But in special cases the mother will be preferred to the father; 5 Binn. 520; 2 S. & R. 174; and after the death of the father the mother is guardian by nurture. Fleta, l. 1, c. 6; Comyns, Dig. *Guardian* (D). See GUARDIAN; HABEAS CORPUS.

NURUS (Lat.). A daughter-in-law. Dig. 50. 16. 50.

O.

OATH. An outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. Tyler, Oaths, 15.

The term has been variously defined: as, "a solemn invocation of the vengeance of the Deity upon the witness if he do not declare the whole truth, so far as he knows it," 1 Stark. Ev. 22; or, "a religious asseveration by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth," 2 Leach, 482; or, as "a religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or, in other words, to punish his perjury if he shall be guilty of it," 10 Toullier, nn. 343–348; Puffendorff, b. 4, c. 2, § 4. The essential idea of an oath would seem to be, however, that of a recognition of God's authority by the party taking it, and an undertaking to accomplish the transaction to which it refers as required by his laws.

In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly. In a more restricted sense, it excludes all those forms of attestation or promise which are not accompanied by an imprecation.

Assertory oaths are those required by law other than in judicial proceedings and upon induction to office: such, for example, as custom-house oaths.

Extra-judicial oaths are those taken without authority of law. Though binding *in foro conscientiæ*, they do not, when false, render the party liable to punishment for perjury.

Judicial oaths are those administered in judicial proceedings.

Promissory or *official* oaths are oaths taken, by authority of law, by which the party declares that he will fulfil certain duties therein mentioned: as, the oath which an alien takes, on becoming naturalized, that he will support the constitution of the United States: the oath which a judge takes that he will perform the duties of his office. The breach of this does not involve the party in the legal crime or punishment of perjury; 3 Zabr. 49. Where an appointee neglects to take an oath of office when required by statute to do so, he cannot be considered qualified, nor justify his doings as an officer; 2 N. H. 202; s. c. 9 Am. Dec. 50.

The *form* of administering the oath may be varied to conform to the religious belief of the individual, so as to make it binding upon his conscience; 16 Pick. 154; 2 Gall. 346; 3 Park. Cr. 590; 2 Hawkes, 458; 7 Ill. 540; Ry. & M. 77. The most common form is upon the gospel, by taking the book in the hand: the words commonly used are, "You do swear that," etc., "so help you God," and then kissing the book; 9 C. & P. 137. The origin of this oath may be traced to the Roman law; Nov. 8, tit. 3; Nov. 74, cap. 5; Nov. 124, cap. 1; and the kissing the book is said to be an imitation of the priest's kissing the ritual, as a sign of reverence, before he reads it to the people; Rees, Cycl. In New England, New York, and in Scotland the gospels are not generally used, but the party taking the oath holds up his right hand and repeats the words here given; 1 Leach, 412, 498.

Another form is by the witness or party promising holding up his right hand while the officer repeats to him, "You do swear by Almighty God, the searcher of hearts, that," etc., "and this as you shall answer to God at the great day."

In another form of attestation, commonly called an affirmation (*q. v.*), the officer repeats, "You do solemnly, sincerely, and truly declare and affirm that," etc.

A Jew is sworn on the Pentateuch, or Old Testament, with his head covered; Stra. 821, 1113; a Mohammedan, on the Koran; 1 Leach, 54; a Gentoo, by touching with his hand the foot of a Brahmin or priest of his religion; a Brahmin, by touching the hand of another such priest; Wils. 549; 1 Atk. 21; a Chinaman, by breaking a china saucer; 1 C. & M. 248. See 25 Alb. L. J. 301.

The form and time of administering oaths, as well as the person authorized to administer, are usually fixed by statute. See Gilp. 439; 1 Tyl. 347; 1 South. 297; 4 Wash. C. C. 555; 2 Blackf. 35; 2 McLean, 135; 9 Pet. 238; 1 Va. Cas. 181; 8 Rich. So. C. 456; 1 Swan, 157; 5 Mo. 21; 48 Cal. 197; 41 Conn. 206. The administering of unlawful oaths is an offence against the government, punishable in England by transportation; Whart. Lex.

The subject of oaths has undergone much

revision of late years by parliament. By the Promissory Oaths Act (31 & 32 Vict. c. 72) a number of unnecessary oaths have been abolished, and declarations substituted. The same act provides a new form of the oath of allegiance, and forms of a judicial oath and an official oath to be taken by particular officers. See also Promissory Oaths Act of 1871.

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

OATH OF CALUMNY. In Civil Law. An oath which a plaintiff was obliged to take that he was not actuated by a spirit of chicanery in commencing his action, but that he had *bona fide* a good cause of action. Pothier, Pand. lib. 5, tt. 16, 17, s. 124. This oath is somewhat similar to our affidavit of a cause of action. See Dunl. Adm. Pr. 289, 290; JURAMENTUM CALUMNIÆ.

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

It may be deferred in any kind of civil contest whatever, in questions of possession or of claim, in personal actions, and in real. The plaintiff may defer the oath to the defendant whenever he conceives he has not sufficient proof of the fact which is the foundation of his claim; and in like manner the defendant may defer it to the plaintiff when he has not sufficient proof of his defence. The person to whom the oath is deferred ought either to take it or refer it back; and if he will not do either, the cause should be decided against him. Pothier, Obl. pt. 4, c. 3, s. 4.

The decisory oath has been practically adopted in the district court of the United States for the district of Massachusetts; and admiralty causes have been determined in that court by the oath decisory. But the cases in which this oath has been adopted have been where the tender has been accepted; and no case is known to have occurred there in which the oath has been refused and tendered back to the adversary. Dunl. Adm. Pr. 290, 291.

OATH EX OFFICIO. The oath by which a clergyman charged with a criminal offence was formerly allowed to swear himself to be innocent; also the oath by which the compurgators swore that they believed in his innocence; 3 Bla. Com. 101, 447; Moz. & W.

OATH IN LITEM. An oath which in the civil law was deferred to the complainant as to the value of the thing in dispute, on failure of other proof, particularly when there was a fraud on the part of the defendant and he suppressed proof in his possession. See Greenl. Ev. § 348; Tait, Ev. 280; 1 Vern. 207; 1 Eq. Cas. Abr. 229; 1 Me. 27; 1 Yeates, 34; 12 Viner, Abr. 24.

In general, the oath of the party cannot, by the common law, be received to establish his claim, but is admitted in two classes of cases: *first*, where it has been already proved that the party against whom it is offered has been guilty of some fraud or other tortious or unwarrantable act of intermeddling with the complainant's goods, and no other evidence can be had of the amount of damages. See 1 Pet. 591; 9 Wheat. 486; 5 Pick. 436; 15 *id.* 368; 16 Johns. 193; 17 Ohio, 156; 3 N. H. 135. As, for example, where a trunk of goods was delivered to a shipmaster at one port to be carried to another, and on the passage he broke the trunk open and rifled it of its contents, in an action by the owners of the goods against the shipmaster, the facts above mentioned having been proved *aliunde*, the plaintiff was held a competent witness to testify as to the contents of the trunk; 1 Me. 27; 11 *id.* 412. And see 10 Watts, 335; 1 Greenl. Ev. § 348; 12 Metc. 44; 2 Watts, 220; 12 Mass. 360. *Second*, the oath *in litem* is also admitted on the ground of public policy where it is deemed essential to the purposes of justice; Tait, Ev. 280; 1 Pet. 596; 6 Mood. 137; 2 Stra. 1186. But this oath is admitted only on the ground of necessity. An example may be mentioned of a case where a statute can receive no execution unless the party interested be admitted as a witness; 16 Pet. 203.

OATH PURGATORY. An oath by which one destroys the presumptions which were against him, for he is then said to purge himself, when he removes the suspicions which were against him: as, when a man is in contempt for not attending court as a witness, he may purge himself of the contempt, by swearing to a fact which is an ample excuse. See PURGATION.

OATH SUPPLETORY. In Civil and Ecclesiastical Law. An oath required by the judge from either party in a cause, upon half-proof already made, which being joined to half-proof, supplies the evidence required to enable the judge to pass upon the subject. See 3 Bla. Com. 270.

OBEDIENCE. The performance of a command.

Officers who obey the command of their superiors, having jurisdiction of the subject-matter, are not responsible for their acts. A sheriff may, therefore, justify a trespass under an execution, when the court has jurisdiction, although irregularly issued; 3 Chitty, Pr. 75; Hamm. N. P. 48.

A child, an apprentice, a pupil, a mariner, and a soldier owe respectively obedience to the lawful commands of the parent, the master, the teacher, the captain of the ship, and the military officer having command; and in case of disobedience submission may be enforced by correction.

OBIT. That particular solemnity or office for the dead which the Roman Catholic church appoints to be read or performed over the body of a deceased member of that communion before interment; also, the office which upon the anniversary of his death was fre-

quently used as a commemoration or observance of the day; Dy. 313.

OBITER DICTUM. See DICTUM.

OBJECTS OF A POWER. The persons who are intended to be benefited by the distribution of property settled subject to a power.

OBLATIO (Lat.). **In Civil Law.** A tender of money in payment of debt made by debtor to creditor. L. 9, C. *de solut.* Whatever is offered to the church by the pious. Calv. Lex.; Vicat, Voc. Jur.

OBLIGATIO. In Roman Law. A legal bond which obliges us to the performance of something in accordance with the law of the land. Ortolan, Inst. 2, § 1179.

It corresponded nearly to our word contract. Justinian says, "*Obligatio est juris vinculum, quo necessitate adstringimur alicujus solvendæ rei, secundum nostræ civitatis jura.*" Pr. J. 3. 13.

The Romans considered that obligations derived their validity solely from positive law. At first the only ones recognized were those established in special cases in accordance with the forms prescribed by the strict *jus civilis*. In the course of time, however, the prætorian jurisdiction, in mitigation of the primitive rigor of the law, introduced new modes of contracting obligations and provided the means of enforcing them: hence the twofold division made by Justinian of *obligationes civiles*, and *obligationes prætoriæ*. Inst. 1. 3. 13. But there was a third class, the *obligationes naturales*, which derived their validity from the law of nature and nations, or the natural reason of mankind. These had not the binding force of the other classes, not being capable of enforcement by action, and are, therefore, not noticed by Justinian in his classification; but they had, nevertheless, a certain efficacy even in the civil law: for instance, though a debt founded upon a natural obligation could not be recovered by an action, yet if it was voluntarily paid by the debtor he could not recover it back, as he might do in the case of money paid by mistake, etc. where no natural obligation existed. L. 38, pr. D. 12. 6. And see Ortolan, 2, § 1180.

The second classification of obligations made by Justinian has regard to the way in which they arise. They were, in this aspect, either *ex contractu* or *quasi ex contractu*, or *ex maleficio* or *quasi ex maleficio*. Inst. 2. 3. 13. These will be discussed separately.

Obligationes ex contractu, those founded upon an express contract, are again subdivided into four classes, with reference to the mode in which they are contracted. The contract might be entered into *re*, *verbis*, *literis*, or *consensu*.

A contract was entered into *re* by the actual transfer of a *thing* from one party to the other. Though in such cases the understanding of the parties as to the object of the transfer, and the conditions accompanying it, formed an essential part of the contract, yet it was only by the actual delivery of the thing that the contract was generated. The only contracts which could be entered into in this way were those known to our law as bailments,—a term derived from the French word *bailler*, to deliver, and evidently pointing to the same characteristic feature in the translation which the Romans indicated by the word *re*. These were the *mutuum*, or loan of a thing to be consumed in the using and to be returned in kind, the *commodatum*, or gratuitous loan of a thing to be used and returned, the *depositum*, or delivery of a thing to be kept in safety for the benefit of the depositor, and the *pignus*, or delivery of a thing in pledge to a creditor, as security for his debt. See MUTUUM; COMMODATUM; DEPOSITUM; PIGNUS; Ortolan, Inst. §§ 1208 *et seq.*; Mackeldey, Röm. Recht, §§ 396–408. Besides the above named *contractus reales*, a large class of contracts which had no special names, and were thence called *contractus innominati*, were included under this head, from the fact that they, like the former, gave rise to the *actio præscriptis verbis*. Some of these were the contracts of exchange, of mutual compromise, of doubtful or contested claims (somewhat resembling our accord and satisfaction), of factorship, etc. See Mackeldey, §§ 409–414.

Contracts were entered into *verbis*, by a formal interrogation by one party and response by the other. The interrogation was called *stipulatio*, and the party making it, *reus stipulandi*. The response was called *promissio*, and the respondent, *reus promittendi*. The contract itself, consisting of the interrogation and response, was often called *stipulatio*. In the time of the earlier jurists, the stipulation could only be entered into by the use of certain formulary words by the parties: as, for instance, *Spondes?* do you promise? *Spondeo*, I promise; *Dabis?* will you give? *Dabo*, I will give; *Facies?* will you do this? *Faciam*, I will do it, etc. etc. But by a constitution of the emperor Leo, A. D. 469, the obligation to use these particular words was done away, and any words which expressed the meaning of the parties were allowed to create a valid stipulation, and any language understood by the parties might be used with as much effect as Latin. Such contracts were called *verbis*, because their validity depended entirely upon the use of the words. The mere agreement of the parties without using the question and response could not beget a stipulation; and, on the other hand, if the question and response had been used, the obligation was created although there might be an absence of consent. In this latter case, however, equitable relief would be granted by the prætor. Ortolan, Inst. § 1250. Stipulations, and, indeed, all other forms of contracts, might be made either *pure*, *i. e.* absolutely, or *in diem*, *i. e.* to take effect at a future day, or *sub conditione*, *i. e.* conditionally. But some kinds of conditions, such as those physically impossible, were inadmissible, and invalidated the contract; while others, such as those which were absurd, were themselves invalidated, and the contract was considered as having been made absolutely. Mackeldey, §§

415–421; Ortolan, Inst. §§ 1235–1413; Inst. 3. 13–20.

Contracts entered into *literis* were obsolete in the reign of Justinian. In the earlier days of Roman jurisprudence, every citizen kept a private account-book. If a creditor, *at the request of his debtor*, entered in such book his charge against his debtor, such entry, in pursuance of the request, constituted not merely evidence of a contract, but the contract itself. This was the contract formed *litiris*, in writing. The debtor, on his part, might also make a corresponding entry of the transaction in his own book. This was, in fact, expected of him, and was generally done; but it seems not to have been necessary to the validity of the contract. The entry was made in the form of a fictitious payment; it was allowable only in pecuniary transactions; it must be simple and unconditional, and could not be made to take effect at a future day. The charge might be made against the original debtor, *a re in personam*, or against a third person who agreed to take his place, *a persona in personam*. This species of literal contract was called *nomina*, *nomina transcriptitia*, or *acceptilatio et expensilatio*. Ortolan, Inst. §§ 1414–1428. This species of contract seems never to have been of great importance; they had disappeared entirely before the time of Justinian; Hadley, Rom. Law, 216.

There were two other literal contracts known to the early jurisprudence, called *syngraphia* and *chirographia;* but these even in the times of Gaius had become so nearly obsolete that very little is known about them. All these, it must be borne in mind, were contracts themselves, not merely evidences of a contract; and this distinguishes them from the instruments of writing in use during the latter ages of the civil law. Ortolan, Inst. §§ 1414–1441; Mackeldey, § 422.

