O.

OATH. A declaration made according to law, before a competent tribunal or officer, to tell the truth; or it is the act of one who, when lawfully required to tell the truth, takes God to witness that what he says is true. It is 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. l0 Toull. n. 343 a 348; Puff. book, 4, c. 2, s. 4; Grot. book 2, c. 13, s. 1; Ruth Inst. book 1, ch. 14, s. 1; 1 Stark. Ev. 80; Merl. Repert. Convention; Dalloz, Dict. Serment: Dur. n. 592, 593; 3 Bouv. Inst. n. 3180.

2. It is proper to distinguish two things in oaths; 1. The invocation by which the God of truth, who knows all things, is taken to witness. 2. The imprecation by which he is asked as a just and all−powerful being, to punish perjury.

3. The commencement of an oath is made by the party taking hold of the book, after being required by the officer to do so, and ends generally with the words,"so help you God," and kissing the book, when the form used is that of swearing on the Evangelists. 9 Car. & P. 137.

4. Oaths are taken in various forms; the most usual is upon the Gospel by taking the book in the hand; the words commonly used are, "You do swear that, " &c. "so help you God," and then kissing the book. 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. h. v.

5. 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," &c., "And this as you shall answer to God at the great day."

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

7. The oath, however, may be varied in any other form, in order to conform to the religious opinions of the person who takes it. 16 Pick. 154, 156, 157; 6 Mass. 262; 2 Gallis. 346; Ry. & Mo. N. P. Cas. 77; 2 Hawks, 458.

8. Oaths may conveniently be divided into promissory, assertory, judicial and extra judicial.

9. Among promissory oaths may be classed all those taken by public officers on entering into office, to support the constitution of the United States, and to perform the duties of the office.

10. Custom−house oaths and others required by law, not in judicial proceedings, nor from officers entering into office, may be classed among the assertory oaths, when the party merely asserts the fact to be true.

11. Judicial oaths, or those administered in judicial proceedings.

12. Extra−judicial oaths are those taken without authority of law, which, though binding in foro conscientiae, do not render the persons who take them liable to the punishment of perjury, when false.

13. Oaths are also divided into various kinds with reference to the purpose for which they are applied; as oath of allegiance, oath of calumny, oath ad litem, decisory oath, oath of supremacy, and the like. As to the persons authorized to administer oaths, see Gilp. R. 439; 1 Tyler, 347; 1 South. 297; 4 Wash. C. C. R. 555; 2 Blackf. 35.

14. The act of congress of June 1, 1789, 1 Story's L. U. S. p. 1, regulates the time and manner of administering certain oaths as follows:

_1. Be it enacted, &c., That the oath or affirmation required by the sixth article of the constitution of the United States, shall be administered in the form following, to wit, "I, A B, do solemnly swear or affirm, (as the case may be,) that I will support the constitution of the United States." The said oath or affirmation shall be administered within three days after the passing of this act, by any one member of the senate, to the president of the senate, and by him to all the members, and to the secretary; and by the speaker of the house of representatives, to all the members who have not taken a similar oath, by virtue of a particular resolution of the said house, and to the clerk: and in case of the absence of any member from the service of either house, at the time prescribed for taking the said oath or affirmation, the same shall be administered to such member when he shall appear to take his seat.

15. − _2. That at the first session of congress after every general election of representatives, the oath or affirmation aforesaid shall be administered by any one member of the house of representatives to the speaker; and by him to all the members present, and to the clerk, previous to entering on any other business; and to the members who shall afterwards appear, previous to taking their seats. The president of the senate for the time being, shall also administer the said oath or affirmation to each senator who shall hereafter be elected, previous to his taking his seat; and in any future case of a president of the senate, who shall not have taken the said oath or

affirmation, the same shall be administered to him by any one of the members of the senate.

16. − _3. That the members of the several state legislatures, at the next session of the said legislatures respectively, and all executive and judicial officers of the several states, who have been heretofore chosen or appointed, or, who shall be chosen or appointed before the first day of August next, and who shall then be in office, shall, within one month thereafter, take the same oath or affirmation, except where they shall have taken it before which may be administered by any person authorized by the law of the state, in which such office shall be holden, to administer oaths. And the members of the several state legislatures, and all executive and judicial officers of the several states, who shall be chosen or appointed after the said first day of August, shall, before they proceed to execute the duties of their respective offices, take the foregoing oath or affirmation, which shall be administered by the person or persons, who, by the law of the state, shall be authorized to ad− minister the oath of office; and the person or persons so administering the oath hereby required to be taken, shall cause a record or certificate thereof to be made, in the same manner as, by the law of the state, he or they shall be directed to record or certify the oath of office.

17. − _4. That all officers appointed or hereafter to be appointed, under the authority of the United States, shall, before they act in their respective offices, take the same oath or affirmation, which shall be administered by the person or persons who shall be authorized by law to administer to such officers their respective oaths of office; and such officers shall incur the same penalties in case of failure, as shall be imposed by law in case of failure in taking their respective oaths of office.

18. − _5. That the secretary of the senate, and the clerk of the house of repreentatives, for the time being, shall, at the time of taking the oath or affirmation aforesaid, each take an oath or affirmation in the words following, to wit; "I, A B, secretary of the senate, or clerk of the house of representatives (as the case may be) of the United States of America, do solemnly swear or affirm, that I will truly and faithfully discharge the duties of my said office to the best of my knowledge and abilities."

19. There are several kinds of oaths, some of which are enumerated by law.

20. Oath of calumny. This term is used in the civil law. It is 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. Poth. Pand. lib. 5, t. 16 and 17, s. 124. This oath is somewhat similar to our affidavit of a cause of action. Vide Dunlap's Adm. Pr. 289, 290.

21. No instance is known in which the oath of calumny has been adopted in practice in the admiralty courts of the United States; Dunl. Adm. Pr. 290; and by the 102d of the rules of the district court for the southern district of New York, the oath of calumny shall not be required of any party in any stage of a cause. Vide Inst. 4, 16, 1; Code, 2, 59, 2; Dig. 10, 2, 44; 1 Ware's R. 427.

22. Decisory oath. By this term in the civil law is understood an oath which one of the parties defers or refers back to the other, for the decision of the cause.

23. 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. Poth. on Oblig. P. 4, c. 3, s. 4.

24. 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.

25. A judicial oath is a solemn declaration made in some form warranted by law, before a court of justice or some officer authorized to administer it, by which the person who takes it promises to tell the truth, the whole truth, and nothing but the truth, in relation to his knowledge of the matter then under examination, and appeals to God for his sincerity.

26. In the civil law, a judicial oath is that which is given in judgment by one party to another. Dig. 12, 2, 25.

27. Oath in litem, in the civil law, is an oath which 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 be suppressed proof in his possession. See Greenl. Ev. _348; Tait on Ev. 280; 1 Vern. 207; 1 Eq. Cas. Ab. 229; 1

Greenl. R. 27; 1 Yeates, R. 34; 12 Vin. Ab. 24. In general the oath of the party cannot, by the common law, be received to establish his claim, but to this there are exceptions. The oath in litem is admitted in two classes of cases: 1. 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. 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 Greenl. 27; and see 10 Watts, 335; 1 Greenl. Ev. _348; 1 Yeates, 34; 2 Watts, 220; 1 Gilb. Ev. by Lofft, 244. 2. The oath in litem is also admitted on the ground of public policy, where it is deemed essential to the purposes of justice. Tait on Ev. 280. 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.

28. A promissory oath is an oath 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.

29. A suppletory oath in the civil and ecclesiastical law, is 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. Vide Str. 80; 3 Bl. Com. 270.

30. A purgatory oath is one 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.

OBEDIENCE. The performance of a command.

2. 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 Chit. Pr. 75; Ham. N. P. 48.

3. 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. (q. v.)

OBIT. That particular solemnity or office for the dead, which the Roman Ca− tholic 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 frequently used as a commemoration or observance of the day. 2 Cro. 51; Dyer, 313.

