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N. An abbreviation of "*Novellæ*," the Novels of Justinian, used in citing them. Tayl. Civil Law, 24.

N. A. An abbreviation for "*non allocatur*," it is not allowed.

N. B. An abbreviation for "*nota bene*," mark well, observe; also "*nulla bona*," no goods.

N. D. An abbreviation for "Northern District."

N. E. I. An abbreviation for "*non est inventus*," he is not found.

N. L. An abbreviation of "*non liquet*," (which see.)

N. P. An abbreviation for "notary public;" also for "*nisi prius*," (*q. v.*)

N. R. An abbreviation for "New Reports;" also for "not reported," and for "non-resident."

N. S. An abbreviation for "New Series;" also for "New Style."

NAAM. The attaching or taking of movable goods and chattels, called "*vif*" or "*mort*" according as the chattels were living or dead. *Termes de la Ley*.

NABOB. Originally the governor of a province under the Mogul government of Hindostan, whence it became a mere title of any man of high rank, upon whom it was conferred without any office being attached to it. *Wils. Indian Gloss*.

NAIF. L. Fr. A villein; a born slave; a bondwoman.

NAIL. A lineal measure of two inches and a quarter.

NAKED. As a term of jurisprudence, this word is equivalent to bare, wanting in necessary conditions, incomplete, as a naked contract, (*nudum pactum*), *i. e.*, a contract devoid of consideration, and therefore invalid; or simple, unilateral, comprising but a single element, as a naked authority, *i. e.* one which is not coupled with any interest in the agent, but subsists for the benefit of the principal alone.

NAKED CONFESSION. A confession of crime which is unsupported by any evidence of the commission of the offense.

NAKED DEPOSIT. A bailment of goods to be kept for the depositor, without hire or reward on either side.

NAKED POWER. One which is simply collateral and without interest in the donee, which arises when, to a mere stranger, authority is given of disposing of an interest, in which he had not before, nor has by the instrument creating the power, any estate whatsoever. *Caines, Cas. 15*.

NAKED TRUST. A dry or passive trust; one which requires no action on the part of the trustee, beyond turning over money or property to the *cestui que trust*.

NAM. In old English law. A distress or seizure of chattels.

As a Latin conjunction, for; because. Often used by the old writers in introducing the quotation of a Latin maxim.

NAMARE. L. Lat. In old records. To take, seize, or distrain.

NAMATIO. L. Lat. In old English and Scotch law. A distraining or taking of a distress; an impounding. *Spelman*.

NAME. The designation of an individual person, or of a firm or corporation. In law a man cannot have more than one Christian name. *1 Ld. Raym. 562*.

NAME AND ARMS CLAUSE. The popular name in English law for the clause, sometimes inserted in a will or settlement by which property is given to a person, for the purpose of imposing on him the condition that he shall assume the surname and arms of the testator or settlor, with a direction that, if he neglects to assume or discontinues the use of them, the estate shall devolve on the next person in remainder, and a provision for preserving contingent remainders. *3 Dav. Prec. Conv. 277; Sweet*.

NAMIUM. L. Lat. In old English law. A taking; a distress. *Spelman*. Things, goods, or animals taken by way of distress. *Simplex namium*, a simple taking or pledge. *Bract. fol. 205b*.

NAMIUM VETITUM. An unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them. *3 Bl. Comm. 149*.

NANTES, EDICT OF. A celebrated law for the security of Protestants, made by Henry IV. of France, and revoked by Louis XIV., October 2, 1685.

NANTISSEMENT, in French law, is the contract of pledge; if of a movable, it is called "*gage*;" and if of an immovable, it is called "*antichrèse*." Brown.

NARR. A common abbreviation of "*narratio*," (*q. v.*) A declaration in an action. Jacob.

NARRATIO. One of the common law names for a plaintiff's count or declaration, as being a narrative of the facts on which he relies.

NARRATIVE. In Scotch conveyancing. That part of a deed which describes the grantor, and person in whose favor the deed is granted, and states the cause (consideration) of granting. Bell.

NARRATOR. A counter; a pleader who draws *narrs.* *Serviens narrator*, a serjeant at law. Fleta, l. 2, c. 37.

NARROW SEAS. Those seas which run between two coasts not far apart. The term is sometimes applied to the English channel. Wharton.

NASCITURUS. Lat. That shall hereafter be born. A term used in marriage settlements to designate the future issue of the marriage, as distinguished from "*natus*," a child already born.

NATALE. The state and condition of a man acquired by birth.

NATI ET NASCITURI. Born and to be born. All heirs, near and remote.

NATIO. In old records. A native place. Cowell.

NATION. A people, or aggregation of men, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty.

Besides the element of autonomy or self-government, that is, the independence of the community as a whole from the interference of any foreign power in its affairs or any subjection to such power, it is further necessary to the constitution of a nation that it should be an organized jural society, that is, both governing its own members by regular laws, and defining and protecting their rights, and

respecting the rights and duties which attach to it as a constituent member of the family of nations. Such a society, says Vattel, has her affairs and her interests; she deliberates and takes resolutions in common; thus becoming a moral person, who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights. Vattel, §§ 1, 2.

The words "nation" and "people" are frequently used as synonyms, but there is a great difference between them. A nation is an aggregation of men speaking the same language, having the same customs, and endowed with certain moral qualities which distinguish them from other groups of a like nature. It would follow from this definition that a nation is destined to form only one state, and that it constitutes one indivisible whole. Nevertheless, the history of every age presents us with nations divided into several states. Thus, Italy was for centuries divided among several different governments. The *people* is the collection of all citizens without distinction of rank or order. All men living under the same government compose the *people* of the state. In relation to the state, the citizens constitute the people; in relation to the human race, they constitute the nation. A free nation is one not subject to a foreign government, whatever be the constitution of the state; a *people* is free when all the citizens can participate in a certain measure in the direction and in the examination of public affairs. The people is the political body brought into existence by community of laws, and the people may perish with these laws. The nation is the moral body, independent of political revolutions, because it is constituted by inborn qualities which render it indissoluble. The state is the people organized into a political body. Lalor, Pol. Enc. s. v.

In American constitutional law the word "state" is applied to the several members of the American Union, while the word "nation" is applied to the whole body of the people embraced within the jurisdiction of the federal government. Cooley, Const. Lim. 1. See 7 Wall. 720.

NATIONAL BANK. A bank incorporated and doing business under the laws of the United States, as distinguished from a state bank, which derives its powers from the authority of a particular state.

NATIONAL CURRENCY. Notes issued by national banks, and by the United States government.

NATIONAL DEBT. The money owing by government to some of the public, the interest of which is paid out of the taxes raised by the whole of the public.

NATIONAL DOMAIN. A term sometimes applied to the aggregate of the property owned directly by a nation.

NATIONAL DOMICILE. The domicile of a person, considered as being within the territory of a particular nation, and not

N with reference to a particular locality or subdivision of a nation.

NATIONAL GOVERNMENT. The government of a whole nation, as distinguished from that of a local or territorial division of the nation, and also as distinguished from that of a league or confederation.

"A national government is a government of the people of a single state or nation, united as a community by what is termed the 'social compact,' and possessing complete and perfect supremacy over persons and things, so far as they can be made the lawful objects of civil government. A federal government is distinguished from a national government, by its being the government of a community of independent and sovereign states, united by compact." 6 Ohio St. 393.

NATIONALITY. That quality or character which arises from the fact of a person's belonging to a nation or state. Nationality determines the political *status* of the individual, especially with reference to allegiance; while domicile determines his civil *status*. Nationality arises either by birth or by naturalization. According to Savigny, "nationality" is also used as opposed to "territoriality," for the purpose of distinguishing the case of a nation having no national territory; *e. g.*, the Jews. 8 Sav. Syst. § 346; Westl. Priv. Int. Law, 5.

NATIONALIZACION. In Spanish and Mexican law. Nationalization. "The nationalization of property is an act which denotes that it has become that of the nation by some process of law, whereby private individuals or corporations have been for specified reasons deprived thereof." Hall, Mex. Law, § 749.

NATIONS, LAW OF. See INTERNATIONAL LAW.

NATIVA. In old English law. A niece or female villein. So called because for the most part bond by nativity. Co. Litt. 122*b*.

NATIVE. A natural-born subject or citizen; a denizen by birth; one who owes his domicile or citizenship to the fact of his birth within the country referred to. The term may also include one born abroad, if his parents were then citizens of the country, and not permanently residing in foreign parts.

NATIVI CONVENTIONARI. Villeins or bondmen by contract or agreement.

NATIVI DE STIPITE. Villeins or bondmen by birth or stock. Cowell.

NATIVITAS. In old English law. Villenage; that state in which men were born slaves. 2 Mon. Angl. 643.

NATIVO HABENDO. In old English law. A writ which lay for a lord when his villein had run away from him. It was directed to the sheriff, and commanded him to apprehend the villein, and to restore him together with his goods to the lord. Brown.

NATIVUS. A servant born. Spelman.

Natura appetit perfectum; ita et lex. Nature covets perfection; so does law also. Hob. 144.

NATURA BREVIUM. The name of an ancient collection of original writs, accompanied with brief comments and explanations, compiled in the time of Edward III. This is commonly called "*Old Natura Brevium*," (or "*O. N. B.*,") to distinguish it from Fitzherbert's *Natura Brevium*, a later work, cited as "*F. N. B.*," or "*Fitzh. Nat. Brev.*"

Natura fide jussionis sit strictissimi juris et non durat vel extendatur de re ad rem, de persona ad personam, de tempore ad tempus. The nature of the contract of suretyship is *strictissimi juris*, and cannot endure nor be extended from thing to thing, from person to person, or from time to time. Burge, Sur. 40.

Natura non facit saltum; ita nec lex. Nature makes no leap, [no sudden or irregular movement;] so neither does law. Co. Litt. 238. Applied in old practice to the regular observance of the degrees in writs of entry, which could not be passed over *per saltum*.

Natura non facit vacuum, nec lex supervacuum. Nature makes no vacuum, the law nothing purposeless. Co. Litt. 79.

Naturæ vis maxima; natura bis maxima. The force of nature is greatest; nature is doubly great. 2 Inst. 564.

NATURAL AFFECTION. Such as naturally subsists between near relatives, as a father and child, brother and sister, husband and wife. This is regarded in law as a good consideration.

NATURAL ALLEGIANCE. In English law. That kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own. 1 Bl. Comm. 369; 2 Kent, Comm. 42.

In American law. The allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law. 2 Kent, Comm. 43-49.

It differs from *local* allegiance, which is temporary only, being due from an alien or stranger born for so long a time as he continues within the sovereign's dominions and protection. Fost. Cr. Law, 184.

NATURAL-BORN SUBJECT. In English law. One born within the dominions, or rather within the allegiance, of the king of England.

NATURAL CHILD. A bastard; a child born out of lawful wedlock. But in a statute declaring that adopted shall have all the rights of "natural" children, the word "natural" was used in the sense of "legitimate." 9 Amer. Law Reg. (O. S.) 747.

In Louisiana. Illegitimate children who have been adopted by the father. Civil Code La. art. 220.

In the civil law. A child by natural relation or procreation; a child by birth, as distinguished from a child by adoption. Inst. 1, 11, pr.; Id. 3, 1, 2; Id. 3, 8, pr.

A child by concubinage, in contradistinction to a child by marriage. Cod. 5, 27.

NATURAL DAY. That space of time included between the rising and the setting of the sun. See DAY.

NATURAL DEATH. 1. Death resulting from disease, or from natural forces without the concurrence of man's agency; as distinguished from "violent" death

2. Physical death; the separation of soul and body; as distinguished from "civil" death, which is the loss of rights and juristic personality as a legal consequence of certain acts.

NATURAL EQUITY. A term sometimes employed in works on jurisprudence, possessing no very precise meaning, but used as equivalent to justice, honesty, or morality in business relations, or man's innate sense of right dealing and fair play.

Inasmuch as equity, as now administered, is a complex system of rules, doctrines, and precedents, and possesses, within the range of its own fixed principles, but little more elasticity than the law, the term "natural equity" may be understood to denote, in a general way, that which strikes the ordinary conscience and sense of justice as being fair, right, and equitable, in advance of the question whether the technical jurisprudence of the chancery courts would so regard it.

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NATURAL FOOL. A person born without understanding; a born fool or idiot. Sometimes called, in the old books, a "natural."

NATURAL FRUITS. The produce of the soil, or of fruit-trees, bushes, vines, etc., which are edible or otherwise useful or serve for the reproduction of their species. The term is used in contradistinction to "artificial fruits," *i. e.*, such as by metaphor or analogy are likened to the fruits of the earth. Of the latter, interest on money is an example.

NATURAL HEIRS. In a statute of distributions, this term may be understood and interpreted as meaning "legitimate heirs," and hence may include an adopted child. 9 Amer. Law Reg. (O. S.) 747.

NATURAL INFANCY. A period of non-responsible life, which ends with the seventh year. Wharton.

NATURAL LAW. The rule and dictate of right reason, showing the moral deformity or moral necessity there is in any act, according to its suitability or unsuitability to a reasonable nature. Tayl. Civil Law, 99.

This expression, "natural law," or *jus naturale*, was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his *nature*, meaning by that word his whole mental, moral, and physical constitution. The point of departure for this conception was the Stoic doctrine of a life ordered "according to nature," which in its turn rested upon the purely supposititious existence, in primitive times, of a "state of nature;" that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses, and promptings of their true nature, such nature being as yet undefaced by dishonesty, falsehood, or indulgence of the baser passions. See Maine, Anc. Law, 50, et seq.

NATURAL LIBERTY. The power of acting as one thinks fit, without any restraint or control, unless by the law of nature. 1 Bl. Comm. 125.

NATURAL LIFE. The period between birth and natural death, as distinguished from civil death, (*q. v.*)

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NATURAL OBLIGATION. One which lacks legal sanction, and therefore cannot be enforced in a court of justice, but which imposes a moral duty upon the person bound.

NATURAL PERSONS. Such as are formed by nature, as distinguished from *artificial* persons, or corporations, formed by human laws for purposes of society and government. Wharton.

NATURAL PRESUMPTION. In the law of evidence. That species of presumption, or process of probable reasoning, which is exercised by persons of ordinary intelligence, in inferring one fact from another, without reference to any technical rules. Otherwise called "*presumptio hominis.*" Burrill, Circ. Ev. 11, 12, 22, 24.

NATURAL RIGHTS. Those rights which are plainly assured by natural law; such as the right to life, to personal liberty, etc.

NATURAL YEAR. In old English law. That period of time in which the sun was supposed to revolve in its orbit, consisting of 365 days and one-fourth of a day, or six hours. Bract. fol. 359b.

Naturale est quilibet dissolvi eo modo quo ligatur. It is natural for a thing to be unbound in the same way in which it was bound. Jenk. Cent. 66; Broom, Max. 877.

NATURALEZA. In Spanish law. The state of a natural-born subject. White, New Recop. b. 1, tit. 5, c. 2.

NATURALIZATION. The act of adopting an alien into a nation, and clothing him with all the rights possessed by a natural-born citizen.

NATURALIZE. To confer citizenship upon an alien; to make a foreigner the same, in respect to rights and privileges, as if he were a native citizen or subject.

NATURALIZED CITIZEN. One who, being an alien by birth, has received citizenship under the laws of the state or nation.

NATURALLY. Damages which "naturally" arise from a breach of contract are such as arise in the usual course of things, from the breach itself, or such as may reasonably be supposed to have been contemplated by the parties when making the contract as the probable result of the breach. 71 Cal. 164, 11 Pac. Rep. 882.

NATUS. Lat. Born, as distinguished from *nasciturus*, about to be born.

NAUCLERUS. Lat. In the civil law. The master or owner of a merchant vessel. Calvin.