Contracts were made *consensu*, by the mere agreement of the contracting parties. Although such agreement might be *proved* by a written instrument, as well as in other ways, yet the writing was only evidence of the contract, not the contract itself. This species of consensual contracts are *emptio et venditio*, or sale, *locatio et conductio*, or hiring, *emphyteusis*, or conveyance of land reserving a rent, *societas*, or partnership, and *mandatum*, or agency. See these words.

Obligationes quasi ex contractu. In the Roman law, persons who had not in fact entered into a contract were sometimes treated as if they had done so. Their legal position in such cases had considerable resemblance to that of the parties to a contract, and is called an *obligatio quasi ex contractu.* Such an obligation was engendered in the cases of *negotiorum gestio*, or unauthorized agency, of *communio incidens*, a sort of tenancy in common not originating in a contract, of *solutio indebiti*, or the payment of money to one not entitled to it, of the *tutela* and *cura*, resembling the relation of guardian and ward, of the *additio hereditatis* and *agnitio bonorum possessionis*, or the acceptance of an heirship, and many others. Some include in this class the *constitutio dotis*, settlement of a dower. Ortolan, Inst. §§ 1522–1632; Mackeldey, §§ 457–468.

Obligationes ex maleficio or *ex delicto.* The terms *maleficium*, *delictum*, embraced most of the injuries which the common law denominates torts, as well as others which are now considered crimes. This class includes *furtum*, theft, *rapina*, robbery, *damnum*, or injury to property, whether direct or consequential, and *injuria*, or injury to the person or reputation. The definitions here given of *damnum* and *injuria* are not strictly accurate, but will serve to convey an idea of the distinction between them. All such acts, from the instant of their commission, rendered the perpetrator liable for damages to the party injured, and were, therefore, considered to originate an *obligatio.* Inst. 4. 1–4; Ortolan, Inst. §§ 1715–1780.

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. Ortolan, Inst. §§ 1781–1792.

Obligationes ex variis causarum figuris. Although Justinian confined the divisions of obligations to the four classes which have been enumerated, there are many species of obligations which cannot properly be reduced within any of these classes. Some authorities have, consequently, established a fifth class, to receive the odds and ends which belonged nowhere else, and have given to this class the above designation, borrowed from Gaius, l. 1, pr. § 1 D. 44, 7. See Mackeldey, §§ 474–482. See, generally, Hadley, Roman Law, 209, etc.

OBLIGATION (from Lat. *obligo*, *ligo*, to bind). A duty.

A tie which binds us to pay or do something agreeably to the laws and customs of the country in which the obligation is made. Inst. 3. 14.

A bond containing a penalty, with a condition annexed, for the payment of money, performance of covenants, or the like, and which differs from a bill, which is generally without a penalty or condition, though it may be obligatory. Co. Litt. 172.

A deed whereby a man binds himself under a penalty to do a thing. Comyns, Dig. *Obligation* (A); 2 S. & R. 502; 6 Vt. 40; 1 Blackf. 241; Harp. 434; Baldw. 129.

An *absolute* obligation is one which gives no alternative to the obligor, but requires fulfilment according to the engagement.

An *accessory* obligation is one which is dependent on the principal obligation; for example, if I sell you a house and lot of ground, the principal obligation on my part is to make

you a title for it; the accessory obligation is to deliver you all the title-papers which I have relating to it, to take care of the estate till it is delivered to you, and the like.

An *alternative* obligation is where a person engages to do or to give several things in such a manner that the payment of one will acquit him of all.

Thus, if A agrees to give B, upon a sufficient consideration, a horse, or one hundred dollars, it is an *alternative* obligation. Pothier, Obl. pt. 2, c. 3, art. 6, no. 245.

In order to constitute an alternative obligation, it is necessary that two or more things should be promised disjunctively: where they are promised conjunctively, there are as many obligations as the things which are enumerated; but where they are in the alternative, though they are all due, there is but one obligation, which may be discharged by the payment of any of them.

The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor; Dougl. 14; 1 Ld.Raym. 279; 4 Mart. La. N. S. 167. If one of the acts is prevented by the obligee or the act of God, the obligor is discharged from both. See 2 Evans, Pothier, Obl. 52–54; Viner, Abr. *Condition* (S b); CONJUNCTIVE; DISJUNCTIVE; ELECTION.

A *civil* obligation is one which has a binding operation in law, and which gives to the obligee the right of enforcing it in a court of justice; in other words, it is an engagement binding on the obligor. 4 Wheat. 197; 12 *id.* 318, 337.

Civil obligations are divided into express and implied, pure and conditional, primitive and secondary, principal and accessory, absolute and alternative, determinate and indeterminate, divisible and indivisible, single and penal, and joint and several. They are also purely personal, purely real, or mixed.

A *conditional* obligation is one the execution of which is suspended by a condition which has not been accomplished, and subject to which it has been contracted.

A *determinate* obligation is one which, has for its object a certain thing: as, an obligation to deliver a certain horse named Bucephalus. In this case the obligation can only be discharged by delivering the identical horse.

A *divisible* obligation is one which, being a unit, may nevertheless be lawfully divided with or without the consent of the parties.

It is clear that it may be divided by consent, as those who made it may modify or change it as they please. But some obligations may be divided without the consent of the obligor: as, where a tenant is bound to pay two hundred dollars a year rent to his landlord, the obligation is entire; yet, if his landlord dies and leaves two sons, each will be entitled to one hundred dollars; or if the landlord sells one undivided half of the estate yielding the rent, the purchaser will be entitled to receive one hundred dollars and the seller the other hundred. See APPORTIONMENT.

Express or conventional obligations are those by which the obligor binds himself in express terms to perform his obligation.

Imperfect obligations are those which are not binding on us as between man and man, and for the non-performance of which we are accountable to God only: such as charity or gratitude. In this sense an obligation is a mere duty. Pothier, Obl. art. prél. n. 1.

An *implied* obligation is one which arises by operation of law: as for example, if I send you daily a loaf of bread, without any express authority, and you make use of it in your family, the law raises an obligation on your part to pay me the value of the bread.

An *indeterminate* obligation is one where the obligor binds himself to deliver one of a certain species: as, to deliver a horse, where the delivery of any horse will discharge the obligation.

An *indivisible* obligation is one which is not susceptible of division: as, for example if I promise to pay you one hundred dollars, you cannot assign one-half of this to another, so as to give him a right of action against me for his share. See DIVISIBLE.

A *joint* obligation is one by which several obligors promise to the obligee to perform the obligation. When the obligation is only joint, and the obligors do not promise separately to fulfil their engagement, they must be all sued, if living, to compel the performance: or, if any be dead, the survivors must all be sued. See PARTIES TO ACTIONS.

A *natural* or *moral* 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.

As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished; 5 Binn. 573. Although natural obligations cannot be enforced by action, they have the following effect; *first*, no suit will lie to recover back what has been paid or given in compliance with a natural obligation: 1 Term, 285; 1 Dall. 184; *second*, a natural obligation has been held to be a sufficient consideration for a new contract; 2 Binn. 591; 5 *id.* 33; Yelv. 41 *a*, n. 1; Cowp. 290; 2 Bla. Com. 445; 3 Bos. & P. 249, n.; 2 East, 506; 3 Taunt. 311; 5 *id.* 36; 3 Pick. 207; Chitty, Contr. 10; but see MORAL OBLIGATION; CONSIDERATION.

A *penal* obligation is one to which is attached a penal clause, which is to be enforced if the principal obligation be not performed. See LIQUIDATED DAMAGES.

A *perfect* obligation is one which gives a right to another to require us to give him something or not to do something. These obligations are either natural or moral, or they are civil.

A *personal* obligation is one by which the obligor binds himself to perform an act, without directly binding his property for its performance.

It also denotes an obligation in which the obligor binds himself only, not including his heirs or representatives.

A *primitive* obligation, which in one sense may also be called a principal obligation, is one which is contracted with a design that it should itself be the first fulfilled.

A *principal* obligation is one which is the most important object of the engagement of the contracting parties.

A *pure* or simple obligation is one which is not suspended by any condition, either because it has been contracted without condition, or, having been contracted with one, it has been fulfilled.

A *real* obligation is one by which real estate, and not the person, is liable to the obligee for the performance.

A familiar example will explain this. When an estate owes an easement as a right of way, it is the thing, and not the owner, who owes the easement. Another instance occurs when a person buys an estate which has been mortgaged, subject to the mortgage: he is not liable for the debt, though the estate is. In these cases the owner has an interest only because he is seised of the servient estate or the mortgaged premises, and he may discharge himself by abandoning or parting with the property. The obligation is both personal and real when the obligor has bound himself and pledged his estate for the fulfilment of his obligations.

A *secondary* obligation is one which is contracted and is to be performed in case the *primitive* cannot be. For example, if I sell you my house, I bind myself to give a title: but I find I cannot, as the title is in another: then my *secondary* obligation is to pay you damages for my non-performance of my obligation.

A *several* obligation is one by which one individual, or, if there be more, several individuals, bind themselves separately to perform the engagement. In this case each obligor may be sued separately; and if one or more be dead, their respective executors may be sued. See PARTIES TO ACTIONS.

A *single* obligation is one without any penalty: as where I simply promise to pay you one hundred dollars. This is called a single bill, when it is under seal.

OBLIGATION OF CONTRACTS. See IMPAIRING THE OBLIGATIONS OF CONTRACTS.

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

Obligees are either several or joint. An obligee is several when the obligation is made to him alone; obligees are joint when the obligation is made to two or more; and in that event each is not a creditor for his separate share, unless the nature of the subject or the particularity of the expression in the instrument lead to a different conclusion. 2 Pothier, Obl. Evans ed. 56; Dy. 350 *a*, pl. 20; Hob. 172; 2 Brownl. 207; Yelv. 177; Cro. Jac. 251.

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

Obligors are joint and several. They are joint when they agree to pay the obligation jointly; and then the survivors only are liable upon it at law, but in equity the assets of a deceased joint obligor may be reached; 1 Bro. C. 29; 2 Ves. 101, 371. They are several when one or more bind themselves each of them separately to perform the obligation. In order to become an obligor, the party must actually, either himself or by his attorney, enter into the obligation and execute it as his own. If a man sign and seal a bond as his own, and deliver it, he will be bound by it although his name be not mentioned in the bond; 4 Ala. 479; 4 Hayw. 239; 4 M'Cord, 203; 7 Cow. 484; 2 Hen. & M. 398; 5 Mass. 538; 2 Dana, 463; 4 Munf. 380; 4 Dev. 272. When the obligor signs between the penal part and the condition, still the latter will be a part of the instrument; 7 Wend. 345; 3 Hen. & M. 144.

The execution of a bond by the obligor, in blank, with verbal authority to fill it up, does not bind the obligor, though it is afterwards filled up, unless the bond is redelivered or acknowledged or adopted; 1 Yerg. 69, 149; 1 Hill, N. Y. 267; 2 N. & M'C. 125; 2 Brock. 64; 1 Ohio, 368; 2 Dev. 369; 6 Gill & J. 250. But see, *contra*, 17 S. & R. 438; and see 6 *id.* 308; Wright, Ohio, 742; BLANK.

OBLITERATION. In the absence of statutory provisions to the contrary, the obliteration of part of a will, leaving it otherwise complete, with the intention by the testator to annul only what was cancelled, leaves the residue valid; 123 Mass. 102; 19 Alb. L. J. 328; 39 L. T. (N. S.) 581; 22 N. J. Eq. 463. But under the present Wills Act in England; 1 Vict. c. 26; any obliterations or other alterations must be duly attested as is required for the execution of a will, except that such attestation may be limited to the alterations; 1 Wms. Exec. 144. For a review of the cases see note to 25 Am. Rep. 35; WILLS.

OBREPTION. Acquisition of escheats, etc. from sovereign, by making false representations. Bell, Dic. *Subreption;* Cal. Lex.

OBROGATION. The annulling a law, in whole or in part, by passing a law contrary to it. The alteration of a law. Vicat, Voc. Jur.; Calv. Lex.

OBSCENITY. In Criminal Law. Such indecency as is calculated to promote the violation of the law and the general corruption of morals. In all cases the indictment must aver exposure and offence to the community generally; mere private indecency is not indictable at common law; 2 Whart. Cr. L. §§ 1431, 1432.

The exhibition of an obscene picture is an indictable offence at common law, although not charged to have been exhibited in public, if it be averred that the picture was exhibited to sundry persons for money; 2 S. & R. 91. The stat. 20 and 21 Vict. c. 83, gives summary powers for the searching of houses in which obscene books, etc., are suspected to be

kept, and for the seizure and destruction of such books. By various acts of congress, the importation and circulation through the mails or otherwise, of obscene literature or articles of any kind is rendered punishable with fine or imprisonment; R. S. §§ 2491, 3893, 5389. See 8 Phila. 453; 126 Mass. 46; 92 Ill. 182. Legislative provisions forbidding the keeping, exhibition, or sale of indecent books or pictures, and authorizing their destruction if seized, are within the police powers of the states and are constitutional; Cooley, Const. Lim. 749.

OBSERVE. In Civil Law. To perform that which has been prescribed by some law or usage. Dig. 1. 3. 32.

OBSOLETE. A term applied to laws which have lost their efficacy without being repealed.

A positive statute, unrepealed, can never be repealed by non-user alone; 4 Yeates, 181, 215; 1 P. A. Browne, App. 28; 13 S. & R. 447. The disuse of a law is at most only presumptive evidence that society has consented to such a repeal: however this presumption may operate on an unwritten law, it cannot, in general, act upon one which remains as a legislative act on the statute-book; because no presumption can set aside a certainty. A written law may indeed become obsolete when the object to which it was intended to apply, or the occasion for which it was enacted, no longer exists; 1 P. A. Browne, App. 28. "It must be a very strong case," says Chief-Justice Tilghman, "to justify the court in deciding that an act standing on the statute-book, unrepealed, is obsolete and invalid. I will not say that such case may not exist,—where there has been a non-user for a great number of years,—where, from a change of times and manners, an ancient sleeping statute would do great mischief if suddenly brought into action,—where a long practice inconsistent with it has prevailed, and specially where from other and latter statutes it might be inferred that in the appprehension of the legislature the old one was not in force." 13 S. & R. 452; Rutherforth, Inst. b. 2, c. 6, s. 19; Merlin, Répert. *Desuetude.*

OBSTRUCTING MAIL. See MAIL.

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

The officer must be prevented by actual violence, or by threatened violence accompanied by the exercise of force, or by those having capacity to employ it, by which the officer is prevented from executing his writ. The officer is not required to expose his person by a personal conflict with the offender; 2 Wash. C. C. 169. See 3 *id.* 335; 12 Ala. N. S. 199.

This is an offence against public justice of a very high and presumptuous nature; and more particularly so where the obstruction is of an arrest upon criminal process. A person opposing an arrest upon criminal process becomes thereby *particeps criminis;* that is, an accessory in felony, and a principal in high treason; 4 Bla. Com. 128; 2 Hawk. Pl. Cr. c. 17, s. 1; 1 Russ. Cr. 360. See 2 Gall. 15: 2 Chitty, Cr. Law, 145, note *a*; 3 Vt. 110; 25 *id.* 415; 2 Strobh. 73; 15 Mo. 486; 4 Am. L. J. 489.

