in administering a bankrupt's estate.

OFFICIAL BOND. A bond given by a public officer, conditioned that he shall well and faithfully perform all the duties of the office. The term is sometimes made to include the bonds of executors, guardians, trustees, etc.

OFFICIAL LIQUIDATOR. In English law. A person appointed by the judge in chancery, in whose court a joint-stock company is being wound up, to bring and defend suits and actions in the name of the company, and generally to do all things necessary for winding up the affairs of the com-

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pany, and distributing its assets. 3 Steph. Comm. 24.

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OFFICIAL LOG-BOOK. A log-book in a certain form, and containing certain specified entries required by 17 & 18 Vict. c. 104, §§ 280–282, to be kept by all British merchant ships, except those exclusively engaged in the coasting trade.

OFFICIAL MANAGERS. Persons formerly appointed, under English statutes now repealed, to superintend the winding up of insolvent companies under the control of the court of chancery. Wharton.

OFFICIAL OATH. One taken by an officer when he assumes charge of his office, whereby he declares that he will faithfully discharge the duties of the same, or whatever else may be required by statute in the particular case.

OFFICIAL PRINCIPAL. An ecclesiastical officer whose duty it is to hear causes between party and party as the delegate of the bishop or archbishop by whom he is appointed. He generally also holds the office of vicar general and (if appointed by a bishop) that of chancellor. The official principal of the province of Canterbury is called the "dean of arches." Phillim. Ecc. Law, 1203, et seq.; Sweet.

OFFICIAL SOLICITOR TO THE COURT OF CHANCERY. An officer in England whose functions are to protect the suitors' fund, and to administer, under the direction of the court, so much of it as now comes under the spending power of the court. He acts for persons suing or defending *in forma pauperis*, when so directed by the judge, and for those who, through ignorance or forgetfulness, have been guilty of contempt of court by not obeying process. He also acts generally as solicitor in all cases in which the chancery division requires such services. The office is transferred to the high court by the judicature acts, but no alteration in its name appears to have been made. Sweet.

OFFICIAL TRUSTEE OF CHARITY LANDS. The secretary of the English charity commissioners. He is a corporation sole for the purpose of taking and holding real property and leaseholds upon trust for an endowed charity in cases where it appears to the court desirable to vest them in him. He is a bare trustee, the possession and management of the land remaining in the persons acting in the administration of the charity Sweet.

OFFICIAL USE. An active use before the statute of uses, which imposed some duty on the legal owner or feofee to uses; as a conveyance to A. with directions for him to sell the estate and distribute the proceeds among B., C., and D. To enable A. to perform this duty, he had the legal possession of the estate to be sold. Wharton.

OFFICIALTY. The court or jurisdiction of which an official is head.

OFFICIARIIS NON FACIENDIS VEL AMOVENDIS. A writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, etc. Reg. Orig. 126.

OFFICINA JUSTITIÆ. The workshop or office of justice. The chancery was formerly so called.

OFFICIO, EX, OATH. An oath whereby a person may be obliged to make any presentment of any crime or offense, or to confess or accuse himself of any criminal matter or thing whereby he may be liable to any censure, penalty, or punishment. 3 Bl. Comm. 447.

OFFICIOUS WILL. A testament by which a testator leaves his property to his family. Sandars, Just. Inst. 207. See INOFFICIOUS TESTAMENT.

Officit conatus si effectus sequatur. The attempt becomes of consequence, if the effect follows. Jenk. Cent. 55.

Officium nemini debet esse damnosum. Office ought not to be an occasion of loss to any one. A maxim in Scotch law. Bell.

OIR. In Spanish law. To hear; to take cognizance. White, New Recop. b. 3, tit. 1, c. 7.

OKER. In Scotch law. Usury; the taking of interest for money, contrary to law. Bell.

OLD NATURA BREVIUM. The title of a treatise written in the reign of Edward III. containing the writs which were then most in use, annexing to each a short comment concerning their nature and the application of them, with their various properties and effects. 3 Reeve, Eng. Law, 152.

It is so called by way of distinction from the *New* Natura Brevium of Fitzherbert, and is generally cited as "O. N. B.," or as "Vet. Na. B.," using the abbreviated form of the Latin title.

OLD STYLE. The ancient calendar or method of reckoning time, whereby the year commenced on March 25th. It was superseded by the new style (that now in use) in most countries of Europe in 1582 and in England in 1752.

OLD TENURES. A treatise, so called to distinguish it from Littleton's book on the same subject, which gives an account of the various tenures by which land was bolden, the nature of estates, and some other incidents to landed property in the reign of Edward III. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work. 3 Reeve, Eng. Law, 151.

OLEOMARGARINE. An artificial imitation of butter, made chiefly from animal fats. Its sale is prohibited by statute in several states. See 114 Pa. St. 265, 7 Atl. Rep. 913; 127 U. S. 678, 8 Sup. Ct. Rep. 992, 1257; 63 Md. 596; 36 Minn. 69, 30 N. W. Rep. 308; 77 Mo. 110; 105 N. Y. 123, 11 N. E. Rep. 277; 64 N. H. 549, 15 Atl. Rep. 210.

OLERON, LAWS OF. A code of maritime laws published at the island of Oleron in the twelfth century by Eleanor of Guienne. They were adopted in England successively under Richard I., Henry III., and Edward III., and are often cited before the admiralty courts.

OLIGARCHY. A form of government wherein the administration of affairs is lodged in the hands of a few persons.

OLOGRAPH. An instrument (*e. g.*, a will) wholly written by the person from whom it emanates.

OLOGRAPHIC TESTAMENT. The olographic testament is that which is written by the testator himself. In order to be valid it must be entirely written, dated, and signed by the hand of the testator. It is subject to no other form, and may be made anywhere, even out of the state. Civil Code La. art. 1588; Civil Code Cal. § 1277.

OLYMPIAD. A Grecian epoch; the space of four years.

OME BUENO. In Spanish law. A good man; a substantial person. Las Partidas, pt. 5, tit. 13, l. 38.

Omissio eorum quæ tacite insunt nihil operatur. The omission of those things which are tacitly implied is of no consequence. 2 Bulst. 131.

OMISSIS OMNIBUS ALIIS NEGOTIIS. Lat. Laying aside all other businesses. 9 East, 347.

OMITTANCE. Forbearance; omission.

Omne actum ab intentione agentis est judicandum. Every act is to be judged by the intention of the doer. Branch, Princ.

Omne crimen ebrietas et incendit et detegit. Drunkenness both inflames (or aggravates) and reveals every crime. Co. Litt. 247*a*; 4 Bl. Comm. 26; Broom, Max. 17.

Omne jus aut consensus fecit, aut necessitas constituit aut firmavit consuetudo. Every right is either made by consent, or is constituted by necessity, or is established by custom. Dig. 1, 3, 40.

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius. Every worthier thing draws to it the less worthy, though the less worthy be the more ancient. Co. Litt. 355*b*.

Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur. Hob. 279. Every great example has some portion of evil, which is compensated by the public utility.