NAUFRAGE. In French maritime law. Shipwreck. "The violent agitation of the waves, the impetuous force of the winds, storm, or lightning, may swallow up the vessel, or shatter it, in such a manner that nothing remains of it but the wreck; this is called 'making shipwreck,' (*faire naufrage.*) The vessel may also strike or run aground upon a bank, where it remains grounded, which is called '*échouement*;' it may be dashed against the coast or a rock, which is called '*bris*;' an accident of any kind may sink it in the sea, where it is swallowed up, which is called '*somber.*'" 3 Pard. Droit Commer. § 643.

NAUFRAGIUM. Lat. Shipwreck.

NAUGHT. In old practice. Bad; defective. "The bar is *naught.*" 1 Leon. 77. "The avowry is *naught.*" 5 Mod. 73. "The plea is undoubtedly *naught.*" 10 Mod. 329. See 11 Mod. 179.

NAULAGE. The freight of passengers in a ship. Johnson; Webster.

NAULUM. In the civil law. The freight or fare paid for the transportation of cargo or passengers over the sea in a vessel. This is a Latinized form of a Greek word.

NAUTA. Lat. In the civil and maritime law. A sailor; one who works a ship. Calvin.

Any one who is on board a ship for the purpose of navigating her.

The employer of a ship. Dig. 4, 9, 1, 2.

NAUTICAL ASSESSORS. Experienced shipmasters, or other persons having special knowledge of navigation and nautical affairs, who are called to the assistance of a court of admiralty, in difficult cases involving questions of negligence, and who sit with the judge during the argument, and give their advice upon questions of seamanship or the weight of testimony. 19 Fed. Rep. 559; 2 Curt. 369.

NAVAGIUM. In old English law. A duty on certain tenants to carry their lord's goods in a ship.

NAVAL. Appertaining to the navy. (q. v.)

NAVAL COURTS. Courts held abroad in certain cases to inquire into complaints by the master or seamen of a British ship, or as

to the wreck or abandonment of a British ship. A naval court consists of three, four, or five members, being officers in her majesty's navy, consular officers, masters of British merchant ships, or British merchants. It has power to supersede the master of the ship with reference to which the inquiry is held, to discharge any of the seamen, to decide questions as to wages, send home offenders for trial, or try certain offenses in a summary manner. Sweet.

NAVAL COURTS-MARTIAL. Tribunals for the trial of offenses arising in the management of public war vessels.

NAVAL LAW. The system of regulations and principles for the government of the navy.

NAVAL OFFICER. An officer in the navy. Also an important functionary in the United States custom-houses, who estimates duties, signs permits and clearances, certifies the collectors' returns, etc.

NAVARCHUS. In the civil law. The master or commander of a ship; the captain of a man-of-war.

NAVICULARIUS. In the civil law. The master or captain of a ship. Calvin.

NAVIGABLE. Capable of being navigated; that may be navigated or passed over in ships or vessels. But the term is generally understood in a more restricted sense, viz., subject to the ebb and flow of the tide.

"The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all, of the navigability of waters. There no waters are navigable in fact, or at least to any considerable extent, which are not subject to the tide, and from this circumstance tide-water and navigable water there signify substantially the same thing. But in this country the case is widely different. Some of our rivers are as navigable for many hundreds of miles above as they are below the limits of tide-water, and some of them are navigable for great distances by large vessels, which are not even affected by the tide at any point during their entire length. A different test must therefore be applied to determine the navigability of our rivers, and that is found in their navigable capacity. Those rivers must be regarded as public navigable rivers, in law, which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States, within the meaning of the acts of congress, in contradistinction from the navigable waters of the states, when they form, in their or-

inary condition, by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water." Field, J., 10 Wall. 563.

It is true that the flow and ebb of the tide is not regarded, in this country, as the usual, or any real, test of navigability; and it only operates to impress, *prima facie*, the character of being public and navigable, and to place the *onus* of proof on the party affirming the contrary. But the navigability of tide-waters does not materially depend upon past or present actual public use. Such use may establish navigability, but it is not essential to give the character. Otherwise, streams in new and unsettled sections of the country, or where the increase, growth, and development have not been sufficient to call them into public use, would be excluded, though navigable in fact, thus making the character of being a navigable stream dependent on the occurrence of the necessity of public use. Capability of being used for useful purposes of navigation, of trade and travel, in the usual and ordinary modes, and not the extent and manner of the use, is the test of navigability. 82 Ala. 166, 2 South. Rep. 716.

NAVIGABLE RIVER or STREAM. A river or stream in which the tide ebbs and flows, or as far as the tide ebbs and flows. 3 Kent, Comm. 412, 414, 417, 418; 2 Hil. Real Prop. 90, 91.

NAVIGABLE WATERS. Those waters which afford a channel for useful commerce. 20 Wall. 430.

NAVIGATE. To conduct vessels through navigable waters; to use the waters as a means of communication.

NAVIGATION. The act or the science or the business of traversing the sea or other waters in ships or vessels.

NAVIGATION ACTS, in English law, were various enactments passed for the protection of British shipping and commerce against foreign countries. For a sketch of their history and operation, see 3 Steph. Comm. They are now repealed. See 16 & 17 Vict. c. 107, and 17 & 18 Vict. cc. 5, 120. Wharton.

NAVIGATION, RULES OF. Rules and regulations adopted by commercial nations to govern the steering and management of vessels approaching each other at sea so as to avoid the danger of collision or fouling.

NAVIRE. Fr. In French law. A ship. Emerig. Traité des Assur. c. 6, § 1.

NAVIS. Lat. A ship; a vessel.

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NAVIS BONA. Lat. A good ship; one that was staunch and strong, well caulked, and stiffened to bear the sea, obedient to her helm, swift, and not unduly affected by the wind. Calvin.

NAVY. A fleet of ships; the aggregate of vessels of war belonging to an independent nation.

NAVY BILLS. Bills drawn by officers of the English navy for their pay, etc.

NAVY DEPARTMENT. One of the executive departments of the United States, presided over by the secretary of the navy, and having in charge the defense of the country by sea, by means of ships of war and other naval appliances.

NAVY PENSION. A pecuniary allowance made in consideration of past services of some one in the navy.

NAZERANNA. A sum paid to government as an acknowledgment for a grant of lands, or any public office. Enc. Lond.

NAZIM. In Hindu law. Composer, arranger, adjuster. The first officer of a province, and minister of the department of criminal justice.

NE ADMITTAS. Lat. In ecclesiastical law. The name of a prohibitory writ, directed to the bishop, at the request of the plaintiff or defendant, where a *quare impedit* is pending, when either party fears that the bishop will admit the other's clerk pending the suit between them. Fitzh. Nat. Brev. 37.

NE BAILA PAS. L. Fr. He did not deliver. A plea in detinue, denying the delivery to the defendant of the thing sued for.

NE DISTURBA PAS. L. Fr. (Does or did not disturb.) In English practice. The general issue or general plea in *quare impedit*. 3 Steph. Comm. 663.

NE DONA PAS, or NON DEDIT. The general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged; and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case. 5 East, 289.

NE EXEAT REGNO. Lat. In English practice. A writ which issues to restrain a person from leaving the kingdom. It was formerly used for political purposes, but is now only resorted to in equity when the defend-

ant is about to leave the kingdom; it is only in cases where the intention of the party to leave can be shown that the writ is granted.

NE EXEAT REPUBLICA. Lat. In American practice. A writ similar to that of *ne exeat regno*, (*q. v.*) available to the plaintiff in a civil suit, under some circumstances, when the defendant is about to leave the state.

NE GIST PAS EN BOUCHE. L. Fr. It does not lie in the mouth. A common phrase in the old books. Yearb. M. 3 Edw. II. 50.

NE INJUSTE VEXES. Lat. In old English practice. A prohibitory writ, commanding a lord not to demand from the tenant more services than were justly due by the tenure under which his ancestors held.

NE LUMINIBUS OFFICIATUR. Lat. In the civil law. The name of a servitude which restrains the owner of a house from making such erections as obstruct the light of the adjoining house. Dig. 8, 4, 15, 17.

NE QUID IN LOCO PUBLICO VEL ITINERE FIAT. Lat. That nothing shall be done (put or erected) in a public place or way. The title of an interdict in the Roman law. Dig. 43, 8.

NE RECIPIATUR. Lat. That it be not received. A *caveat* or warning given to a law officer, by a party in a cause, not to receive the next proceedings of his opponent. 1 Sell. Pr. 8.

NE RECTOR PROSTERNET ARBORES. L. Lat. The statute 35 Edw. I. § 2, prohibiting rectors, *i. e.*, parsons, from cutting down the trees in church-yards. In *Rutland v. Green*, 1 Keb. 557, it was extended to prohibit them from opening new mines and working the minerals therein. Brown.

NE RELESSA PAS. L. Fr. Did not release. Where the defendant had pleaded a release, this was the proper replication by way of traverse.

NE UNQUES ACCOUPLE. L. Fr. Never married. More fully, *ne unques accouple en loiall matrimonie*, never joined in lawful marriage. The name of a plea in the action of dower *unde nihil habet*, by which the tenant denied that the dowress was ever lawfully married to the decedent.

NE UNQUES EXECUTOR. L. Fr. Never executor. The name of a plea by which the defendant denies that he is an ex-

executor, as he is alleged to be; or that the plaintiff is an executor, as he claims to be.

NE UNQUES SEISE QUE DOWER.

L. Fr. (Never seised of a dowable estate.) In pleading. The general issue in the action of dower *unde nil habet*, by which the tenant denies that the demandant's husband was ever seised of an estate of which dower might be had. Rosc. Real Act. 219, 220.

NE UNQUES SON RECEIVER.

L. Fr. In pleading. The name of a plea in an action of account-render, by which the defendant denies that he ever was receiver of the plaintiff. 12 Vin. Abr. 183.

NE VARIETUR. Lat. It must not be altered. A phrase sometimes written by a notary upon a bill or note, for the purpose of establishing its identity, which, however, does not affect its negotiability. 8 Wheat. 338.

NEAP TIDES. Those tides which happen between the full and change of the moon, twice in every twenty-four hours. 18 Cal. 21.

NEAR. This word, as applied to space, can have no positive or precise meaning. It is a relative term, depending for its signification on the subject-matter in relation to which it is used and the circumstances under which it becomes necessary to apply it to surrounding objects. 5 Allen, 227. See, also, 44 Mo. 202; 31 Fed. Rep. 872.

NEAT, NET. The clear weight or quantity of an article, without the bag, box, keg, or other thing in which it may be enveloped.

NEAT CATTLE. Oxen or heifers. "Beeves" may include neat stock, but all neat stock are not beeves. 36 Tex. 324; 32 Tex. 479.

NEAT-LAND. Land let out to the yeomanry. Cowell.

NEATNESS. In pleading. The statement in apt and appropriate words of all the necessary facts, and no more. Lawes, Pl. 62.

Nec curia deficeret in justitia exhibenda. Nor should the court be deficient in showing justice. 4 Inst. 63.

Nec tempus nec locus occurrit regi. Jenk. Cent. 190. Neither time nor place affects the king.

Nec veniam effuso sanguine casus habet. Where blood is spilled, the case is unpardonable. 3 Inst. 57.

Nec veniam, læso numine, casus habet. Where the Divinity is insulted, the case is unpardonable. Jenk. Cent. 167.

NECATION. The act of killing.

NECESSARIES. Things indispensable, or things proper and useful, for the sustenance of human life. This is a relative term, and its meaning will contract or expand according to the situation and social condition of the person referred to.

In reference to the contracts of infants, this term is not used in its strictest sense, nor limited to that which is required to sustain life. Those things which are proper and suitable to each individual, according to his circumstances and condition in life, are necessities, if not supplied from some other source. 12 Cush. 513. See, also, 133 Mass. 504; 114 Mass. 424; 3 C. P. Div. 401; 31 Conn. 306.

In the case of ships the term "necessaries" means such things as are fit and proper for the service in which the ship is engaged, and such as the owner, being a prudent man, would have ordered if present; *e. g.*, anchors, rigging, repairs, victuals. Maude & P. Shipp. 71, 113. The master may hypothecate the ship for necessities supplied abroad so as to bind the owner. Sweet.

Necessarium est quod non potest aliter se habere. That is necessary which cannot be otherwise.

NECESSARIUS. Lat. Necessary; unavoidable; indispensable; not admitting of choice or the action of the will; needful.

NECESSARY. As used in jurisprudence, the word "necessary" does not always import an absolute physical necessity, so strong that one thing, to which another may be termed "necessary," cannot exist without that other. It frequently imports no more than that one thing is convenient or useful or essential to another. To employ the means *necessary* to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable. 4 Wheat. 316, 413.

NECESSARY DEPOSIT. The *necessary* deposit is that which has been compelled by some accident; such as fire, falling down of a house, pillage, shipwreck, or other casualty. Civil Code La. art. 2964.

NECESSARY DOMICILE. That kind of domicile which exists by operation of law,

N as distinguished from voluntary domicile or domicile of choice. Phillim. Dom. 27-97.

NECESSARY IMPLICATION. In construing a will, necessary implication means not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to the testator cannot be supposed. 1 Ves. & B. 466.

NECESSARY INTROMISSION. In Scotch law. That kind of intromission or interference where a husband or wife continues in possession of the other's goods after their decease, for preservation. Wharton.

NECESSARY REPAIRS. Necessary repairs (for which the master of a ship may lawfully bind the owner) are such as are reasonably fit and proper for the ship under the circumstances, and not merely such as are absolutely indispensable for the safety of the ship or the accomplishment of the voyage. 3 Sum. 237.

NECESSITAS. Lat. Necessity; a force, power, or influence which compels one to act against his will. Calvin.

NECESSITAS CULPABILIS. Culpable necessity; unfortunate necessity; necessity which, while it excuses the act done under its compulsion, does not leave the doer entirely free from blame. The necessity which compels a man to kill another in self-defense is thus distinguished from that which requires the killing of a felon. See 4 Bl. Comm. 187.

Necessitas est lex temporis et loci. Necessity is the law of time and of place. 1 Hale, P. C. 54.

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Necessity excuses or extenuates a delinquency in capital cases, which has not the same operation in civil cases. Bac. Max.

Necessitas facit licitum quod alias non est licitum. 10 Coke, 61. Necessity makes that lawful which otherwise is not lawful.

Necessitas inducit privilegium quoad jura privata. Bac. Max. 25. Necessity gives a privilege with reference to private rights. The necessity involved in this maxim is of three kinds, viz.: (1) Necessity of self-preservation; (2) of obedience; and (3) necessity resulting from the act of God, or of a stranger. Noy, Max. 32.

Necessitas non habet legem. Necessity has no law. Plowd. 184. "Necessity shall be a good excuse in our law, and in every other law." Id.

Necessitas publica major est quam privata. Public necessity is greater than private. "Death," it has been observed, "is the last and furthest point of particular necessity, and the law imposes it upon every subject that he prefer the urgent service of his king and country before the safety of his life." Noy, Max. 34; Broom, Max. 18.

Necessitas quod cogit, defendit. Necessity defends or justifies what it compels. 1 Hale, P. C. 54. Applied to the acts of a sheriff, or ministerial officer, in the execution of his office. Broom, Max. 14.

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. 2 Inst. 326. Necessity is not restrained by law; since what otherwise is not lawful necessity makes lawful.

Necessitas vincit legem. Necessity overrules the law. Hob. 144; Cooley, Const. Lim. (4th Ed.) 747.

Necessitas vincit legem; legum vincula irridet. Hob. 144. Necessity overcomes law; it derides the fetters of laws.

NECESSITUDO. In the civil law. An obligation; a close connection; relationship by blood. Calvin.

NECESSITY. Controlling force; irresistible compulsion; a power or impulse so great that it admits no choice of conduct. When it is said that an act is done "under necessity," it may be, in law, either of three kinds of necessity: (1) The necessity of preserving one's own life, which will excuse a homicide; (2) the necessity of obedience, as to the laws, or the obedience of one not *sui juris* to his superior; (3) the necessity caused by the act of God or a stranger. See Jacob; Mozley & Whitley.

A constraint upon the will whereby a person is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject. A man, therefore, is excused for those actions which are done through unavoidable force and compulsion. Wharton.