OBSTRUCTING RAILWAYS. Under a statute for the punishment of any who shall wilfully obstruct any engine or carriage passing upon any railroad, so as to endanger the safety of any person conveyed therein, it is not necessary for conviction that any engine or carriage should be actually obstructed. It is the character and intention of the act, and not the actual consequence of it, which fixes its criminality; State *vs.* Kilty, S. C. of Minn., 25 Alb. L. J. 419; see RAILWAY.

OBVENTIO (Lat. *obvenire*, to fall in). **In Civil Law.** Rent or profit accruing from a thing, or from industry. It is generally used in the plural.

In Old English Law. The revenue of spiritual living, so called. Cowel. Also, in the plural, offerings. Co. 2d Inst. 661.

OCCUPANCY. The taking possession of those things corporeal which are without an owner, with an intention of appropriating them to one's own use.

Pothier defines it to be the title by which one acquires property in a thing which belongs to nobody, by taking possession of it with design of acquiring it. Tr. du Dr. de Propriété, n. 20. The Civil Code of Louisiana, art. 3375, nearly following Pothier, defines occupancy to be "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 an intention of acquiring a right of ownership in it." Occupancy is sometimes used in the sense of occupation or holding possession; indeed it has come to be very generally so used in this country in homestead laws, public-land laws, and the like; 21 Ill. 178; 25 Barb. 54; Act of Cong. May 29, 1830 (4 Stat. at L. 420); 36 Wisc. 73; but this does not appear to be a common legal use of the term, as recognized by English authorities.

To constitute occupancy, there must be a taking of a thing corporeal, belonging to no body, with an intention of becoming the owner of it; Co. Litt. 416.

A right by occupancy attaches in the finder of lost goods unreclaimed by the owner; in the captor of beasts *ferœ naturæ*, so long as he retains possession; 2 Bla. Com. 403; the owner of lands by accession, and the owner of goods acquired by confusion.

It was formerly considered, also, that the captor of goods contraband of war acquired a right by occupancy; but this is now held otherwise, such goods being now held to be primarily vested in the sovereign, and as belonging to individual captors only, to the extent and under such regulations as positive laws may prescribe; 2 Kent, 290.

OCCUPANT, OCCUPIER. One who has the actual use or possession of a thing.

When the occupiers of a house are entitled to a privilege in consequence of such occupation, as to pass along a way, to enjoy a pew, and the like, a person who occupies a part of such house, however small, is entitled to some

right, and cannot be deprived of it; 2 B. & Ald. 164; 1 Chitty, Pr. 209, 210; 4 Comyns, Dig. 64; 5 *id.* 199.

OCCUPATION. Use of tenure: as, the house is in the occupation of A B. A trade, business, or mystery: as, the occupation of a printer.

A putting out of a man's freehold in time of war. Co. Litt. s. 412.

OCCUPAVIT (Lat.). **In Old Practice.** The name of a writ which lies to recover the possession of lands when they have been taken from the possession of the owner by occupation (*q. v.*).

OCCUPIER. One who is in the enjoyment of a thing.

He may be the occupier by virtue of a lawful contract, either express or implied, or without any contract. The occupier is, in general, bound to make the necessary repairs to the premises he occupies: the cleansing and repairing of drains and sewers, therefore, is *primâ facie* the duty of him who occupies the premises; 3 Q. B. 449.

OCHLOCRACY. A government where the authority is in the hands of the multitude; the abuse of a democracy. Vaumène, Dict. du Langage Politique.

OCTAVE (Law Lat. *utas*). **In Old English Practice.** The eighth day inclusive after a feast. 3 Bla. Com. 277.

OCTO TALES (Lat. eight such). If, when a trial at bar is called on, the number of jurors in attendance is too small, the trial must be adjourned, and a *decem* or *octo tales* awarded, according to the number deficient; as, at common law, namely, a writ to the sheriff to summon eight more such men as were originally summoned. 3 Bla. Com. 364.

ODHALL RIGHT. The same as allodial. Odio et atia. See De Odio et atia.

OF COURSE. That which may be done in the course of legal proceedings without making any application to the court; that which is granted by the court, without further inquiry, upon its being asked: as, a rule to plead is a matter of course.

OFFENCE. In Criminal Law. The doing that which a penal law forbids to be done, or omitting to do what it commands. In this sense, it is nearly synonymous with crime. In a more confined sense, it may be considered as having the same meaning with misdemeanor; but it differs from it in this, that it is not indictable, but punishable summarily by the forfeiture of a penalty. 1 Chitty, Pr. 14.

OFFER. A proposal to do a thing.

An offer, as an element of a contract, is a proposal to make a contract. It must be made by the person who is to make the promise, and it must be made to the person to whom the promise is made. It may be made either by words or by signs, either orally or in writing, and either personally or by a messenger; but in whatever way it is made, it is not in law an offer until it comes to the knowledge of the person to whom it is made; Langd. Contr. § 151; 18 Dunl. 1. While an offer remains in force, it confers upon the offeree the power to convert it into a promise by accepting it. The offerer may state how long it shall remain in force; and it will then remain in force during the time so stated, unless sooner revoked; 3 Cush. 224. In the absence of any specification by the offerer, an offer will remain in force a reasonable time unless sooner revoked. As to what will be a reasonable time, no uniform positive rule can be laid down. When an offer is made personally, it will *prima facie* continue until the interview or negotiation terminates, and longer; 6 Wend. 103. In commercial transactions, when an offer is made by mail, the general rule is that the offerer is entitled to an answer by return mail; but this will not apply in all cases, *e.g.*, when there are several mails each day. In transactions which are not commercial, much less promptitude in answering is required; Langd. Contr. § 152.

Where the offer contemplates a unilateral contract, the length of time that the offer will continue in force depends upon different considerations. The question is no longer one of accepting the offer orally or by letter, but of performing the consideration. The duration of such an offer, therefore, in the absence of any express limitation, will be measured by the length of time which may be reasonably required for the performance of the consideration. When performance of the consideration has been begun in good faith, it seems that the offer will continue, in the absence of actual revocation, until the performance is either completed or abandoned, especially when the performance of the consideration is constantly within the knowledge of the offerer; Langd. Contr. § 155. An offer which contains no stipulation as to how long it shall continue is revocable at any moment. A stipulation that an offer shall remain open for a specified time, must be supported by a sufficient consideration, or be contained in an instrument under seal, in order to be binding; Langd. Contr. § 178; 3 Term, 653. When thus made binding, the offer is not irrevocable, but the only effect is to give the offerer a claim for damages if the stipulation be broken by revoking the offer.

As an offer can only be made by communication from the offerer to the offeree, so it can only be revoked in the same manner. But the death or insanity of the offerer during the pendency of the offer, revokes it; Langd. Contr. § 180.

An offer can only be accepted in the terms in which it is made; an acceptance, therefore, which modifies the offer in any particular, goes for nothing; L. R. 7 Ch. App. 587.

A man may change his will at any time, if it is not to the injury of another; he may, therefore, revoke or recall his offers at any time before they have been accepted; and, in or-

der to deprive him of this right, the offer must have been accepted on the terms in which it was made; 10 Ves. 438; 2 C. & P. 553.

Any qualification of, or departure from, those terms, invalidates the offer, unless the same be agreed to by the party who made it; 4 Wheat. 225; 3 Johns. 534; 7 *id.* 470; 6 Wend. 103.

When the offer has been made, the party is presumed to be willing to enter into the contract for the time limited, and, if the time be not fixed by the offer, then until it be expressly revoked or rendered nugatory by a contrary presumption; 6 Wend. 103. See 8 S. & R. 243; 1 Pick. 278; 10 *id.* 326; 12 Johns. 190; 9 Port. Ala. 605; 1 Bell, Com. 326, 5th ed.; Pothier, Vente, n. 32. And see ACCEPTANCE OF CONTRACTS; ASSENT; BID.

OFFICE. A right to exercise a public function or employment, and to take the fees and emoluments belonging to it. Shelf. Mortm. 797; Cruise, Dig. Index; 3 S. & R. 149. An office may exist without an incumbent; 28 Cal. 382.

Judicial offices are those which relate to the administration of justice, and which must be exercised by persons of sufficient skill and experience in the duties which appertain to them.

Military offices are such as are held by soldiers and sailors for military purposes.

Ministerial offices 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. 7 Mass. 280. See 5 Wend. 170; 10 *id.* 514; 8 Vt. 512; 1 Ill. 280; 12 Ind. 569. It is a general rule that a judicial office cannot be exercised by deputy, while a ministerial may.

Political offices are such as are not connected immediately with the administration of justice or the execution of the mandates of a superior officer: the offices of the president of the United States, of the heads of departments, of the members of the legislature, are of this number.

In England, offices are public or private. The former affect the people generally; the latter are such as concern particular districts belonging to private individuals. In the United States, all offices, according to the above definition, are public; but in another sense employments of a private nature are also called offices: for example, the office of president of a bank, the office of director of a corporation. For the incompatibility of office, see INCOMPATIBILITY; 4 S. & R. 277; 4 Co. Inst. 100; Comyns, Dig. b. 7. And see, generally, 3 Kent, 362; Cruise, Dig. tit. 25; 16 Viner, Abr. 101; Ayliffe, Parerg. 395; Pothier, Traité des Choses, § 2; 17 S. & R. 219; 6 Wall. 385; 22 Barb. 595; 29 Ohio, 347; 27 Am. Rep. 754; MANDAMUS; QUO WARRANTO.

For the word "office," as used of a place for transacting public business, see 6 Cush. 181. See, as to tenure of office, R. S. §§ 1767–1775. See RANK.

OFFICE-BOOK. A book kept in a public office, not appertaining to a court, authorized by the law of any state.

An *exemplification* of any such office-book, when authenticated under the act of congress of 27th March, 1804, is to have such faith and credit given to it in every court and office within the United States as such exemplification has by law or usage in the courts or offices of the state from whence the same has been taken. See FOREIGN LAWS; FOREIGN JUDGMENT.

OFFICE-COPY. A transcript of a record or proceeding filed in an office established by law, certified under the seal of the proper officer.

OFFICE FOUND. In English Law. When an inquisition is made to the king's use of any thing, by virtue of office of him who inquires, and the inquisition is found, it is said to be office found. See INQUEST OF OFFICE.

OFFICE GRANT. See GRANT.

OFFICE OF A JUDGE. In English Law. 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*. Coote's Eccl. Practice; Moz. & W.

OFFICER. He who is lawfully invested with an office. An office in this country is not property, nor are the prospective fees of an office the property of the incumbent; 37 N. Y. 518. He cannot sell, or purchase, or encumber his office. Payment of salary to a *de facto* officer is a good defence to an action by a *de jure* officer for the same salary after he had acquired possession; 68 N. Y. 279; s. c. 23 Am. Rep. 168; 30 Barb. 193; 20 Kans. 298; 12 Ad. & E. 702; but see *contra*, 12 Heisk. 499; s. c. 27 Am. Rep. 754; 28 Cal. 21; 53 Ill. 428.

Executive officers are those whose duties are mainly to cause the laws to be executed.

For example, the president of the United States of America, and the several governors of the different states, are executive officers. Their duties are pointed out in the national constitution and in the constitutions of the several states.

Legislative officers are those whose duties relate mainly to the enactment of laws, such as members of congress and of the several state legislatures.

These officers are confined in their duties, by the constitution, generally to make laws; though sometimes, in cases of impeachment, one of the houses of the legislature exercises judicial functions somewhat similar to those of a grand jury,

by presenting to the other articles of impeachment, and the other house acts as a court in trying such impeachment. The legislatures have, besides, the power to inquire into the conduct of their members, judge of their elections, and the like.

Judicial officers are those whose duties are to decide controversies between individuals, and accusations made in the name of the public against persons charged with a violation of the law.

Ministerial officers are those whose duty it is to execute the mandates, lawfully issued, of their superiors.

Military officers are those who have command in the army; and

Naval officers are those who are in command in the navy.

Officers are also divided into public officers and those who are not public. Some officers may bear both characters: for example, a clergyman is a public officer when he acts in the performance of such a public duty as the marriage of two individuals; 4 Conn. 209; and he is merely a private person when he acts in his more ordinary calling of teaching his congregation. See 4 Conn. 134; 18 Me. 155.

Officers are required to exercise the functions which belong to their respective offices. The neglect to do so may, in some cases, subject the offender to an indictment; 1 Yeates, 519; and in others he will be liable to the party injured; 1 Yeates, 506.

The word "officer" has been held strictly applicable, among others, in the following cases: persons entrusted by authority of law with the receipt of public money; 74 Penn. 124; a deputy of a United States marshal; 3 Bla. 425; the legally appointed receiver of a national bank; 2 Ben. 303; clerks in the executive departments of the federal or of a state goverment; 10 Ct. Cl. 426; a collector of city taxes; 7 Metc. 152; a representative in a state legislature; 2 N. H. 246; president and directors of a bank, or treasurer of a railroad corporation; 8 Metc. 247; 10 Gray, 173; while the reverse has been held as to: one who receives no certificate of appointment, takes no oath, and has no term of office; 42 N. Y. Sup. Ct. 481; one who has been elected, but has not qualified; 1 Neb. 130; 28 Md. 1; a special deputy of a sheriff; 41 Ala. 399; a road supervisor; 35 Iowa, 361; 50 How. Pr. 353; a police juryman; 25 La. An. 138; a pension officer of the United States; 33 Miss. 508; a public printer; 70 N. C. 93; see 20 Wall. 179; 22 *id.* 492.

OFFICIAL. In Old Civil Law. The person who was the minister of, or attendant upon, a magistrate.

In Canon Law. The person to whom the bishop generally commits the charge of his spiritual jurisdiction bears this name. Wood, Inst. 30, 505; Merlin, Répert.

OFFICINA JUSTITIÆ. The workshop or office of justice. **In English Law.** The chancery was formerly so called, because all writs issued from it, under the great seal, returnable into the courts of common law. See CHANCERY.

OHIO. One of the states of the American Union.