Omne majus continet in se minus. Every greater contains in itself the less. 5 Coke, 115*a*. The greater always contains the less. Broom, Max. 174.

Omne majus dignum continet in se minus dignum. Co. Litt. 43. The more worthy contains in itself the less worthy.

Omne majus minus in se complectitur. Every greater embraces in itself the less. Jenk. Cent. 208.

Omne principale trahit ad se accessorium. Every principal thing draws to itself the accessory. 17 Mass. 425; 1 Johns. 580.

Omne quod solo inædificatur solo cedit. Everything which is built upon the soil belongs to the soil. Dig. 47, 3, 1; Broom, Max. 401.

Omne sacramentum debet esse de certa scientia. Every oath ought to be of certain knowledge. 4 Inst. 279.

Omne testamentum morte consummatum est. 3 Coke, 29. Every will is completed by death.

Omnes actiones in mundo infra certa tempora habent limitationem. All actions in the world are limited within certain periods. Bract. fol. 52.

Omnes homines aut liberi sunt aut servi. All men are freemen or slaves. Inst. 1, 3, pr.; Fleta, l. 1, c. 1, § 2.

Omnes licentiam habere his quæ pro se indulta sunt, renunciare. [It is a rule of the ancient law that] all persons shall have liberty to renounce those privileges which have been conferred for their benefit. Cod. 1, 3, 51; Id. 2, 3, 29; Broom, Max. 699.

Omnes prudentes illa admittere solent quæ probantur iis qui in arte sua bene versati sunt. All prudent men are accustomed to admit those things which are approved by those who are well versed in the art. 7 Coke, 19.

Omnes sorores sunt quasi unus hæres de una hæreditate. Co. Litt. 67. All sisters are, as it were, one heir to one inheritance.

OMNI EXCEPTIONE MAJUS. 4 Inst. 262. Above all exception.

Omnia delicta in aperto leviora sunt. All crimes that are committed openly are lighter, [or have a less odious appearance than those committed secretly.] 8 Coke, 127*a*.

OMNIA PERFORMAVIT. He has done all. In pleading. A good plea in bar where all the covenants are in the affirmative. 1 Me. 189.

Omnia præsumuntur contra spoliatorem. All things are presumed against a despoiler or wrong-doer. A leading maxim in the law of evidence. Best, Ev. p. 340, § 303; Broom, Max. 938.

Omnia præsumuntur legitime facta donec probetur in contrarium. All things are presumed to be lawfully done, until proof be made to the contrary. Co. Litt. 232*b*; Best, Ev. p. 337, § 300.

Omnia præsumuntur rite et solemniter esse acta donec probetur in contrarium. All things are presumed to have been rightly and duly performed until it is proved to the contrary. Co. Litt. 232; Broom, Max. 944.

Omnia præsumuntur solemniter esse acta. Co. Litt. 6. All things are presumed to have been done rightly.

Omnia quæ jure contrahuntur contrario jure pereunt. Dig. 50, 17, 100. All things which are contracted by law perish by a contrary law.

Omnia quæ sunt uxoris sunt ipsius viri. All things which are the wife's are the husband's. Bract. fol. 32; Co. Litt. 112*a*. See 2 Kent, Comm. 130–143.

Omnia rite acta præsumuntur. All things are presumed to have been rightly done. Broom, Max. 944.

OMNIBUS AD QUOS PRÆSENTES LITERÆ PERVENERINT, SALUTEM. To all to whom the present letters shall come, greeting. A form of address with which charters and deeds were anciently commenced.

Omnis actio est loquela. Every action is a plaint or complaint. Co. Litt. 292*a*.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum. Every conclusion of a good and true judgment follows from good and true premises, and the verdicts of jurors. Co. Litt. 226*b*.

Omnis consensus tollit errorem. Every consent removes error. Consent always removes the effect of error. 2 Inst. 123.

Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit. Dig. 50, 17, 202. All definition in the civil law is hazardous, for there is little that cannot be subverted.

Omnis definitio in lege periculosa. All definition in law is hazardous. 2 Wood. Lect. 196.

Omnis exceptio est ipsa quoque regula. Every exception is itself also a rule.

Omnis indemnatus pro innoxis legibus habetur. Every uncondemned person is held by the law as innocent. Lofft, 121.

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation occasions more harm by its novelty than benefit by its utility. 2 Bulst. 338; Broom, Max. 147.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. Jenk. Cent. 96. Every interpretation, if it can be done, is to be so made in instruments that all contradictions may be removed.

Omnis interpretatio vel declarat, vel extendit, vel restringit. Every interpretation either declares, extends, or restrains.

Omnis nova constitutio futuris formam imponere debet, non præteritis. Every new statute ought to prescribe a form to future, not to past, acts. Bract. fol. 228; 2 Inst. 95.

Omnis persona est homo, sed non vicissim. Every person is a man, but not every man a person. Calvin.

Omnis privatio præsupponit habitum. Every privation presupposes a former enjoyment. Co. Litt. 339*a*. A "rule of philosophie" quoted by Lord Coke, and applied to the discontinuance of an estate.

Omnis querela et omnis actio injuriarum limita est infra certa tempora. Co. Litt. 114*b*. Every plaint and every action for injuries is limited within certain times.

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur. Every ratification relates back and is equivalent to a prior authority. Broom, Max. 757, 871; Chit. Cont. 196.

Omnis regula suas patitur exceptiones. Every rule is liable to its own exceptions.

OMNIUM. In mercantile law. A term used to express the aggregate value of the different stock in which a loan is usually funded. Tomlins.

Omnium contributione sarciatur quod pro omnibus datum est. 4 Bing. 121. That which is given for all is recompensed by the contribution of all. A principle of the law of general average.

Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta. There may be an abuse of everything of which there is a use, virtue only excepted. Dav. Ir. K. B. 79.

ON ACCOUNT. In part payment; in partial satisfaction of an account. The phrase is usually contrasted with "in full."

ON ACCOUNT OF WHOM IT MAY CONCERN. When a policy of insurance expresses that the insurance is made "on account of whom it may concern," it will cover all persons having an insurable interest in the subject-matter at the date of the policy and who were then contemplated by the party procuring the insurance. 2 Pars. Mar. Law, 30.

ON CALL. There is no legal difference between an obligation payable "when demanded" or "on demand" and one payable "on call" or "at any time called for." In each case the debt is payable immediately 22 Grat. 609.

ON CONDITION. These words may be construed to mean "on the terms," in order to effectuate the intention of parties. 4 Watts & S. 302.

ON DEFAULT. In case of default; upon failure of stipulated action or performance; upon the occurrence of a failure, omission, or neglect of duty.

ON DEMAND. A promissory note payable "on demand" is a present debt, and is payable without any demand. 2 Mees. & W. 461; 39 Me. 494.

ON FILE. Filed; entered or placed upon the files; existing and remaining upon or among the proper files.

ON OR ABOUT. A phrase used in reciting the date of an occurrence or conveyance, to escape the necessity of being bound by the statement of an exact date.