OBLATION, eccl. law. In a general sense the property which accrues to the church by any right or title whatever; but, in a more limited sense, it is that which the priest receives at the altar, at the celebration of the eucharist. Ayl. Par. 392.

OBLIGATION. In its general and most extensive sense, obligation is synony− mous with duty. In a more technical meaning, it is a tie which binds us to pay or to do something agreeably to the laws and customs of the country in which the obligation is made. Just. Inst. 1. 3, t. 14. The term obligation also signifies the instrument or writing by which the contract is witnessed. And in another sense, an obligation still subsists, although the civil obligation is said to be a bond containing a penalty, with a condition annexed for the payment of money, performance of covenants or the like; it differs from a bill, which is generally without a penalty or condition, though it may be obligatory. Co. Litt. 172. It is also defined to be a deed whereby a man binds himself under a penalty to do a thing. Com. Dig. Obligation, A. The word obligation, in its most technical signification, ex vi termini, imports a sealed instrument. 2 S. & R. 502; 6 Verm. 40; 1 Blackf. 241; Harp. R. 434; 2 Porter, 19; 1 Bald. 129. See 1 Bell's Com. b. 3, p. 1, c. 1, page 293; Bouv. Inst. Index, h. t.

2. Obligations are divided into imperfect obligations, and perfect obligations.

3. 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. Poth. Ob. art. Prel. n. 1.

4. 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.

5. 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 is extinguished. 5 Binn. 573. Although natural obligations cannot be enforeed by action, they have the following effect: 1. No suit will lie to recover back what has been paid, or given in compliance with a natural obligation. 1 T. R. 285; 1 Dall. 184, 2. A natural obligation is a sufficient consideration for a new contract. 5 Binn. 33; 2 Binn. 591; Yelv. 41, a, n. 1; Cowp. 290; 2 Bl. Com. 445; 3 B. & P. 249, n.; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; Yelv. 41, b. note; 3 Pick. 207 Chit. Contr. 10.

6. A civil obligation is one which has a binding operation in law, vinculum juris, 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. 12 Wheat. It:. 318, 337; 4 Wheat. R. 197.

7. 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, and both real and mixed at the same time.

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

9. 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.

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

11. 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.

12. 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.

13. A secondary obligation is one which is contrasted, 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−perform− ance of my obligation.

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

15. 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.

16. An absolute obligation is one which gives no alternative to the obligor, but he is bound to fulfil it according to his engagement.

17. 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; as if A agrees to give B, upon a sufficient consideration, a horse, or one hundred dollars. Poth. Obl. Pt. 2, c. 3, art. 6, No.. 245.

18. 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.

19. The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that all belong to the creditor. Dougl. 14; 1 Lord Raym. 279; 4 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' Poth. Ob. 52 to 54; Vin. Ab. Condition, S b; and articles Conjunctive; Disjunctive; Election.

20. 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.

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

22. 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 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.

23. 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.

24. 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.

25. A penal obligation is one to which is attached a penal clause which is to be enforeed, if the principal obligation be not performed. In general equity will relieve against a penalty, on the fulfilment of the principal obligation. See Liquidated damages; Penalty.

26. 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.

27. 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.

28. The obligation is, purely personal when the obligor binds himself to do a thing; as if I give my note for one thousand dollars, in that case my person only is bound, for my property is liable for the debt only while it belongs to me, and, if I lawfully transfer it to a third person, it is discharged.

29. The obligation is personal in another sense, as when the obligor binds himself to do a thing, and he provides his heirs and executors shall not be bound; as, for example, when he promises to pay a certain sum yearly during his life, and the payment is to cease at his death.

30. The obligation is real when 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 his 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.

31. The obligation is both personal and real when the obligor has bound himself, and pledged his estate for the fulfilment of his obligation.

OBLIGATION OF CONTRACTS. By this expression, which is used in the consti− tution of the United States, is meant a legal and not merely a moral duty. 4 Wheat. 107. The obligation of contracts consists in the necessity under which a man finds himself to, do, or to refrain from doing something. This obligation consists generally both in foro legis and in foro conscientice, though it does at times exist in one of these only. It is certainly of the first, that in foro legis, which the framers of the constitution spoke, when they prohibited the passage of any law impairing the obligation of contract. 1 Harr. Lond. Rep. Lo. 161. See Impairing the obligation of contracts.

OBLIGEE or CREDITOR, contracts. The person in favor of whom some obliga− tion is contracted, whether such obligation be to pay money, or to do, or not to do something. Louis. Code, art. 3522, No. 11.

2. 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 Evans' Poth. 56; Dyer 350 a, pl. 20; Hob. 172; 2 Brownl. 207 Yelv, 177; Cro. Jac. 251.

OBLIGOR or DEBTOR. The person who has engaged to perform some obligation. Louis. Code, art. 3522, No. 12. The word obligor, in its more technical signification, is applied to designate one who makes a bond.

2. 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. R. 29; 2 Ves. 101; Id. 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 Stew. R. 479; 4 Hayw R. 239; 4 McCord, R. 203; 7 Cowen; R. 484; 2 Bail. R. 190; Brayt. 38; 2 H. & M. 398; 5 Mass. R. 538; 2 Dana, R. 463; 4 Munf. R. 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. 2 Wend. Rep. 345; 3 H. & M. 144.

3. The execution of a bond by the obligor with a blank, and a verbal authority to fill it up, and it is afterwards filled up, does not bind the obligor, unless it is redelivered, or acknowledged or adopted. 1 Yerg. R. 69 149; 1 Hill, Rep. 267; 2 N. & M. 125; 2 Brock. R. 64; 1 Ham. R. 368; 2 Dev. R. 369 6 Gill. & John. 250; but see contra, 17 Serg. & R. 438; and see 6 Serg. & Rawle, 308; Wright, R. 742.

OBREPTION, civil law. Surprise. Dig. 3,5,8,1. Vide Surprise.

OBSCENITY, crim. law. Such indecency as is calculated to promote the violation of the law, and the general corruption of morals.

2. 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 Serg. & Rawle, 91.

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

OBSOLETE. This term is applied to those laws which have lost their efficacy, without being repealed,

2. A positive statute, unrepealed, can never be repealed by non−user alone. 4 Yeates, Rep. 181; Id. 215; 1 Browne's Rep. Appx. 28; 13 Serg. & Rawle, 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's R. 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 apprehension of the legislature, the old one was not in force." 13 Serg. & Rawle, 452; Rutherf. Inst. B. 2, c. 6, s. 19; Merl. Repert. mot Desuetude.

OBSTRUCTING PROCESS. crim. law. The act by which one or more persons at− tempt to prevent, or do prevent, the execution of lawful process.

2. 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. R. 169. See 3 Wash. C. C. R. 335.

3. This is in 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 accessary in felony, and a principal in high treason. 4 Bl. Com. 128; 2 Hawk. c. 17, s. 1; l. Russ. on Cr. 360: vide Ing. Dig. 159; 2 Gallis. Rep. 15; 2 Chit. Criminal Law, 145, note a.

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. Tr. du Dr. de Propriete n. 20. The Civil Code of Lo. 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."

2. To constitute occupancy there must be a taking of a thing corporeal, belonging to nobody with an intention of becoming the owner of it.

3. − 1. The taking must be such as the nature of the time requires; if, for example, two persons were walking on the sea−shore, and one of them should perceive a precious stone, and say he claimed it as his own, he would, acquire no property in it by occupancy, if the other seized it first.

4. − 2. The thing must be susceptible of being possessed; an incorporeal right, therefore, as an annuity, could not be claimed by occupancy.

5. − 3. The thing taken must belong to nobody; for if it were in the possession of another the taking would be larceny, and if it had been lost and not abandoned, the taker would have only a qualified property in it, and would hold the possession for the owner.

6. − 4. The taking must have been with an intention of becoming the owner; if therefore a person non compos mentis should take such a thing he would not acquire a property in it, because he had no intention to do so. Co. Litt. 41, b.