NECESSITY, HOMICIDE BY. A species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing, and therefore without any shadow of blame. As, for instance, by virtue of such

an office as obliges one, in the execution of public justice, to put a malefactor to death who has forfeited his life to the laws of his country. But the law must require it, otherwise it is not justifiable. 4 Bl. Comm. 178.

NECK-VERSE. The Latin sentence, "*Miserere mei, Deus,*" was so called, because the reading of it was made a test for those who claimed benefit of clergy.

NEEDLESS. In a statute against "needless" killing or mutilation of any animal, this term denotes an act done without any useful motive, in a spirit of wanton cruelty, or for the mere pleasure of destruction. 37 Ark. 460; 4 Mo. App. 215.

NEFAS. Lat. That which is against right or the divine law. A wicked or impious thing or act. Calvin.

NEFASTUS. Lat. Inauspicious. Applied, in the Roman law, to a day on which it was unlawful to open the courts or administer justice.

Negatio conclusionis est error in lege. Wing. 268. The denial of a conclusion is error in law.

Negatio destruit negationem, et ambæ faciunt affirmationem. A negative destroys a negative, and both make an affirmative. Co. Litt. 146b. Lord Coke cites this as a rule of grammatical construction, not always applying in law.

Negatio duplex est affirmatio. A double negative is an affirmative.

NEGATIVE. A denial; a proposition by which something is denied; a statement in the form of denial. Two negatives do not make a good issue. Steph. Pl. 386, 387.

NEGATIVE AVERMENT. As opposed to the traverse or simple denial of an affirmative allegation, a negative averment is an allegation of some substantive fact, *e. g.*, that premises are not in repair, which, although negative in form, is really affirmative in substance, and the party alleging the fact of non-repair must prove it. Brown.

NEGATIVE CONDITION. One by which it is stipulated that a given thing shall not happen.

NEGATIVE COVENANT. One in which the covenantor binds himself *not* to do or perform a specified act or thing.

NEGATIVE EASEMENT. One by which the owner of the servient estate is

prohibited from doing something otherwise lawful upon his estate, because it will affect the dominant estate, (as interrupting the light and air from the latter by building on the former.) 2 Washb. Real Prop. 301; 70 N. Y. 447.

NEGATIVE PREGNANT. In pleading. A negative implying also an affirmative. Cowell. Such a form of negative expression as may imply or carry within it an affirmative. Steph. Pl. 381. As if a man be said to have aliened land *in fee*, and he says *he has not aliened in fee*, this is a negative pregnant; for, though it be true that he has not aliened in fee, yet it may be that he has made an estate *in tail*. Cowell.

NEGATIVE STATUTE. A statute expressed in negative terms; a statute which prohibits a thing from being done, or declares what shall *not* be done.

NEGLECT. Omission; failure to do something that one is bound to do; carelessness.

The term is used in the law of bailment as synonymous with "negligence." But the latter word is the closer translation of the Latin "*negligentia.*"

As used in respect to the payment of money, refusal is the failure to pay money when demanded; neglect is the failure to pay money which the party is bound to pay without demand. 6 Gray, 224.

The term means to omit, as to neglect business or payment or duty or work, and is generally used in this sense. It does not generally imply carelessness or imprudence, but simply an omission to do or perform some work, duty, or act. 54 N. Y. 262.

NEGLIGENCE. The omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. It must be determined in all cases by reference to the situation and knowledge of the parties and all the attendant circumstances. 15 Wall. 536; 11 Exch. 784.

Negligence, in its civil relation, is such an inadvertent imperfection, by a responsible human agent, in the discharge of a legal duty, as immediately produces, in an ordinary and natural sequence, a damage to another. Whart. Neg. § 3.

It is conceded by all the authorities that the standard by which to determine whether a person has been guilty of negligence is the

N conduct of the prudent or careful or diligent man. *Bigelow, Torts, 261.*

The failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. *Cooley, Torts, 630.*

The failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or the doing what such a person under the existing circumstances would not have done. *95 U. S. 441.*

The opposite of care and prudence; the omission to use the means reasonably necessary to avoid injury to others. *39 Ill. 353.*

Negligence or carelessness signifies want of care, caution, attention, diligence, or discretion in one having no positive intention to injure the person complaining thereof. The words "reckless," "indifferent," "careless," and "wanton" are never understood to signify positive will or intention, unless when joined with other words which show that they are to receive an artificial or unusual, if not an unnatural, interpretation. *10 Bush, 677.*

Negligence is any culpable omission of a positive duty. It differs from heedlessness, in that heedlessness is the doing of an act in violation of a negative duty, without advertent to its possible consequences. In both cases there is inadvertence, and there is breach of duty. *Aust. Jur. § 630.*

Negligence is commonly classed under three degrees,—slight, ordinary, and gross. Slight negligence consists in the want of great care and diligence; ordinary negligence, in the want of ordinary care and diligence; and gross negligence, in the want of slight care and diligence. *Civil Code Dak. § 2102.* See, further, **CARE**; **GROSS NEGLIGENCE**; **SLIGHT NEGLIGENCE**.

Negligence cannot be considered "gross" unless evidenced by an entire failure to exercise care, or by the exercise of so slight a degree of care as to justify the belief that the person on whom care was incumbent was indifferent to the interest and welfare of others. *64 Tex. 156.*

NEGLIGENT ESCAPE. An escape from confinement effected by the prisoner without the knowledge or connivance of the keeper of the prison, but which was made possible or practicable by the latter's negligence, or by his omission of such care and vigilance as he was legally bound to exercise in the safe-keeping of the prisoner.

NEGLIGENTIA. Lat. In the civil law. Carelessness; inattention; the omission of proper care or forethought. The term is not exactly equivalent to our "negligence," inasmuch as it was not any *negligentia*, but only a high or gross degree of it, that amounted to *culpa*, (actionable or punishable fault.)

Negligentia semper habet infortunium comitem. Negligence always has misfort-

une for a companion. *Co. Litt. 246b; Shep. Touch. 476.*

NEGOCE. Fr. Business; trade; management of affairs.

NEGOTIABILITY. In mercantile law. Transferable quality. That quality of bills of exchange and promissory notes which renders them transferable from one person to another, and from possessing which they are emphatically termed "negotiable paper." *3 Kent, Comm. 74, 77, 89, et seq. See Story, Bills, § 60.*

NEGOTIABLE. The word "negotiation," as used by writers upon mercantile law, means the act by which a bill of exchange or promissory note is put into circulation, by being passed by one of the original parties to another person. "Negotiable" means that which is capable of being transferred by assignment; a thing which may be transferred by a sale and indorsement or delivery. This negotiable quality transfers the debt from the party to whom it was originally owing, to the holder, when the instrument is properly indorsed, so as to enable the latter to sue, in his own name, either the maker of a promissory note or the acceptor of a bill of exchange, and the other parties to such instruments, such as the drawer of a bill, or the indorser of a bill or note, unless the holder has been guilty of laches in giving the required notice. It must, however, be payable to order or bearer, and, at all events, in money only, and not out of any particular fund. *60 Ind. 250.*

NEGOTIABLE INSTRUMENTS. A general name for bills, notes, checks, transferable bonds or coupons, letters of credit, and other negotiable written securities.

Any written securities which may be transferred by indorsement and delivery or by delivery merely, so as to vest in the indorsee the legal title, and thus enable him to sue thereon in his own name. Or, more technically, those instruments which not only carry the legal title with them by indorsement or delivery, but carry as well, when transferred before maturity, the right of the transferee to demand the full amounts which their faces call for. *Daniel, Neg. Inst. § 1a.*

A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer. *Civil Code Cal. § 3087.*

NEGOTIABLE WORDS. Words and phrases which impart the character of nego-

liability to bills, notes, checks, etc., in which they are inserted; for instance, a direction to pay to A. "or order" or "bearer."

NEGOTIATE. To discuss or arrange a sale or bargain; to arrange the preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery.

NEGOTIATION. The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction. Also the transfer of, or act of putting into circulation, a negotiable instrument.

NEGOTIORUM GESTIO. Lat. In the civil law. Literally, a doing of business or businesses. A species of spontaneous agency, or an interference by one in the affairs of another, in his absence, from benevolence or friendship, and without authority. 2 Kent, Comm. 616, note; Inst. 3, 28, 1.

NEGOTIORUM GESTOR. Lat. In the civil law. A transacter or manager of business; a person voluntarily constituting himself agent for another; one who, without any mandate or authority, assumes to take charge of an affair or concern for another person, in the latter's absence, but for his interest.

One who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, etc. Story, Bailm. § 189.

NEGRO. The word "negro" means a black man, one descended from the African race, and does not commonly include a mulatto. 18 Ala. 720.

NEIF. In old English law. A woman who was born a villein, or a bondwoman.

NEIGHBORHOOD. A place near; an adjoining or surrounding district; a more immediate vicinity; vicinage. See 63 N. H. 247; 3 N. Y. 502; 38 Iowa, 484.

NEMBDA. In Swedish and Gothic law. A jury. 8 Bl. Comm. 349, 359.

NEMINE CONTRADICENTE. Lat. No one dissenting; no one voting in the negative. A phrase used to indicate the unanimous consent of a court or legislative body to a judgment, resolution, vote, or motion. Commonly abbreviated "*nem. con.*"

Neminem oportet esse sapienterem legibus. Co. Litt. 97b. No man ought to be wiser than the laws.

NEMO. Lat. No one; no man. The initial word of many Latin phrases and maxims, among which are the following:

Nemo admittendus est inhabilitare seipsum. Jenk. Cent. 40. No man is to be admitted to incapacitate himself.

Nemo agit in seipsum. No man acts against himself. Jenk. Cent. p. 40, case 76. A man cannot be a judge and a party in his own cause. Id.; Broom, Max. 216n.

Nemo alienæ rei, sine satisfactione, defensor idoneus intelligitur. No man is considered a competent defender of another's property, without security. A rule of the Roman law, applied in part in admiralty cases. 1 Curt. 202.

Nemo alieno nomine lege agere potest. No one can sue in the name of another. Dig. 50, 17, 123.

Nemo allegans suam turpitudinem est audiendus. No one alleging his own baseness is to be heard. The courts of law have properly rejected this as a rule of evidence. 7 Term R. 601.

Nemo bis punitur pro eodem delicto. No man is punished twice for the same offense. 4 Bl. Comm. 315; 2 Hawk. P. C. 377.

Nemo cogitationis pœnam patitur. No one suffers punishment on account of his thoughts. Tray. Lat. Max. 362.

Nemo cogitur rem suam vendere, etiam justo pretio. No man is compelled to sell his own property, even for a just price. 4 Inst. 275.

Nemo contra factum suum venire potest. No man can contravene or contradict his own deed. 2 Inst. 66. The principle of estoppel by deed. Best, Ev. p. 408, § 370.

Nemo dare potest quod non habet. No man can give that which he has not. Fleta, lib. 3, c. 15, § 8.

Nemo dat qui non habet. He who hath not cannot give. Jenk. Cent. 250; Broom, Max. 499n; 6 C. B. (N. S.) 478.

Nemo de domo sua extrahi potest. No one can be dragged out of his own house. In other words, every man's house is his castle. Dig. 50, 17, 103.

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Nemo debet bis puniri pro uno delicto. No man ought to be punished twice for one offense. 4 Coke, 43a; 11 Coke, 59b. No man shall be placed in peril of legal penalties more than once upon the same accusation. Broom, Max. 348.

Nemo debet bis vexari [si constet curiæ quod sit] pro una et eadem causa. No man ought to be twice troubled or harassed [if it appear to the court that it is] for one and the same cause. 5 Coke, 61a. No man can be sued a second time for the same cause of action, if once judgment has been rendered. See Broom, Max. 327, 348. No man can be held to bail a second time at the suit of the same plaintiff for the same cause of action. 1 Chit. Archb. Pr. 476.

Nemo debet esse iudex in propria causa. No man ought to be a judge in his own cause. 12 Coke, 114a. A maxim derived from the civil law. Cod. 3, 5. Called a "fundamental rule of reason and of natural justice." Burrows, Sett. Cas. 194, 197.

Nemo debet immiscere se rei ad se nihil pertinenti. No one should intermeddle with a thing that in no respect concerns him. Jenk. Cent. p. 18, case 32.

Nemo debet in communione invitus teneri. No one should be retained in a partnership against his will. 2 Sandf. 568, 593; 1 Johns. 106, 114.

Nemo debet locupletari aliena jactura. No one ought to be enriched by another's loss. Dig. 6, 1, 48, 65; 2 Kent, Comm. 336; 1 Kames, Eq. 331.

Nemo debet locupletari ex alterius incommodo. No one ought to be made rich out of another's loss. Jenk. Cent. 4; 10 Barb. 626, 633.

Nemo debet rem suam sine facto aut defectu suo amittere. No man ought to lose his property without his own act or default. Co. Litt. 263a.

Nemo duobus utatur officiis. 4 Inst. 100. No one should hold two offices, *i. e.*, at the same time.

Nemo ejusdem tenementi simul potest esse hæres et dominus. No one can at the same time be the heir and the owner of the same tenement. See 1 Reeve, Eng. Law, 106.

Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit. No one is able

rightly to understand one part before he has again and again read through the whole. Broom, Max. 593.

Nemo est hæres viventis. No one is the heir of a living person. Co. Litt. 8a, 22b. No one can be heir during the life of his ancestor. Broom, Max. 522, 523. No person can be the actual complete heir of another till the ancestor is previously dead. 2 Bl. Comm. 208.

Nemo est supra leges. No one is above the law. Lofft, 142.

Nemo ex alterius facto prægravari debet. No man ought to be burdened in consequence of another's act. 2 Kent, Comm. 646.

Nemo ex consilio obligatur. No man is bound in consequence of his advice. Mere advice will not create the obligation of a mandate. Story, Bailm. § 155.

Nemo ex dolo suo proprio relevetur, aut auxilium capiat. Let no one be relieved or gain an advantage by his own fraud. A civil law maxim.

Nemo ex proprio dolo consequitur actionem. No one maintains an action arising out of his own wrong. Broom, Max. 297.

Nemo ex suo delicto meliorem suam conditionem facere potest. No one can make his condition better by his own misdeed. Dig. 50, 17, 134, 1.

Nemo in propria causa testis esse debet. No one ought to be a witness in his own cause. 3 Bl. Comm. 371.

Nemo inauditus condemnari debet si non sit contumax. No man ought to be condemned without being heard unless he be contumacious. Jenk. Cent. p. 18, case 12, in marg.

Nemo jus sibi dicere potest. No one can declare the law for himself. No one is entitled to take the law into his own hands. Tray. Lat. Max. 366.

Nemo militans Deo implicetur secularibus negotiis. No man who is warring for [in the service of] God should be involved in secular matters. Co. Litt. 70b. A principle of the old law that men of religion were not bound to go in person with the king to war.

Nemo nascitur artifex. Co. Litt. 97. No one is born an artificer.

Nemo patriam in qua natus est exuere, nec ligeantiæ debitum ejurare possit. No man can renounce the country in which he was born, nor abjure the obligation of his allegiance. Co. Litt. 129a; Broom, Max. 75; Fost. Cr. Law, 184.

Nemo plus commodi heredi suo relinquit quam ipse habuit. No one leaves a greater benefit to his heir than he had himself. Dig. 50, 17, 120.

Nemo plus juris ad alium transferre potest quam ipse habet. No one can transfer more right to another than he has himself. Dig. 50, 17, 54; Broom, Max. 467, 469.

Nemo potest contra recordum verificare per patriam. No one can verify by the country against a record. 2 Inst. 380. The issue upon matter of record cannot be to the jury. A maxim of old practice.

Nemo potest esse dominus et hæres. No man can be both owner and heir. Hale, Com. Law, c. 7.

Nemo potest esse simul actor et judex. No one can be at once suitor and judge. Broom, Max. 117.

Nemo potest esse tenens et dominus. No man can be both tenant and lord [of the same tenement.] Gilb. Ten. 142.

Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do of himself. Jenk. Cent. p. 237, case 14. A rule said to hold in original grants, but not in descents; as where an office descended to a woman, in which case, though she could not exercise the office in person, she might by deputy. Id.