ON OR BEFORE. These words, inserted in a stipulation to do an act or pay money, entitle the party stipulating to perform at any time before the day; and upon performance, or tender and refusal, he is immediately vested with all the rights which would have attached if performance were made on the day. 6 J. J. Marsh. 156.

Once a fraud, always a fraud. 13 Vin. Abr. 539.

ONCE A MORTGAGE, ALWAYS A MORTGAGE. This rule signifies that an instrument originally intended as a mortgage, and not a deed, cannot be converted into anything else than a mortgage by any subsequent clause or agreement.

Once a recompense, always a recompense. 19 Vin. Abr. 277.

ONCE IN JEOPARDY. A phrase used to express the condition of a person charged with crime, who has once already, by legal proceedings, been put in danger of conviction and punishment for the same offense.

Once quit and cleared, ever quit and cleared. (Scotch, anis quit and clenged, ay quit and clenged.) Skene, de Verb. Sign. voc. "Iter.," ad fin.

ONCUNNE. Accused. Du Cange.

ONE HUNDRED THOUSAND POUNDS CLAUSE. A precautionary stipulation inserted in a deed making a good tenant to the *præcipe* in a common recovery. See 1 Prest. Conv. 110.

ONE-THIRD NEW FOR OLD. See NEW FOR OLD.

ONERANDO PRO RATA PORTIONIS. A writ that lay for a joint tenant or tenant in common who was distrained for more rent than his proportion of the land comes to. Reg. Orig. 182.

ONERARI NON. In pleading. The name of a plea, in an action of debt, by which the defendant says that he ought not to be charged.

ONERATIO. A lading; a cargo.

ONERATUR NISI. See O. NI.

ONERIS FERENDI. Lat. In the civil law. The servitude of support; a servitude by which the wall of a house is required to sustain the wall or beams of the adjoining house.

ONEROUS. A contract, lease, share, or other right is said to be "onerous" when the obligations attaching to it counter-balance or exceed the advantage to be derived from it, either absolutely or with reference to the particular possessor. Sweet.

ONEROUS CAUSE. In Scotch law. A good and legal consideration.

ONEROUS CONTRACT. In the civil law this term designates a contract based upon any consideration given or promised, however trifling or inconsiderable such consideration may be. Civil Code La. art. 1767.

ONEROUS DEED. In Scotch law. A deed given for a valuable consideration. Bell.

ONEROUS GIFT. A gift made subject to certain charges imposed by the donor on the donee.

ONOMASTIC. A term applied to the signature of an instrument, the body of which is in a different handwriting from that of the signature. Best, Ev. 315.

ONUS. Lat. A burden or load; a weight. The lading, burden, or cargo of a vessel. A charge; an incumbrance. *Cumonere*, (*q.v.*,) with the incumbrance.

ONUS EPISCOPALE. Ancient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, etc.

ONUS IMPORTANDI. The charge of importing merchandise, mentioned in St. 12 Car. II. c. 28.

ONUS PROBANDI. Lat. Burden of proving; the burden of proof. The strict meaning of the term "*onus probandi*" is that, if no evidence is adduced by the party on whom the burden is cast, the issue must be found against him. 1 Houst. 44.

OPE CONSILIO. Lat. By aid and counsel. A civil law term applied to accessaries, similar in import to the "aiding and abetting" of the common law. Often written "*ope et consilio.*" Burrill.

OPEN. 1. To open a case is to begin it; to make an initiatory explanation of its features to the court, jury, referee, etc., by outlining the nature of the transaction on which it is founded, the questions involved, and the character and general course of the evidence to be adduced.

2. To open a court is to make a formal announcement, usually by the crier, that its session has now begun, and that the business before the court will be proceeded with.

3. To open a legal document, *e. g.*, a deposition, is to break the seals by which it was secured, and lay it open to view, or to bring it into court ready for use.

4. To open a judgment, decree, or similar act of a court is to lift the bar of finality which it imposes, so as to allow a party who is entitled to such relief to proceed to a re-examination of the merits.

5. To open a street or highway is to establish it and make it available to public travel.

6. To open a rule or order is to revoke the action by which it was made final or absolute, and give an opportunity to show cause against it.

7. To open bids received on a judicial sale of property is to reject or cancel them for fraud or other cause, and direct a resale.

OPEN ACCOUNT. An account which has not been finally settled or closed, but is still running or open to future adjustment or liquidation.

Open account, in legal as well as in ordinary language, means an indebtedness subject to future adjustment, and which may be reduced or modified by proof. 1 Ga. 275.

OPEN A CREDIT. To accept or pay the draft of a correspondent who has not furnished funds. Pardessus, no. 296.

OPEN CORPORATION. One in which all the citizens or corporators have a vote in

the election of the officers of the corporation. 3 Bland, 416. note.

OPEN COURT. This term may mean either a court which has been formally convened and declared open for the transaction of its proper judicial business, or a court which is freely open to the approach of all decent and orderly persons in the character of spectators.

OPEN DOORS. In Scotch law. "Letters of open doors" are process which empowers the messenger, or officer of the law, to break open doors of houses or rooms in which the debtor has placed his goods. Bell.

OPEN FIELDS, or MEADOWS. In English law. Fields which are undivided, but belong to separate owners; the part of each owner is marked off by boundaries until the crop has been carried off, when the pasture is shared promiscuously by the joint herd of all the owners. Elton, Commons, 31; Sweet.

OPEN INSOLVENCY. The condition of one who has no property, within the reach of the law, applicable to the payment of any debt. 8 Blackf. 305.

OPEN LAW. The making or waging of law. Magna Charta, c. 21.

OPEN POLICY. In marine insurance. One in which the value of the subject insured is not fixed or agreed upon in the policy, as between the assured and the underwriter, but is left to be estimated in case of loss. The term is opposed to "valued policy," in which the value of the subject insured is fixed for the purpose of the insurance, and expressed on the face of the policy. Mozley & Whitley.

OPEN THEFT. In Saxon law. The same with the Latin "*furtum manifestum*," (*q. v.*)

OPENING. In American practice. The beginning; the commencement; the first address of the counsel.

OPENING A COMMISSION. An entering upon the duties under a commission, or commencing to act under a commission, is so termed. Thus, the judges of assize and *nisi prius* derive their authority to act under or by virtue of commissions directed to them for that purpose; and, when they commence acting under the powers so committed to them, they are said to open the commissions; and the day on which they so commence their proceedings is thence termed the "commission day of the assizes." Brown.

OPENING A JUDGMENT. The act of the court in so far relaxing the finality and conclusiveness of a judgment as to allow a re-examination of the case on which it was rendered. This is done at the instance of a party showing good cause why the execution of the judgment would be inequitable. It so far annuls the judgment as to prevent its enforcement until the final determination upon it, but does not in the mean time release its lien upon real estate.

OPENING A RULE. The act of restoring or recalling a rule which has been made absolute to its conditional state, as a rule *nisi*, so as to readmit of cause being shown against the rule. Thus, when a rule to show cause has been made absolute under a mistaken impression that no counsel had been instructed to show cause against it, it is usual for the party at whose instance the rule was obtained to consent to have the rule opened, by which all the proceedings subsequent to the day when cause ought to have been shown against it are in effect nullified, and the rule is then argued in the ordinary way. Brown.