7. Among the numerous ways of acquiring property by occupancy, the following are considered as the most usual.

8. − 1. Goods captured in war, from public enemies, were, by the common law, adjudged to belong to the captors. Finch's law, 28; 178; 1 Wills. 211; 1 Chit. Com. Law, 377 to 512; 2 Wooddes. 435 to 457; 2 Bl. Com. 401. But by the law of nations such things are now considered as 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's Com. 290. By the policy of law, goods belonging to an enemy are considered as not being the property of any one. Lecon's Elem. du Dr. Rom. _348; 2 Bl. Com. 401.

9. − 2. When movables are casually lost by the owner and unreclaimed, or designedly abandoned by him, they belong to the fortunate finder who seizes them, by right of occupancy.

10. − 3. The benefit of the elements, the light, air, and water, can only be appropriated by occupancy.

11. − 4. When animals ferae naturae are captured, they become the property of the occupant while he retains the possession; for if an animal so taken should escape, the captor loses all the property he had in it. 2 Bl. Com. 403.

12. − 5. It is by virtue of his occupancy that the owner of lands is entitled to the emblements.

13. − 6. Property acquired by accession, is also grounded on the right of occupancy.

14. − 7. Goods acquired by means of confusion may be referred to the same right.

15. − 8. The right of inventors of machines or of authors of literary productions is also founded on occupancy. Vide, generally, Kent, Com. Lect. 36; 16 Vin. Ab. 69; Bac. Ab. Estate for life and occupancy; 1 Brown's Civ. Law, 234; 4 Toull. n. 4; Lecons du Droit Rom. _342, et seq.; Bouv. Inst. Index, h. t.

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

2. He derives his title of occupancy either by taking possession of a thing without an owner, or by purchase, or gift of the thing from the owner, or it descends to him by due course of law.

3. 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. & A. 164; S. C. Eng. C. L. R. 50; 1 Chit. Pr. 209, 210; 4 Com. Dig. 64; 5 Com. Dig. 199.

OCCUPATION. Use or tenure; as, the house is in the occupation of A B. A trade, business or mystery; as the occupation of a printer. Occupancy. (q. v.)

2. In another sense occupation signifies a putting out of a man's freehold in time of war. Co. Litt. s. 412. See Dependeney; Posession.

OCCUPAVIT. 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.) 3 Tho. Co. Litt. 41.

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

2. 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 premises he occupies the cleansing and repairing of drains and sewers, therefore, is prima facie the duty of him who occupies the premises. 3 Q. B. R. 449; S. C. 43 Eng. C. L. R. 814.

OCHLOCRACY. A government where the authority is in the hands of the multi− tude; the abuse of a democracy. Vaumene, Dict. du Language Politique.

ODHALL RIGHT. The same as allodial.

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, crimes. 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. (q. v.) In a more confined sense, it may be considered as having the same meaning with misdemeanor, (q.v.) but it differs from it in this, that it is not indictable, but punishable summarily by the forfeiture of a penalty. 1 Chit. Prac. 14.

OFFER, contracts. A proposition to do a thing.

2. An offer ought to contain a right, if accepted, of compelling the fulfilment of the contract, and this right when not expressed, is always implied.

3. By virtue of his natural liberty, 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 order 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.

4. 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. R. 225; 3 John. R. 534; 7 John. 470; 6 Wend. 103.

5. 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 Pick. 326; 12 John. 190; 9 Porter, 605; 1 Bell's Com. 326, 5th ed.; Poth. Vente, n. 32; 1 Bouv. Inst. n. 577, et seq.; and see Acceptance of contracts; Assent; Bid.

OFFICE. An office is a right to exercise a public function or employment, and to take the fees and emoluments belonging to it,. Shelf. on Mortm. 797; Cruise, Dig. Index, h. t.; 3 Serg. & R. 149.

2. Offices may be classed into civil and military.

3. − 1. Civil offices may be classed into political, judicial, and ministerial.

4. − 1. The 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 office of the president of the United States, of the heads of departments, of the members of the legislature, are of this number.

5. − 2. The 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.

6. − 3. 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 Wend. 514; 8 Verm. 512; Breese, 280. It is a general rule, that a judicial office cannot be exercised by deputy, while a ministerial may.

7. In the United, States, the tenure of office never extends beyond good behaviour. 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 Inst. 100; Com. Dig. h. t., B. 7; and vide, generally, 3 Kent, Com. 362; Cruise, Dig. tit. 25; Ham. N. P. 283; 16 Vin. Ab. 101; Ayliffe's Parerg. 395; Poth. Traite des Choses, _2; Amer. Dig. h. t.; 17 S. & R. 219.

8. − 2. Military offices consist of such as are granted to soldiers or naval officers.

9. The room in which the business of an officer is transacted is also called an office, as the land office. Vide Officer.

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

2. An exemplification, (q. v.) of any such office book, when authenticated under the act of congress of 27th March, 1804, Ingers' Dig. 77, 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.

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, Eng. law. When an inquisition is made to the king's use of anything, by virtue of office of him who inquires, and the inquisition is found, it is said to be office found.

OFFICE, INQUEST OF. An examination into a matter by an officer in virtue of his office. Vide Inquisition.

OFFICER. He who is lawfully invested with an office.

2. Officers may be classed into, 1. Executive; as the president of the United States of America, the several

governors of the different states. Their duties are pointed out in the national constitution, and the constitutions of the several states, but they are required mainly to cause the laws to be executed and obeyed.

3. − 2. The legislative; 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 impeachments. The legislatures have, besides the power to inquire into the conduct of their members, judge of their elections, and the like.

4. − 3. Judicial officers; 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.

5. − 4. Ministerial officers, or those whose duty it is to execute the mandates, lawfully issued, of their superiors.

6. − 5. Military officers, who have commands in the army; and

7. − 6. Naval officers, who are in command in the navy.

8. 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, R. 519; and in others, he will be liable to the party injured. 1 Yeates, R. 506.

9. 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; 1 Apple. 155.

OFFICIAL, civil and canon laws. In the ancient civil law, the person who was the minister of, or attendant upon a magistrate, was called the official.

2. In the canon law, the person to whom the bishop generally commits the charge of his spiritual jurisdiction, bears this name. Wood’s Inst. 30, 505; Merl. Repert. h. t.

OFFICINA JUSTITIAE, Eng. law. The chancery is so called, because all writs issue from it, under the great seal returnable into the courts of common law.

OFFICIO, EX. By virtue of one’s office. Vide Ex officio; 3 Bl. Com. 447.

OHIO. The name of one of the new states of the United States of America. It was admitted into the Union by virtue of the act of congress, entitled "An act to enable the people of the eastern division of the territory north−west of the river Ohio, to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes," approved, May 30, 1802, 2 Story’s L. U. S. 869; by which it is enacted,

_1. That the inhabitants of the eastern division of the territory north−west of the river Ohio, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

2. − _2. That the said state shall consist of all the territory included within the following boundaries, to wit: Bounded on the east by the Pennsylvania line, on the south by the Ohio river, to the month of the Great Miami river, on the west by the line drawn due north from the mouth of the Great Miami aforesaid, and on the north by an east and west line dawn through the southerly extreme of lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami until it shall intersect lake Erie, or the territorial line, and thence, with the same, through lake Erie, to the Pennsylvania line aforesaid: Provided, That congress shall be at liberty, at any time hereafter, either to attach all the territory lying east of the line to be drawn due north from the mouth of the Miami aforesaid to the territorial line, and north of an east and west line drawn through the southerly extreme of lake Michigan, running east as aforesaid to lake Eric, to the aforesaid state, or dispose of it otherwise, in conformity to the fifth Article of compact between the original states and the people and states to be formed are the territory north−west of the river Ohio.