Nemo potest facere per obliquum quod non potest facere per directum. No man can do that indirectly which he cannot do directly. 1 Eden, 512.

Nemo potest mutare consilium suum in alterius injuriam. No man can change his purpose to another's injury. Dig. 50, 17, 75; Broom, Max. 34.

Nemo potest plus juris ad alium transferre quam ipse habet. Co. Litt. 309; Wing. Max. 56. No one can transfer a greater right to another than he himself has.

Nemo potest sibi debere. No one can owe to himself.

Nemo præsens nisi intelligat. One is not present unless he understands.

Nemo præsumitur alienam posteritatem suæ prætulisse. No man is presumed to have preferred another's posterity to his own. Wing. Max. p. 285, max. 79.

Nemo præsumitur donare. No one is presumed to give. 9 Pick. 128.

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis. 6 Coke, 76. No one is presumed to be forgetful of his own eternal welfare, and particularly at the point of death.

Nemo præsumitur ludere in extremis. No one is presumed to trifle at the point of death.

Nemo præsumitur malus. No one is presumed to be bad.

Nemo prohibetur plures negotiationes sive artes exercere. No one is prohibited from following several kinds of business or several arts. 11 Coke, 54a. The common law doth not prohibit any person from using several arts or mysteries at his pleasure. Id.

Nemo prohibetur pluribus defensionibus uti. Co. Litt. 304a. No one is prohibited from making use of several defenses.

Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur. No wise man punishes in order that past things may be recalled, but that future wrongs may be prevented. 2 Bulst. 173.

Nemo punitur pro alieno delicto. Wing. Max. 336. No one is punished for another's wrong.

Nemo punitur sine injuria, facto, seu defalta. No one is punished unless for some wrong, act, or default. 2 Inst. 287.

Nemo qui condemnare potest, absolvere non potest. No one who may condemn is unable to acquit. Dig. 50, 17, 37.

Nemo sibi esse judex vel suis jus dicere debet. No one ought to be his own judge, or the tribunal in his own affairs. Broom, Max. 116, 121. See L. R. 1 C. P. 722, 747.

Nemo sine actione experitur, et hoc non sine breve sive libello conventionali. No one goes to law without an action, and no one can bring an action without a writ or bill. Bract. fol. 112.

Nemo tenetur ad impossibile. No one is bound to an impossibility. Jenk. Cent. 7; Broom, Max. 244.

Nemo tenetur armare adversarium contra se. Wing. Max. 665. No one is bound to arm his adversary against himself.

Nemo tenetur divinare. No man is bound to divine, or to have foreknowledge of, a future event. 10 Coke, 55a.

Nemo tenetur edere instrumenta contra se. No man is bound to produce writings against himself. A rule of the Roman law, adhered to in criminal prosecutions, but departed from in civil questions. Bell.

Nemo tenetur informare qui nescit, sed quisquis scire quod informat. Branch, Princ. No one is bound to give information about things he is ignorant of, but every one is bound to know that which he gives information about.

Nemo tenetur jurare in suam turpitudinem. No one is bound to swear to the fact of his own criminality; no one can be forced to give his own oath in evidence of his guilt. Bell; Halk. 100.

Nemo tenetur prodere seipsum. No one is bound to betray himself. In other words, no one can be compelled to criminate himself. Broom, Max. 968.

Nemo tenetur seipsum accusare. Wing. Max. 486. No one is bound to accuse himself.

Nemo tenetur seipsum infortuniis et periculis exponere. No one is bound to expose himself to misfortunes and dangers. Co. Litt. 253b.

Nemo unquam judicet in se. No one can ever be a judge in his own cause.

Nemo unquam vir magnus fuit, sine aliquo divino afflatu. No one was ever a great man without some divine inspiration. Cicero.

Nemo videtur fraudare eos qui sciunt et consentiunt. No one seems [is supposed] to defraud those who know and assent [to his acts.] Dig. 50, 17, 145.

NEMY. L. Fr. Not. Litt. § 3.

NEPHEW. The son of a brother or sister. Nephew and uncle are related in the third degree according to the civil law, but by the canon law, in the second degree.

NEPOS. Lat. A grandson.

NEPTIS. Lat. A granddaughter.

NEPUOY. In Scotch law. A grandson. Skene.

NET BALANCE. The proceeds of sale, after deducting expenses. 71 Pa. St. 69.

NET PRICE. The lowest price, after deducting all discounts.

NET PROFITS. This term does not mean what is made over the losses, expenses, and interest on the amount invested. It includes the gain that accrues on the investment, after deducting simply the losses and expenses of the business. 50 Ga. 350.

NET WEIGHT. The weight of an article or collection of articles, after deducting from the gross weight the weight of the boxes, coverings, casks, etc., containing the same. The weight of an animal dressed for sale, after rejecting hide, offal, etc.

NETHER HOUSE OF PARLIAMENT. A name given to the English house of commons in the time of Henry VIII.

NEUTRAL. In international law. Indifferent; impartial; not engaged on either side; not taking an active part with either of the contending states. In an international war, the principal hostile powers are called "belligerents;" those actively co-operating with and assisting them, their "allies;" and those taking no part whatever, "neutrals."

NEUTRAL PROPERTY. Property which belongs to citizens of neutral powers, and is used, treated, and accompanied by proper *insignia* as such.

NEUTRALITY. The state of a nation which takes no part between two or more other nations at war.

NEVER INDEBTED, PLEA OF. A species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied. Steph. Pl. 153, 156; Wharton.

NEW AND USEFUL INVENTION. This phrase is used in the United States patent laws to designate the kind of invention which is patentable. The word "useful" does not import that the invention should invariably be superior to the modes previously in use for the same purpose, but means that it must have real utility, in contradistinction to frivolous or mischievous inventions. 1 Mason, 182.

NEW ASSIGNMENT. Under the common law practice, where the declaration in an action is ambiguous, and the defendant pleads facts which are literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course is to reply by way of new assignment; *i. e.*, allege that he brought his action not for the cause supposed by the defendant, but for some other cause to which the plea has no application. 3 Steph. Comm. 507; Sweet.

NEW FOR OLD. In making an adjustment of a partial loss under a policy of marine insurance, the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third *new for old* upon the balance. 3 Kent, Comm. 339.

NEW INN. An inn of chancery. See **INNS OF CHANCERY.**

NEW MATTER. In pleading. Matter of fact not previously alleged by either party in the pleadings.

NEW PROMISE. An undertaking or promise, based upon and having relation to a former promise which, for some reason, can no longer be enforced, whereby the promisor recognizes and revives such former promise and engages to fulfill it.

NEW STYLE. The modern system of computing time was introduced into Great Britain A. D. 1752, the 3d of September of that year being reckoned as the 14th.

NEW TRIAL. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury or court or by referees. Code Civil Proc. Cal. § 656.

A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given. Pen. Code Cal. § 1179.

A new trial is a re-examination in the same court of an issue of fact, or some part or portions thereof, after the verdict by a jury, report of a referee, or a decision by the court. Rev. Code Iowa 1880, § 2837.

NEW TRIAL PAPER. In English practice. A paper containing a list of causes in which rules *nisi* have been obtained for a new trial, or for entering a verdict in place of a nonsuit, or for entering judgment *non obstante veredicto*, or for otherwise varying or setting aside proceedings which have taken place at *nisi prius*. These are called on for

argument in the order in which they stand in the paper, on days appointed by the judges for the purpose. Brown.

NEW WORKS. In the civil law. By a new work is understood every sort of edifice or other work which is newly commenced on any ground whatever. When the ancient form of work is changed, either by an addition being made to it or by some part of the ancient work being taken away, it is styled also a "new work." Civil Code La. art. 856.

NEW YEAR'S DAY. The first day of January. The 25th of March was the civil and legal New Year's Day, till the alteration of the style in 1752, when it was permanently fixed at the 1st of January. In Scotland the year was, by a proclamation, which bears date 27th of November, 1599, ordered thenceforth to commence in that kingdom on the 1st of January instead of the 25th of March. Enc. Lond.

NEWGATE. The name of a prison in London, said to have existed as early as 1207. It was three times destroyed and rebuilt. For centuries the condition of the place was horrible, but it has been greatly improved since 1808. Since 1815, debtors have not been committed to this prison.

NEWLY-DISCOVERED EVIDENCE. Evidence of a new and material fact, or new evidence in relation to a fact in issue, discovered by a party to a cause after the rendition of a verdict or judgment therein.

NEWSPAPER. According to the usage of the commercial world, a newspaper is defined to be a publication in numbers, consisting commonly of single sheets, and published at short and stated intervals, conveying intelligence of passing events. 4 Op. Attys. Gen. 10.

NEXI. Lat. In Roman law. Bound; bound persons. A term applied to such insolvent debtors as were delivered up to their creditors, by whom they might be held in bondage until their debts were discharged. Calvin.; Adams, Rom. Ant. 49.

NEXT FRIEND. A person, usually a relative, not appointed by the court, in whose name suit is brought by an infant, married woman, or other person not *sui juris*.

NEXT OF KIN. In the law of descent and distribution. This term properly denotes the persons nearest of kindred to the decedent, that is, those who are most

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nearly related to him by blood; but it is sometimes construed to mean only those who are entitled to take under the statute of distributions, and sometimes to include other persons. 2 Story, Eq. Jur. § 1065b.

The words "next of kin," used *simpliciter* in a deed or will, mean, not nearest of kindred, but those relatives who share in the estate according to the statute of distributions, including those claiming *per stirpes* or by representation. 28 How. Pr. 417; 43 Barb. 147.

NEXT PRESENTATION. In the law of advowsons. The right of next presentation is the right to present to the first vacancy of a benefice.

NEXUM. Lat. In Roman law. In ancient times the *nexum* seems to have been a species of formal contract, involving a loan of money, and attended with peculiar consequences, solemnized with the "copper and balance." Later, it appears to have been used as a general term for any contract struck with those ceremonies, and hence to have included the special form of conveyance called "*mancipatio*." In a general sense it means the obligation or *bond* between contracting parties. See Maine, Anc. Law, 305, et seq.; Hadl. Rom. Law, 247.

In Roman law, this word expressed the tie or obligation involved in the old conveyance by *mancipatio*; and came latterly to be used interchangeably with (but less frequently than) the word "*obligatio*" itself. Brown.

NICHILLS. In English practice. Debts due to the exchequer which the sheriff could not levy, and as to which he returned *nil*. These sums were transcribed once a year by the clerk of the nichills, and sent to the treasurer's remembrancer's office, whence process was issued to recover the "nichill" debts. Both of these offices were abolished in 1833. Mozley & Whitley.

NICKNAME. A short name; one *nicked* or cut off for the sake of brevity, without conveying any idea of opprobrium, and frequently evincing the strongest affection or the most perfect familiarity. Busb. Eq. 74.

NIDERLING, NIDERING, or NITHING. A vile, base person, or sluggard; chicken-hearted. Spelman.

NIECE. The daughter of one's brother or sister. Ambl. 514.

NIEFE. In old English law. A woman born in vassalage; a bondwoman.

NIENT. L. Fr. Nothing; not.

NIENT COMPRISE. Not comprised; not included. An exception taken to a petition because the thing desired is not contained in that deed or proceeding whereon the petition is founded. Tomlins.

NIENT CULPABLE. Not guilty. The name in law French of the general issue in tort or in a criminal action.

NIENT DEDIRE. To say nothing; to deny nothing; to suffer judgment by default.

NIENT LE FAIT. In pleading. Not the deed; not his deed. The same as the plea of *non est factum*.

NIENT SEISI. In old pleading. Not seised. The general plea in the writ of annuity. Crabb, Eng. Law, 424.

NIGER LIBER. The black book or register in the exchequer; chartularies of abbey, cathedrals, etc.

NIGHT. As to what, by the common law, is reckoned night and what day, it seems to be the general opinion that, if there be daylight, or *crepusculum*, enough begun or left to discern a man's face, that is considered day; and night is when it is so dark that the countenance of a man cannot be discerned. 1 Hale, P. C. 350. However, the limit of 9 P. M. to 6 A. M. has been fixed by statute, in England, as the period of night, in prosecutions for burglary and larceny. St. 24 & 25 Vict. c. 96, § 1; Brown.

NIGHT MAGISTRATE. A constable of the night; the head of a watch-house.

NIGHT WALKERS. Described in the statute 5 Edw. III. c. 14, as persons who sleep by day and walk by night. Persons who prowl about at night, and are of a suspicious appearance and behavior.

Nigrum nunquam excedere debet rubrum. The black should never go beyond the red, [*i. e.* the text of a statute should never be read in a sense more comprehensive than the rubric, or title.] Tray. Lat. Max. 373.

NIHIL. Nothing. Also the name of a return made by a sheriff, etc., when the circumstances warrant it.

Nihil aliud potest rex quam quod de jure potest. 11 Coke, 74. The king can do nothing except what he can by law do.

NIHIL CAPIAT PER BREVE. In practice. That he take nothing by his writ. The form of judgment against the plaintiff

in an action, either in bar or in abatement. When the plaintiff has commenced his proceedings by bill, the judgment is *nihil capiat per billam*. Co. Litt. 363.

Nihil consensui tam contrarium est quam vis atque metus. Nothing is so opposed to consent as force and fear. Dig. 50, 17, 116.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Co. Litt. 188. Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.

NIHIL DICIT. He says nothing. This is the name of the judgment which may be taken as of course against a defendant who omits to plead or answer the plaintiff's declaration or complaint within the time limited. In some jurisdictions it is otherwise known as judgment "for want of a plea."

Nihil dictum quod non dictum prius. Nothing is said which was not said before. Said of a case where former arguments were repeated. Hardr. 464.

NIHIL EST. Lat. There is nothing. A form of return made by a sheriff when he has been unable to serve the writ. "Although *non est inventus* is the more frequent return in such a case, yet it is by no means as full an answer to the command of the writ as is the return of *nihil*. That amounts to an averment that the defendant has nothing in the bailiwick, no dwelling-house, no family, no residence, and no personal presence to enable the officer to make the service required by the act of assembly. It is therefore a full answer to the exigency of the writ." 33 Pa. St. 139.

Nihil est enim liberale quod non idem justum. For there is nothing generous which is not at the same time just. 2 Kent, Comm. 441, note a.

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est. Nothing is more consonant to reason than that a thing should be dissolved or discharged in the same way in which it was created. Shep. Touch. 323.

Nihil facit error nominis cum de corpore constat. 11 Coke, 21. An error as to a name is nothing when there is certainty as to the person.

NIHIL HABET. He has nothing. The name of a return made by a sheriff to a *scire*

facias or other writ which he has been unable to serve on the defendant.

Nihil habet forum ex scena. The court has nothing to do with what is not before it. Bac. Max.

Nihil in lege intolerabilius est [quam] eandem rem diverso jure censer. Nothing is more intolerable in law than that the same matter, thing, or case should be subject to different views of law. 4 Coke, 93a. Applied to the difference of opinion entertained by different courts, as to the law of a particular case. Id.

Nihil infra regnum subditos magis conservat in tranquillitate et concordia quam debita legum administratio. Nothing preserves in tranquility and concord those who are subjected to the same government better than a due administration of the laws. 2 Inst. 158.

Nihil iniquius quam æquitatem nimis intendere. Nothing is more unjust than to extend equity too far. Halk. 103.

Nihil magis justum est quam quod necessarium est. Nothing is more just than that which is necessary. Dav. Ir. K. B. 12; Branch, Princ.

Nihil nequam est præsumendum. Nothing wicked is to be presumed. 2 P. Wms. 583.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect while anything remains to be done. 9 Coke, 9b.

Nihil peti potest ante id tempus quo per rerum naturam persolvi possit. Nothing can be demanded before the time when, by the nature of things, it can be paid. Dig. 50, 17, 186.

Nihil possumus contra veritatem. We can do nothing against truth. Doct. & Stud. dial. 2, c. 6.

Nihil præscribitur nisi quod possidetur. There is no prescription for that which is not possessed. 5 Barn. & Ald. 277.