OPENING BIDDINGS. In equity practice. The allowance by a court, on sufficient cause shown, of a resale of property once sold under a decree.

OPENING THE PLEADINGS. Stating briefly at a trial before a jury the substance of the pleadings. This is done by the junior counsel for the plaintiff at the commencement of the trial.

OPENTIDE. The time after corn is carried out of the fields.

OPERA. A composition of a dramatic kind, set to music and sung, accompanied with musical instruments, and enriched with appropriate costumes, scenery, etc. The house in which operas are represented is termed an "opera-house." 1 Pittsb. R. 71.

OPERARII. Such tenants, under feudal tenures, as held some little portions of land by the duty of performing bodily labor and servile works for their lord.

OPERATIO. One day's work performed by a tenant for his lord.

OPERATION OF LAW. This term expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular

N transaction of the established rules of law, without the act or co-operation of the party himself.

OPERATIVE. A workman; a laboring man; an artisan; particularly one employed in factories.

OPERATIVE PART. That part of a conveyance, or of any instrument intended for the creation or transference of rights, by which the main object of the instrument is carried into effect. It is distinguished from introductory matter, recitals, formal conclusion, etc.

OPERATIVE WORDS, in a deed or lease, are the words which effect the transaction intended to be consummated by the instrument.

OPERIS NOVI NUNTIATIO. In the civil law. A protest or warning against [of] a new work. Dig. 39, 1.

OPETIDE. The ancient time of marriage, from Epiphany to Ash-Wednesday.

Opinio est duplex, scilicet, opinio vulgaris, orta inter graves et discretos, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis. 4 Coke, 107. Opinion is of two kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth, and opinion which springs up only among light and foolish men, without the semblance of truth.

Opinio quæ favet testamento est tenenda. The opinion which favors a will is to be followed. 1 W. Bl. 13, arg.

OPINION. 1. In the law of evidence, opinion is an inference or conclusion drawn by a witness from facts some of which are known to him and others assumed, or drawn from facts which, though lending probability to the inference, do not evolve it by a process of absolutely necessary reasoning.

An inference necessarily involving certain facts may be stated without the facts, the inference being an equivalent to a specification of the facts; but, when the facts are not necessarily involved in the inference (*e. g.*, when the inference may be sustained upon either of several distinct phases of fact, neither of which it necessarily involves,) then the facts must be stated. Whart. Ev. § 510.

2. A document prepared by an attorney for his client, embodying his understanding of the law as applicable to a state of facts submitted to him for that purpose.

3. The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based.

Oportet quod certa res deducatur in donationem. It is necessary that a certain thing be brought into the gift, or made the subject of the conveyance. Bract. fol. 15*b*.

Oportet quod certa res deducatur in judicium. Jenk. Cent. 84. A thing certain must be brought to judgment.

Oportet quod certa sit res quæ venditur. It is necessary that there should be a certain thing which is sold. To make a valid sale, there must be certainty as to the thing which is sold. Bract. fol. 61*b*.

Oportet quod certæ personæ, terræ, et certi status comprehendantur in declaratione usuum. 9 Coke, 9. It is necessary that given persons, lands, and estates should be comprehended in a declaration of uses.

OPPIGNERARE. Lat. In the civil law. To pledge. Calvin.

OPPOSER. An officer formerly belonging to the green-wax in the exchequer.

OPPOSITE. An old word for "opponent."

OPPOSITION. In bankruptcy practice. Opposition is the refusal of a creditor to assent to the debtor's discharge under the bankrupt law.

In French law. A motion to open a judgment by default and let the defendant in to a defense.

OPPRESSION. The misdemeanor committed by a public officer, who, under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury. 1 Russ. Crimes, 297; Steph. Dig. Crim. Law, 71.

OPPRESSOR. A public officer who unlawfully uses his authority by way of oppression, (*q. v.*)

OPPROBRIUM. In the civil law. Ignominy; infamy; shame.

Optima est legis interpres consuetudo. Custom is the best interpreter of the law. Dig. 1, 3, 37; Lofft, 237; Broom, Max. 931.

Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi. That law is the best which

leaves least to the discretion of the judge; that judge is the best who leaves least to his own. Bac. Aphorisms, 46; 2 Dwar. St. 782. That system of law is best which confides as little as possible to the discretion of the judge; that judge the best who relies as little as possible on his own opinion. Broom, Max. 84; 1 Kent. Comm. 478.

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. The best interpreter of a statute is (all its parts being considered) the statute itself. 8 Coke, 117*b*; Wing. Max. p. 239, max. 68.

OPTIMACY. Nobility; men of the highest rank.

Optimam esse legem, quæ minimum relinquit arbitrio judicis; id quod certitudo ejus præstat. That law is the best which leaves the least discretion to the judge; and this is an advantage which results from its certainty. Bac. Aphorisms, 8.

Optimus interpres rerum usus. Use or usage is the best interpreter of things. 2 Inst. 282; Broom, Max. 917, 930, 931.

Optimus interpretandi modus est sic leges interpretari ut leges legibus concordant. 8 Coke, 169. The best mode of interpretation is so to interpret laws that they may accord with each other.

Optimus legum interpres consuetudo. 4 Inst. 75. Custom is the best interpreter of the laws.

OPTION. In English ecclesiastical law. A customary prerogative of an archbishop, when a bishop is consecrated by him, to name a clerk or chaplain of his own to be provided for by such suffragan bishop; in lieu of which it is now usual for the bishop to make over by deed to the archbishop, his executors and assigns, the next presentation of such dignity or benefice in the bishop's disposal within that see, as the archbishop himself shall *choose*, which is therefore called his "option." 1 Bl. Comm. 381; 3 Steph. Comm. 63, 64; Cowell.

In contracts. An option is a privilege existing in one person, for which he has paid money, which gives him the right to *buy* certain merchandise or certain specified securities from another person, if he chooses, at any time within an agreed period, at a fixed price, or to *sell* such property to such other person at an agreed price and time. If the option gives the choice of buying or not buying, it is denominated a "call." If it gives the choice of selling or not, it is called a "put." If it is a combination of both these, and gives the privilege of *either* buying or selling or not, it is called a "straddle" or a "spread eagle." These terms are used on the stock-exchange.

OPTIONAL WRIT. In old English practice. That species of original writ, otherwise called a "*præcipe*," which was framed in the alternative, commanding the defendant to do the thing required, *or* show the reason wherefore he had not done it. 3 Bl. Comm. 274.

OPUS. Lat. Work; labor; the product of work or labor.

OPUS LOCATUM. The product of work let for use to another; or the hiring out of work or labor to be done upon a thing.

OPUS MANIFICUM. In old English law. Labor done by the hands; manual labor; such as making a hedge, digging a ditch. Fleta, lib. 2, c. 48, § 3.