3. By virtue of the authority given them by the act of congress, the people of the eastern division of said territory met in convention at Chillicothe; on Monday, the, first day of November, 1802, by which they did ordain and establish the constitution and form of government, and did mutually agree with each other to form themselves into a free and independent state, by the name of The State of Ohio. This constitution has been superseded by the present one, which was adopted in 1851. The powers of the government are separated into three distinct branches,

the legislative, the executive, and the judicial.

4. − 1st. By article 2, the legislative department is constituted as follows:

5. − _1. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate, and house of representatives.

6. − _2. Senators and representatives shall be elected biennally, by the electors in the respective counties or districts, on the second Tuesday of October; their term of office shall commence on the first, day of January next thereafter, and continue two years.

7. − _3. Senators and representatives shall have resided in their respective counties, or districts, one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this state.

8. − _4. No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have a seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia.

9. − _5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for dishursement, or otherwise, have a seat in the general assembly, until, he shall have accounted for, and paid such money into the treasury.

10. − _6. All regular sessions of the general assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty−two.

11. − _7. The style of the laws of this state, shall be, "Be it enacted by the General Assembly of the State of Ohio."

12. − _8. The apportionment of this state for members of the general assembly, shall be made every ten years, after the year one thousand eight hundred and fifty−one, in the following manner: The whole population of the state, as ascertained by the federal census, or in such other mode as the general assembly may direct, shall be divided by the number: one hundred,: and the quotient shall be the ratio of representation in the house of representatives for ten years next succeeding such apportionment.

13. − _9. Every county, having a popuIation equal to one−half of said ratio, shall be entitled to one representative; every county, containing said ratio, and three−fourths over, shall be entitled to two representantives; every county, containing three times said ratio, shall be entitled to three representatives: and so on, requiring after the first two, an entire ratio for each additional representative.

14. − _10. When any county shall have a fraction above the ratio, so large, that being multiplied by five, the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratios, among the several sessions of the decennial period, in the following manner: If there be only one ratio, a representative shall be allotted to the fifth session of the decennial period; if there are two ratios, a representative shall be allotted to the fourth and third sessions, respectively if three, to the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

15. − _11. Any county, forming with another county or counties, a representative district, during one decennial period, if it have acquired sufficient population at the next decennial period; shall be entitled to a separate representation, if there shall be left, in the district from which it shall have been separated, or population sufficient for a representative; but no such change shall be made, except at the regular decennial period for the apportionment of representatives.

16. − _12. If, in fixing any subsequent ratio, a county, previously entitled to a separate representation, shall have less than the number required by the new ratio for a representative, such county shall be attached to the county adjoining it; having the least number of inhabitants; and the representation of the district, so formed, shall be determined as herein provided.

17. − _13. The ratio for a senator shall, forever hereafter, be ascertained, by dividing the whole population of the state by the number thirty−five.

18. − _14. The same rule shall be applied, in apportioning the fractions of senatorial districts, and in annexing districts, which may hereafter have less than three−fourths of a senatorial ratio, as are applied to representative districts.

19. − _15. Any county forming part of a senatorial district, having acquired a population equal to a full senatorial ratio, shall be made a separate senatorial district, at any regular decennial apportionment, if a full senatorial ratio

shall be left in the district from which it shall be taken.

20. − _16. For the first ten years, after the year one thousand eight hundred and fifty−one, the apportionment of representatives shall be as provided, in the schedule, and no change shall ever be made in the principles of representation, as herein established, or in the senatorial districts, except as above provided. All territory, belonging to a county at the time of any appor− tionment, shall, as to the right of representation and suffrage, remain an integral part thereof, during the decennial period.

21. − _17. The governor, auditor, and secretary of state, or any two of them, shall, at least six months prior to the October election, in the year one thousand eight hundred and sixty−one, and, at each decennial period thereafter, ascertain and determine the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years, within the next ensuing ten years, and the governor shall cause the same to be published, in such manner as shall be directed by law.

22.− _18. Every white male citizen of the United States, of the age of twenty−one years, who shall have been a resident of the state one year next preceding the election and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

23. − _19. No person shall be elected or appointed to any office in this state, unless he possess, the qualifications of an elector.

24. − 3d. By article 3, the executive department is constituted as follows:

25. − _1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and an attorney general, who shall be chosen by the electors of the state, on the second Tuesday of October, and at the places of voting for members of the general assembly.

26. − _2. The governor, lieutenant governor, Secretary of State, treasurer, and attorney general, shall hold their offices for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their suceessors are elected and qualified.

27. − _3. The returns of every election for the officers, named in the foregoing section, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the resident of the senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen, by the joint vote of both houses.

28. − _4. Should there be no session of the general assembly in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the secretary of state, and opened, and the result declared by the governor, in such manner as may be provided by law.

29. − _5. The supreme executive power of this state shall be vested in the governor.

30. − _6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respeceive office’s; and shall see that the laws are faithfully executed.

31. − _7. He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient.

32. − _8. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened.

33. − _9. In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof.

34. − _10. He shall be 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.

35. − _11. He shall have power, after conviction, to grant reprieves, commutatious, 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 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 shall communicate to the gene− ral 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.

36. − _12. There shall be a seal of the state, which shall be kept by the governor and used by him officially; and shall be called "The Great Seal of the State of Ohio."

37. − _13. All grants and commissions shall be issued in the name, and by the authority, of the State of Ohio; sealed with the great seal signed, by the governor, and countersigned by the secretary of state.

38. − _14. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor, except as herein provided.

39. − _15. In case of the death, impeachment, resignation, removal, or other disability of the governor, the powers and duties of the office, for the resi−due of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

40. − _16. The lieutenant governor shall be president of the senate, but shall vote only when the, senate is equally divided; and in case of him absence, or impeachment, or when he shall exercise the office of governor, the senate shall choose a president pro tempore.

41. − _17. If the lieutenant governor, while executing the office of governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president of the senate shall act as govemor, until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives.

42. − _18. Should the office of auditor, treasurer, secretary, or attorney general, become vacant for any of the causes specified in the fifteenth section of this article, the governor shall fill the vacancy until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs, more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article.

43. − _19. The officers mentioned in this article, shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor dimininshed during the period for which they shall have been elected.

44. − _20. The officers of the executive department, and of the public state institutions, shall, at least five days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports, with his message, to the general assembly.

45. − 4th. By article 4, the judicial department is constituted as follows: 46.−SS 1. The judicial power of the state shall be vested, in a supreme court, in district courts, courts of common pleas, courts of probate, justices of the peace, and in such other courts, inferior to the supreme court, in one or more counties, as the general assembly, may from time to time establish.

47. − _2. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, or to pronouuce a decision. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and procedendo and such appellate jurisdiction as may be provided by law. It shall hold at least one term in each year, at the seat of government, and such other terms, at the seat of government, or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large.

48. − _3. The state shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one, of compact territory, and bounded by county lines; and each of said districts, consisting of three or more counties, shall be subdivided into three parts, of compact territory, bounded by county lines, and as nearly equal, in population as practicable; in each of which, one judge of the court of common pleas for said district, and residing therein, shall be elected by the electors of said subdivision. Courts of common pleas shall be held, by one or more of these judges, in every county in the district, as often as may be provided by law; and more than one court, or sitting thereof, may be held at the same time in each district.

49. − _4 . The jurisdiction of the courts of common pleas, and of the judges thereof, shall be fixed by law.

50. − _5. District courts shall be composed of the judges of the court of common pleas of the respective districts, and one of the judges of the supreme court, any three of whom shall be a quorum, and shall be held in each county therein, at least once in each year; but, if it shall be found inexpedient to hold such court annually, in each county, of any district, the general assembly may, for such district, provide that said court shall hold at least three annual sessions therein, in not less than three places: Provided, that the general assembly may, by law, authorize the

judges of each district to fix the times of holding the courts therein.

51. − _6. The district court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as may be provided by law.

52. − _7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elec−ted by the voters of the county, who shall hold his office for the term of three years, and shall receive such compensation, payable out of the county treasury, or by fees, or both; as shall be provided by law.