Nihil quod est contra rationem est licitum. Nothing that is against reason is lawful. Co. Litt. 97b.

Nihil quod est inconveniens est licitum. Nothing that is inconvenient is lawful. Co. Litt. 66a, 97b. A maxim very frequently quoted by Lord Coke, but to be taken in modern law with some qualification. Broom, Max. 186, 366.

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Nihil simul inventum est et perfectum. Co. Litt. 230. Nothing is invented and perfected at the same moment.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est. Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by which it was bound. 2 Inst. 359; Broom, Max. 877.

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere. 1 Coke, 100. Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.

Nihil tam naturale est, quam eo genere quidque dissolvere, quo colligatum est; ideo verborum obligatio verbis tollitur; nudi consensus obligatio contrario consensu dissolvitur. Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore the obligation of words is taken away by words; the obligation of mere consent is dissolved by the contrary consent. Dig. 50, 17, 35; Broom, Max. 887.

Nihil tam proprium imperio quam legibus vivere. Nothing is so becoming to authority as to live in accordance with the laws. Fleta, lib. 1, c. 17, § 11.

NIHILIST. A member of a secret association, (especially in Russia,) which is devoted to the destruction of the present political, religious, and social institutions. Webster.

Nil agit exemplum litem quod lite resolvit. An example does no good which settles one question by another. 15 Wend. 44, 49.

Nil consensu tam contrarium est quam vis atque metus. Nothing is so opposed to consent as force and fear. Dig. 50, 17, 116.

NIL DEBET. He owes nothing. The form of the general issue in all actions of debt on simple contract.

Nil facit error nominis cum de corpore vel persona constat. A mistake in the name does not matter when the body or person is manifest. 11 Coke, 21; Broom, Max. 634.

NIL HABUIT IN TENEMENTIS

He had nothing [no interest] in the tenements. A plea in debt on a lease indented, by which the defendant sets up that the person claiming to be landlord had no title or interest.

NIL LIGATUM. Nothing bound; that is, no obligation has been incurred. Tray. Lat. Max.

Nil sine prudenti fecit ratione vetustas. Antiquity did nothing without a good reason. Co. Litt. 65.

Nil temere novandum. Nothing should be rashly changed. Jenk. Cent. 163.

Nimia certitudo certitudinem ipsam destruit. Too great certainty destroys certainty itself. Lofft, 244.

Nimia subtilitas in jure reprobatur. Wing. Max. 26. Too much subtlety in law is discountenanced.

Nimum altercando veritas amittitur. Hob. 344. By too much altercation truth is lost.

NIMMER. A thief; a pilferer.

NISI. Lat. Unless. The word is often affixed, as a kind of elliptical expression, to the words "rule," "order," "decree," "judgment," or "confirmation," to indicate that the adjudication spoken of is one which is to stand as valid and operative *unless* the party affected by it shall appear and show cause against it, or take some other appropriate step to avoid it or procure its revocation. Thus a "decree *nisi*" is one which will definitely conclude the defendant's rights unless, within the prescribed time, he shows cause to set it aside or successfully appeals. The word, in this sense, is opposed to "absolute." And when a rule *nisi* is finally confirmed, for the defendant's failure to show cause against it, it is said to be "made absolute."

NISI FECERIS. Lat. The name of a clause commonly occurring in the old manorial writs, commanding that, if the lords failed to do justice, the king's court or officer should do it. By virtue of this clause, the king's court usurped the jurisdiction of the private, manorial, or local courts. Stim. Law Gloss.

NISI PRIUS. Lat. The *nisi prius* courts are such as are held for the trial of issues of fact before a jury and one presiding judge. In America the phrase is familiarly used to denote the forum (whatever may be its stat-

utory name) in which the cause was tried to a jury, as distinguished from the appellate court. See 3 Bl. Comm. 58.

NISI PRIUS CLAUSE. In practice. A clause entered on the record in an action at law, authorizing the trial of the cause at *nisi prius* in the particular county designated. It was first used by way of continuance.

NISI PRIUS ROLL. In practice. The roll or record containing the pleadings, issue, and jury process of an action, made up for use in the *nisi prius* court.

NISI PRIUS WRIT. The old name of the writ of *venire*, which originally, in pursuance of the statute of Westminster 2, contained the *nisi prius* clause. Reg. Jud. 28, 75; Cowell.

NIVICOLLINI BRITONÆS. In old English law. Welshmen, because they live near high mountains covered with snow. Du Cange.

NO AWARD. The name of a plea in an action on an award, by which the defendant traverses the allegation that an award was made.

NO BILL. This phrase, when indorsed by a grand jury on an indictment, is equivalent to "not found," "not a true bill," or "*ignorantis*."

NO FUNDS. This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

NO GOODS. This is the English equivalent of the Latin term "*nulla bona*," being the form of the return made by a sheriff or constable, charged with an execution, when he has found no property of the debtor on which to levy.

No man can hold the same land immediately of two several landlords. Co. Litt. 152.

No man is presumed to do anything against nature. 22 Vin. Abr. 154.

No man shall set up his infamy as a defense. 2 W. Bl. 364.

No one can grant or convey what he does not own. 25 Barb. 284, 301. See

20 Wend. 267; 23 N. Y. 252; 13 N. Y. 121; 6 Duer, 232.

NOBILE OFFICIUM. In Scotch law. An equitable power of the court of session, to give relief when none is possible at law. Ersk. Inst. 1, 3, 22; Bell.

Nobiles magis plectuntur pecunia; plebes vero in corpore. 3 Inst. 220. The higher classes are more punished in money; but the lower in person.

Nobiles sunt, qui arma gentilitia antecessorum suorum proferre possunt. 2 Inst. 595. The gentry are those who are able to produce armorial bearings derived by descent from their own ancestors.

Nobiliores et benigniores præsumptiones in dubiis sunt præferendæ. In cases of doubt, the more generous and more benign presumptions are to be preferred. A civil-law maxim.

Nobilitas est duplex, superior et inferior. 2 Inst. 583. There are two sorts of nobility, the higher and the lower.

NOBILITY. In English law. A division of the people, comprehending dukes, marquises, earls, viscounts, and barons. These had anciently duties annexed to their respective honors. They are created either by writ, *i. e.*, by royal summons to attend the house of peers, or by letters patent, *i. e.*, by royal grant of any dignity and degree of peerage; and they enjoy many privileges, exclusive of their senatorial capacity. 1 Bl. Comm. 396.

NOCENT. From Latin "*nocere*." Guilty. "The *nocent* person." 1 Vern. 429.

NOCTANTER. By night. An abolished writ which issued out of chancery, and returned to the queen's bench, for the prostration of inclosures, etc.

NOCTES and NOCTEM DE FIRMA. Entertainment of meat and drink for so many nights. Domesday.

NOCUMENTUM. Lat. In old English law. A nuisance. *Nocumentum damnosum*, a nuisance occasioning loss or damage. *Nocumentum injuriosum*, an injurious nuisance. For the latter only a remedy was given. Bract. fol. 221.

NOLENS VOLENS. Lat. Whether willing or unwilling; consenting or not.

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NOLIS. Fr. In French law. Freight. The same with "*fret.*" Ord. Mar. liv. 3, tit. 3.

NOLISSEMENT. Fr. In French marine law. Affreightment. Ord. Mar. liv. 3, tit. 1.

NOLLE PROSEQUI. Lat. In practice. A formal entry upon the record, by the plaintiff in a civil suit or the prosecuting officer in a criminal action, by which he declares that he "will no further prosecute" the case, either as to some of the counts, or some of the defendants, or altogether.

A *nolle prosequi* is in the nature of an acknowledgment or undertaking by the plaintiff in an action to forbear to proceed any further either in the action altogether, or as to some part of it, or as to some of the defendants; and is different from a *non pros.*, by which the plaintiff is put out of court with respect to all the defendants. Brown.

NOLO CONTENDERE. Lat. I will not contest it. This is the name of a plea in a criminal action, upon which the defendant may be sentenced.

NOMEN. In the civil law. A name; the name, style, or designation of a person. Properly, the name showing to what *gens* or tribe he belonged, as distinguished from his own individual name, (the *prænomen*,) from his surname or family name, (*cognomen*,) and from any name added by way of a descriptive title, (*agnomen*.)

The name or style of a class or genus of persons or objects.

A debt or a debtor. Ainsworth; Calvin.

NOMEN COLLECTIVUM. A collective name or term; a term expressive of a class; a term including several of the same kind; a term expressive of the plural, as well as singular, number.

Nomen est quasi rei notamen. A name is, as it were, the note of a thing. 11 Coke, 20.

NOMEN GENERALE. A general name; the name of a *genus*. Fleta, lib. 4, c. 19, § 1.

NOMEN GENERALISSIMUM. A name of the most general kind; a name or term of the most general meaning. By the name of "land," which is *nomen generalissimum*, everything terrestrial will pass. 2 Bl. Comm. 19; 3 Bl. Comm. 172.

NOMEN JURIS. A name of the law; a technical legal term.

Nomen non sufficit, si res non sit de jure aut de facto. A name is not sufficient if there be not a thing [or subject for it] *de jure* or *de facto*. 4 Coke, 107b.

Nomina mutabilia sunt, res autem immobiles. Names are mutable, but things are immovable, [immutable.] A name may be true or false, or may change, but the thing itself always maintains its identity. 6 Coke, 66.

Nomina si nescis perit cognitio rerum; et nomina si perdas, certe distinctio rerum perditur. Co. Litt. 86. If you know not the names of things, the knowledge of things themselves perishes; and, if you lose the names, the distinction of the things is certainly lost.

Nomina sunt notæ rerum. 11 Coke, 20. Names are the notes of things.

Nomina sunt symbola rerum. Godb. Names are the symbols of things.

NOMINA TRANSCRIPTITIA. In Roman law. Obligations contracted by *literæ* (*i. e.*, *litteris obligationes*) were so called because they arose from a peculiar transfer (*transcriptio*) from the creditor's day-book (*adversaria*) into his ledger, (*codex*.)

NOMINA VILLARUM. In English law. An account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs, (9 Edw. II.,) and returned by them into the exchequer, where it is still preserved. Wharton.

NOMINAL. Titular; existing in name only; not real or substantial; connected with the transaction or proceeding in name only, not in interest.

NOMINAL DAMAGES. In practice. A trifling sum awarded to a plaintiff in an action, where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of his rights or a breach of the defendant's duty.

NOMINAL DEFENDANT. A person who is joined as defendant in an action, not because he is immediately liable in damages or because any specific relief is demanded as against him, but because his connection with the subject-matter is such that the plaintiff's action would be defective, under the technical rules of practice, if he were not joined.

NOMINAL PARTNER. A person who appears to be a partner in a firm, or is so represented to persons dealing with the firm,

or who allows his name to appear in the style of the firm or to be used in its business, in the character of a partner, but who has no actual interest in the firm or business. Story, Partn. § 80.

NOMINAL PLAINTIFF. One who has no interest in the subject-matter of the action, having assigned the same to another, (the real plaintiff in interest, or "use plaintiff,") but who must be joined as plaintiff, because, under technical rules of practice, the suit cannot be brought directly in the name of the assignee.

NOMINATE. To propose for an appointment; to designate for an office, a privilege, a living, etc.

NOMINATE CONTRACTS. In the civil law. Contracts having a proper or peculiar name and form, and which were divided into four kinds, expressive of the ways in which they were formed, viz.: (1) Real, which arose *ex re*, from something done; (2) verbal, *ex verbis*, from something said; (3) literal, *ex literis*, from something written; and (4) consensual, *ex consensu*, from something agreed to. Calvin.

NOMINATIM. By name; expressed one by one.

NOMINATING AND REDUCING. A mode of obtaining a panel of special jurors in England, from which to select the jury to try a particular action. The proceeding takes place before the under-sheriff or secondary, and in the presence of the parties' solicitors. Numbers denoting the persons on the sheriff's list are put into a box and drawn until forty-eight unchallenged persons have been nominated. Each party strikes off twelve, and the remaining twenty-four are returned as the "panel," (*q. v.*) This practice is now only employed by order of the court or judge. (Sm. Ac. 130; Juries Act 1870, § 17.) Sweet.

NOMINATION. An appointment or designation of a person to fill an office or discharge a duty. The act of suggesting or proposing a person by name as a candidate for an office.

NOMINATION TO A LIVING. In English ecclesiastical law. The rights of nominating and of presenting to a living are distinct, and may reside in different persons. Presentation is the offering a clerk to the bishop. Nomination is the offering a clerk to the person who has the right of presentation. Brown.

NOMINATIVUS PENDENS. Lat. A nominative case grammatically unconnected with the rest of the sentence in which it stands. The opening words in the ordinary form of a deed *inter partes*, "This indenture," etc., down to "whereas," though an intelligible and convenient part of the deed, are of this kind. Wharton.

NOMINE. Lat. By name; by the name of; under the name or designation of.

NOMINE PCENÆ. In the name of a penalty. In the civil law, a legacy was said to be left *nomine pœnæ* where it was left for the purpose of coercing the heir to do or not to do something. Inst. 2, 20, 36.

The term has also been applied, in English law, to some kinds of covenants, such as a covenant inserted in a lease that the lessee shall forfeit a certain sum on non-payment of rent, or on doing certain things, as plowing up ancient meadow, and the like. 1 Crabb, Real Prop. p. 171, § 155.

NOMINEE. One who has been nominated or proposed for an office.

NOMOCANON. (1) A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180. (2) A collection of the ancient canons of the apostles, councils, and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotelier. Enc. Lond.

NOMOGRAPHER. One who writes on the subject of laws.

NOMOGRAPHY. A treatise or description of laws.

NOMOTHEA. A lawgiver; such as Solon and Lycurgus among the Greeks, and Cæsar, Pompey, and Sylla among the Romans. Calvin.

NON. Lat. Not. The common particle of negation.

NON-ABILITY. Want of ability to do an act in law, as to sue. A plea founded upon such cause. Cowell.

NON-ACCEPTANCE. The refusal to accept anything.

NON ACCEPTAVIT. In pleading. The name of a plea to an action of *assumpsit*

N brought against the drawee of a bill of exchange by which he denies that he *accepted* the same.

NON-ACCESS. In legal parlance, this term denotes the absence of opportunities for sexual intercourse between husband and wife; or the absence of such intercourse.

Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram. Words ought not to be taken to import a false demonstration which may have effect by way of true limitation. *Bac. Max. p. 59, reg. 13; Broom, Max. 642.*

NON ACCREVIT INFRA SEX AN-NOS. It did not accrue within six years. The name of a plea by which the defendant sets up the statute of limitations against a cause of action which is barred after six years.

NON-ACT. A forbearance from action; the contrary to act.

NON-ADMISSION. The refusal of admission.

NON-AGE. Lack of requisite legal age. The condition of a person who is under twenty-one years of age, in some cases, and under fourteen or twelve in others; minority.

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio. 3 *Inst.* 217. A person may not be punished differently than according to what the sentence enjoins.

Non aliter a significatione verborum recedi oportet quam cum manifestum est, aliud sensisse testatorem. We must never depart from the signification of words, unless it is evident that they are not conformable to the will of the testator. *Dig. 32, 69, pr.; Broom, Max. 568.*

NON-APPARENT EASEMENT. A non-continuous or discontinuous easement. 18 *N. J. Eq.* 262. See **EASEMENT.**

NON-APPEARANCE. A failure of appearance; the omission of the defendant to appear within the time limited.

NON-ASSESSABLE. This word, placed upon a certificate of stock, does not cancel or impair the obligation to pay the amount due upon the shares created by the acceptance and holding of such certificate. At most its legal effect is a stipulation against liability from further assessment or taxation after

the entire subscription of one hundred per cent. shall have been paid. 91 *U. S.* 45.

NON-ASSUMPSIT. The general issue in the action of *assumpsit*; being a plea by which the defendant avers that "he did not undertake" or promise as alleged.

NON-ASSUMPSIT INFRA SEX AN-NOS. He did not undertake within six years. The name of the plea of the statute of limitations, in the action of *assumpsit*.