OPUS NOVUM. In the civil law. A new work. By this term was meant something newly built upon land, or taken from a work already erected. He was said *opus novum facere* (to make a new work) who, either by building or by taking anything away, changed the former appearance of a work. Dig. 39, 1, 1, 11.

OR. A term used in heraldry, and signifying gold; called "sol" by some heralds when it occurs in the arms of princes, and "topaz" or "carbuncle" when borne by peers. Engravers represent it by an indefinite number of small points. Wharton.

ORA. A Saxon coin, valued at sixteen pence, and sometimes at twenty pence.

ORACULUM. In the civil law. The name of a kind of response or sentence given by the Roman emperors.

ORAL. Uttered by the mouth or in words; spoken, not written.

ORAL PLEADING. Pleading by word of mouth, in the actual presence of the court. This was the ancient mode of pleading in England, and continued to the reign of Edward III. Steph. Pl. 23–26.

ORANDO PRO REGE ET REGNO. An ancient writ which issued, while there was no standing collect for a sitting parliament, to pray for the peace and good government of the realm.

ORANGEMEN. A party in Ireland who keep alive the views of William of Orange. Wharton.

ORATOR. The plaintiff in a cause or matter in chancery, when addressing or petitioning the court, used to style himself "orator," and, when a woman, "oratrix." But these terms have long gone into disuse, and the customary phrases now are "plaintiff" or "petitioner."

In Roman law, the term denoted an advocate.

ORATRIX. A female petitioner; a female plaintiff in a bill in chancery was formerly so called.

ORBATION. Deprivation of one's parents or children, or privation in general. Little used.

ORCINUS LIBERTUS. Lat. In Roman law. A freedman who obtained his liberty by the direct operation of the will or testament of his deceased master was so called, being the freedman of the deceased, (*orcinus*,) not of the *hæres*. Brown.

ORDAIN. To institute or establish; to make an ordinance; to enact a constitution or law.

ORDEAL. The most ancient species of trial, in Saxon and old English law, being peculiarly distinguished by the appellation of "*judicium Dei*," or judgment of God, it being supposed that supernatural intervention would rescue an innocent person from the danger of physical harm to which he was exposed in this species of trial. The ordeal was of two sorts,—either fire ordeal or water ordeal; the former being confined to persons of higher rank, the latter to the common people. 4 Bl. Comm. 342.

ORDEFFE, or ORDELFE. A liberty whereby a man claims the ore found in his own land; also, the ore lying under land. Cowell.

ORDELS. In old English law. The right of administering oaths and adjudging trials by ordeal within a precinct or liberty. Cowell.

ORDENAMIENTO. In Spanish law. An order emanating from the sovereign, and differing from a *cedula* only in form and in the mode of its promulgation. Schm. Civil Law, Introd. 93, note.

ORDENAMIENTO DE ALCALA. A collection of Spanish law promulgated by the Cortes in the year 1348. Schm. Civil Law, Introd. 75.

ORDER. In a general sense. A mandate, precept; a command or direction authoritatively given; a rule or regulation.

The distinction between "order" and "requisition" is that the first is a mandatory act, the latter a request. 19 Johns. 7.

In practice. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an "order." An application for an order is a motion. Code Civil Proc. Cal. § 1003; Code N. Y. § 400.

Orders are also issued by subordinate legislative authorities. Such are the English orders in council, or orders issued by the privy council in the name of the queen, either in exercise of the royal prerogative or in pursuance of an act of parliament. The rules of court under the judicature act are grouped together in the form of orders, each order dealing with a particular subject-matter. Sweet.

An order is also an informal bill of exchange or letter of request whereby the party to whom it is addressed is directed to pay or deliver to a person therein named the whole or part of a fund or other property of the person making the order, and which is in the possession of the drawee.

It is further a designation of the person to whom a bill of exchange or negotiable promissory note is to be paid.

It is also used to designate a rank, class, or division of men; as the order of nobles, order of knights, order of priests, etc.

In French law. The name order (*ordre*) is given to the operation which has for its object to fix the rank of the preferences claimed by the creditors in the distribution of the price [arising from the sale] of an immovable affected by their liens. Dalloz, *mot* "Ordre."

ORDER AND DISPOSITION of goods and chattels. When goods are in the "order and disposition" of a bankrupt, they go to his trustee, and have gone so since the time of James I. Wharton.

ORDER NISI. A provisional or conditional order, allowing a certain time within which to do some required act, on failure of which the order will be made absolute.

ORDER OF DISCHARGE. In England. An order made under the bankruptcy act of 1869, by a court of bankruptcy, the effect of which is to discharge a bankrupt from all debts, claims, or demands provable under the bankruptcy.

ORDER OF FILIATION. An order made by a court or judge having jurisdiction, fixing the paternity of a bastard child upon a given man, and requiring him to provide for its support.

ORDER OF REVIVOR. In English practice. An order as of course for the continuance of an abated suit. It superseded the bill of revivor.

ORDERS. The directions as to the course and purpose of a voyage given by the owner of the vessel to the captain or master. For other meanings, see ORDER.

ORDERS OF THE DAY. Any member of the English house of commons who wishes to propose any question, or to "move the house," as it is termed, must, in order to give the house due notice of his intention, state the form or nature of his motion on a previous day, and have it entered in a book termed the "order-book;" and the motions so entered, the house arranges, shall be considered on particular days, and such motions or matters, when the day arrives for their being considered, are then termed the "orders of the day." Brown. A similar practice obtains in the legislative bodies of this country.

ORDINANCE. A rule established by authority; a permanent rule of action; a law or statute. In a more limited sense, the term is used to designate the enactments of the legislative body of a municipal corporation.

Strictly, a bill or law which might stand with the old law, and did not alter any statute in force at the time, and which became complete by the royal assent on the *parliament roll*, without any entry on the *statute roll*. A bill or law which might at any time be amended by the parliament, without any statute. Hale, Com. Law. An ordinance was otherwise distinguished from a statute by the circumstance that the latter required the threefold assent of king, lords, and commons, while an ordinance might be ordained by one or two of these constituent bodies. See 4 Inst. 25.

The name has also been given to certain enactments, more general in their character than ordinary statutes, and serving as organic laws, yet not exactly to be called "constitutions." Such was the "Ordinance for the government of the North-West Territory," enacted by congress in 1787.

ORDINANCE OF THE FOREST. In English law. A statute made touching matters and causes of the forest. 33 & 34 Edw. I.

ORDINANDI LEX. The law of procedure, as distinguished from the substantial part of the law.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter deputationem. Co. Litt. 96. The ordinary is so called because he has an ordinary jurisdiction in his own right, and not a deputed one.

ORDINARY. At common law. One who has exempt and immediate jurisdiction in causes ecclesiastical. Also a bishop; and an archbishop is the ordinary of the whole province, to visit and receive appeals from inferior jurisdictions. Also a commissary or official of a bishop or other ecclesiastical judge having judicial power; an archdeacon; officer of the royal household. Wharton.

In American law. A judicial officer, in several of the states, clothed by statute with powers in regard to wills, probate, administration, guardianship, etc.