53. − _8. The probate court shall have jurisdiction in probate and testa−mentary 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, aclministrators and guardians, and such other jurisdiction, in any county, or counties, as may be provided by law.

54. − _9. A competent number of justices of the peace shall be elected, by the electors, in each township in the several counties. Their term, of office shall be three years, and their powers and duties shall be regulated by law.

55. − _10. All judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created, but not for a longer term of office than five years.

56. − _11. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold for the term of one year, one for two years, one for three years, one for four years, and one for five years; and, at all subsequent elections, the term sf each of said judges shall be for five years.

57. − _12. The judges of the courts of common pleas shall, while in office, reside in the district for which they, are elected; and their term of office shall be for five years.

58. − _13. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and quali− fied; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty, days after the vacancy shall have happened.

59. − _14. The judges of the supreme court, and of the court of common pleas shall, at stated times, receive for their services, such compensation as may be provided by law, which shall not be diminished or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. All votes for either of them, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void.

60. − _15. The general assembly may increase or diminish the number of the judges of the supreme court, the number of the districts of the court of common pleas, the number of judges in any district; change the districts, or the subdivisions thereof, or establish other courts, whenever two−thirds of the members elected to each house shall concur therein; but no such change, addition, or diminution, shall vacate the office of any judge.

61. − _16. There shall be elected in each county by the electors thereof, one clerk of the court of common pleas, who shall hold his office for the term of three years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts of record held therein; but the general assembly may provide by law, for the election of a clerk, with a like term of office, for each or any other of the courts of record, and may authorize the judge of the probate court to perform the duties of clerk for his court, under such regulations as may be directed by law. Clerks of courts shall be removable for such cause, and in such manner, as shall be prescribed by law.

62. − _17. Judges may be removed from office, by concurrent resolution of both houses of the general assembly, if two−thirds of the members elected to each house concur therein; but no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor until the party charged shall have had notice thereof, and an opportunity to be heard.

63. − _18. The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise as may be directed by law.

64. − _19. The general assembly may establish courts of conciliation, and pre− scribe their powers and duties; but such courts shall not render final judgment in any case, except upon submission, by the parties of the matter in dispute, and their agreement to abide such judgment.

65. − _20. The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on in the name

and by the authority of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

OLD AGE. This needs no definition. Sometimes old age is the cause of loss of memory and of the powers of the mind, when the party may be found non compos mentis. See Aged witness; Senility.

OLD NATURA BREVIUM. The title of an old English book, (usually cited Vet. N. B.) so called to distinguish it from the F. N. B. 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 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. The name of a maritime code. Vide Laws of Oleron.

OLIGARCHY. This name is 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. When applied to wills or testaments, this term signifies that they are wholly written by the testator himself. Vide Civil, Code of Louisiana, art. 1581: Code Civil, 970; 6 Toull. n. 357; 1 Stuart's (L. C.) R. 327; 2 Bouv. Inst. n. 2139; and see Testament, Olographic; Will, Olographic.

OMISSION. An omission is the neglect to perform what the law requires.

2. 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.

3. 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. Vide Branches; Commission; Nuisance; Trees.

OMNIA PERFORMAVIT. A good plea in bar, where all the covenants are in the affirmative. 1 Greenl. R. 189.

OMNIUM, mercant. law. A term used to express the aggregate value of the dif− ferent stocks in which a loan is usually funded. 2 Esp. Rep. 361; 7 T. R. 630.

ONERARI NON. The name of a plea by which the defendant says that he ought not to be charged. lt is used in an action of debt. 1 Saund. 290, n. a.

ONERIS FERENDI, 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.

2. 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 Bouv. Inst. n. 1627.

ONEROUS CAUSE, civil law., A valuable consideration.

ONEROUS CONTRACT, civil law. One made for a consideration given or promised, however small. Civ. Code of Lo. art. 1767.

ONEROUS GIFT, civil law. The gift of a thing subject to certain charges which the giver has imposed on the donee. Poth. h. t.

ONUS PROBANDI, evidence. The burden of the proof.

2. 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 defen−dant to show that he was not of age at the time. 1 Term. Rep. 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. Vide 11 Johns. R. 513; 19 Johns. R. 345; 9 M. R. 48; 3 N. S. 576.

3. 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. Vide. generally, 1 Phil. Ev. 156: 1 Stark. Ev. 376; Roscoe's Civ. Ev. 51 Roscoe's Cr. Ev. 55; B. P. 298; 2 Gall. 485; 1 McCord, 573; 12 Vin. Ab. 201; 4 Bouv. Inst. n. 4411.

4. The party on whom the onus probandi lies is entitled to begin, notwithstanding the technical form of the

proceedings. 1 Stark. Ev. 584; 3 Bouv. last. n. 3043.

TO OPEN, OPENING. To open a case is to make a statement of the pleadings in a case, which is called the opening.

2. The opening 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. R. 439;S. C. 2 E. C. L. R. 462; 2 Stark. R. 31; S. C 3 Eng. C. L. R. 230.

3. The opening address or speech is that made immediately after the evidence has been closed; such address usually states, 1st. The full extent of the plaintiff's claims, and the circumstances under which they are made, to show that they are just and reasonable. 2d. At least an outline of the evidence by which those claims are to be established. 3d. The legal grounds and authori−ties in favor of the claim or of the proposed evidence. 4th. 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. 3 Chit. Pr. 881; 3 Bouv. Inst. n. 3044, et seq. To open a judgment, is to set it aside.

TO OPEN A CREDIT. When a banker accepts or pays a bill of exchange drawn on him by a correspondent, who has not furnished him with funds, he is said to open a credit with the drawer. Pardess. n. 29.

OPEN COURT. The term sufficiently explains its meaning. By the constitution of some states, and by the laws and practice of all the others, the courts are required to be kept open; that is, free access is admitted in courts to all persons who have a desire to enter there, while it can be done without creating disorder.

2. In England, formerly, the parties and probably their witnesses were admitted freely in the courts, but all other persons were required to pay in order to obtain admittance. Stat. 13 Edw. I. C. 42, and 44; Barr. on the Stat, 126, 7. See Prin. of Pen. Law. 165

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. Vide Policy.

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

2. 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 Watts & Serg. 493, 494.

OPERATION OF LAW. This term is applied to those rights which are cast upon a party by the law, 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. 9 B. & C. 298; 5 B. & C. 269; 2 B. & A. 119; 5 Taunt. 518.

OPERATIVE. A workman; one employed to perform labor for another.

2. This word is used in the bankrupt law of 19th August, 1841, s. 5, which directs that any person who shall have performed any labor as an operative in the service of anly bankrupt shall be entitled to receive the full amount of wages due to him for such labor, not exceeding twenty−five dollars; provided that such labor shall have been performed within six months next before the bankruptcy of his employer.

3. Under this act it has been decided that an apprentice who had done work beyond a task allotted to him by his master, commonly called overwork, under an agreement on the part of the master to pay for such work, was entitled as an operative. 1 Penn. Law Journ. 368. See 3 Rob. Adm. R. 237; 2 Cranch, 240 270.

OPINION, practice. A declaration by a counsel to his client of what the law is, according to his judgment, on a statement of facts submitted to him. The paper upon which an opinion is written is, by a figure of speech, also called an opinion.

2. The counsel should as far as practicable give, 1. A direct and positive opinion, meeting the point and effect of the question and separately, if the− questions proposed were properly divisible into several. 2. The reasons, succinctly stated, in support of such opinion. 3. A reference to the statute, rule or decision on the subject. 4. When the facts are susceptible of a small difference in the statement, a suggestion of the probability of such variation. 5. When some, important fact is stated as resting principally on the statement of the party interested, a suggestion ought to be made to inquire how that fact is to be proved. 6. A suggestion of the proper process or pleadings to be adopted. 7. A suggestion of what precautionary measures ought to be adopted. As to the value of an opinion, see 4

Penn, St. R. 28.