Non auditur perire volens. He who is desirous to perish is not heard. *Best, Ev.* 423, § 385. He who confesses himself guilty of a crime, with the view of meeting death, will not be heard. A maxim of the foreign law of evidence. *Id.*

NON-BAILABLE. Not admitting of bail; not requiring bail.

NON BIS IN IDEM. Not twice for the same; that is, a man shall not be twice tried for the same crime. This maxim of the civil law (*Code, 9, 2, 9, 11*) expresses the same principle as the familiar rule of our law that a man shall not be twice "put in jeopardy" for the same offense.

NON CEPIT. He did not take. The general issue in replevin, where the action is for the wrongful *taking* of the property; putting in issue not only the taking, but the *place* in which the taking is stated to have been made. *Steph. Pl.* 157, 167.

NON-CLAIM. The omission or neglect of him who ought to claim his right within the time limited by law; as within a year and a day where a continual claim was required, or within five years after a fine had been levied. *Termes de la Ley.*

NON-COMBATANT. A person connected with an army or navy, but for purposes other than fighting; such as the surgeons and chaplains. Also a neutral.

NON-COMMISSIONED. A non-commissioned officer of the army or militia is a subordinate officer who holds his rank, not by commission from the executive authority of the state or nation, but by appointment by a superior officer.

NON COMPOS MENTIS. *Lat.* Not sound of mind; insane. This is a very general term, embracing all varieties of mental derangement.

Coke has enumerated four different classes of persons who are deemed in law to be *non compos mentis*: First, an idiot, or fool natural; second, he who was of good and sound mind and mem-

ory, but by the act of God has lost it; *third*, a lunatic, *lunaticus qui gaudet lucidis intervallis*, who sometimes is of good sound mind and memory, and sometimes *non compos mentis*; *fourth*, one who is *non compos mentis* by his own act, as a drunkard. Co. Lit., 247a; 4 Coke, 124; 6 Neb. 404.

Non concedantur citationes priusquam exprimatur super qua re fieri debet citatio. 12 Coke, 47. Summonses should not be granted before it is expressed on what matter the summons ought to be made.

NON CONCESSIT. Lat. He did not grant. The name of a plea denying a grant, which could be made only by a stranger.

NON-CONFORMIST. In English law. One who refuses to comply with others; one who refuses to join in the established forms of worship.

Non-conformists are of two sorts: (1) Such as absent themselves from divine worship in the Established Church through total irreligion, and attend the service of no other persuasion; (2) such as attend the religious service of another persuasion. Wharton.

Non consentit qui errat. Bract. fol. 44. He who mistakes does not consent.

NON CONSTAT. Lat. It does not appear; it is not clear or evident. A phrase used in general to state some conclusion as not necessarily following although it may appear on its face to follow.

NON-CONTINUOUS EASEMENT. A non apparent or discontinuous easement. 18 N. J. Eq. 262. See EASEMENT.

NON CULPABILIS. Lat. In pleading. Not guilty. It is usually abbreviated "*non cul.*"

NON DAMNIFICATUS. Lat. Not injured. This is a plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified," etc. It is in the nature of a plea of performance, being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition. Steph. Pl. (7th Ed.) 309, 301.

Non dat qui non habet. He who has not does not give. Lofft, 258; Broom, Max. 467.

Non debeo melioris conditionis esse, quam auctor meus a quo jus in me transit. I ought not to be in better condi-

tion than he to whose rights I succeed. Dig. 50, 17, 175, 1.

Non debet actori licere quod reo non permittitur. A plaintiff ought not to be allowed what is not permitted to a defendant. A rule of the civil law. Dig. 50, 17, 41.

Non debet adduci exceptio ejus rei cujus petitur dissolutio. A plea of the same matter the dissolution of which is sought [by the action] ought not to be brought forward. Broom, Max. 166.

Non debet alii nocere, quod inter alios actum est. A person ought not to be prejudiced by what has been done between others. Dig. 12, 2, 10.

Non debet alteri per alterum iniqua conditio inferri. A burdensome condition ought not to be brought upon one man by the act of another. Dig. 50, 17, 74.

Non debet cui plus licet, quod minus est non licere. He to whom the greater is lawful ought not to be debarred from the less as unlawful. Dig. 50, 17, 21; Broom, Max. 176.

Non debet dici tendere in præjudicium ecclesiasticæ liberatatis quod pro rege et republica necessarium videtur. 2 Inst. 625. That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.

Non decet homines dedere cause non cognita. It is unbecoming to surrender men when no cause is shown. 4 Johns. Ch. 106, 114; 3 Wheel. Crim. Cas. 473, 482.

NON DECIMANDO. See DE NON DECIMANDO.

Non decipitur qui scit se decipi. 5 Coke, 60. He is not deceived who knows himself to be deceived.

NON DEDIT. Lat. In pleading. He did not grant. The general issue in forme-don.

NON-DELIVERY. Neglect, failure, or refusal to deliver goods, on the part of a carrier, vendor, bailee, etc.

NON DETINET. Lat. He does not detain. The name of the general issue in the action of detinue. 1 Tidd, Pr. 645.

The general issue in the action of replevin, where the action is for the wrongful detention only. 2 Burrill, Pr. 14.

Non differunt quæ concordant re, tametsi non in verbis iisdem. Those

N things do not differ which agree in substance, though not in the same words. Jenk. Cent. p. 70, case 32.

NON DIMISIT. L. Lat. He did not demise. A plea resorted to where a plaintiff declared upon a demise without stating the indenture in an action of debt for rent. Also, a plea in bar, in replevin, to an avowry for arrears of rent, that the avowant did not demise.

NON-DIRECTION. Omission on the part of a judge to properly instruct the jury upon a necessary conclusion of law.

NON DISTRINGENDO. A writ not to distrain.

Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta, ex empto competere actionem. It is certain that, although the vendor has not given a special guaranty, an action *ex empto* lies against him, if the purchaser is evicted. Code, 8, 45, 6; Broom, Max. 768.

Non efficit affectus nisi sequatur effectus. The intention amounts to nothing unless the effect follow. 1 Rolle, 226.

Non erit alia lex Romæ, alia Athænis; alia nunc, alia posthac; sed et omnes gentes, et omni tempore, una lex, et sempiterna, et immortalis continebit. There will not be one law at Rome, another at Athens; one law now, another hereafter; but one eternal and immortal law shall bind together all nations throughout all time. Cic. Frag. de Repub. lib. 3; 3 Kent, Comm. 1.

Non est arctius vinculum inter homines quam jusjurandum. There is no closer [or firmer] bond between men than an oath. Jenk. Cent. p. 126, case 54.

Non est certandum de regulis juris. There is no disputing about rules of law.

Non est consonum rationi, quod cognitio accessorii in curia christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere. 12 Coke, 65. It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.

Non est disputandum contra principia negantem. Co. Litt. 343. We cannot dispute against a man who denies first principles.

NON EST FACTUM. Lat. A plea by way of traverse, which occurs in debt on bond or other specialty, and also in covenant. It denies that the deed mentioned in the declaration is the defendant's deed. Under this, the defendant may contend at the trial that the deed was never executed in point of fact; but he cannot deny its validity in point of law. Wharton.

The plea of *non est factum* is a denial of the execution of the instrument sued upon, and applies to notes or other instruments, as well as deeds, and applies only when the execution of the instrument is alleged to be the act of the party filing the plea, or adopted by him. Code Ga. 1882, § 3472.

NON EST INVENTUS. Lat. He is not found. The sheriff's return to process requiring him to arrest the body of the defendant, when the latter is not found within his jurisdiction. It is often abbreviated "*n. e. i.*," or written, in English, "not found."

Non est justum aliquem antenatum post mortem facere bastardum qui toto tempore vitæ suæ pro legitimo habebatur. It is not just to make an elder-born a bastard after his death, who during his lifetime was accounted legitimate. 12 Coke, 44.

Non est novum ut priores leges ad posteriores trahantur. It is no new thing that prior statutes should give place to later ones. Dig. 1, 3, 36; Broom, Max. 28.

Non est regula quin fallat. There is no rule but what may fail. Off. Exec. 212.

Non est singulis concedendum, quod per magistratum publice possit fieri, ne occasio sit majoris tumultus faciendi. That is not to be conceded to private persons which can be publicly done by the magistrate, lest it be the occasion of greater tumults. Dig. 50, 17, 176.

Non ex opinionibus singulorum, sed ex communi usu, nomina exaudiri debent. The names of things ought to be understood, not according to the opinions of individuals, but according to common usage. Dig. 33, 10, 7, 2.

Non facias malum, ut inde fiat bonum. You are not to do evil, that good may be or result therefrom. 11 Coke, 74a; 5 Coke, 306.

NON FECIT. Lat. He did not make it. A plea in an action of *assumpsit* on a promissory note. 3 Man. & G. 446.

NON FECIT VASTUM CONTRA PROHIBITIONEM. He did not commit

waste against the prohibition. A plea to an action founded on a writ of estrepement for waste. 3 Bl. Comm. 226, 227.

NON HÆC IN FŒDERA VENI. I did not agree to these terms.

Non impedit clausula derogatoria quo minus ad eadem potestate res dissolvantur a qua constituuntur. A derogatory clause does not impede things from being dissolved by the same power by which they are created. Broom, Max. 27.

NON IMPEDIVIT. Lat. He did not impede. The plea of the general issue in *quare impedit*. The Latin form of the law French "*ne disturba pas*."

NON IMPLACITANDO ALIQUEM DE LIBERO TENEMENTO SINE BREVI. A writ to prohibit bailiffs, etc., from distraining or impleading any man touching his freehold without the king's writ. Reg. Orig. 171.

Non in legendo sed in intelligendo legis consistunt. The laws consist not in being read, but in being understood. 8 Coke, 167a.

NON INFREGIT CONVENTIONEM. Lat. He did not break the contract. The name of a plea sometimes pleaded in the action of covenant, and intended as a general issue, but held to be a bad plea; there being, properly speaking, no general issue in that action. 1 Tidd, Pr. 356.

NON-INTERCOURSE. 1. The refusal of one state or nation to have commercial dealings with another; similar to an embargo. (*q. v.*)

2. The absence of access, communication, or sexual relations between husband and wife.

NON INTERFUI. I was not present. A reporter's note. T. Jones, 10.

NON INTROMITTANT CLAUSE. In English law. A clause of a charter of a municipal borough, whereby the borough is exempted from the jurisdiction of the justices of the peace for the county.

NON INTROMITTENDO, QUANDO BREVE PRÆCIPE IN CAPITE SUBDOLE IMPETRATUR. A writ addressed to the justices of the bench, or in eyre, commanding them not to give one who, under color of entitling the king to land, etc., as holding of him *in capite*, had deceitfully obtained the writ called "*præcipe in capite*,"

any benefit thereof, but to put him to his writ of right. Reg. Orig. 4.

NON-ISSUABLE PLEAS. Those upon which a decision would not determine the action upon the merits, as a plea in abatement. 1 Chit. Archb. Pr. (12th Ed.) 249.

NON-JOINDER. The omission to join some person as party to a suit, whether as plaintiff or defendant, who ought to have been so joined, according to the rules of pleading and practice.

NON JURIDICUS. Not judicial; not legal. *Dies non juridicus* is a day on which legal proceedings cannot be had.

NON-JURORS. In English law. Persons who refuse to take the oaths, required by law, to support the government.

Non jus ex regula, sed regula ex jure. The law does not arise from the rule, (or maxim,) but the rule from the law. Tray. Lat. Max. 384.

Non jus, sed seisin, facit stipitem. Not right, but seisin, makes a stock. Fleta, lib. 6, c. 2, § 2. It is not a mere *right* to enter on lands, but actual *seisin*, which makes a person the root or *stock* from which all future inheritance by right of blood must be derived. 2 Bl. Comm. 209, 312. See Broom, Max. 525, 527.

Non licet quod dispendio licet. That which may be [done only] at a loss is not allowed [to be done.] The law does not permit or require the doing of an act which will result only in loss. The law forbids such recoveries whose ends are vain, chargeable, and unprofitable. Co. Litt. 127b.

NON LIQUET. Lat. It is not clear. In the Roman courts, when any of the judges, after the hearing of a cause, were not satisfied that the case was made clear enough for them to pronounce a verdict, they were privileged to signify this opinion by casting a ballot inscribed with the letters "N. L.," the abbreviated form of the phrase "*non liquet*."

NON MERCHANDIZANDA VICTUALIA. An ancient writ addressed to justices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did. Reg. Orig. 184.

N **NON MOLESTANDO.** A writ that lay for a person who was molested contrary to the king's protection granted to him. Reg. Orig. 184.

Non nasci, et natum mori, paria sunt. Not to be born, and to be dead-born, are the same.

NON-NEGOTIABLE. Not negotiable; not capable of passing title or property by indorsement and delivery.

Non obligat lex nisi promulgata. A law is not obligatory unless it be promulgated.

Non observata forma, infertur adnullatio actus. Where form is not observed, an annulling of the act is inferred or follows. 12 Coke, 7.

NON OBSTANTE. Lat. Notwithstanding. Words anciently used in public and private instruments, intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes. Burrill.

A clause frequent in old English statutes and letters patent, (so termed from its initial words,) importing a license from the crown to do a thing which otherwise a person would be restrained by act of parliament from doing. Crabb, Com. Law, 570; Plowd. 501; Cowell.

A power in the crown to dispense with the laws in any particular case. This was abolished by the bill of rights at the Revolution. 1 Bl. Comm. 342.

NON OBSTANTE VEREDICTO. Notwithstanding the verdict. A judgment entered by order of court for the plaintiff, although there has been a verdict for the defendant, is so called.

Non officit conatus nisi sequatur effectus. An attempt does not harm unless a consequence follow. 11 Coke, 98.

NON OMITTAS. A clause usually inserted in writs of execution, in England, directing the sheriff "not to omit" to execute the writ by reason of any liberty, because there are many liberties or districts in which the sheriff has no power to execute process unless he has special authority. 2 Steph. Comm. 630.

Non omne damnum inducit injuriam. It is not every loss that produces an injury. Bract. fol. 45b.

Non omne quod licet honestum est. It is not everything which is permitted that

is honorable. Dig. 50, 17, 144; 4 Johns. Ch. 121.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest. There cannot be given a reason for all the things which have been established by our ancestors. Branch, Princ.; 4 Coke, 78; Broom, Max. 157.

NON-PAYMENT. The neglect, failure, or refusal of payment of a debt or evidence of debt when due.

NON-PERFORMANCE. Neglect, failure, or refusal to do or perform an act stipulated to be done. Failure to keep the terms of a contract or covenant, in respect to acts or doings agreed upon.

Non pertinet ad judicem secularem cognoscere de iis quæ sunt mere spiritualia annexa. 2 Inst. 488. It belongs not to the secular judge to take cognizance of things which are merely spiritual.

NON-PLEVIN. In old English law. Default in not replevying land in due time, when the same was taken by the king upon a default. The consequence thereof (loss of seisin) was abrogated by St. 9 Edw. III. c. 2.

NON PONENDIS IN ASSISIS ET JURATIS. A writ formerly granted for freeing and discharging persons from serving on assizes and juries. Fitzh. Nat. Brev. 165.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. A person in possession is not bound to prove that the possessions belong to him. Broom, Max. 714.

Non potest adduci exceptio ejus rei cujus petitur dissolutio. An exception of the same thing whose avoidance is sought cannot be made. Broom, Max. 166.

Non potest probari quod probatum non relevat. 1 Exch. 91, 92. That cannot be proved which, if proved, is immaterial.

Non potest quis sine brevi agere. No one can sue without a writ. Fleta, lib. 2, c. 13, § 4. A fundamental rule of old practice.

Non potest rex gratiam facere cum injuria et damno aliorum. The king cannot confer a favor on one subject which occasions injury and loss to others. 3 Inst. 236; Broom, Max. 63.

Non potest rex subditum renitentem onerare impositionibus. The king cannot

load a subject with imposition against his consent. 2 Inst. 61.