In Scotch law. A single judge of the court of session, who decides with or without a jury, as the case may be. Brande.

In the civil law. A judge who has authority to take cognizance of causes in his own right, and not by deputation.

ORDINARY CARE. That degree of care which persons of ordinary care and prudence are accustomed to use and employ, under the same or similar circumstances, in order to conduct the enterprise in which they are engaged to a safe and successful termination, having due regard to the rights of others and the objects to be accomplished. 8 Ohio St. 581.

The phrase "ordinary care" is equivalent to reasonable care, and necessarily involves the idea that such care was to be used as a reasonable person, under like circumstances, would adopt to avoid an accident. 3 Allen, 39. See, also, 25 Ind. 185; 6 Duer, 633; 28 Vt. 458; 23 Conn. 443.

ORDINARY CONVEYANCES. Those deeds of transfer which are entered into between two or more persons, without an assurance in a superior court of justice. Wharton.

ORDINARY DILIGENCE is that degree of care which men of common prudence generally exercise in their affairs, in the country and the age in which they live. 3 Brewst. 9.

ORDINARY NEGLECT or NEGLIGENCE. The omission of that care which a man of common prudence usually takes of

his own concerns. 1 Edw. Ch. 513, 543. See 24 N. Y. 181.

ORDINARY OF ASSIZE AND SESSIONS. In old English law. A deputy of the bishop of the diocese, anciently appointed to give malefactors their neck-verses, and judge whether they read or not; also to perform divine services for them, and assist in preparing them for death. Wharton.

ORDINARY OF NEWGATE. The clergyman who is attendant upon condemned malefactors in that prison to prepare them for death; he records the behavior of such persons. Formerly it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal. Wharton.

ORDINARY SKILL in an art, means that degree of skill which men engaged in that particular art usually employ; not that which belongs to a few men only, of extraordinary endowments and capacities. 20 Pa. St. 130; 11 Mees. & W. 113; 20 Mart. (La.) 75.

ORDINATION is the ceremony by which a bishop confers on a person the privileges and powers necessary for the execution of sacerdotal functions in the church. Phillim. Ecc. Law, 110.

ORDINATIONE CONTRA SERVIENTES. A writ that lay against a servant for leaving his master contrary to the ordinance of St. 23 & 24 Edw. III. Reg. Orig. 189.

ORDINATUM EST. In old practice. It is ordered. The initial words of rules of court when entered in Latin.

Ordine placitandi servato, servatur et jus. When the order of pleading is observed, the law also is observed. Co. Litt. 303*a*; Broom, Max. 188.

ORDINES. A general chapter or other solemn convention of the religious of a particular order.

ORDINES MAJORES ET MINORES. In ecclesiastical law. The holy orders of priest, deacon, and subdeacon, any of which qualified for presentation and admission to an ecclesiastical dignity or cure were called "*ordines majores*;" and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte were called "*ordines minores*." Persons ordained to the *ordines minores* had their *prima tonsura*, different from the *tonsura clericalis*. Cowell.

ORDINIS BENEFICIUM. Lat. In the civil law. The benefit or privilege of order; the privilege which a surety for a debtor had of requiring that his principal should be discussed, or thoroughly prosecuted, before the creditor could resort to him. Nov. 4, c. 1; Heinecc. Elem. lib. 3, tit. 21, § 883.

ORDINUM FUGITIVI. In old English law. Those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations. Paroch. Antiq. 388.

ORDO. Lat. That rule which monks were obliged to observe. Order; regular succession. An order of a court.

ORDO ALBUS. The white friars or Augustines. Du Cange.

ORDO ATTACHIAMENTORUM. In old practice. The order of attachments. Fleta, lib. 2, c. 51, § 12.

ORDO GRISEUS. The gray friars, or order of Cistercians. Du Cange.

ORDO JUDICIORUM. In the canon law. The order of judgments; the rule by which the due course of hearing each cause was prescribed. 4 Reeve, Eng. Law, 17.

ORDO NIGER. The black friars, or Benedictines. The Cluniacs likewise were black. Du Cange.

ORE-LEAVE. A license or right to dig and take ore from land. 84 Pa. St. 340.

ORE TENUS. By word of mouth; orally. Pleading was anciently carried on *ore tenus*, at the bar of the court. 3 Bl. Comm. 293.

ORFGILD. In Saxon law. The price or value of a beast. A payment for a beast. The payment or forfeiture of a beast. A penalty for taking away cattle. Spelman.

ORGANIC LAW. The fundamental law, or constitution, of a state or nation, written or unwritten; that law or system of laws or principles which defines and establishes the organization of its government.

ORGANIZE. To establish or furnish with organs; to systematize; to put into working order; to arrange in order for the normal exercise of its appropriate functions.

The word "organize," as used in railroad and other charters, ordinarily signifies the choice and qualification of all necessary officers for the transaction of the business of the corporation. This is usually done after

all the capital stock has been subscribed for. 38 Conn. 66.

ORGILD. In Saxon law. Without recompense; as where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain. Spelman.

ORIGINAL. Primitive; first in order; bearing its own authority, and not deriving authority from an outside source; as *original* jurisdiction, *original* writ, etc. As applied to documents, the original is the first copy or archetype; that from which another instrument is transcribed, copied, or imitated.

ORIGINAL AND DERIVATIVE ESTATES. An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent. Prest. Est. 125.

ORIGINAL BILL. In equity pleading. A bill which relates to some matter not before litigated in the court by the same persons standing in the same interests. Mitf. Eq. Pl. 33.

In old practice. The ancient mode of commencing actions in the English court of king's bench. See BILL.

ORIGINAL CHARTER. In Scotch law. One by which the first grant of land is made. On the other hand, a charter by progress is one renewing the grant in favor of the heir or singular successor of the first or succeeding vassals. Bell.

ORIGINAL CONVEYANCES. Those conveyances at common law, otherwise termed "primary," by which a benefit or estate is created or first arises; comprising feoffments, gifts, grants, leases, exchanges, and partitions. 2 Bl. Comm. 309.

ORIGINAL ENTRY. The first entry of an item of an account made by a trader or other person in his account-books, as distinguished from entries posted into the ledger or copied from other books.

ORIGINAL JURISDICTION. Jurisdiction in the first instance; jurisdiction to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts. Distinguished from *appellate* jurisdiction.

ORIGINAL PROCESS. That by which a judicial proceeding is instituted; process to compel the appearance of the defendant. Distinguished from "mesne" process, which issues, during the progress of a suit, for some subordinate or collateral purpose; and from "final" process, which is process of execution.

ORIGINAL WRIT. In English practice. An original writ was the process formerly in use for the commencement of personal actions. It was a mandatory letter from the king, issuing out of chancery, sealed with the great seal, and directed to the sheriff of the county wherein the injury was committed, or was supposed to have been committed, requiring him to command the wrong-doer or accused party either to do justice to the plaintiff or else to appear in court and answer the accusation against him. This writ is now disused, the writ of summons being the process prescribed by the uniformity of process act for commencing personal actions; and under the judicature act, 1873, all suits, even in the court of chancery, are to be commenced by such writs of summons. Brown.