OPINION, evidence. An inference made, or conclusion drawn, by a witness from facts known to him,

2. In general a witness cannot be asked his opinion upon a particular question, for he is called to speak of facts only. But to this general rule there are exceptions; where matters of skill and judgment are involved, a person competent, particularly to understand such matters, may be asked his opinion, and it will be evidence. 4 Hill , 129; 1 Denio, 281; 2 Scam. 297; 2 N. H. Rep. 480; 2 Story, R. 421; see 8 W. & S. 61; 1 McMullan, 561 For example, an engi−neer may be called to say what, in his opinion, is the cause that a harbor has teen blocked up. 3 Dougl. R. 158; S. C. 26 Eng. C. L. Rep. 63; 1 Phil. Ev. 276; 4 T. R. 498. A ship builder may be asked his opinion on a question of sea−worthiness. Peake, N. P. C. 25; 10 Bingh. R. 57; 25 Eng. Com. Law Rep. 28.

3. Medical men are usually examined as to their judgment with regard to the cause of a person's death, who has suffered by violence. Vide Death. Of the sanity, 1 Addams, 244, or impotency, 3 Philm. 14, of an individual. Professional men are, however, confined to state facts and 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 Rogers' Rec. 26; 4 Wend. 320; 3 Fairf. 398; 3 Dana, 882; 1 Pennsyl. 161; 2 Halst. 244; 7 Verm. 161; 6 Rand. 704; 4 Yeates, 262; 9 Conn. 102; 3 N. H. Rep. 349; 5 H. & J. 488.

4. The unwritten or common law of foreign countries may be proved by the opinion of witnesses possessing professional skill. Story's Confl. of Laws, 530; 1 Cranch, 12, 38; 2 Cranch, 236; 6 Pet Rep. 763; Pet. C. C. R. 225; 2 Wash. C. C. R. 175; Id. 1; 5 Wend. Rep. 375; 2 Id. 411; 3 Pick. Rep. 293; 4 Conn. R. 517; 6 Conn: R. 486; 4 Bibb R. 73; 2 Marsh. Rep. 609; 5 Harr. & John. 86; 1 Johns. Rep. 385; 3 Johns. Rep. 105; 14 Mass., R. 455; 6 Conn. R. 508; 1 Verm. R. 336; 15 Serg. & Rawle, 87; 1, Louis. R. 153; 3 Id. 53; Cranch, 274. Vide also 14 Serg. & Rawle, 137; 3 N. Hamp. R. 349; 3 Yeates, 527; 1 Wheel. C. C. Rep. 205; 6 Rand. R. 704; 2 Russ. on Cr. 623; 4 Camp. R. 155; Russ. & Ry. 456; 2 Esp. C. 58; Foreign Laws; 3 Phillim. R. 449; 1 Eccl. R. 291.

OPINION, judgment. A collection of reasons delivered by a judge for giving the judgment he is about to pronounce the judgment itself is sometimes called an opinion.

2. Such an opinion ought to be a perfect syllogism, the major of which should be the law; the minor, the fact to be decided and the consequence, the judgment which declares that to be conformable or contrary to law.

3. Opinions are judicial or extra−judicial; a judicial opinion is one which is given on a matter which is legally brought before the judge for his decision; an extra−judicial opinion, is one which although given in court, is not necessary to the judgment. Vaughan, 382; 1 Hale's 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. R. 28. Vide Reason.

OPPOSITION, practice. The act of a creditor who, declares his dissent to a debtor's being discharged under the insolvent laws.

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.

2. To charge a magistrate with being an oppressor, is therefore actionable. Stark. Sland. 185.

OPPROBRIUM, civil law. Ignominy; shame; infamy. (q. v.)

OPTION. Choice; Election; (q. v.) where the subject is considered.

OR. This syllable in the termination of words has an active signification, and usually denotes the doer of an act; as, the grantor, he who makes a grant; the vendor, he who makes a sale; the feoffor, he who makes a feoffment. Litt. s. 57; 1 Bl. Com. 140, n.

ORACULUM, civil law. The name of a kind of decisions given by the Roman emperors.

ORAL. Something spoken in contradistinction to something written; as oral evidence, which is evidence delivered verbally by a witness,

ORATOR, practice. A good man, skillful in speaking well, and who employs a perfect eloquence to defend causes either public or private. Dupin, Profession d'Avocat, tom. 1, p. 19..

2. In chancery, the party who files a bill calls himself in those pleadings your orator. Among the Romans, advocates were called orators. Code, 1, 8, 33, 1.

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

2. In the constitution of the United States, the preamble. declares that the people "do ordain and establish this constitution for the United States of America." The 3d 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. R. 304, 324; 4 Wheat: R. 316, 402.

ORDEAL. An ancient superstitious mode of tribal. When in a criminal case the accused was arraigned, be might select the mode of trial either by God and his country, that is, by jury; or by God only, that is by ordeal.

2. 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.

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

ORDER, government. 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.

2. In the United States there are no orders of men, all men are equal in the eye of the law, except that in some states slavery has been entailed on them while they were colonies, and it still exists, in relation to some of the African race but these have no particular rights. Vide Rank.

ORDER, contracts. An indorsement or short writing put upon the back of a negotiable bill or note, for the purpose of passing the title to it, and making it payable to another person.

2. When a bill or note is payable to order, which is generally expressed by this formula, "to A B, or order,"or" to the order of A B," in this case the payee, A B may either receive the money secured by such instrument, or by his order, which is generally done by a simple indorsement, (q. v.) pass the right to receive it to another. But a bill or note wanting these words, although not negotiable, does not lose the general qualities of such instruments. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines, 137; 9 John. 217. Vide Bill of Exchange; Indorsement.

3. An informal bill of exchange or a paper which requires one person to pay or deliver to another goods on account of the maker to a third party, is called an order.

ORDER, French law. The act by which the rank of preferences of claims among creditors who have liens over the price which arises out of the sale of an immovable subject, is ascertained, is called order. Dalloz, Dict. h. t.

ORDER OF FILIATION. The name of a judgment tendered 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 farther adjudged that he pay a certain sum for its support.

2. The order must bear upon its face, 1st. That it was made upon the complaint of the township, parish, or other place, where the child was born and is chargeable. 2d. That it was made by justices of the peace having jurisdiction. Salk. 122, pl. 6; 2 Ld. Raym. 1197. 3d. The birth place of the child; 4th. 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. It. 308. 5th. The judgment that the defendant is the putative father of the child. Sid. 363; Stile, 154; Dalt. 52; Dougl. 662. 6th. That he shall maintain, the child as long as he shall be chargeable to the township, parish, or other place, which must be named. 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. Stile, 134; Vent. 210. 7th. It must be dated, signed, and, sealed by the justices. Such order cannot be vacated by two other justices. 15 John. R. 208; see 8 Cowen, R. 623; 4 Cowen, R. 253; 12 John. R. 195; 2 Blackf. R. 42.

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 those words: It is ordered, &c.

2. Orders also signify the instructions given by the owner to the captain or commander of a ship which he is to follow in the course of the vovage.

ORDINANCE, legislation. A law, a statute, a decree.

2. 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 Bac. Ab. 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 Harg. & But. Co. Litt. l59 b, notis; 3 Reeves, Hist. Eng. Law, 146.

3. 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 those powers. 4 Inst. 25. See Barr. on Stat. 41, note (x).

ORDINANCE OF 1787. An act of congress which regulates the territories of the United States. It is printed in 3 Story, L. U. S. 2073. Some parts of this ordinance were designed for the temporary government of the territory north−west of the river Ohio while other parts were intended to be permanent, and are now in force. 1 McLean, R. 337; 2 Missouri R. 20; 2 Missouri R. 144; 2 Missouri R. 214; 5 How. U. S. R. 215.

ORDINARY, civil and eccles. law. An officer who has original jurisdiction in his own right and not by deputation.