Non potest videri desisse habere qui nunquam habuit. He cannot be considered as having ceased to have a thing who never had it. Dig. 50, 17, 208.

NON PROSEQUITUR. Lat. If, in the proceedings in an action at law, the plaintiff neglects to take any of those steps which he ought to take within the time prescribed by the practice of the court for that purpose, the defendant may enter judgment of *non pros.* against him, whereby it is adjudged that the plaintiff does not follow up (*non prosequitur*) his suit as he ought to do, and therefore the defendant ought to have judgment against him. Smith, Act. 96.

NON QUIETA MOVERE. Lat. Not to disturb what is settled. A rule expressing the same principle as that of *stare decisis*, (*q. v.*)

Non quod dictum est, sed quod factum est inspicitur. Not what is said, but what is done, is regarded. Co. Litt. 36a.

Non refert an quis assensum suum præfert verbis, aut rebus ipsis et factis. 10 Coke, 52. It matters not whether a man gives his assent by his words or by his acts and deeds.

Non refert quid ex æquipollentibus fiat. 5 Coke, 122. It matters not which of [two] equivalents happen.

Non refert quid notum sit judici, si notum non sit in forma judicii. It matters not what is known to a judge, if it be not known in judicial form. 3 Bulst. 115. A leading maxim of modern law and practice. Best, Ev. Intro. 31, § 38.

Non refert verbis an factis fit revocatio. Cro. Car. 49. It matters not whether a revocation is made by words or deeds.

NON-RESIDENCE. Residence beyond the limits of the particular jurisdiction.

In ecclesiastical law. The absence of spiritual persons from their benefices.

NON-RESIDENT. One who is not a dweller within some jurisdiction in question; not an inhabitant of the state of the forum.

NON-RESIDENTIO PRO CLERICO REGIS. A writ, addressed to a bishop, charging him not to molest a clerk employed in the royal service, by reason of his non-res-

idence; in which case he is to be discharged. Reg. Orig. 58.

Non respondebit minor nisi in causa dotis, et hoc pro favore doti. 4 Coke, 71. A minor shall not answer unless in a case of dower, and this in favor of dower.

NON SANÆ MENTIS. Lat. Of unsound mind. Fleta, lib. 6, c. 40, § 1.

NON-SANE. As "sane," when applied to the mind, means whole, sound, in a healthful state, "non-sane" must mean not whole, not sound, not in a healthful state; that is, broken, impaired, shattered, infirm, weak, diseased, unable, either from nature or accident, to perform the rational functions common to man upon the objects presented to it. 5 N. J. Law, 589, 661.

NON-SANE MEMORY. Unsound memory; unsound mind.

NON SEQUITUR. Lat. It does not follow.

Non solent quæ abundant vitiare scripturas. Superfluities [things which abound] do not usually vitiate writings. Dig. 50, 17, 94.

Non solum quid licet, sed quid est conveniens, est considerandum; quia nihil quod est inconveniens est licitum. Not only what is lawful, but what is proper or convenient, is to be considered; because nothing that is inconvenient is lawful. Co. Litt. 66a.

NON SOLVENDO PECUNIAM AD QUAM CLERICUS MULCTATUR PRO NON-RESIDENTIA. A writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for non-residence. Reg. Writ. 59.

NON SUBMISSIT. Lat. He did not submit. A plea to an action of debt, on a bond to perform an award, to the effect that the defendant did not submit to the arbitration.

NON SUI JURIS. Lat. Not his own master. The opposite of *sui juris*. (*q. v.*)

NON SUM INFORMATUS. Lat. I am not informed; I have not been instructed. The name of a species of judgment by default, which is entered when the defendant's attorney announces that he is not informed of any answer to be given by him; usually in pursuance of a previous arrangement between the parties.

N

NON-SUMMONS, WAGER OF LAW OF. The mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time.

Non temere credere est nervus sapientiæ. 5 Coke, 114. Not to believe rashly is the nerve of wisdom.

NON TENENT INSIMUL. Lat. In pleading. A plea to an action in partition, by which the defendant denies that he and the plaintiff are joint tenants of the estate in question.

NON TENUIT. Lat. He did not hold. This is the name of a plea in bar in replevin, by which the plaintiff alleges that he did not hold in manner and form as averred, being given in answer to an avowry for rent in arrear. See Rosc. Real Act. 638.

NON-TENURE. A plea in a real action, by which the defendant asserts, either as to the whole or as to some part of the land mentioned in the plaintiff's declaration, that he does not hold it. Pub. St. Mass. 1882, p. 1293.

NON-TERM. The vacation between two terms of a court.

NON-TERMINUS. The vacation between term and term, formerly called the time or days of the king's peace.

NON-USER. Neglect to use. Neglect to use a franchise; neglect to exercise an office. 2 Bl. Comm. 153. Neglect or omission to use an easement or other right. 3 Kent, Comm. 448. A right acquired by use may be lost by *non-user*.

NON USURPAVIT. Lat. He has not usurped. A form of traverse, in an action or proceeding against one alleged to have usurped an office or franchise, denying the usurpation charged. See 53 Pa. St. 62.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio succedit in hæritate patris vel matris a quo non fuerit felonia perpetrata. 3 Coke, 41. The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but, if he had offspring before the felony, such offspring may succeed as to the inheritance of the father or mother by whom the felony was not committed.

NON VALENTIA AGERE. Inability to sue. 5 Bell, App. Cas. 172.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione. Co. Litt. 295. Confirmation is not valid unless he who confirms is either in possession of the thing itself or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.

Non valet exceptio ejusdem rei cujus petitur dissolutio. A plea of the same matter the dissolution of which is sought, is not valid. Called a "maxim of law and common sense." 2 Eden, 134.

Non valet impedimentum quod de jure non sortitur effectum. 4 Coke, 31a. An impediment which does not derive its effect from law is of no force.

Non verbis, sed ipsis rebus, leges imponimus. Cod. 6, 43, 2. We impose laws, not upon words, but upon things themselves.

Non videntur qui errant consentire. They are not considered to consent who commit a mistake. Dig. 50, 17, 116, § 2; Broom, Max. 262.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. He does not appear to have retained consent, who has changed anything through menaces. Broom, Max. 278.

Non videtur perfecte cujusque id esse, quod ex casu auferri potest. That does not seem to be completely one's own which can be taken from him on occasion. Dig. 50, 17, 139, 1.

Non videtur quisquam id capere quod ei necesse est alii restitutum. Dig. 50, 17, 51. No one is considered entitled to recover that which he must give up to another.

Non videtur vim facere, qui jure suo utitur et ordinaria actione experitur. He is not deemed to use force who exercises his own right, and proceeds by ordinary action. Dig. 50, 17, 155, 1.

NONÆ ET DECIMÆ. Payments made to the church, by those who were tenants of church-farms. The first was a rent or duty for things belonging to husbandry; the second was claimed in right of the church. Wharton.

NONAGIUM, or NONAGE. A ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretense of being distributed to pious uses. Blount.

NONES. In the Roman calendar. The fifth and, in March, May, July, and October, the seventh day of the month. So called because, counting inclusively, they were *nine* days from the ides. Adams, Rom. Ant. 355, 357.

NONFEASANCE. The neglect or failure of a person to do some act which he ought to do. The term is not generally used to denote a breach of contract, but rather the failure to perform a duty towards the public whereby some individual sustains special damage, as where a sheriff fails to execute a writ. Sweet.

NONNA. In old ecclesiastical law. A nun. *Nonnus*, a monk. Spelman.

NONSENSE. Unintelligible matter in a written agreement or will.

NONSUIT. Not following up the cause; failure on the part of a plaintiff to continue the prosecution of his suit. An abandonment or renunciation of his suit, by a plaintiff, either by omitting to take the next necessary steps, or voluntarily relinquishing the action, or pursuant to an order of the court. An order or judgment, granted upon the trial of a cause, that the plaintiff has abandoned, or shall abandon, the further prosecution of his suit.

A *voluntary* nonsuit is one incurred by the plaintiff's own act or omission, and is a judgment entered against him as a consequence of his abandoning or not following up his cause, or being absent when his presence is required.

An *involuntary* nonsuit is a judgment entered against the plaintiff by direction of the court when, upon trial, he has not adduced any evidence on which the jury could find a verdict under the rules of law.

NOOK OF LAND. Twelve acres and a half.

NORMAL. Opposed to exceptional; that state wherein any body most exactly comports in all its parts with the abstract idea thereof, and is most exactly fitted to perform its proper functions, is entitled "normal."

NORMAL LAW. A term employed by modern writers on jurisprudence to denote the law as it affects persons who are in a nor-

mal condition; *i. e.*, *sui juris* and sound in mind.

NORMAN FRENCH. The tongue in which several formal proceedings of state are still carried on. The language, having remained the same since the date of the Conquest, at which it was introduced into England, is very different from the French of this day, retaining all the peculiarities which at that time distinguished every province from the rest. A peculiar mode of pronunciation (considered authentic) is handed down and preserved by the officials who have, on particular occasions, to speak the tongue. Norman French was the language of our legal procedure till the 36 Edw. III. Wharton.

NORROY. In English law. The title of the third of the three kings-at-arms, or provincial heralds.

NORTHAMPTON TABLES. Longevity and annuity tables compiled from bills of mortality kept in All Saints parish, England, in 1735-1780.

Noscitur a sociis. It is known from its associates. 1 Vent. 225. The meaning of a word is or may be known from the accompanying words. 3 Term R. 87; Broom, Max. 588.

Noscitur ex socio, qui non cognoscitur ex se. Moore, 817. He who cannot be known from himself may be known from his associate.

NOSOCOMI. In the civil law. Persons who have the management and care of hospitals for paupers.

NOT FOUND. These words, indorsed on a bill of indictment by a grand jury, have the same effect as the indorsement "Not a true bill" or "*Ignoramus*."

NOT GUILTY. A plea of the general issue in the actions of trespass and case and in criminal prosecutions.

The form of the verdict in criminal cases, where the jury acquit the prisoner. 4 Bl. Comm. 351.

NOT GUILTY BY STATUTE. In English practice. A plea of the general issue by a defendant in a civil action, when he intends to give special matter in evidence by virtue of some act or acts of parliament, in which case he must add the reference to such act or acts, and state whether such acts are public or otherwise. But, if a defendant so plead, he will not be allowed to plead any

N other defense, without the leave of the court or a judge. Mozley & Whitley.

NOT POSSESSED. A special traverse used in an action of trover, alleging that defendant was not possessed, at the time of action brought, of the chattels alleged to have been converted by him.

NOT PROVEN. A verdict in a Scotch criminal trial, to the effect that the guilt of the accused is not made out, though his innocence is not clear.

NOTA. In the civil law. A mark or brand put upon a person by the law. Mac-keld. Rom. Law, § 135.

NOTÆ. In civil and old European law. Short-hand characters or marks of contraction, in which the emperors' secretaries took down what they dictated. Spelman; Calvin.

NOTARIAL. Taken by a notary.

NOTARIUS. Lat. In Roman law. A draughtsman; an amanuensis; a short-hand writer; one who took notes of the proceedings in the senate or a court, or of what was dictated to him by another; one who prepared draughts of wills, conveyances, etc.

In old English law. A scribe or scrivener who made short draughts of writings and other instruments; a notary. Cowell.

NOTARY PUBLIC. A public officer whose function is to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and certify the same; and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage.

NOTATION. In English probate practice, notation is the act of making a memorandum of some special circumstance on a probate or letters of administration. Thus, where a grant is made for the whole personal estate of the deceased within the United Kingdom, which can only be done in the case of a person dying domiciled in England, the fact of his having been so domiciled is noted on the grant. Coote, Prob. Pr. 36; Sweet.

NOTE, v. To make a brief written statement; to enter a memorandum; as to note an exception.

NOTE, n. An abstract, a memorandum; an informal statement in writing. Also a

negotiable promissory note. See **BOUGHT NOTE**; **NOTES**; **JUDGMENT NOTE**; **PROMISSORY NOTE**; **SOLD NOTE**.

NOTE A BILL. When a foreign bill has been dishonored, it is usual for a notary public to present it again on the same day, and, if it be not then paid, to make a minute, consisting of his initials, the day, month, and year, and reason, if assigned, of non-payment. The making of this minute is called "noting the bill." Wharton.

NOTE OF A FINE. In old conveyancing. One of the parts of a fine of lands, being an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land, and the agreement. 2 Bl. Comm. 351.

NOTE OF ALLOWANCE. In English practice. This was a note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings, allowing him to bring error.

NOTE OF HAND. A popular name for a promissory note.

NOTE OF PROTEST. A memorandum of the fact of protest, indorsed by the notary upon the bill, at the time, to be afterwards written out at length.

NOTE OR MEMORANDUM. The statute of frauds requires a "note or memorandum" of the particular transaction to be made in writing and signed, etc. By this is generally understood an informal minute or memorandum made on the spot. See 14 Johns. 492.

NOTES. In practice. Memoranda made by a judge on a trial, as to the evidence adduced, and the points reserved, etc. A copy of the judge's notes may be obtained from his clerk.

NOTHUS. Lat. In Roman law. A natural child or a person of spurious birth.

NOTICE. Knowledge; information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Used in this sense in such phrases as "A. had notice of the conversion," "a purchaser without notice of fraud," etc.

Notice is either (1) statutory, *i. e.*, made so by legislative enactment; (2) actual, which brings the knowledge of a fact directly home to the party; or (3) constructive or implied, which is no more than evidence of facts which raise such a strong presumption of notice that equity will not

allow the presumption to be rebutted. Constructive notice may be subdivided into: (a) Where there exists actual notice of matter, to which equity has added constructive notice of facts, which an inquiry after such matter would have elicited; and (b) where there has been a designed abstinence from inquiry for the very purpose of escaping notice. Wharton.

Notice is actual when it is directly and personally given to the party to be notified; and constructive when the party, by circumstances, is put upon inquiry, and must be presumed to have had notice, or, by judgment of law, is held to have had notice. 14 Ga. 145.

Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact. Civil Code Cal. § 19.

Actual notice consists in express information of a fact. Constructive notice is notice imputed by the law to a person not having actual notice; and every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself. 1 Dak. T. 399, 400, 46 N. W. Rep. 1134.

In another sense, "notice" means information of an act to be done or required to be done; as of a motion to be made, a trial to be had, a plea or answer to be put in, costs to be taxed, etc.

In this sense, "notice" means an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.

NOTICE, AVERMENT OF. In pleading. The allegation in a pleading that notice has been given.

NOTICE IN LIEU OF SERVICE. In lieu of personally serving a writ of summons (or other legal process,) in English practice, the court occasionally allows the plaintiff (or other party) to give notice in lieu of service, such notice being such as will in all probability reach the party. This notice is peculiarly appropriate in the case of a foreigner out of the jurisdiction, whom it is desired to serve with a writ of summons. Sweet.

NOTICE OF ACTION. When it is intended to sue certain particular individuals, as in the case of actions against justices of the peace, it is necessary in some jurisdictions to give them notice of the action some time before.

NOTICE OF APPEARANCE. A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

NOTICE OF DISHONOR. When a negotiable bill or note is dishonored by non-acceptance on presentment for acceptance, or by non-payment at its maturity, it is the duty of the holder to give immediate notice of such dishonor to the drawer, if it be a bill, and to the indorser, whether it be a bill or note. 2 Daniel, Neg. Inst. § 970.

NOTICE OF JUDGMENT. It is required by statute in several of the states that the party for whom the verdict in an action has been given shall serve upon the other party or his attorney a written notice of the time when judgment is entered. The time allowed for taking an appeal runs from such notice.

NOTICE OF LIS PENDENS. A notice filed for the purpose of warning all persons that the title to certain property is in litigation, and that, if they purchase the defendant's claim to the same, they are in danger of being bound by an adverse judgment.

NOTICE OF MOTION. A notice in writing, entitled in a cause, stating that, on a certain day designated, a motion will be made to the court for the purpose or object stated.

NOTICE OF PROTEST. A notice given by the holder of a bill or note to the drawer or indorser that the bill has been protested for refusal of payment or acceptance.