Massachusetts, Connecticut, and Virginia claimed, under their respective charters, the territory lying northwest of the river Ohio. At the solicitation of the continental congress, these claims were, soon after the close of the war of independence, ceded to the United States. Virginia, however, reserved the ownership of the soil of three million seven hundred thousand acres between the Scioto and the Little Miami rivers, for military bounties to the soldiers of her line who had served in the revolutionary war; and Connecticut reserved three million six hundred and sixty-six thousand acres in northern Ohio, now usually called "the Western Reserve." The history of these reservations, and of the several "purchases" under which land-titles have been acquired in various parts of the state, will be found in Albachi's Annals of the West; in the Preliminary Sketch of the History of Ohio, in the first volume of Chase's Statutes of Ohio; and in Swan's Land Laws of Ohio. The conflicting titles of the states having been extinguished, congress, on July 13, 1787, passed the celebrated ordinance for the government of the territory northwest of the river Ohio. 1 Curwen's Revised Statutes of Ohio, 86. It provided for the equal distribution of the estates of intestates among their children, gave the widow dower as at common law, regulated the execution of wills and deeds, secured perfect religious toleration, the right of trial by jury, judicial proceedings according to the course of the common law, the benefits of the writ of habeas corpus, security against cruel and unusual punishments, the right of reasonable bail, the inviolability of contracts and of private property, and declared that "there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

These provisions have been, in substance, incorporated into the constitution and laws of Ohio, as well as of the other states which have since been formed within "the territory." The legal effect of the ordinance has been much discussed, and the supreme court of Ohio and the circuit court of the United States for the seventh circuit, on the one hand, and the supreme court of the United States, on the other, have arrived at directly opposite conclusions in respect to it. By the former it was considered a compact not incompatible with state sovereignty, and as binding on the state of Ohio as her own constitution; while the latter treated it as a mere temporary statute, which was abrogated by the adoption of the constitution of the United States. 5 Ohio, 410; 7 *id.* 416; 17 *id.* 425; 1 McLean, 336; 3 *id.* 226; 3 How. 212, 589; 10 *id.* 82; s. c., 8 West. L. J., 232.

On the 30th of October, 1802, congress passed an act making provision for the formation of a state constitution, under which, in 1803, Ohio was admitted into the Union, under the name of "the State of Ohio." This constitution was never submitted to a vote of the people. It continued to be the organic law of Ohio until September 1, 1851, when it was abrogated by the adoption of the present constitution.

The bill of rights which forms a part of this constitution contains the provisions common to such instruments in the constitutions of the different states. Such are the prohibitions against any laws impairing the right of peaceably assembling to consult for the common good, to bear arms, to have a trial by jury, to worship according to the dictates of one's own conscience, to have the benefit of the writ of *habeas corpus*, to be allowed reasonable bail, to be exempt from excessive fines and cruel and unusual punish-

ments, not to be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury, to have a copy of the indictment, the aid of counsel, compulsory process for witnesses, a speedy and public trial, to be privileged from testifying against one's self or to be twice put in jeopardy for the same offence. Provision is also made against the existence of slavery, against transporting offenders out of the state, against imprisonment for debt unless in cases of fraud, against granting hereditary honors, against quartering soldiers in private houses, for the security of persons from unreasonable arrest or searches, and for the freedom of speech and the press.

Every male citizen of the United States, twenty-one years of age, who has resided in the state one year, and in the county, township, or ward such period as may be fixed by law, next preceding election, is entitled to vote.

THE LEGISLATIVE POWER.—This is lodged in a General Assembly, consisting of a Senate and House of Representatives.

The *Senate* is composed of thirty-five members, elected biennially, one in each of the senatorial districts into which the state is divided, for the term of two years. Senators must have resided in their respective districts one year next before election, unless absent on business of the state or the United States.

The *House of Representatives* is composed of one hundred members, elected biennially, one in each of the representative districts of the state, for the term of two years, by the voters of the district. A representative must have resided one year next preceding the election in the county or district for which he is elected. No person can be elected to either house who holds office under the United States or an office of profit under the state. Provision is made for re-districting the state every ten years from 1851, by dividing and combining the existing districts, and affording additional representatives during a part of the decennial period to those districts which have a surplus population over the ratio. The assembly cannot grant special charters to corporations, but may provide for their creation by general laws. No association with banking powers can be authorized until the act creating it has been submitted to the people and approved by a majority voting at that election. A debt cannot be contracted for purposes of internal improvement. Cities and incorporated villages are corporations under general laws. The general assembly may not pass retroactive laws, but may authorize courts to carry into effect, upon such terms as may be just and equitable, the manifest intention of parties and officers, by curing omissions, defects, and errors in instruments and proceedings arising out of their want of conformity with the laws of the state.

THE EXECUTIVE DEPARTMENT.—The *Governor* is elected biennally, for the term of two years from the second Monday of January next following his election, and until his successor is qualified. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed; may, on extraordinary occasions, convene the general assembly by proclamation; in case of disagreement between the two houses in respect to the time of adjournment, has power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof; is commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States; and has power, after conviction, to grant reprieves, commutations, and pardons for all crimes and offences, except treason and cases of impeachment, upon such conditions as he may think proper, subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the general assembly at its next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He must communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor.

He has no veto power upon the acts of the legislature, and his power of appointment is extremely limited.

The *Lieutenant-Governor* is elected at the same time, and for the same term of office, as the governor.

In case of the death, impeachment, resignation, removal, or other disability of the governor, the powers and duties of the office, for the residue of the term, or until he is acquitted or the disability be removed, devolve upon the lieutenant-governor.

He is president of the senate *ex officio* but possesses only a casting vote.

A *Secretary of State*, a *Treasurer*, and an *Attorney-General* are also elected at the same time, for the same term.

An *Auditor* is elected once in four years. If any of these offices become vacant, the governor appoints incumbents to serve till the next general election, after thirty days, occurs, when a successor is elected for a full term.

THE JUDICIAL POWER.—The *Supreme Court* consists of five judges, elected by the people for five years. The judges are so classified that one goes out of office each year. It has original jurisdiction over writs of quo warranto, mandamus, habeas corpus, and procedendo, and a large appellate jurisdiction by writs of error from inferior courts. It may issue writs of error and certiorari in any criminal case, and supersedeas in any case, and all writs, not provided for, which are necessary to enforce the administration of justice. Writs of error, certiorari, habeas corpus, and supersedeas may be issued by the judge in vacation.

The *District Court* is composed of one judge of the supreme court and the judges of the common pleas court for the district in which the court is held. One session at least of this court is to be held annually in each county, or at least three sessions annually in three places in the district. It has like original and appellate jurisdiction with the supreme court upon writ of error granted by the supreme court, or some judge thereof in vacation.

The *Court of Common Pleas* under the constitution of 1851, was originally composed of three judges, elected by the people in each of the nine districts into which the state was divided, for the term of five years. Each of these nine districts was divided into three parts, following county-lines, and as nearly equal as possible; and in each of these sub-districts one judge was elected. The general assembly may increase or diminish the number of judges in any district, and may alter the number of districts, and has in several districts increased the number of

judges, and has increased the number of districts to ten. Courts of common pleas are to be held by one or more of these judges; and more than one common pleas court may be held in the district at the same time. This court has original jurisdiction of all civil causes where the matter in controversy exceeds one hundred dollars, and a service, personal or by attachment of property, can be made in the county or where the property in question is situated in the county. This court has also almost exclusively the criminal jurisdiction, with the exception of a petty jurisdiction exercised in some instances by local police courts. It has a supervisory jurisdiction in cases of distribution of decedent's property or the probate courts. Acts 1857, p. 202. It may effectuate the intentions of parties, by curing defective instruments. Acts 1859, p. 40. It exercises appellate jurisdiction also of cases brought from justices of the peace and all other inferior judicial tribunals. A writ of error lies from this court to the district court.

A *Probate Court* is held in each county by a probate judge, elected for three years by the people of the county. This court has jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators, and guardians, and such jurisdiction in habeas corpus, the issuing of marriage licenses, and for the sale of land by executors, administrators, and guardians, and such other jurisdiction, in any county or counties, as may be provided by law.

A very extensive jurisdiction is now exercised over the administration of trusts upon assignments made by failing debtors for the benefit of their creditors, and over judgment debtors who are accused of secreting their effects.

Superior Courts have been established, under authority of the constitution, in Cincinnati, and Dayton, whose jurisdiction in civil causes is concurrent with the courts of common pleas within their respective territorial limits. Their decisions are supervised by the supreme court, by writ of error allowed by that court, or by one of its judges in vacation.

Jurisprudence.—The common law of England is the basis of the civil law of this state, modified by the judicial rejection of that part which is "inapplicable to the condition of the people of Ohio." A revision and consolidation of the statutes was adopted by the general assembly in June, 1879, and published in two volumes under the title of the "Revised Statutes of Ohio, 1880." This work contains all the statutes of a general nature in force on January 1, 1880. No attempt has ever been made to arrange or classify the great mass of local legislation, including the charters of banks, turnpikes, railroads, and manufacturing companies, the boundaries of counties, sales of school lands, acts for the relief of private persons, and others of a kindred nature; and complete editions of these latter laws have now become very rare.

The criminal law of the state is wholly statutory, and there are no offences recognized as common-law offences. The formal distinction between actions at law and in equity is abolished. Actions are brought by a petition stating the facts of the case.

OIL. Coal oil, or petroleum, is a mineral, and forms part of the realty; 9 Pitts. L. J. N. S. 139.

OLD NATURA BREVIUM. The title of an English book, so called to distinguish it from Fitzherbert's work entitled Natura Brevium. It contains the writs most in use in the reign of Edward III., together with a short comment on the application and properties of each of them.

OLD STYLE. The mode of reckoning time in England until the year 1752, when the New Style, at present in use, and which had prevailed in the Roman Catholic countries of the continent since 1582, was introduced. According to the O. S., the year commenced on the 25th of March; every fourth year was a leap-year, instead of, as now, but 97 leap years in 400 years; Moz. & W.

OLD TENURES. The title of a small tract, which, as its title denotes, contains an account of the various tenures by which land was holden in the reign of Edward III. This tract was published in 1719, with notes and additions, with the eleventh edition of the First Institutes, and reprinted in 8vo. in 1764, by Serjeant Hawkins, in a selection of Coke's Law Tracts.

OLERON, LAWS OF. A maritime code promulgated by Eleanor, duchess of Guienne, mother of Richard I., at the isle of Oleron,—whence their name. They were modified and enacted in England under Richard I., and again promulgated under Henry III. and Edward III., and are constantly quoted in proceedings before the admiralty courts, as are also the Rhodian Laws. Co. Litt. 2. See CODE.

OLIGARCHY (Gr. ὀλίγος and ἀρχή. The government of a few). A name given to designate the power which a few citizens of a state have usurped, which ought by the constitution to reside in the people. Among the Romans, the government degenerated several times into an oligarchy,—for example, under the decemvirs, when they became the only magistrates in the commonwealth.

OLOGRAPH. A term which signifies that an instrument is wholly written by the party. See La. Civ. Code, art. 1581; Code Civ. 970; 5 Toullier, n. 357; 1 Stu. Low. C. 327; 2 Bouvier, Inst. n. 2139. And see TESTAMENT; WILL.

OMISSION. The neglect to perform what the law requires.

When a public law enjoins on certain officers duties to be performed by them for the public, and they omit to perform them, they may be indicted: for example, supervisors of the highways are required to repair the public roads: the neglect to do so will render them liable to be indicted.

When a nuisance arises in consequence of an omission, it cannot be abated, if it be a private nuisance, without giving notice, when such notice can be given. See COMMISSION; NUISANCE.

OMNIA PERFORMAVIT (Lat. he has done all). **In Pleading.** A good plea in bar where all the covenants are in the affirmative. 1 Me. 189.

OMNIUM (Lat.). **In Mercantile Law.** A term used to express the aggregate value of the different stock in which a loan is usually funded. 2 Esp. 361; 7 Term, 630.

ON ACCOUNT OF WHOM IT MAY CONCERN, FOR WHOM IT MAY CONCERN. A clause in policies of insurance, under which all are insured who have an insurable interest at the time of effecting the insurance and who were then contemplated by the party effecting the insurance. 2 Parsons, Marit. Law, 30.

ONCE IN JEOPARDY. See JEOPARDY.

ONERARI NON (Lat. ought not to be burdened). **In Pleading.** The name of a plea by which the defendant says that he ought not to be charged. It is used in an action of debt; 1 Saund. 290, n. *a*.

O. Ni. In the exchequer, when the sheriff made up his account for issues, amerciaments, etc., he marked 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. But sheriffs now account to the commissioners for auditing the public accounts; Whart. Lex.

ONERIS FERENDI (Lat. of bearing a burden). **In Civil Law.** The name of a servitude by which the wall or pillar of one house is bound to sustain the weight of the buildings of the neighbor.

The owner of the servient building is bound to repair and keep it sufficiently strong for the weight it has to bear. Dig. 8. 2. 23; 2 Bouvier, Inst. n. 1627.

ONEROUS CAUSE. In Civil Law. A valuable consideration.

ONEROUS CONTRACT. In Civil Law. One made for a consideration given or promised, however small. La. Civ. Code, art. 1767.

ONEROUS DEED. In Scotch Law. A deed given for valuable consideration. Bell, Dict.; CONSIDERATION.

ONEROUS GIFT. The gift of a thing subject to certain charges imposed by the giver on the donee. Pothier, Obl.

ONOMASTIC. A term applied to a signature which is in a different handwriting from the body of the instrument. 2 Benth. Jud. Ev. 460, 461.

ONUS PROBANDI (Lat.) **In Evidence.** The burden of proof.

It is a general rule that the party who alleges the affirmative of any proposition shall prove it. It is also a general rule that the *onus probandi* lies upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant: for example, when to a plea of infancy the plaintiff replies a promise after the defendant had attained his age, it is sufficient for the plaintiff to prove the promise, and it lies on the defendant to show that he was not of age at the time; 1 Term, 648. But where the negative involves a criminal omission by the party, and, consequently, where the law, by virtue of the general principle, presumes his innocence, the affirmative of the fact is also presumed. See 11 Johns. 513; 19 *id.* 345; 9 Mart. La. 48; 3 Mart. La. N. S. 576.

In general, wherever the law presumes the affirmative, it lies on the party who denies the fact to prove the negative; as when the law raises a presumption as to the continuance of life, the legitimacy of children born in wedlock, or the satisfaction of a debt. See, generally; 1 Phill. Ev. 156; 1 Stark. Ev. 376; Rosc. Civ. Ev. 51; Roscoe, Cr. Ev. 55; Bull. N. P. 298; 2 Gall. 485; 1 M'Cord, 573; 1 Houst. 44; 12 Viner. Abr. 201.

The party on whom the *onus probandi* lies is entitled to begin, notwithstanding the technical form of the proceedings; 1 Stark. Ev. 584; 3 Bouvier, Inst. n. 3043. See BURDEN OF PROOF.

OPEN. To begin. He begins or opens who has the affirmative of an issue. 1 Greenl. Ev. § 74.

To open a case is to make a statement of the pleadings in a case, which is called the opening. This should be concise, very distinct, and perspicuous. Its use is to enable the judge and jury to direct their attention to the real merits of the case and the points in issue; 1 Stark. 439; 2 *id.* 317.

To vacate; to relieve a party who has an equitable right to such relief against a proceeding which is to him a formal or legal bar; to allow a re-discussion on the merits.

For example, to open a rule of court. 2 Chitty, Bail, 265; 5 Taunt. 628; 1 Mann. & G. 555; 7 Ad. & E. 519. To open a judgment or default. 4 R. I. 324; 1 Wisc. 631. See OPENING A JUDGMENT. To open an account; to make a judicial announcement, that a party, *e. g.* an executor, shall not be absolutely bound by the account he has rendered, but may show that it contains errors to his prejudice. To open a marriage settlement or an estate-tail; *i. e.* to allow a new settlement of the estate. To open biddings; *i. e.* to allow a re-sale. See OPENING BIDDINGS. To open contract. 44 Me. 206.