2. In England the ordinary is an officer who has immediate jurisdiction in ecclesiastical causes. Co. Litt. 344.

3. In the United States, the ordinary possesses, in those states where such officer exists, powers vested in him by the constitution and acts of the legislature, In South Carolina, the ordinary is a judicial officer. 1 Rep. Const. Ct. 26; 2 Rep. Const. Ct. 384.

ORDINATION, civil and eccles. law. The act of conferring the orders of the church upon an individual. Nov. 137.

ORE TENUS. 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 the Third, 3 Reeves, 95; Steph. Pl. 29; and vide Bract. 372, b.

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

OREGON. The name of a territory of the United States of America. This terri− tory was established by the act of congress of August 14, 1848; and this act is the fundamental law of the territory.

2. − Sect. 2. The executive power and authority in and over said territory of Oregon shall be vested in a governor who shall hold his office for four years, and until his successors shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander−in−chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs; he may grant pardons and respites for offences against the laws of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

3. − Sect. 3. There shall be a secretary of said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi−annually, on the first days of January and July, in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or ab− sence, or until another governor shall be duly appointed and qualified to fill such vacancy.

4. − Sect. 4. The legislative power and authority of said territory shall be vested in a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into, three classes. The seats. of the members of council of the first. class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year, so that one−third may be chosen every year, and if vacancies happen by resignation or otherwise, the same shall be filled at the next ensuing election. The house of representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for memers of the council,

and whose term of serice shall continue one year. The number of representatives may be increased by the legislative assembly from time to time, in proportion to the increase of qualified voters: Provided, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council andrepresentatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in and be inhabitants of the district, or county or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons, and in such mode as the governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor; and the first election shall be held at such time and places, and be conducted in such manner, both as to the person who shall superintend such election, and the returns thereof, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house; Provided, That, in case two or more persons voted for shall have an equal number of votes and in case a vacancy shall otherwise occur, in either branch of the legislative assembly, the governor shall order a new election, and the persons thus elected to the legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the governor shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: Prodided, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not be prolonged beyond one hundred days.

5. − Sect, 5. Every white male inhabitant, above the age of twenty−one years, who shall have been a reident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: Provided, That the right of suffrage and of holding office shall be exercised only by citizens United States above the age of twenty−one years, and those above that age who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: And, further, provided, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troop’s in the service of the United States, shall be allowed to vote in said territory, by reason of being on service therein, unless said territory is and has been for the period of six months, his permanent domicil: Provided, further, That no person belonging to the army or navy of the United States shall ever be elected to, or hold any civil office or appointment in, said territory.

6. − Sect. 6. The legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tar shall be imposed upon the property of the United States; nor shall the lands or other property of non−residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect: Provided, That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds scrip, drafts, bills of exchange, or obligations, or granting anyother banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt by said territory, in any mode or manner whatever, except certificates for services to said territory; and all such laws, or any law or laws inconsistent with the provisions of this act, shall be

utterly null and void; and all taxes shall be equal and uniform and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences which may result from intermixing in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title.

7. − Sect. 7. All township, district, and county, officers, not herein otherwise provided for, shall be appointed or elected, in such manner as shall be provided by the legislative assembly of the territory of Oregon.

8. − Sect. 8. No member of the legislative assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission, or appointment under the United States shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

9. The 16th section of the act authorizes the qualified voters to elect a delegate to the house of representatives of the United States, who shall have and exercise all the rights and privileges as have been heretofore exercised and enjoyed by the delegates from the other territories of the United States to the said house of representatives. Vide Courts of the United States.

ORIGINAL, contracts, practice, evidence. 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.

2. 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. Watson’s Case, 2 Stark. R. 130; sed vide 14 Serg.& Rawle, 200; 2 Bouv. lnst. n. 2001.

3. 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 Camp. R. 121,

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.

2. This subject will be divided into three sections. 1. The form of the original entry. 2. The proof of such entry. 3. The effect.

3. − _1. To make a valid original entry it must possess the following requisites, namely: 1. It must. be made in a proper book. 2. It must be made in proper time. 3. It must be intelligible and according to law. 4. It must be made by a person having authority to make it.

4. − 1. 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 he 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, R. 435; 2 Watts, R. 451; 4 Watts, R. 258; 1 Browne’s R. 147; 6 Whart. R. 189; 5 Watts, 432; 4 Rawle, 408; 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 ori−ginal 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. R. 33; 4 M’Cord, R. 76; 20 Wend. 72; 2 Miles, R. 268; 1 Yeates, R. 198; 4 Yeates, R. 341.

5. − 2. 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. 8 Watts, 545; 1 Nott, & M’Cord, 130; 4 Nott & M’Cord, 77; 4 S. & R. 5; 2 Dall. 217; 9 S. & R. 285. A book in which the charges are made when the goods are ordered is not admissible. 4 Rawle, 404; 3 Dev. 449.

6. − 3. 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 Nott & M’Cord, 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 Const. Rep. 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. Rep. 745; 2 Bail. R. 449; 1 Nott & M'Cord, 130.

7. − 4. 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.

8. − _2. 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 John. R. 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 Watts & Serg. 137. But the plaintiff is not competent to prove the handwriting of a deceased clerk who made the entries. 1 Browne's R. App. liii.

9.− _3. The books and original entries, when proved by the supplementary oath of the party, is prima facie evidence of the sale and delivery of goods, or of work and labor done. 1 Yeates, 347; Swift's Ev. 84; 3 Verm. 463; 1 M'Cord, 481; 1 Aik. 355; 2 Root, 59; Cooke's R. 38. But they are not evidence of money lent, or cash paid. Id.; 1 Day, 104; 1 Aik. 73, 74; Kirby, 289. Nor of the time a vessel laid at the plaintiff's wharf; 1 Browne's Rep. 257; nor of the delivery of goods to be sold on commission. 2 Wharton, 33.

ORIGINAL JURISDICTION, practice. That which is given to courts to take cognizance of cases which may be instituted in those courts in the first instance. The constitution of the United States gives the supreme court of the United State original jurisdiction in cases which affect ambassadors, other public ministers and consuls, and to those in which a state is a party. Art. 3, s. 2; 1 Kent, Com. 314.

ORIGINAL WRIT, practice, English law. 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.

2. In modern practice, however, it is often dispensed with, by recourse, as usual, to fiction, and a proceeding by bill is 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. Vide 3 Bl. Com. 273 Walk. Intr. to Amer. Law, 514.

ORIGINALIA, Eng. law. The transcripts and other documents sent to the office of the treasurer−remembrancer in the exchequer, are called by this name to distinguish them from records, which contain the judgment's of the barons.

ORNAMENT. An embellisment. 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 an accessory. Vide Accessory; Principal.

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 Sim. & Stu. 93; Lo & Man. Inst. B. 1, t. 2, c. 1. See Hazzard's Register of Pennsylvania, vol. 14, pages 188, 1 89, for a correspon−dence between the Hon. Joseph Hopkinson and ex−president J. Q. Adams as to the meaning of the word Orphan, and Rob. 247.

ORPHANAGE, Engl. law. 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. Lov. on Wills, 102, 104; Bac. Ab. Custom of London, C. Vide Legitime.

ORPHANS' COURT. The name of a court in some of the states, having jurisdic− tion of the estates and persons of orphans.

ORPHANOTROPHI, civil law. Persons who have the charge of administering the affairs of houses destined for the use of orphans. Clef des Lois Rom. mot Ad− ministrateurs.

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

OTHER WRONGS, pleading, evidence. In actions of trespass, the declaration concludes by charging generally, that the defendant did other wrongs to the plaintiff to his great damage. When the injury is a continuation or consequence of the trespass declared on, the plaintiff may give evidence of such injury under this averment of other wrongs, Rep., Temp. Holt 699; 2 Salk. 642; 6 Mod. 127; Bull. N. P. 89; 2 Stark. N. P. C. 818.