ORIGINALIA. In English law. Transcripts sent to the remembrancer's office in the exchequer out of the chancery, distinguished from *recorda*, which contain the judgments and pleadings in actions tried before the barons.

Origine propria neminem posse voluntate sua eximi manifestum est. It is evident that no one is able of his own pleasure, to do away with his proper origin. Code 10, 38, 4; Broom, Max. 77.

Origo rei inspici debet. The origin of a thing ought to be regarded. Co. Litt. 248*b*.

ORNEST. In old English law. The trial by battle, which does not seem to have been usual in England before the time of the Conqueror, though originating in the kingdoms of the north, where it was practiced under the name of "*holmgang*," from the custom of fighting duels on a small island or *holm*. Wharton.

ORPHAN. A minor or infant who has lost both (or one) of his or her parents. More particularly, a fatherless child. 33 Pa. St. 9.

ORPHANAGE PART. That portion of an intestate's effects which his children were entitled to by the custom of London. This custom appears to have been a remnant of what was once a general law all over Eng-

OUT OF THE STATE. Beyond sea, (which title see.)

OUT OF TIME. A mercantile phrase applied to a ship or vessel that has been so long at sea as to justify the belief of her total loss.

In another sense, a vessel is said to be *out of time* when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. The phrase is identical with "missing ship." 2 Duer, Ins. 469.

OUTER BAR. In the English courts, barristers at law have been divided into two classes, viz., queen's counsel, who are admitted within the bar of the courts, in seats specially reserved for themselves, and junior counsel, who sit without the bar; and the latter are thence frequently termed barristers of the "outer bar," or "utter bar," in contradistinction to the former class. Brown.

OUTER HOUSE. The name given to the great hall of the parliament house in Edinburgh, in which the lords ordinary of the court of session sit as single judges to hear causes. The term is used colloquially as expressive of the business done there in contradistinction to the "Inner House," the name given to the chambers in which the first and second divisions of the court of session hold their sittings. Bell.

OUTFANGTHEF. A liberty or privilege in the ancient common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court. Du Cange.

OUTFIT. 1. An allowance made by the United States government to one of its diplomatic representatives going abroad, for the expense of his equipment.

2. This term, in its original use, as applying to ships, embraced those objects connected with a ship which were necessary for the sailing of her, and without which she would not in fact be navigable. But in ships engaged in whaling voyages the word has acquired a much more extended signification. 9 Metc. (Mass.) 364.

OUTHEST, or OUTHOM. A calling men out to the army by sound of horn. Jacob.

OUTHOUSE. Any house necessary for the purposes of life, in which the owner does not make his constant or principal residence, is an outhouse. 2 Root, 516.

A smaller or subordinate building connected with a dwelling, usually detached from it and standing at a little distance from it, not intended for persons to live in, but to serve some purpose of convenience or necessity; as a barn, a dairy, a tool-house, and the like.

OUTLAND. The Saxon thanes divided their hereditary lands into inland, such as lay nearest their dwelling, which they kept to their own use, and outland, which lay beyond the demesnes, and was granted out to tenants, at the will of the lord, like copyhold estates. This outland they subdivided into two parts. One part they disposed among those who attended their persons, called "theodans," or lesser thanes; the other part they allotted to their husbandmen, or churls. Jacob.

OUTLAW. In English law. One who is put out of the protection or aid of the law.

OUTLAWED, when applied to a promissory note, means barred by the statute of limitations. 37 Me. 389.

OUTLAWRY. In English law. A process by which a defendant or person in contempt on a civil or criminal process was declared an outlaw. If for treason or felony, it amounted to conviction and attainder. Stim. Law Gloss.

OUTPARTERS. Stealers of cattle. Cowell.

OUTPUTERS. Such as set watches for the robbing any manor-house. Cowell.

OUTRAGE. Injurious violence, or, in general, any species of serious wrong offered to the person, feelings, or rights of another. See 44 Iowa, 314.

OUTRIDERS. In English law. Bailiffs-errant employed by sheriffs or their deputies to ride to the extremities of their counties or bundreds to summon men to the county or hundred court. Wharton.

OUTROPER. A person to whom the business of selling by auction was confined by statute. 2 H. Bl. 557.

OUTSETTER. In Scotch law. Publisher. 3 How. State Tr. 603.

OUTSTANDING. 1. Remaining undischarged; unpaid; uncollected; as an outstanding debt.

2. Existing as an adverse claim or pretension; not united with, or merged in, the title or claim of the party; as an outstanding title.

OUT OF THE STATE. Beyond sea, (which title see.)

OUT OF TIME. A mercantile phrase applied to a ship or vessel that has been so long at sea as to justify the belief of her total loss.

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OUTHEST, or OUTHOM. A calling men out to the army by sound of horn. Jacob.

OUTHOUSE. Any house necessary for the purposes of life, in which the owner does not make his constant or principal residence, is an outhouse. 2 Root, 516.

A smaller or subordinate building connected with a dwelling, usually detached from it and standing at a little distance from it, not intended for persons to live in, but to serve some purpose of convenience or necessity; as a barn, a dairy, a toolhouse, and the like.

OUTLAND. The Saxon thanes divided their hereditary lands into inland, such as lay nearest their dwelling, which they kept to their own use, and outland, which lay beyond the demesnes, and was granted out to tenants, at the will of the lord, like copyhold estates. This outland they subdivided into two parts. One part they disposed among those who attended their persons, called "theodans," or lesser thanes; the other part they allotted to their husbandmen, or churls. Jacob.

OUTLAW. In English law. One who is put out of the protection or aid of the law.

OUTLAWED, when applied to a promissory note, means barred by the statute of limitations. 37 Me. 389.

OUTLAWRY. In English law. A process by which a defendant or person in contempt on a civil or criminal process was declared an outlaw. If for treason or felony, it amounted to conviction and attainder. Stim. Law Gloss.

OUTPARTERS. Stealers of cattle. Cowell.

OUTPUTERS. Such as set watches for the robbing any manor-house. Cowell.

OUTRAGE. Injurious violence, or, in general, any species of serious wrong offered to the person, feelings, or rights of another. See 44 Iowa, 314.

OUTRIDERS. In English law. Bailiffs-errant employed by sheriffs or their deputies to ride to the extremities of their counties or hundreds to summon men to the county or hundred court. Wharton.

OUTROPER. A person to whom the business of selling by auction was confined by statute. 2 H. Bl. 557.

OUTSETTER. In Scotch law. Publisher. 3 How. State Tr. 603.

OUTSTANDING. 1. Remaining undischarged; unpaid; uncollected; as an outstanding debt.

2. Existing as an adverse claim or pretension; not united with, or merged in, the title or claim of the party; as an outstanding title.

OUTSTANDING TERM. A term in gross at law, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication.

OUTSUCKEN MULTURES. In Scotch law. Out-town multures; multures, duties, or tolls paid by persons voluntarily grinding corn at any mill to which they are not *thirled*, or bound by tenure. 1 Forb. Inst. pt. 2, p. 140.