OPEN ACCOUNT. A running or unsettled account; not completely settled, but subject to future adjustment. 1 Ala. 62; 6 *id.* 438; 21 La. An. 406.

OPEN A CREDIT. To accept or pay the draft of a correspondent who has not furnished funds. Pardessus, n. 296.

OPEN COURT. A court formally opened and engaged in the transaction of all judicial functions. 45 Iowa, 501.

A court to which all persons have free access as spectators while they conduct themselves in an orderly manner.

The term is used in the first sense as distinguishing a court from a judge sitting in chambers or informally for the transaction of such matters as may be thus transacted. See CHAMBERS; COURT.

In the second sense, all courts in the United States are open; but in England, formerly, while the parties and probably their witnesses were admitted freely in the courts, all other persons were required to pay in order to obtain admittance. Stat. 13 Edw. I. cc. 42, 44; Barr. on the Stat. 126, 127. See Prin. of Pen. Law, 165.

OPEN ENTRY. See ENTRY.

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

OPEN POLICY. An open policy is one in which the amount of the interest of the insured is not fixed by the policy, and is to be ascertained in case of loss. See POLICY.

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

The opening is made immediately upon the impanelling of the jury: it embraces the reading of such of the pleadings as may be necessary, and a brief outline of the case as the party expects to prove it, where there is a trial, or of the argument, where it is addressed to the court.

OPENING AND CLOSING. After the evidence is all in, the plaintiff has the privilege of the opening and closing or summing up speeches to the jury; in the closing address he should confine himself to a reply to defendant's speech. It seems doubtful whether it is within the discretion of the court to interfere with this established mode of procedure; at least it should only be done with great caution; 36 Mich. 254; 32 Ohio, 224; 8 Daly, 61; 16 West. Jur. 18. See Best's Right to Begin and Reply; TRIAL.

In English Practice. The address made immediately after the evidence is closed. Such address usually states—*first*, the full extent of the plaintiff's claims, and the circumstances under which they are made, to show that they are just and reasonable; *second*, at least an outline of the evidence by which those claims are to be established; *third*, the legal grounds and authorities in favor of the claim or of the proposed evidence; *fourth*, an anticipation of the expected defence, and statement of the grounds on which it is futile, either in law or justice, and the reasons why it ought to fail. But the court will sometimes restrict counsel from an anticipation of the defence. 3 Chitty Pr. 881.

OPENING A COMMISSION. See COURTS OF ASSIZE AND NISI PRIUS.

OPENING BIDDINGS. Ordering a resale. When estates are sold under decree of equity to the highest bidder, the court will, on notice of an offer of a sufficient advance on the price obtained *open the biddings*, *i. e.* order a re-sale. But this will not generally be done after the confirmation of the certificate of the highest bidder. So, by analogy, a re-sale has been ordered of an estate sold under bankruptcy. Sugd. Vend. 90; 22 Barb. 167; 8 Md. 322; 9 *id.* 228; 13 Gratt. 639; 4 Wisc. 242; 31 Miss. 514.

In England, by stat. 30 & 31 Vict. c. 48, s. 7, the opening of biddings is now allowed only in cases of fraud or misconduct in the sale; Wms. R. P. The courts of this country also will not generally open the biddings merely to obtain a higher price, but require irregularity, fraud, or gross inadequacy of price to be shown.

OPENING A JUDGMENT. In Practice. An act of the court by which a judgment is so far annulled that it cannot be executed, although it still retains some qualities of a judgment: as for example, its binding operation or lien upon the real estate of the defendant.

The opening of the judgment takes place when some person having an interest makes affidavit to facts which, if true, would render the execution of such judgment inequitable. The judgment is opened so as to be in effect an award of a collateral issue to try the facts alleged in the affidavit; 6 W. & S. 493, 494.

The rule to open judgment and let defendant into a defence is peculiar to Pennsylvania practice, and is a clear example of our system of administering equity under common law forms. By practice it is confined to judgments by default and those entered on warrants of attorney to confess, etc. It was, however, devised in the absence of a court of chancery, as a substitute for a bill in equity, to enjoin proceedings at law; Mitchell's "Motions and Rules;" 49 Penn. 365; 8 Phila. 553; 2 Watts, 379; 6 W. N. C. 484.

OPENING OF A POLICY OF INSURANCE. The question has been made whether, and in what cases, if any, the valuation in a valued policy shall be opened. The valuation, being a part of the agreement of the parties, is not to be set aside as between them in any case. The question is, how shall it be treated where only a part of the subject insured and valued is put at a risk, and also in the settlement of a particular average? and the answer is the same in both cases: viz., when the proportion or rate per centum put at risk or lost is ascertained, the agreed valuation of the whole is to be applied to the part put at risk or the proportion lost, *pro rata*. 2 Phill. Ins. 1203.

OPERATION OF LAW. A term applied to indicate the manner in which a party acquires rights without any act of his own: as, the right to an estate of one who dies intestate is cast upon the heir at law, by operation of law; when a lessee for life enfeoffs him in reversion, or when the lessee and lessor join in a feoffment, or when a lessee for life or years accepts a new lease or demise from the lessor, there is a surrender of the first lease by operation of law; 5 B. & C. 269; 9 *id.* 298; 2 B. & Ad. 119; 5 Taunt. 518. See DESCENT; PURCHASE.

OPERATIVE. A workman; one employed to perform labor for another. See 1 Penn. L. J. 368; 3 C. Rob. 237; 2 Cra. 240, 270.

OPERATIVE WORDS. In a deed, or lease, are the words which effect the transaction of which the instrument is the evi-

dence; the terms generally used in a lease are "demise and lease," but any words clearly indicating an intention of making a present demise will suffice; Fawcett, L. & T. 74; Wms. R. P. 196; Bacon, Abr. (K) 161; see Martindale, Conv. 273.

OPINION. In Evidence. An inference or conclusion drawn by a witness as distinguished from facts known to him as facts.

It is the province of the jury to draw inferences and conclusions; and if witnesses were in general allowed to testify what they judge as well as what they know, the verdict would sometimes prove not the decision of the jury, but that of the witnesses. Hence the rule that, in general, the witness cannot be asked his opinion upon a particular question; 29 N. H. 94; 16 Ill. 513; 18 Ga. 194, 573; 7 Wend. 560; 24 *id.* 668; 2 N. Y. 514; 9 *id.* 371; 17 *id.* 340. But while it is incompetent for a witness to state his opinion upon a question of law, where the intent with which an act done by him is drawn in question he may testify as to such intent; 12 Reptr. 664.

Some confusion in the application of this rule arises from the delicacy of the line which divides that which is to be regarded as matter of observation from that which is matter of judgment founded upon observation. Thus, it is held that an unprofessional witness may testify to the fact that a person whom he saw was intoxicated, whether he is able to state all the constituent facts which amount to drunkenness or not; 14 N. Y. 562; 26 Ala. N. S. 26. But, on the other hand, insanity or mental incapacity cannot, in general, be proved by the mere assertion of an unprofessional witness; 17 N. Y. 340; 7 Barb. 314; 13 Tex. 568. And see 25 Ala. N. S. 21.

So handwriting may be proved by being recognized by a witness who has seen other writings of the party in the usual course of business, or who has seen him write; Peake, N. P. 21; 1 Esp. 15, 351; 2 Johns. Cas. 211; 19 Johns. 134. But, on the other hand, the authorship of an anonymous article in a newspaper cannot be proved by one professing to have a knowledge of the author's style; How. App. Cas. N. Y. 187, 202.

From necessity, an exception to the rule of excluding opinions is made in questions involving matters of science, art, or trade, where skill and knowledge possessed by a witness, peculiar to the subject, give a value to his opinion above that of any inference which the jury could draw from facts which he might state; 4 Hill, N. Y. 129; 1 Denio, 281; 3 Ill. 297; 2 N. H. 480; 2 Story, 421. Such a witness is termed an expert; and he may give his opinion in evidence.

The following reference to some of the matters in which the opinions of expert witnessess have been held admissible will illustrate this principle. The unwritten or common law of foreign countries may be proved by the opinion of witnesses possessing professional knowledge; 1 Cra. 12, 38; 2 *id.* 236; 6 Pet. 763; 2 Wash. C. C. 1, 175; 2 Wend. 411; 3 Pick. 293; 4 Conn. 517; 4 Bibb, 73; 2 Marsh. 609; 5 Harr. & J. 186; 1 Johns. 385; 14 Mass. 455; 6 Conn. 508; 1 Vt. 336; 15 S. & R. 87; 1 La. 153; 3 *id.* 53; 6 Cra. 274; the degree of hazard of property insured against fire; 17 Barb. 111; 4 Zabr. 843; whether a picture is a good likeness or not; 39 Ala. 193; handwriting; 35 Me. 78; 2 R. I. 319; 25 N. H. 87; 1 Jones, No. C. 94, 150; 13 B. Monr. 258; mechanical operations, the proper way of conducting a particular manufacture, and the effect of a certain method; 4 Barb. 614; 19 *id.* 338; 3 N. Y. 322; negligence of a navigator, and its effect in producing a collision; 24 Ala. N. S. 21; sanity; 1 Add. 244; 41 Ala. 700; 12 N. Y. 358; 17 *id.* 340; impotency; 3 Phill. Eccl. 14; value of chattles; 22 Ala. N. S. 370; 11 Cush. 257; 22 Barb. 652, 656; 23 Wend. 354; value of land; 11 Cush. 201; 4 Gray, 607; 9 N. Y. 183; compare 4 Ohio St. 583; value of services; 15 Barb. 550; 20 *id.* 387; speed of a railway train; 59 N. Y. 631; benefit to real property by laying out a street adjacent thereto; 2 Gray, 107; survey-marks identified as being those made by United States surveyors; 24 Ala. N. S. 390; seaworthiness; Peake, Cas. 25; 10 Bingh. 57; and see 9 Cush. 226; whether a person appeared sick or well; 53 N. Y. 603. So an engineer may be called to say what, in his opinion, is the cause that a harbor has been blocked up; 3 Dougl. 158; 1 Phill. Ev. 276; 4 Term, 498. Opinion evidence as to the age of a person, from his appearance, is not admissible; 6 Conn. 9; nor is it in cases involving adultery, on the question of guilt or guilty intent; see 18 Ala. 738.

It is to be observed, however, that the principle of admitting such opinions is taken with the qualifications necessary to make, as far as possible, the judgment of the jury, and not that of the witness, the final means of determining the issue. Thus opinions of experts are not admissible upon the question of damages; 4 Denio, 311; 3 Hill, N. Y. 609; 21 Barb. 331; 23 Wend. 425; 2 N. Y. 514; and experts are always confined to opinions within the scope of their professions, and are not allowed to give opinions on things of which the jury can as well judge; 5 Rog. Rec. N. Y. 26; 4 Wend. 320; 14 Me. 398; 3 Dana, 382; 1 Penn. R. 161; 2 Halst. 244; 7 Vt. 161; 6 Rand. 704; 4 Yeates, 262; 9 Conn. 102; 3 N. H. 349; 5 Harr. & J. 438; 1 Denio, 281. A distinction is also to be observed between a feeble impression and a mere opinion or belief; 3 Ohio St. 406; 19 Wend. 477. See Mr. Lawson's article, in 25 Alb. L. J. 367 *et seq.*

In Practice. The statement of reasons delivered by a judge or court for giving the judgment which is pronounced upon a case. The judgment itself is sometimes called an opinion; and sometimes the opinion is spoken of as the judgment of the court.

A declaration, usually in writing, made by

a counsel to the client of what the law is, according to his judgment, on a statement of facts submitted to him.

An opinion is in both the above cases a decision of what principles of law are to be applied in the particular case, with the difference that judicial opinions pronounced by the court are law and of authority, while the opinions of counsel, however eminent, are merely advice to his client or argument to the court.

Where there are several judges, and they do not all agree in the disposition of the cause, the opinion of the majority is termed the prevailing opinion, or the opinion of the court. The opinion of the minority is termed the dissenting opinion. The opinions of the courts, collected and provided with such preliminary statements of facts and of the arguments of counsel as may be necessary in each case to an understanding of the decision, make up the books of reports.

Opinions are said to be judicial or extra-judicial. A judicial opinion is one which is given on a question which is actually involved in the matter brought before the judge for his decision; an extra-judicial opinion is one which, although given by a judge in deciding a case, is not necessary to the judgment; Vaugh. 382; 1 Hale, Hist. 141; and, whether given in or out of court, is no more than the *prolatum* of him who gives it, and has no legal efficacy; 4 Penn. St. 28. Where a point is essential to the decision rendered, it will be presumed that it was duly considered, and that all that could be urged for or against it was presented to the court. But if it appears from the report of the case that such point was not taken or inquired into at all, there is no ground for this presumption, and the authority of the case is proportionably weakened; 8 Abb. Pr. 316.

Where two or more points are discussed in the opinions delivered on the decision of a cause, and the determination of either point in the manner indicated in such opinions would authorize the judgment pronounced by the court, the judges concurring in the judgment must be presumed to have concurred in such opinions upon all the points so discussed, unless some dissent is expressed or the circumstances necessarily lead to a different conclusion; 6 N. Y. 9. Where a judgment is reversed upon a part only of the grounds on which it went, it is still deemed an authority as to the other grounds not questioned. See 5 Johns. 125.

Counsel should, in giving an opinion, as far as practicable, give, *first*, a direct and positive opinion, meeting the point and effect of the question, and, if the question proposed is properly divisible into several, treating it accordingly. *Second*, his reasons, succinctly stated, in support of such opinion. *Third*, a reference to the statutes or decisions on the subject. *Fourth*, when the facts are susceptible of a material difference in statement, a suggestion of the probability of such variation. When an opinion is sought as a guide in respect to maintaining an action or defence, some other matters should be noticed:—as, *Fifth*, any necessary precautionary suggestions in reference to the possibility of a fatal defect in the evidence, arising from the nature of the case. Thus, where some important fact is stated as resting principally on the statement of the party interested, if by the law of the place such party is incompetent to testify respecting it, a suggestion ought to be made to inquire how that fact is to be proved. *Sixth*, a suggestion of the proper mode of proceeding, or the process or pleadings to be adopted.

In English and American law, the opinions of counsel, however eminent, are not entitled to any weight with the court, as *evidence* of the law. While the court will deem it their duty to receive such opinions as arguments and entitled to whatever weight they may have as such, they will not yield to them any authority; 4 Penn. 1, 28. In many cases, however, where a client acts in good faith under the advice of counsel, he may on that ground be protected from a liability which the court in its discretion might otherwise have imposed upon him.

OPPOSITION. In Practice. The act of a creditor who declares his dissent to a debtor's being discharged under the insolvent laws. 14 Bankr. Reg. 449.

OPPRESSOR. One who having public authority uses it unlawfully to tyrannize over another: as, if he keep him in prison until he shall do something which he is not lawfully bound to do.

To charge a magistrate with being an oppressor is, therefore, actionable. 1 Starkie, Sland. 185.

OPPROBRIUM. In Civil Law. Ignominy; shame; infamy.

OPTION. Choice; election. See those titles.

In Contracts. A contract by which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from or selling to B, specified securities at a fixed price within a certain time; 71 N. Y. 420; 83 *id.* 93.