OUNCE. The name of a weight. An ounce avoirdupois weight is the sixteenth part of a pound; an ounce troy weight is the twelfth part of a pound. Vide Weights.

OUSTER, torts. An ouster is the actual turning out, or keeping excluded, the party entitlod to possession of any real property corporeal.

2. An ouster can properly be only from real property corporeal, and cannot be committed of anything movable; 1 Car. & P. 123; S. C. 11 Eng. Com. Law R. 339; 2 Bouv. 1 Inst. n. 2348; 1 Chit. Pr. 148, note r; nor is a mere temporary trespass considered as an Guster. Any continuing act of exclusion from the enjoyment, constitutes an ouster, even by one tenant in common of his co−tenant. Co. Litt. 199 b, 200 a. Vide 3 Bl; Com. 167; Arch. Civ. Pl. 6, 14; 1 Chit. Pr. 374, where the remedies for an ouster are pointed out. Vide Judgment of Respondent Ouster.

OUSTER LE MAIN. In law−French, this signifies, to take out of the hand. In the old English law it signified a livery 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.

OUTFIT. An allowance made by the government of the United States to a minis−ter plenipotentiary, or charge des affaires, on going from the United States to any foreign country.

2. The outfit can in no case exceedlone year's full salary of such minister or charge des affaires. No outfit is allowed to a consul. Act of Cong. May 1, 1810. s. 1. Vide Minister.

OUTHOUSES. Buildings adjoining to or belonging to dwelling−houses.

2. It is not easy to say what comes within and what is excluded from the meaning of out−house. 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 enclosed them, being rented by the same person, was properly described as an out−house: Russ. & R. C. C. 295; see, for other cases, 3 Inst. 67; Burn's Just., Burning, II; 1 Leach, 49; 2 East's P. C. 1020, 1021. Vide House.

OUTRIDERS, Engl. law. Bailiffs errant, employed by the sheriffs and their deputies, to ride to the furthest places of their counties or hundreds to summon such as they thought good, to attend their county or hundred court.

OUTLAW, Engl. law. One who is put out of the protection or aid of the law. 22 Vin. Ab. 316; 1 Phil. Ev. Index, h. t.; Bac. Ab. Outlawry; 2 Sell. Pr. 277; Doct. Pl. 331; 3 Bl. Com. 283, 4.

OUTLAWRY, Engl. 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.

2. Outlawry may take place in criminal or in civil cases. 3 Bl. Com. 283; Co. Litt. 128; 4 Bouv. Inst. n. 4196.

3. 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's Ab. eh. 193, a, 34. Vide Bac. Ab. Abatement, B; Id. h. t.; Gilb. Hist. C. P. 196, 197; 2 Virg. Cas. 244; 2 Dal. 92.

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

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

2. 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 had overdrawn the bank knowingly, and had no funds there between the time the check was given and its presentment, the notice is not requisite. 2 N. & McC. 433.

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.

2. 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 Alab. R. 153.

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

OVERPLUS. What is left beyond a certain amount; the residue, the remainder of a thing. The same as Surplus. (q. v.)

2. 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.

TO 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.

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

3. The term overrule also signifies that a majority of the judges have decided against the opinion of the minority, in which case the latter are said to be overruled.

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

2. 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. Vide 1 Bl. Com. 360; 16 Vin. Ab. 150; 1 Mass. 459; 3 Mass. 436; 1 Penning. R. 6, 136; Com. Dig. Justices of the Peace, B. 63, 64, 65.

OVERSMAN, 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. Ersk. Pr. L. Scot. 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 Chit: Cr. Law, 40. An overt act then, is one which manifests the intention of the traitor, to commit treason. Archb. Cr. Pl. 379 4 Bl. Com. 79.

2. 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 were speculative wantonness of a licentious imagination, however dangerous, or even san−guinary 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. Vide Attempt; Conspiracy, and Cro. Car. 577.

OWELTY. The difference which is paid or secured by one coparcener to another, for the purpose of equalizing a partition. Hugh. Ab. Partition and Partner, _ 2, n. 8; Litt. s. 251; Co. Litt. 169 a; 1 Watts, R. 265; 1 Whart. 292; 3 Penna, 11 5; Cruise, Dig. tit. 19, _32; Co. Litt. 10 a; 1 Vern. 133; Plow. 134; 16 Vin. Ab. 223, pl. 3; Bro. Partition; _5. OWING. Something unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not.

2. 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. Law Jo. 210.

OWLER, Eng. law. One guilty of the offence of owling.

OWLING, Eng. law. The offence of transporting wool or sheep out of the king−dom.

2. 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, property. The owner is he who has dominion of a thing real or person−al, corporeal or incorporeal, which he has a right to enjoy and to 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.

2. The right of the owner is more extended than that of him who has only the use of the thing. The owner of an estate may, therefore change the face of it; he may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper, for minerals, stone, plaster, and similar things. He may committ what would be considered waste if done by another.

3. 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 sufficient time to enable the latter to acquire a title to it by prescription, or lapse of time. See Civil Code of Louis. B. 2, t. 2, c. 1; Encyclopedie de M. D'Alembert, Proprietaire.

4. 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's Com. 519, 5th ed. See 5 Whart. R. 366.

OWNERSHIP, title to property. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. Louis. Code, art. 480.

OXGANG OF LAND, old Eng. law. An uncertain quantity of land, but, according to some opinions, it contains fifteen acres. Co. Litt. 69 a.

OYER, pleading. Oyer is a French word signifying to hear; in pleading it is a prayer or petition to the court, that the party may hear read to him the deed, &c., stated in the pleadings of the opposite party, aud which deed is by intendment of law in court, when it is pleaded with a profert.

2. The origin of this form of pleading, we are told, is that the generality of defendants, in ancient times, were themselves incapable of reading. 3 Bl. Com. 299.

3. Oyer is, in some cases demandable of right, and in others it is not. It may be demanded of any speciality or other written instrument, as bonds of all sorts, deeds poll, indentures, letters testamentary, and of administration, and the like, of which a profert in curiam is necessarily made by the adverse party. But if the party be not bound to plead the specialty or instrument with a profert, and he pleads it with one, it is but surplusage, and the court will not compel him to give oyer of it. 1 Salk. 497. Oyer is not now demandable of the writ, and if it be demanded, the plaintiff may proceed as if no such demand were made. Dougl. 227; 3 B. & P. 398; 1 B.& P. 646, n. b. Nor is oyer demandable of a record, yet if a judgment or other record be pleaded in its own court, the party pleading it must give a notice in writing of the term and number roll whereon such judgment or matter of record is entered or filed in default of which the plea is not to be received. Tidd's Pr. 529.

4. To deny over when it ought to be granted is error; and in such case 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. ibid.; 2 Lev. 142; 6 Mod. 28. On the latter judgment, the defendant may bring a writ of error, for to deny oyer when it ought to be granted, is error, but not e converso. Id. ibid.; 1 Blackf. R. 126. See, in general, 1 Saund. 9, n. 1; 289, in. 2; 2. Saund. 9, n. 12, 13; 46, n. 7; 366, n. 1; 405, n. 1; 410, n. 2; Tidd's Pr. 8 ed. 635 to 638, and index, tit. Oyer; 1 Chit. Pl. 369 to 375; Lawes on Civ. Pl. 96 to 101; 16 Vin. Ab. 157; Bac. Abr. Pleas, &c., I 12, n. 2; Arch. Civ. Pl. 185; 1 Sell. Pr. 260; Doct. Pl, 344; Com. Dig. Pleader, P Abatement, I 22; 1 Blackf. R. 241, 3 Bouv. Inst. n. 2890.

OYER AND TERMINER. The name of a court authorized to hear and determine all treasons, felonies and misdemeanors; and, generally, invested with other power in relation to the punishment of offenders.

OYEZ, practice. Hear; do you hear. In order to attract attention immediately before he makes proclamation, the cryer of the court cries Oyez, Oyez, which is generally corruptly pronounced O yes.

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