OUVERTURE DES SUCCESSIONS. In French law. The right of succession which arises to one upon the death, whether natural or civil, of another.

OVELTY. In old English law. Equality.

OVER. In conveyancing, the word "over" is used to denote a contingent limitation intended to take effect on the failure of a prior estate. Thus, in what is commonly called the "name and arms clause" in a will or settlement there is generally a proviso that if the devisee fails to comply with the condition the estate is to go to some one else. This is a limitation or gift over. Wats. Comp. Eq. 1110; Sweet.

OVERCYTED, or OVERCYHSED. Proved guilty or convicted. Blount.

OVERDRAW. To draw upon a person or a bank, by bills or checks, to an amount in excess of the funds remaining to the drawer's credit with the drawee, or to an amount greater than what is due.

The term "overdraw" has a definite and well-understood meaning. Money is drawn from the bank by him who draws the check, not by him who receives the money; and it is drawn upon the account of the individual by whose check it is drawn, though it be paid to and for the benefit of another. No one can draw money from bank upon his own account, except by means of his own check or draft, nor can he overdraw his account with the bank in any other manner. 24 N. J. Law, 478, 484.

OVERDUE. A negotiable instrument or other evidence of debt is overdue when the day of its maturity is past and it remains unpaid. A vessel is said to be overdue when she has not reached her destination at the time when she might ordinarily have been expected to arrive.

OVERHAUL. To inquire into; to review; to disturb. "The merits of a judgment can never be *overhauled* by an original suit." 2 H. Bl. 414.

OVERHERNISSA. In Saxon law. Contumacy or contempt of court. Leg. Æthel. c. 25.

OVERLIVE. To survive; to live longer than another. Finch, Law, b. 1, c. 3, no. 58; 1 Leon. 1.

OVERPLUS. What is left beyond a certain amount; the residue; the remainder of a thing.

OVERREACHING CLAUSE. In a resettlement, a clause which saves the powers of sale and leasing annexed to the estate for life created by the original settlement, when it is desired to give the tenant for life the same estate and powers under the resettlement. The clause is so called because it provides that the resettlement shall be overreached by the exercise of the old powers. If the resettlement were executed without a provision to this effect, the estate of the tenant for life and the annexed powers would be subject to any charges for portions, etc., created under the original settlement. 3 Dav. Conv. 489; Sweet.

OVERRULE. To supersede; annul; reject by subsequent action or decision. A judicial decision is said to be overruled when a later decision, rendered by the same court or by a superior court in the same system, expresses a judgment upon the same question of law directly opposite to that which was before given, thereby depriving the earlier opinion of all authority as a precedent. The term is not properly applied to conflicting decisions on the same point by co-ordinate or independent tribunals.

In another sense, "overrule" is spoken of the action of a court in refusing to sustain, or recognize as sufficient, an objection made in the course of a trial, as to the introduction of particular evidence, etc.

OVERSAMESSA. In old English law. A forfeiture for contempt or neglect in not pursuing a malefactor. 3 Inst. 116.

OVERSEER. A superintendent or supervisor; a public officer whose duties involve general superintendence of routine affairs.

OVERSEERS OF HIGHWAYS. The name given, in some of the states, to a board of officers of a city, township, or county, whose special function is the construction and repair of the public roads or highways.

OVERSEERS OF THE POOR. Persons appointed or elected to take care of the poor with moneys furnished to them by the public authority.

OVERSMAN. In Scotch law. An umpire appointed by a submission to decide where two arbiters have differed in opinion, or he is named by the arbiters themselves, under powers given them by the submission. Bell.

OVERT. Open; manifest; public; issuing in action, as distinguished from that which rests merely in intention or design.

OVERT ACT. In criminal law. An open, manifest act from which criminality may be implied. An open act, which must be manifestly proved. 3 Inst. 12.

OVERT WORD. An open, plain word, not to be misunderstood. Cowell.

OVERTURE. An opening; a proposal.

OWELTY. Equality. This word is used in law in several compound phrases, as follows:

1. *Owelty of partition* is a sum of money paid by one of two coparceners or co-tenants to the other, when a partition has been effected between them, but, the land not being susceptible of division into exactly equal shares, such payment is required to make the portions respectively assigned to them of equal value.

2. In the feudal law, when there is lord, mesne, and tenant, and the tenant holds the mesne by the same service that the mesne holds over the lord above him, this was called "owelty of services." Tomlins.

3. *Owelty of exchange* is a sum of money given, when two persons have exchanged lands, by the owner of the less valuable estate to the owner of the more valuable, to equalize the exchange.

OWING. Something unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not.

OWLERS. In English law. Persons who carried wool, etc., to the sea-side by night, in order that it might be shipped off contrary to law. Jacob.

OWLING. In English law. The offense of transporting wool or sheep out of the kingdom; so called from its being usually carried on in the night. 4 Bl. Comm. 154.

OWNER. The person in whom is vested the ownership, dominion, or title of property; proprietor.

He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. Bouvier.

OWNERSHIP. The complete dominion, title, or proprietary right in a thing or claim. See PROPERTY.

The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called "property." Civil Code Cal. § 654.

Ownership is the right by which a thing belongs to some one in particular, to the exclusion of all other persons. Civil Code La. art. 488.

Ownership is divided into *perfect* and *imperfect*. Ownership is perfect when it is perpetual, and when the thing is unincumbered with any real right towards any other person than the owner. On the contrary, ownership is imperfect when it is to terminate at a certain time or on a condition, or if the thing which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use, or servitude. When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership. Civil Code La. art. 490.

OXFILD. A restitution anciently made by a hundred or county for any wrong done by one that was within the same. Lamb. Arch. 125.

OXGANG In old English law. As much land as an ox could till. Co. Litt. 5*a*. A measure of land of uncertain quantity. In Scotland, it consisted of thirteen acres. Spelman.

OYER. In old practice. Hearing; the hearing a deed read, which a party sued on a bond, etc., might pray or demand, and it was then *read* to him by the other party; the entry on the record being, "*et ei legitur in hæc verba*," (and it is read to him in these words.) Steph. Pl. 67, 68; 3 Bl. Comm. 299; 3 Salk. 119.

In modern practice. A *copy* of a bond or specialty sued upon, given to the opposite party, in lieu of the old practice of *reading* it.

OYER AND TERMINER. A half French phrase applied in England to the assizes, which are so called from the commission of *oyer and terminer* directed to the judges, empowering them to "inquire, *hear, and determine*" all treasons, felonies, and misdemeanors. This commission is now issued regularly, but was formerly used only on particular occasions, as upon sudden out-

N rage or insurrection in any place. In the United States, the higher criminal courts are called "courts of oyer and terminer." Burrill.

O OYER DE RECORD. A petition made in court that the judges, for better proof's sake, will hear or look upon any record. Cowell.

OYEZ. Hear ye. A word used in courts by the public crier to command attention when a proclamation is about to be made. Commonly corrupted into "O yes."