These options are of three kinds, viz.: "calls," "puts," and "straddles," or "spread eagles." A call gives A the option of calling or buying from B or not, certain securities. A put gives A the option of selling or delivering to B or not. A straddle is a combination of a put and a call, and secures to A the right to buy of or sell to B or not. Where neither party, at the time of making the contract, intends to deliver or accept the shares, but merely to pay differences according to the rise or fall of the market, the contract is void either by virtue of statute or as contrary to public policy; 11 C. B. 538. In each transaction the law looks primarily at the intention of the parties; and the form of the transaction is not conclusive; 11 Hun, 471; 71 N. Y. 420; 5 M. & W. 466; 89 Penn. 250; 10 W. N. C. 112. Option contracts are not *prima facie* gambling contracts; 11 Hun. 471; 71 N. Y. 420. But see, 78 Ill. 43; 83 *id.* 33. See in general Dos Passos, Stock-Brokers.

OPTIONAL WRIT. An original writ in the alternative, commanding either to do a thing or show cause why it has not been done. 3 Bla. Com. 274; Finch, Law, 257.

OPUS LOCATUM (Lat.). **In Civil Law.** A work (*i. e.* the result of work) let to another to be used. A work (*i. e.* something to be completed by work) hired to be done by another. Vicat, Voc. Jur. *Opus*, *Locare*; L. 51, § 1, D. *Locat.*; L. 1, § 1, D. *ad leg. Rhod.*

OPUS MAGNIFICIUM or **MANIFICIUM** (from Lat. *opus*, work, *manus*, hand). **In Old English Law.** Manual labor. Fleta, l. 2, c. 48, § 3.

OR. A disjunctive particle.

As a particle, *or* is often construed *and*, and *and* construed *or*, to further the intent of the parties, in legacies, devises, deeds, bonds, and writings; 3 Gill. 492; 7 *id.* 197; 1 Call, 212; 2 Rop. Leg. text and notes of American editor 1400, 1405; 3 Greenl. Ev. tit. 38, c. 9, §§ 18, 25; 1 Jarm. Wills, c. 17, p. 427, 2d ed., and cases cited in Perk. note.; 1 Wills. Ex. 932, notes k, l; 5 Co. 112 *a*; Cro. Jac. 322; 4 Zabr. 686; 3 Term, 470.

Where an indictment is in the alternative, as forged or caused to be forged, it is bad for uncertainty; 2 Stra. 900; Hardw. 370; 1 Y. & J. 22. But a description of a horse as of a brown or bay color, in an indictment for larceny of such horse, is good; 13 Vt. 687; and so an indictment describing a nuisance as in the highway or road; 1 Dall. 150. See 28 Vt. 583; 24 Conn. 286; 13 Ark. 397. So, "break or enter," in a statute defining burglary means "break and enter;" 82 Penn. 306, 326; 105 Mass. 185.

When the word *or* in a statute is used in the sense of *to wit*, that is in explanation of what precedes, and making it signify the same thing, a complaint or indictment which adopts the words of the statute is well framed. Thus, it was held that an indictment was sufficient which alleged that the defendant had in his custody and possession ten counterfeit bank-bills *or* promissory notes, payable to the bearer thereof, and purporting to be signed in behalf of the president and directors of the Union Bank, knowing them to be counterfeit, and with intent to utter and pass them, and thereby to injure and defraud the said president and directors; it being manifest from the statute on which the indictment was framed, that promissory note was used merely as explanatory of bank-bill, and meant the same thing; 8 Mass. 59; 2 Gray, 502.

In general, see Cro. Eliz. 832; 27 Hen. VIII. 18 *b*; Hardw. 91, 94; 1 Ventr. 148; 2 Sandf. 369; 1 Jones, No. C. 309; 3 Atk. 291; 3 Term, 470; 1 Bingh. 500; 2 Dr. & Warr. 471; Whart. Cr. Pl. & Pr. 171, 251.

ORACULUM (Lat.). **In Civil Law.** The name of a kind of decision given by the Roman emperors.

ORAL. Spoken, in contradistinction to written: as, oral evidence, which is evidence delivered verbally by a witness. Formally pleadings were put in viva voce, or orally; Kerr's Act. Law.

ORATOR. **In Chancery Practice.** The party who files a bill. *Oratrix* is used of a female plaintiff. These words are disused in England, the customary phrases now being plaintiff and petitioner; Brown.

In Roman Law. An advocate; Code, 1. 3. 33. 1.

ORDAIN. To ordain is to make an ordinance, to enact a law.

The preamble to the constitution of the United States declares that the people "do ordain and establish this constitution for the United States of America." The third article of the same constitution declares that "the judicial power shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish." See 1 Wheat. 304, 324; 4 *id.* 316, 402.

Ordination, in the Prot. Epis. church, is the conferring on a person the holy orders of priest or deacon. The custom is similar in the Methodist church; 4 Conn. 134.

ORDEAL. An ancient superstitious mode of trial.

When in a criminal case the accused was arraigned, he might select the mode of trial either by God and his country, that is, by jury, or by God only, that is, by ordeal.

The trial by ordeal was either by fire or by water. Those who were tried by the former passed barefooted and blindfolded over nine hot glowing ploughshares, or were to carry burning irons in their hands, and accordingly as they escaped or not they were acquitted or condemned. The water ordeal was performed either in hot or cold water. In cold water, the parties suspected were adjudged innocent if their bodies were not borne up by the water contrary to the course of nature; and if after putting their bare arms or legs into scalding water they came out unhurt, they were taken to be innocent of the crime.

It was supposed that God would, by the mere contrivance of man, exercise his power in favor of the innocent. 4 Bla. Com. 342; 2 Am. Jur. 280. For a detailed account of the trial by ordeal, see Herbert, Antiq. of the Inns of Court, 146.

ORDER. Command; direction.

An informal bill of exchange or letter of request requiring the party to whom it is addressed to deliver property of the person making the order to some one therein described.

A designation of the person to whom a bill of exchange or negotiable promissory note is to be paid. See 14 Conn. 445; 48 N. H. 45; 39 N. Y. 98.

This order, in the case of negotiable paper, is usually by indorsement, and may be either express, as, "Pay to C D," or implied merely, as by writing A B [the payee's name]. See INDORSEMENT.

In French Law. The act by which the rank of preferences of claim, among creditors who have liens over the price which arises out of the sale of an immovable subject, is ascertained. Dalloz, Dict.

In the Practice of Courts. An order is any direction of a court or judge made or entered in writing, and not included in a judg-

ment; N. Y. Code of Proc. § 400. For distinction between order and requisition, see 19 John. 7.

In Governmental Law. By this expression is understood the several bodies which compose the state. In ancient Rome, for example, there were three distinct orders: namely, that of the senators, that of the patricians, and that of the plebeians.

In the United States there are no orders of men; all men are equal in the eye of the law. See RANK.

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; Robson, Bkcy.; Whart. Lex.

ORDER OF FILIATION. The name of a judgment rendered by two justices, having jurisdiction in such case, in which a man therein named is adjudged to be the putative father of a bastard child, and it is further adjudged that he pay a certain sum for its support.

The order must bear upon its face—*first*, that it was made upon the complaint of the township, parish, or other place where the child was born and is chargeable; *second*, that it was made by justices of the peace having jurisdiction; 1 Salk. 122, pl. 6; 2 Ld. Raym. 1197; *third*, the birthplace of the child; *fourth*, the examination of the putative father and of the mother, but it is said the presence of the putative father is not requisite if he has been summoned; Cald. 308; *fifth*, the judgment that the defendant is the putative father of the child; Sid. 363; Style, 154; Dalt. 52; Dougl. 662; *sixth*, that he shall maintain the child as long as he shall be chargeable to the township, parish, or other place, which must be named; 1 Salk. 121, pl. 2; Comb. 232; but the order may be that the father shall pay a certain sum weekly as long as the child is chargeable to the public; Style, 134; Ventr. 210; *seventh*, it must be dated, signed, and sealed by the justices. Such order cannot be vacated by two other justices; 15 Johns. 208. See 4 Cow. 253; 8 *id.* 623; 12 Johns. 195; 2 Blackf. 42.

ORDER OF REVIVOR. In English Practice. An order as of course for the continuance of an abated suit. It superseded the bill of revivor. See 15 & 16 Vict. c. 86, s. 52. Whart. Lex.

ORDER NISI. A conditional order, which is to be confirmed *unless* something be done, which has been required, by a time specified. Eden, Inj. 122.

ORDERS. Rules made by a court or other competent jurisdiction. The formula is generally in these words: *It is ordered*, etc.

The instructions given by the owner to the captain or commander of a ship, which he is to follow in the course of the voyage.

ORDERS OF THE DAY. Matters which the House of Commons may have agreed beforehand to consider on any particular day, are called the "orders of the day," as opposed to original motions; May's Parl. Prac. Orders of the day are also known to the parliamentary practice of this country; Cush. 1512, 1513.

ORDINANCE. A law; a statute; a decree.

This word is more usually applied to the laws of a corporation than to the acts of the legislature: as, the ordinances of the city of Philadelphia. The following account of the difference between a statute and an ordinance is extracted from Bacon's Abridgment, *Statute* (A). "Where the proceeding consisted only of a petition from parliament and an answer from the king, these were entered on the *parliament roll;* and if the matter was of a public nature, the whole was then styled an *ordinance:* if, however, the petition and answer were not only of a public but a novel nature, they were then formed into an *act* by the king, with the aid of his council and judges, and entered on the *statute roll.*" See Co. Litt. 159 *b*, Butler's note; 3 Reeve, Hist. Eng. Law, 146.

According to Lord Coke, the difference between a statute and an ordinance is that the latter has not had the assent of the king, lords, and commons, but is made merely by two of these powers. Co. 4th Inst. 25. See Barrington, Stat. 41, note (x).

ORDINARY. In Ecclesiastical Law. An officer who has original jurisdiction in his own right, and not by deputation.

In England, the ordinary is an officer who has immediate jurisdiction in ecclesiastical causes. Co. Litt. 344. Also a bishop, and an archbishop is the ordinary of the whole province; also an archdeacon; and an officer of the royal household.

In the United States, the ordinary possesses, in those states where such officer exists, powers identical with those usually vested in the courts of probate. In South Carolina, the ordinary was a judicial officer; 1 Const. So. C. 267; 2 *id.* 384; but no longer exists in South Carolina, where they have now a probate court. Georgia retains courts of ordinary.

ORDINARY CARE. That degree of care which men of ordinary prudence exercise in taking care of their own property. It can only be determined by the circumstances of each particular case whether ordinary care was used. This degree of care is that required of bailees for the mutual benefit of bailor and bailee; 8 Metc. 91; 2 Wisc. 316; 16 Ark. 308; 23 Conn. 443; 40 Me. 64; 19 Ga. 427; 28 Vt. 150, 458; 9 N. Y. 416; 26 Ala. N. S. 203; 1 Dutch. 556; 36 E. L. & E. 506; 4 Ind. 368. See BAILEE; 24 N. J. L. 268; 35 Penn. 60; 74 Ill. 232; 21 How. 356.

ORDINARY SKILL. Such skill as a person conversant with the matter undertaken might be reasonably supposed to have. 11 M. & W. 113; 20 Mart. La. 68, 75; 1 H. Blackst. 158, 161; 6 Ga. 213, 219; 8 B.

Monr. 515; 13 Johns. 211; 4 Burr. 2060; 7 C. & P. 289; 6 Bingh. 460; 16 S. & R. 368; 15 Mass. 316; 2 Cush. 316; 8 C. & P. 479; 4 Barnew. & C. 345. See NEGLIGENCE.

One who undertakes to act in a professional or other clearly defined capacity is bound to exercise the skill appropriate to such capacity, though the undertaking be gratuitous; 20 Penn. 136; 31 N. H. 119.

ORDINATION. The act of conferring the orders of the church upon an individual.

In the Presbyterian and Congregational churches, ordination means the act of establishing a licensed preacher over a congregation with pastoral charge and authority, or the act of conferring on a man the powers of a settled minister of the gospel, without the charge of a particular church, but with general powers wherever he may be called on to officiate; Whart. Lex. See ORDAIN.

ORDINIS BENEFICIUM. See BENEFICIUM ORDINIS.

ORDONNANCE DE LA MARINE. See CODE.

ORE TENUS (Lat.). Verbally; orally.

Formerly the pleadings of the parties were *ore tenus;* and the practice is said to have been retained till the reign of Edward III. 3 Reeve, Hist. Eng. Law, 95; Steph. Pl. 29. And see Bracton, 372 *b*.

In chancery practice, a defendant may demur at the bar *ore tenus;* 3 P. Wms. 370; if he has not sustained the demurrer on the record; 1 Swanst. 288; Mitf. Pl. 176; 6 Ves. 779; 8 *id.* 405; 17 *id.* 215, 216.

OREGON. One of the Pacific coast states of the American Union, and the thirty-third state admitted therein.

The territory called Oregon from the early name of its principal river—now called the Columbia—originally included all the country on the Pacific coast west of the Rocky mountains, and north of the 42d and south of the 49th parallel of north latitude. From 1818 to 1846, this country was subject to the joint occupancy of the subjects and citizens of Great Britain and the United States, under a disputed claim of title, which was settled by the treaty of June 15, of the latter year, in favor of the United States (8 Stat. 249, 360; 9 Stat. 109, 869).

As early as 1841 the American and British occupants west of the Cascade mountains, commenced to organize a government for their protection. These efforts resulted in the establishment of the "Provisional government of Oregon" by a popular vote on July 5, 1845, consisting of an executive, legislative (one house), and judicial department, the officers of which were chosen and supported by the voluntary action of the citizens and subjects of both nations. On March 3, 1849, this government was superseded by the territorial government provided by congress in the act of August 14, 1848 (9 Stat. 323). On September 27, 1850, congress passed the "donation act" (9 Stat. 497), giving the settlers the land held by them under the provisional government—640 acres to a married man and his wife, and 320 to a single man.

In 1857 a state constitution was formed and ratified by the people, under which that portion of the territory included in the following boundaries was admitted into the Union on February 14, 1859 (11 Stat. 383), on an equal footing with the other states:—

Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast lying west and opposite the state, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship-channel of the Columbia river; thence easterly to and up the middle channel of said river, and, where it is divided by islands, up the middle of the widest channel thereof, to a point near fort Walla-Walla, where the forty-sixth parallel of north latitude crosses said river; thence east on said parallel to the middle of the main channel of the Shoshones or Snake river; thence up the middle of the main channel of said river to the mouth of the Owyhee river; thence due south to the parallel of latitude forty-two degrees north; thence west along said parallel to the place of beginning; including jurisdiction in civil and criminal cases upon the Columbia river and Snake river, concurrently with states and territories of which those rivers form a boundary in common with this state.

By the same act the navigable waters of the state were declared common highways, and forever free to the citizens of the United States.

THE LEGISLATIVE POWER.—The legislative authority is vested in a *legislative assembly*, consisting of a Senate and House of Representatives.

The *Senate* is to consist of sixteen members, which number may be increased to thirty, elected for the term of four years by the electors of the districts into which the state is divided for the purpose. The senate is divided into two classes: so that one-half the number may be changed every two years.

The *House of Representatives* is to consist of thirty-four members, which number may be increased to sixty, chosen by the electors from the respective districts into which the state is divided for the purpose, for the term of two years.

Both houses now consist of the maximum number.

Senators and representatives must be twenty-one years old, citizens of the United States, and for a year at least preceding the election inhabitants of the county or district from which they were chosen. Sessions of the assembly are holden every second year.

Two-thirds of each house constitutes a quorum; and no bill can be passed without the votes of a majority of all the members elected to each house. No act can take effect until ninety days after the adjournment of the legislature, except in case of an emergency which must be declared therein. The power to pass special and local laws is denied in certain cases; and the reading of a bill by sections on its final passage cannot be dispensed with.

THE EXECUTIVE POWER.—The *Governor* is elected for the term of four years, by the qualified electors, at the time and places of choosing members of the assembly. He is commander-in-chief of the military and naval forces of the state; must take care that the laws are faithfully executed; may convene the legislative assembly on extraordinary occasions; may grant reprieves, commutations, and pardons, after convictions, for all offences but treason, subject to regulations prescribed by the assembly. He has the veto power, and must sign all commissions.

He must be thirty years old, a citizen of the United States, and must have been for three years preceding his election a resident in the state. In case of removal, death, resignation, or inability of the governor, the duties of his office devolve upon the secretary of state, and in case of his removal, death, resignation, or disability, upon the president of the senate, till a governor is elected.

A *Secretary of State* is elected, by the qualified electors, for the term of four years, who is also auditor of public accounts.

A *Treasurer of State* is elected, by the qualified electors, for the term of four years.

In each county, a county clerk, treasurer, sheriff, coroner, and surveyor are elected, for the term of two years.

THE JUDICIAL POWER.—The judicial power of the state is vested in a supreme court, circuit and county courts, and justices of the peace; and municipal courts may be created to administer the regulations of incorporated towns.

The *Supreme Court* originally consisted of four justices, which number was increased to five, chosen in districts, within which they held the circuit courts. But in 1878 the legislative assembly, in pursuance of § 10 of art. vii., of the constitution, provided for the election of justices of the supreme and circuit courts in separate classes; and now the supreme court is held by three justices elected by the electors of the whole state. A judge of the supreme court is elected for six years, and in addition to the usual oath of office is required to swear that he will not accept any other office, except a judicial one, during the term for which he is elected. He must be a citizen of the United States, and must have resided three years in the state. The court has jurisdiction only to revise the decisions of the circuit court. It holds two terms a year, at the seat of government, and the judges are required to file with the secretary of state concise written statements of their decisions.

The *Circuit Courts* have all jurisdiction not vested in any other court including appellate jurisdiction and supervisory control of all inferior tribunals and officers. There are five circuit judges who are elected by the electors of the districts in which they hold court, for the term of six years. Their qualifications are the same as the judges of the supreme court, including the oath not to accept a political office.

County Courts are held in each county, by a judge elected for the term of four years. They have the jurisdiction pertaining to courts of probate and county commissioners, and may have, by act of assembly, civil jurisdiction to the extent of five hundred dollars, and "criminal jurisdiction not extending to death or imprisonment in the penitentiary." The civil jurisdiction has been conferred but no criminal jurisdiction.

A county clerk and sheriff are elected in each county, for the term of two years, and in each district composed of one or more counties a prosecuting attorney, who is a law officer of the state, and of the counties within his district.

A judge of the supreme court, or prosecuting officer, may be removed from office by the governor, upon the joint resolution of the legislative assembly in which two-thirds of the members present concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution.

Jurors are selected from the names of the persons on the assessment rolls, and out of the number in attendance upon the circuit court, seven are chosen by lot, who constitute the grand jury for the term, five of whom must concur to find an indictment. But the legislature may abolish the grand jury.

ORFGILD (Sax. *orf*, cattle, *gild*, payment. Also called *cheapgild*). A payment for cattle, or the restoring them. Cowel.

A restitution made by the hundred or county of any wrong done by one that was in pledge. Lambard, Archaion. 125, 126.

A penalty for taking away cattle. Blount.

ORIGINAL. An authentic instrument of something, and which is to serve as a model or example to be copied or imitated. It also means first, or not deriving any authority from any other source: as, original jurisdiction, original writ, original bill, and the like.

Originals are single or duplicate: single when there is but one; duplicate, when there are two. In the case of printed documents, all the impressions are *originals*, or in the nature of *duplicate originals*, and any copy will be primary evidence; 2 Stark. 130. But see 14 S. & R. 200; 2 Bouvier, Inst. n. 2001.

When an original document is not evidence at common law, and a copy of such original is made evidence by an act of the legislature, the original is not therefore made admissible evidence by implication; 2 Campb. 121, n.

ORIGINAL BILL. In Chancery Practice. A bill relating to a matter not before brought before the court by the same parties, standing in the same interests. Mitf. Eq. Pl. 33; Willis, Pl. 13 *et seq.*

Proceedings in a court of chancery are either commenced by way of information, when the matter concerns the state or those under its protection, or by original petition or bill, when the matter does not concern the state or those under its protection. The original bill states simply the cause of complaint, and asks for relief. It is composed of nine parts; Story, Eq. Pl. 7, 8, and is the foundation of all subsequent proceedings before the court; see 1 Daniell, Ch. Pr. 351. See BILL.

ORIGINAL CHARTER. In Scotch Law. That one by which the first grant of land is made. Bell, Dict.

ORIGINAL CONVEYANCES (called, also, primary conveyances) are those conveyances by means whereof the benefit or estate is created or first arises: viz., feoffment, gift, grant, lease, exchange, partition. 2 Bla. Com. 309, 310*; 1 Steph. Com. 466.

ORIGINAL ENTRY. The first entry made by a merchant, tradesman, or other person in his account-books, charging another with merchandise, materials, work or labor, or cash, on a contract made between them.

Such an entry, to be admissible as evidence, must be made in a proper book. In general, the books in which the first entries are made, belonging to a merchant, tradesman, or mechanic, in which are charged goods sold and delivered or work and labor done, are received in evidence. There are many books which are not evidence, a few of which will be here enumerated. A book made up by transcribing entries made on a slate by a

journeyman, the transcript being made on the same evening, or sometimes not until nearly two weeks after the work was done, was considered as not being a book of original entries; 1 Rawle, 435; 4 *id.* 408; 2 Watts, 451; 4 *id.* 258; 5 *id.* 432; 6 Whart. 189; 2 Miles, 268. A book purporting to be a book of original entries, containing an entry of the sale of goods when they were ordered, but before they were delivered, is not a book of original entries; 4 Rawle, 404. And unconnected scraps of paper, containing, as alleged, original entries of sales by an agent, on account of his principal, and appearing on their face to be irregularly kept, are not to be considered as a book of original entries; 13 S. & R. 126. See 2 Whart. 33; 4 M'Cord, 76; 20 Wend. 72; 1 Yeates, 198; 4 *id.* 341.

The entry must be made in the course of business, and with the intention of making a charge for goods sold or work done; they ought not to be made after the lapse of one day; 1 N. & McC. 130; 4 *id.* 77; 4 S. & R. 5; 9 *id.* 285; 8 Watts, 545. A book in which the charges are made when the goods are ordered is not admissible; 4 Rawle, 404; 3 Dev. 449.

The entry must be made in an intelligible manner, and not in figures or hieroglyphics which are understood by the seller only; 4 Rawle, 404. A charge made in the gross as "190 days work," 1 N. & McC. 130, or "for medicine and attendance," or "thirteen dollars for medicine and attendance on one of the general's daughters in curing the hooping-cough," 2 Cons. So. C. 476, were rejected. An entry of goods without carrying out any prices proves, at most, only a sale; and the jury cannot, without other evidence, fix any price; 1 South. 370. The charges should be specific, and denote the particular work or service charged as it arises daily, and the quantity, number, weight, or other distinct designation of the materials or articles sold or furnished, and attach the price and value to each item; 2 Const. So. C. 745; 1 N. & M'C. 130.

The entry must, of course, have been made by a person having authority to make it; 4 Rawle, 404; and with a view to charge the party; 8 Watts, 545.

The proof of the entry must be made by the person who made it. If made by the seller, he is competent to prove it from the necessity of the case, although he has an interest in the matter in dispute; 5 Conn. 496; 12 Johns. N. Y. 461; 1 Dall. 239. When made by a clerk, it must be proved by him. But in either case, when the person who made the entry is out of the reach of the process of the court, as in the case of death, or absence out of the state, the handwriting may be proved by a person acquainted with the handwriting of the person who made the entry; 2 W. & S. 137. But the plaintiff was not competent to prove the handwriting of a deceased clerk who made the entries; 1 Browne, App. liii.

The books and original entries, when proved by the supplementary oath of the party, is *primâ facie* evidence of the sale and delivery of goods, or of work and labor done; 1 Yeates, 347; Swift, Ev. 84; 3 Vt. 463; 1 M'Cord, 481; 2 Root, 59; 1 Cooke, 38. But they are not evidence of money lent or cash paid; 1 Day, 104; 1 Aik. 73, 74; Kirb. 289; nor of the time a vessel lay at the plaintiff's wharf; 1 Browne, 257; nor of the delivery of goods to be sold on commission; 2 Whart. 33.

These entries are evidence in suits between third parties; 8 Wheat. 326; 3 Campb. 305, 377; 2 P. & D. 573; 15 Mass. 380; 20 Johns. 168; 7 Wend. 160; 15 Conn. 206; 7 S. & R. 116; 16 *id.* 89; 2 Harr. & J. 77; 2 Rand. 87; 1 Y. & C. 53; and also in favor of the party himself; 2 Mart. La. N. S. 508; 4 *id.* 383; 2 Mass. 217; 1 Dall. 239; 2 Bay, 173, 362; 5 Vt. 313; 1 Phill. Ev. 266, Cowen & H. note.

ORIGINAL AND DERIVATIVE ESTATES. An original estate is the first of several estates, bearing to each other the relation of a particular estate and a reversion. It is contrasted with a derivative estate, which is a particular interest carved out of another estate of larger extent; 1 Pres. Est. *123.

ORIGINAL JURISDICTION. See JURISDICTION.

ORIGINAL WRIT. In English Practice. A mandatory letter issued in the king's name, sealed with his great seal, and directed to the sheriff of the county wherein the injury was committed or supposed to have been done, requiring him to command the wrongdoer, or party accused, either to do justice to the complainant, or else to appear in court and answer the accusation against him. This writ is deemed necessary to give the courts of law jurisdiction.

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. But before this, in modern English practice, the original writ was often dispensed with, by recourse to a fiction, and a proceeding *by bill* substituted. In this country, our courts derive their jurisdiction from the constitution, and require no original writ to confer it. Improperly speaking, the first writ which is issued in a case is sometimes called an original writ; but it is not so in the English sense of the word. See 3 Bla. Com. 273; Walker, Am. Law, 514.

ORIGINALIA (Lat.). **In English Law.** The transcripts and other documents sent to the office of the treasurer-remembrancer in exchequer are called by this name to distinguish them from *recorda*, which contain the judgments of the barons. The treasurer-remembrancer's office was abolished in 1833.

ORNAMENT. An embellishment. In questions arising as to which of two things is to be considered as principal or accessory, it is the rule that an ornament shall be considered as accessory.

ORPHAN. A minor or infant who has lost both of his or her parents. Sometimes the term is applied to such a person who has lost only one of his or her parents. 3 Mer. 48; 2 S. & S. 93; Aso & M. Inst. b. 1, t. 2. c. 1; 40 Wisc. 276. See 14 Hazzard, Penn. Reg. 188, 189, for a correspondence between the Hon. Joseph Hopkinson and ex-president J. Q. Adams as to the meaning of the word *orphan*. See, also, Hob. 247.

ORPHANAGE. In English Law. The share reserved to an orphan by the custom of London.

By the custom of London, when a freeman of that city dies, his estate is divided into three parts, as follows: one-third part to the widow; another to the children advanced by him in his lifetime, which is called the *orphanage;* and the other third part may be by him disposed of by will. Now, however, a freeman may dispose of his estate as he pleases; but in cases of intestacy the Statute of Distribution expressly excepts and reserves the custom of London. Lovelace, Wills, 102, 104; Bacon, Abr. *Custom of London* (C).

ORPHANS' COURT. In American Law. Courts of more or less extended probate jurisdiction, in Delaware, Maryland, New Jersey, and Pennsylvania. See the accounts of the respective states.

ORPHANOTROPHI. In Civil Law. Persons who have the charge of administering the affairs of houses destined for the use of orphans. Clef des Lois Rom. *Administrateurs.*

OSTENSIBLE PARTNER. One whose name appears in a firm as a partner, and who is really such.

OSWALD'S LAW. The law by which was effected the ejection of married priests, and the introduction of monks into churches, by Oswald, bishop of Worcester, about A. D. 964; Whart. Lex.

OTHER WRONGS. See ALIA ENORMIA.

OTHESWORTHE (Sax. *eoth*, oath). Worthy to make oath. Bracton, 185, 192.

OUNCE. The name of a weight. See WEIGHTS.

OUSTER (L. Fr. *outre, oultre;* Lat. *ultra*, beyond). Out; beyond; besides; farther; also; over and more. *Le ouster*, the uppermost. Over: *respondeat ouster*, let him answer over. Britton, c. 29. *Ouster le mer*, over the sea. Jacob. Law Dict. *Ouster eit*, he went away. 6 Co. 41 *b*; 9 *id.* 120.

To put out; to oust. *Il oust*, he put out or ousted. *Oustes*, ousted. 6 Co. 41 *b*.

In Torts. The actual turning out or keeping excluded the party entitled to possession of any real property corporeal.

An ouster can properly be only from real property corporeal, and cannot be committed of any thing movable; 1 C. & P. 123; 2 Bouvier, Inst. n. 2348; 1 Chitty, Pr. 148, n. r; nor is a mere temporary trespass considered as an ouster. Any continuing act of exclusion from the enjoyment constitutes an ouster, even by one tenant in common of his cotenant; Co. Litt. 199 *b*, 200 *a*. See 3 Bla. Com. 167; Archb. Civ. Pl. 6, 14; 1 Chitty, Pr. 374, where the remedies for an ouster are pointed out. In an action of *quo-warranto*, the judgment rendered, if against an officer or individuals, is called *judgment of ouster;* if against a corporation by its corporate name, it is *ouster* and seizure. See JUDGMENT OF RESPONDEAT OUSTER; Rosc. Real Actions, 502, 552, 574, 582; 2 Crabb, R. P. § 2454 *a;* 1 Woodd. Lect. 501; Washb. R. P.

OUSTER LE MAIN (L. Fr. to take out of the hand). **In Old English Law.** A delivery of lands out of the hands of the lord after the tenant came of age. If the lord refused to deliver such lands, the tenant was entitled to a writ to recover the same from the lord: this recovery out of the hands of the lord was called ouster le main. Abolished by 12 Car. II. c. 24. Also, a livery of land out of the king's hands by judgment given in favor of the petitioner in a monstrans de droit; 3 Steph. Com. 657.

OUT OF COURT. A plaintiff in an action at common law sues to have declared within one year after the service of the summons, otherwise he was *out of court*, unless the court had, by special order, enlarged the time for declaring; see now Jud. Act, 1875, Ord. xxi. r. 1. Whart. Lex. Also a colloquial phrase applied to a litigant party, when his case breaks down, equivalent to saying, "he has not a leg to stand on;" Moz. & W.

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

OUT OF TIME. In Marine Insurance. Missing. Generally speaking, a ship may be said to be missing or out of time when she has not been heard of after the longest ordinary time in which the voyage is safely performed. 1 Arnoult, Ins. 540; 2 Duer, Ins. 469, n.

OUTER BAR. See UTTER BARRISTER.

OUTER HOUSE. A department of the court of session in Scotland, consisting of five lords ordinary, sitting each separately, to decide causes in the first instance. Paterson; Moz. & W.

OUTFIT. An allowance made by the government of the United States to a minister plenipotentiary, or chargé d'affaires, on going from the United States to any foreign country.

The outfit can in no case exceed one year's full salary of such minister or chargé d'affaires. No outfit is allowed to a consul. Act of Congr. May 1, 1810, s. 1. See MINISTER.

As to the meaning of "outfit" in the whaling business, see 9 Metc. 354.

OUTHOUSES. Buildings adjoining or belonging to dwelling-houses.

Buildings subservient to, yet distinct from, the principal mansion-house, located either

within or without the curtilage; 4 Conn. 46; 4 Gill & J. 402; 2 Cr. & D. 479.

It is not easy to say what comes within and what is excluded from the meaning of outhouse. It has been decided that a *school-room*, separated from the dwelling-house by a narrow passage about a yard wide, the roof of which was partly upheld by that of the dwelling-house, the two buildings, together with some other, and the court which inclosed them, being rented by the same person, was properly described as an outhouse; Russ. & R. Cr. Cas. 295. See, for other cases, Co. 3d Inst. 67; Burn, Just. *Burning*, II.; 1 Leach, 49; 2 East, Pl. Cr. 1020, 1021; 5 C. & P. 555; 6 *id.* 402; 8 B. & C. 461; 1 Mood. Cr. Cas. 323, 336; 4 Conn. 446; 11 Ala. N. S. 594; 20 *id.* 30.

OUTLAW. In English Law. One who is put out of the protection or aid of the law. 22 Viner, Abr. 316; 1 Phill. Ev. Index; Bacon, Abr. *Outlawry;* 2 Sell. Pr. 277; Doctr. Plac. 331; 3 Bla. Com. 283, 284.

As used in the Ala. act of December 28, 1868, § 1, declaring counties liable for persons killed by an "outlaw," outlaw is not used in the strict common law sense of the term, but merely refers in a loose sense to the disorderly persons then roving through the state, committing acts of violence; 46 Ala. 118, 137. See 37 Me. 389.

OUTLAWRY. In English Law. The act of being put out of the protection of the law, by process regularly sued out against a person who is in contempt in refusing to become amenable to the court having jurisdiction. The proceedings themselves are also called the outlawry.

Outlawry may take place in criminal or in civil cases; 3 Bla. Com. 283; Co. Litt. 128; 4 Bouvier, Inst. n. 4196.

In the United States, outlawry in civil cases is unknown, and if there are any cases of outlawry in criminal cases they are very rare; Dane, Abr. ch. 193 *a*, 34. See Bacon, Abr. *Abatement* (B), *Outlawry;* Gilbert, Hist. 196, 197; 2 Va. Cas. 244; 2 Dall. 92.

OUTRAGE. A grave injury; a serious wrong. This is a generic word which is applied to every thing which is injurious in a great degree to the honor or rights of another. 44 Iowa, 314.

OUTRIDERS. In English Practice. Bailiffs employed by the sheriffs and their deputies to ride to the farthest places of their counties or hundreds, to summon such as they thought good to attend their county or hundred court.

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

OVERDRAFT. See OVERDRAW.

OVERDRAW. To draw bills or checks upon an individual, bank, or other corporation, for a greater amount of funds than the party who draws is entitled to.

When a person has overdrawn his account without any intention to do so, and afterwards gives a check on a bank, the holder is required to present it, and on refusal of payment to give notice to the maker, in order to hold him bound for it; but when the maker has overdrawn the bank knowingly, having no funds there between the time the check is given and its presentment, the notice is not requisite; 2 N. & M'C. 433; 16 Me. 36.

An overdraft on a bank is in the nature of a loan. It is considered a fraud on the part of the depositor; 52 Penn. 206; see 10 Wall. 647. *Indebitatus assumpsit* will lie against the depositor to recover the overdraft; 9 Penn. 475.

A cashier who knowingly permits an overdraft is guilty of a breach of trust, and liable to an action to make good the amount even though the directors had been wont to countenance him in a custom of allowing good depositors to overdraw; Morse, Bank. 196.

OVERDUE. A bill, note, bond, or other contract for the payment of money at a particular day, when not paid upon the day, is overdue.

The indorsement of a note or bill overdue is equivalent to drawing a new bill payable at sight; 2 Conn. 419; 18 Pick. 260; 9 Ala. N. S. 153.

A note, when passed or assigned, when overdue is subject to all the equities between the original contracting parties; 6 Conn. 5; 10 *id.* 30, 55; 3 Harr. N. J. 222.

OVER-INSURANCE. See DOUBLE INSURANCE.

OVERPLUS. What is left beyond a certain amount; the residue; the remainder of a thing. The same as surplus.

The overplus may be certain or uncertain. It is certain, for example, when an estate is worth three thousand dollars, and the owner asserts it to be so in his will, and devises of the proceeds one thousand dollars to A, one thousand dollars to B, and the overplus to C, and in consequence of the deterioration of the estate, or from some other cause, it sells for less than three thousand dollars, each of the legatees, A, B, and C, shall take one-third. The overplus is uncertain where, for example, a testator does not know the value of his estate, and gives various legacies, and the *overplus* to another legatee: the latter will be entitled only to what may be left; 18 Ves. 466. See RESIDUE; SURPLUS.

OVERRULE. To annul; to make void.

This word is frequently used to signify that a case has been decided directly opposite to a former case; when this takes place, the first-decided case is said to be overruled as a precedent, and cannot any longer be considered as of binding authority.

Mr. Greenleaf has made a very valuable collection of overruled cases, of great service to the practitioner.

It also signifies that a majority of the judges having decided against the opinion of the minority, in which case the latter are said to be overruled.

OVERSEERS OF HIGHWAYS. So called in some of the states. See COMMISSIONERS OF HIGHWAYS.

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

The duties of these officers are regulated by local statutes In general, the overseers are bound to perform those duties, and the neglect of them will subject them to an indictment. See 1 Bla. Com. 360; 16 Viner, Abr. 150; 1 Mass. 459; 3 *id.* 436; 1 Penn. N. J. 6, 136; 77 N. C. 494; Comyns, Dig. *Justice of the Peace* (B 63-65).

OVERSMAN. In Scotch Law. A person commonly named in a submission, to whom power is given to determine in case the arbiters cannot agree in the sentence. Sometimes the nomination of the oversman is left to the arbiters. In either case the oversman has no power to decide unless the arbiters differ in opinion; Erskine, Inst. 4. 3. 16. The office of an oversman very much resembles that of an umpire.

OVERT. Open.

An overt act in treason is proof of the intention of the traitor, because it opens his designs: without an overt act, treason cannot be committed; 2 Chitty, Cr. Law, 40. An overt act, then, is one which manifests the intention of the traitor to commit treason; Archb. Cr. Pl. 379; 4 Bla. Com. 79; Co. 3d Inst. 12; 1 Dall. 33; 2 *id.* 346; 4 Cra. 75; 3 Wash. C. C. 234. In order to sustain a conviction for treason under the United States constitution, there must be the testimony of two witnesses to the same overt act or a confession in open court. A conspirator can be tried in any place where his co-conspirators perform an overt act; Rev. Stat. § 440. The phrase is used in relation to the fugitive slave act in 5 How. 215.

In conspiracy, no overt act is needed to complete the offence; 11 Cl. & F. 155; 48 Md. 381; 49 Ind. 186. See 7 Biss. 175.

The mere contemplation or intention to commit a crime, although a sin in the sight of Heaven, is not an act amenable to human laws. The mere speculative wantonness of a licentious imagination, however dangerous or even sanguinary in its object, can in no case amount to a crime. But the moment that any overt act is manifest, the offender becomes amenable to the laws. See ATTEMPT; CONSPIRACY; Cro. Car. 577.

OWELTY. The difference which is paid or secured by one coparcener to another for the purpose of equalizing a partition. Littleton, § 251; Co. Litt. 169 *a*; 1 Watts, 265; 1 Whart. 292; Cruise, Dig. tit. 19, § 22; 1 Vern. 133; Plowd. 134; 16 Viner, Abr. 223, pl. 3; Brooke, Abr. *Partition*, § 5.

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

In affidavits to hold to bail it is usual to state that the debt on which the action is founded is due, owing and unpaid; 1 Penn. L. J. 210.

OWLER. In English Law. One guilty of the offence of owling.

OWLING. In English Law. The offence of transporting wool or sheep out of the kingdom.

The name is said to owe its origin to the fact that this offence was carried on in the night, when the owl was abroad.

OWNER. 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.

Although there can be but one absolute owner of a thing, there may be a qualified ownership of the same thing by many. Thus, a bailor has the general ownership of the thing bailed, the bailee the special ownership. See 2 Cra. C. C. 83. The right of the absolute owner is more extended than that of him who has only a qualified ownership: as, for example, the use of the thing. Thus, the absolute owner of an estate, that is, an owner in fee, may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper for minerals, stone, plaster, and similar things, which would be considered waste and would not be allowed in a qualified owner of the estate, as a lessee or a tenant for life. The word owner, when used alone, imports an absolute owner; but it has been held in Ohio that the word owner, in the Mechanic Lien Law of that state, included the owner of the leasehold as well as of the reversion, on the ground that any other construction would be subversive of the policy and intent of the statute. 2 Ohio, 123.

The owner continues to have the same right although he perform no acts of ownership or be disabled from performing them, and although another perform such acts without the knowledge or against the will of the owner. But the owner may lose his right in a thing if he permit it to remain in the possession of a third person for a sufficient time to enable the latter to acquire a title to it by prescription or under the Statute of Limitations. See La. Civ. Code, b. 2, tit. 2, c. 1; Encyclopedie de M. d'Alembert, *Proprietaire*.

When there are several joint owners of a thing,—as, for example, of a ship,—the majority of them have the right to make contracts in respect of such thing in the usual course of business or repair, and the like, and the minority will be bound by such contracts; Holt, 586; 1 Bell, Com. 5th ed. 519; 5 Whart. 366. See, further, 22 Wall. 263; 76 Ill. 490; 64 Mo. 112; 57 N. H. 110; 36 N. J. L. 181; 13 N. Y. 553; 25 N. J. Eq. 284; 26 Penn. 238.

OWNERSHIP. The right by which a thing belongs to some one in particular, to the

exclusion of all others. La. Civ. Code, art. 480.

OXGANG (fr. Sax. *gang*, going, and ox; Law Lat. *bovata*). **In Old English Law.** So much land as an ox could till. According to some, fifteen acres. Co. Litt. 69 *a*; Crompton, Jurisd. 220. According to Balfour, the Scotch *oxengang*, or *oxgate*, contained twelve acres; but this does not correspond with ancient charters. See Bell, Dict. *Ploughgate*. Skene says thirteen acres. Cowel.

OYER (Lat. *audire;* through L. Fr. *oyer*, to hear).

In Pleading. A prayer or petition to the court that the party may hear read to him the deed, etc., stated in the pleadings of the opposite party, and which deed is by intendment of law in court when it is pleaded with a profert. The same end is now generally attained by giving a copy of the deed of which oyer is asked, or, in other instances, by setting forth the instrument in full in the plaintiff's statement of his case. Oyer as it existed at common law seems to be abolished in England; 1 B. & P. 646, n. *b*; 3 *id.* 398; 25 E. L. & E. 304. Oyer may be demanded of any specialty or other written instrument, as, bonds of all sorts, deeds-poll, indentures, letters testamentary and of administration, and the like, which the adverse party is obliged to plead with a *profert in curia*. But pleading with a profert unnecessarily does not give a right to demand oyer; 1 Salk. 497; and it may not be had except when profert is made; Hempst. 265. Denial of oyer when it should be granted is ground for error; 1 Blackf. 126. In such cases the party making the claim should move the court to have it entered on record, which is in the nature of a plea, and the plaintiff may counterplead the right of oyer, or strike out the rest of the pleading following the oyer, and demur; 1 Saund. 9 *b*, n. 1; Bac. Abr. *Pleas*, 1; upon which the judgment of the court is either that the defendant have oyer, or that he answer without it; *id.;* 2 Lev. 142; 6 Mod. 28. See PROFERT IN CURIA.

After craving oyer, the defendant may set forth the deed or a part thereof, or not, at his election; 1 Chitty, Pl. 372; and may afterwards plead *non est factum*, or any other plea, without stating the oyer; 2 Stra. 1241; 1 Wils. 97; and may demur if a material variance appear between the oyer and declaration; 2 Saund. 366, n.

See, generally, Comyns, Dig. *Pleader* (P), *Abatement* (I 22); 3 Bouvier, Inst. n. 2890.

OYER AND TERMINER. See ASSIZE; COURT OF OYER AND TERMINER.

OYEZ (Fr. hear ye). The introduction to any proclamation or advertisement by public crier. It is wrongly and usually pronounced oh yes. 4 Bla. Com. 340, n.

P.

PACE. A measure of length, containing two feet and a half. The geometrical pace is five feet long. The common pace is the length of a step; the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

PACIFICATION (Lat. *pax*, peace, *facere*, to make). The act of making peace between two countries which have been at war; the restoration of public tranquillity.

PACK. To deceive by false appearances; to counterfeit; to delude: as, packing a jury. See JURY; Bacon, Abr. *Juries* (M); 12 Conn. 262.

PACKAGE. A bundle put up for transportation or commercial handling. A parcel is a small package; 1 Hugh. 529; 44 Ala. 468. Certain duties charged in the port of London on the goods imported and exported by aliens. Now abolished. Whart. Lex.

PACT. In Civil Law. An agreement made by two or more persons on the same subject, in order to form some engagement, or to dissolve or modify one already made: *Conventio est duorum in idem placitum consensus de re solvendâ, id est faciendâ vel præstandâ.* Dig. 2. 14; Clef des Lois Rom.; Ayliffe, Pand. 558; Merlin, Rép. *Pacte.*

PACTIONS. In International Law. Contracts between nations which are to be performed by a single act, and of which execution is at an end at once. 1 Bouvier, Inst. n. 100.

PACTUM CONSTITUTÆ PECUNIÆ (Lat.). **In Civil Law.** An agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or it may be defined simply an agreement by which a person promises a creditor to pay him.

When a person by this pact promises his own creditor to pay him, there arises a new obligation, which does not destroy the former by which he was already bound, but which is accessory to it; and by this multiplicity of obligations the right of the creditor is strengthened. Pothier, Obl. pt. 2, c. 6, s. 9.