NOTICE OF TRIAL. A notice given by one of the parties in an action to the other, after an issue has been reached, that he intends to bring the cause forward for trial at the next term of the court.

NOTICE TO ADMIT. In the practice of the English high court, either party to an action may call on the other party by notice to admit the existence and execution of any document, in order to save the expense of proving it at the trial; and the party refusing to admit must bear the costs of proving it unless the judge certifies that the refusal to admit was reasonable. No costs of proving a document will in general be allowed, unless such a notice is given. Rules of Court, xxxii. 2; Sweet.

NOTICE TO PLEAD. This is a notice which, in the practice of some states, is prerequisite to the taking judgment by default. It proceeds from the plaintiff, and warns the defendant that he must plead to the declaration or complaint within a prescribed time.

NOTICE TO PRODUCE. In practice. A notice in writing, given in an action at

Nlaw, requiring the opposite party to produce a certain described paper or document at the trial. Chit. Archb. Pr. 230; 3 Chit. Gen. Pr. 834.

NOTICE TO QUIT. A written notice given by a landlord to his tenant, stating that the former desires to repossess himself of the demised premises, and that the latter is required to quit and remove from the same at a time designated, either at the expiration of the term, if the tenant is in under a lease, or immediately, if the tenancy is at will or by sufferance. The term is also sometimes applied to a written notice given by the tenant to the landlord, to the effect that he intends to quit the demised premises and deliver possession of the same on a day named.

NOTIFY. In legal proceedings, and in respect to public matters, this word is generally, if not universally, used as importing a notice *given* by some person, whose duty it was to give it, in some manner prescribed, and to some person entitled to receive it, or be notified. 31 Conn. 384.

NOTING. As soon as a notary has made presentment and demand of a bill of exchange, or at some seasonable hour of the same day, he makes a minute on the bill, or on a ticket attached thereto, or in his book of registry, consisting of his initials, the month, day, and year, the refusal of acceptance or payment, the reason, if any, assigned for such refusal, and his charges of protest. This is the preliminary step towards the protest, and is called "noting." 2 Daniel, Neg. Inst. § 939.

NOTIO. Lat. In the civil law. The power of hearing and trying a matter of fact; the power or authority of a *judex*; the power of hearing causes and of pronouncing sentence, without any degree of jurisdiction. Calvin.

NOTITIA. Knowledge; information; intelligence; notice.

Notitia dicitur a noscendo; et notitia non debet claudicare. Notice is named from a knowledge being had; and notice ought not to halt, [*i. e.*, be imperfect.] 6 Coke, 29.

NOTORIAL. The Scotch form of "notarially," (*q. v.*) Bell.

NOTORIETY. The state of being notorious or universally well known.

NOTORIOUS. In the law of evidence, matters deemed notorious do not require to be proved. There does not seem to be any recognized rule as to what matters are deemed notorious. Cases have occurred in which the state of society or public feeling has been treated as notorious; *e. g.*, during times of sedition. Best, Ev. 354; Sweet.

NOTOUR. In Scotch law. Open; notorious. A *notour* bankrupt is a debtor who, being under diligence by horning and caption of his creditor, retires to sanctuary or absconds or defends by force, and is afterwards found insolvent by the court of session. Bell.

Nova constitutio futuris formam imponere debet non præteritis. A new state of the law ought to affect the future, not the past. 2 Inst. 292; Broom, Max. 34, 37.

NOVA CUSTUMA. The name of an imposition or duty. See **ANTIQUA CUSTUMA.**

NOVA STATUTA. New statutes. An appellation sometimes given to the statutes which have been passed since the beginning of the reign of Edward III. 1 Steph. Comm. 68.

NOVÆ NARRATIONES. New counts. The collection called "*Novæ Narrationes*" contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and subsequent pleadings. The *Articuli ad Novas Narrationes* is usually subjoined to this little book, and is a small treatise on the method of pleading. It first treats of actions and courts, and then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents. 3 Reeves, Eng. Law, 152; Wharton.

NOVALE. Land newly plowed and converted into tillage, and which has not been tilled before within the memory of man; also fallow land.

NOVALIS. In the civil law. Land that rested a year after the first plowing. Dig. 50, 16, 30, 2.

Novatio non præsumitur. Novation is not presumed. Halk. Lat. Max. 109.

NOVATION. Novation is the substitution of a new debt or obligation for an existing one. Civil Code Cal. § 1530; Civil Code Dak. § 863.

Novation is a contract, consisting of two stipulations,—one to extinguish an existing

obligation; the other to substitute a new one in its place. Civil Code La. art. 2185.

The term was originally a technical term of the civil law, but is now in very general use in English and American jurisprudence.

In the civil law, there are three kinds of novation: (1) Where the debtor and creditor remain the same, but a new debt takes the place of the old one; (2) where the debt remains the same, but a new debtor is substituted; (3) Where the debt and debtor remain, but a new creditor is substituted. 48 Miss. 451.

NOVEL ASSIGNMENT. See **NEW ASSIGNMENT.**

NOVEL DISSEISIN. See **ASSISE OF NOVEL DISSEISIN.**

NOVELLÆ, (or **NOVELLÆ CONSTITUTIONES.**) New constitutions; generally translated in English, "Novels." The Latin name of those constitutions which were issued by Justinian after the publication of his Code; most of them being originally written in Greek. After his death, a collection of 168 Novels was made, 154 of which had been issued by Justinian, and the rest by his successors. These were afterwards included in the *Corpus Juris Civilis*, (*q. v.*) and now constitute one of its four principal divisions. Mackeld. Rom. Law, § 80; 1 Kent, Comm. 541.

NOVELLÆ LEONIS. The ordinances of the Emperor Leo, which were made from the year 887 till the year 893, are so called. These Novels changed many rules of the Justinian law. This collection contains 113 Novels, written originally in Greek, and afterwards, in 1560, translated into Latin by Agilæus. Mackeld. Rom. Law, § 84.

NOVELS. The title given in English to the New Constitutions (*Novellæ Constitutiones*) of Justinian and his successors, now forming a part of the *Corpus Juris Civilis*. See **NOVELLÆ.**

NOVELTY. An objection to a patent or claim for a patent on the ground that the invention is not new or original is called an objection "for want of novelty."

NOVERCA. Lat. In the civil law. A step-mother.

NOVERINT UNIVERSI PRÆSENTES. Know all men by these presents. Formal words used at the commencement of deeds of release in the Latin forms.

NOVI OPERIS NUNCIATIO. Lat. Denunciation of, or protest against, a new

work. This was a species of remedy in the civil law, available to a person who thought his rights or his property were threatened with injury by the act of his neighbor in erecting or demolishing any structure, (which was called a "new work.") In such case, he might go upon the ground, while the work was in progress, and publicly protest against or forbid its completion, in the presence of the workmen or of the owner or his representative.

NOVIGILD. In Saxon law. A pecuniary satisfaction for an injury, amounting to nine times the value of the thing for which it was paid. Spelman.

NOVISSIMA RECOPIACION. (Latest Compilation.) The title of a collection of Spanish law compiled by order of Don Carlos IV. in 1805. 1 White, Recop. 355.

NOVITAS. Lat. Novelty; newness; a new thing.

Novitas non tam utilitate prodest quam novitate perturbat. A novelty does not benefit so much by its utility as it disturbs by its novelty. Jenk. Cent. p. 167, case 23.

NOVITER PERVENTA, or **NOVITER AD NOTITIAM PERVENTA.** In ecclesiastical procedure. Facts "newly come" to the knowledge of a party to a cause. Leave to plead facts *noviter perventa* is generally given, in a proper case, even after the pleadings are closed. Phillim. Ecc. Law, 1257; Rog. Ecc. Law, 723.

NOVODAMUS. In old Scotch law. (We give anew.) The name given to a charter, or clause in a charter, granting a renewal of a right. Bell.

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum. A new adjudication does not make a new law, but declares the old; because adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden. 10 Coke, 42.

NOVUM OPUS. In the civil law. A new work. See **NOVI OPERIS NUNCIATIO.**

NOVUS HOMO. Lat. A new man. This term is applied to a man who has been pardoned of a crime, and so made, as it were, a "new man."

N

NOXA. Lat. In the civil law. This term denoted any damage or injury done to persons or property by an unlawful act committed by a man's slave or animal. An action for damages lay against the master or owner, who, however, might escape further responsibility by delivering up the offending agent to the party injured. "*Noxa*" was also used as the designation of the offense committed, and of its punishment, and sometimes of the slave or animal doing the damage.

Noxa sequitur caput. The injury [*i. e.*, liability to make good an injury caused by a slave] follows the head or person, [*i. e.*, attaches to his master.] Heinecc. Elem. 1. 4, t. 8, § 1231.

NOXAL ACTION. An action for damage done by slaves or irrational animals. Sandars, Just. Inst. (5th Ed.) 457.

NOXALIS ACTIO. Lat. In the civil law. An action which lay against the master of a slave, for some offense (as theft or robbery) committed or damage or injury done by the slave, which was called "*noxa*." Usually translated "noxal action."

NOXIA. Lat. In the civil law. An offense committed or damage done by a slave. Inst. 4, 8, 1.

NOXIOUS. Hurtful; offensive; offensive to the smell. 1 Burrows, 337. The word "noxious" includes the complex idea both of insalubrity and offensiveness. *Id.*

NUBILIS. In the civil law. Marriageable; one who is of a proper age to be married.

NUCES COLLIGERE. To collect nuts. This was formerly one of the works or services imposed by lords upon their inferior tenants. Paroch. Antiq. 495.

Nuda pactio obligationem non parit. A naked agreement [*i. e.*, without consideration] does not beget an obligation. Dig. 2, 14, 7, 4; Broom, Max. 746.

NUDA PATIENTIA. Lat. Mere sufferance.

NUDA POSSESSIO. Lat. Bare or mere possession.

Nuda ratio et nuda pactio non ligant aliquem debitorem. Naked reason and naked promise do not bind any debtor. Fleta, 1. 2, c. 60, § 25.

NUDE. Naked. This word is applied metaphorically to a variety of subjects to in-

dicare that they are lacking in some essential legal requisite.

NUDE CONTRACT. One made without any consideration; upon which no action will lie, in conformity with the maxim "*ex nudo pacto non oritur actio*." 2 Bl. Comm. 445.

NUDE MATTER. A bare allegation of a thing done, unsupported by evidence.

NUDUM PACTUM. Lat. A naked pact; a bare agreement; a promise or undertaking made without any consideration for it.

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem. A naked contract is where there is no consideration except the agreement; but, where there is a consideration, it becomes an obligation and gives a right of action. Plowd. 309; Broom, Max. 745, 750.

Nudum pactum ex quo non oritur actio. *Nudum pactum* is that upon which no action arises. Cod. 2, 3, 10; *Id.* 5, 14, 1; Broom, Max. 676.

NUEVA RECOPIACION. (New Compilation.) The title of a code of Spanish law, promulgated in the year 1567. Schm. Civil Law, Introd. 79-81.

NUGATORY. Fatile; ineffectual; invalid; destitute of constraining force or vitality. A legislative act may be "nugatory" because unconstitutional.

NUISANCE. Anything that unlawfully worketh hurt, inconvenience, or damage. 3 Bl. Comm. 216.

That class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, either real or personal, or from his own improper, indecent, or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing such material annoyance, inconvenience, discomfort, or hurt that the law will presume a consequent damage. Wood, Nuis. § 1.

Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. Civil Code Cal. § 8479.

Nuisances are either *public* or *private*. A public nuisance is one which damages all

persons who come within the sphere of its operation, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or few individuals. Generally, a public nuisance gives no right of action to any individual, but must be abated by a process instituted in the name of the state. A private nuisance gives a right of action to the person injured. Code Ga. 1882, § 2997.

A *public* nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Civil Code Cal. § 3480.

A *private* nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. It produces damage to but one or a few persons, and cannot be said to be public. 3 Bl. Comm. 216; 80 N. Y. 582.

A *mixed* nuisance is one which, while producing injury to the public at large, does some special damage to some individual or class of individuals. Wood, Nuis. § 16.

NUISANCE, ASSISE OF. In old practice. A judicial writ directed to the sheriff of the county in which a nuisance existed, in which it was stated that the party injured complained of some particular fact done *ad nocumentum liberi tenementi sui*, (to the nuisance of his freehold,) and commanding the sheriff to summon an assize (that is, a jury) to view the premises, and have them at the next commission of assizes, that justice might be done, etc. 3 Bl. Comm. 221.

NUL. No; none. A law French negative particle, commencing many phrases.

NUL AGARD. No award. The name of a plea in an action on an arbitration bond, by which the defendant traverses the making of any legal award.

Nul charter, nul vente, ne nul done vault perpetualment, si le doner n'est seiso al temps de contracts de deux droits, sc. del droit de possession et del droit de propertie. Co. Litt. 266. No grant, no sale, no gift, is valid forever, unless the donor, at the time of the contract, is seised of two rights, namely, the right of possession, and the right of property.

NUL DISSEISIN. In pleading. No disseisin. A plea of the general issue in a real action, by which the defendant denies that there was any disseisin.

Nul ne doit s'enrichir aux depens des autres. No one ought to enrich himself at the expense of others.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong. 2 Inst. 713; Broom, Max. 290.

Nul sans damage avera error ou attain. Jenk. Cent. 323. No one shall have error or attain unless he has sustained damage.

NUL TIEL CORPORATION. No such corporation [exists.] The form of a plea denying the existence of an alleged corporation.

NUL TIEL RECORD. No such record. A plea denying the existence of any such record as that alleged by the plaintiff. It is the general plea in an action of debt on a judgment.

NUL TORT. In pleading. A plea of the general issue to a real action, by which the defendant denies that he committed any wrong.

NUL WASTE. No waste. The name of a plea in an action of waste, denying the committing of waste, and forming the general issue.

NULL. Naught; of no validity or effect. Usually coupled with the word "void;" as "null and void."

NULLA BONA. Lat. No goods. The name of the return made by the sheriff to a writ of execution, when he has not found any goods of the defendant within his jurisdiction on which he could levy.

Nulla curia quæ recordum non habet potest imponere finem neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo. 8 Coke, 60. No court which has not a record can impose a fine or commit any person to prison; because those powers belong only to courts of record.

Nulla emptio sine pretio esse potest. There can be no sale without a price. 4 Pick. 189.

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia. No things that are impossible or dishonorable are to be presumed; but things that are true and honorable and possible. Co. Litt. 78b.

Nulla pactioe effici potest ut dolus præstetur. By no agreement can it be effected that a fraud shall be practiced. Fraud

N will not be upheld, though it may seem to be authorized by express agreement. 5 Maule & S. 466; Broom, Max. 696.

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestia. Co. Litt. 394. Without modesty, no virtue, no knowledge, can preserve its place and dignity.

Nulle terre sans seigneur. No land without a lord. A maxim of feudal law. Guyot, Inst. Feod. c. 28.

Nulli enim res sua servit jure servitutis. No one can have a servitude over his own property. Dig. 8, 2, 26; 17 Mass. 443; 2 Bouv. Inst. no. 1600.

NULLITY. Nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.

NULLITY OF MARRIAGE. The entire invalidity of a supposed, pretended, or attempted marriage, by reason of relationship or incapacity of the parties or other diriment impediments. An action seeking a decree declaring such an assumed marriage to be null and void is called a suit of "nullity of marriage." It differs from an action for divorce, because the latter supposes the existence of a valid and lawful marriage. See 2 Bish. Mar. & Div. §§ 289-294.

NULLIUS FILIUS. The son of nobody; a bastard.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit. The authority of no man ought to prevail with us, so far as to prevent our following better [opinions] if any one should present them. Co. Litt. 383b.

NULLIUS IN BONIS. Among the property of no person.

NULLIUS JURIS. In old English law. Of no legal force. Fleta, lib. 2, c. 60, § 24.

NULLUM ARBITRIUM. L. Lat. No award. The name of a plea in an action on an arbitration bond, for not fulfilling the award, by which the defendant traverses the allegation that there was an award made.

Nullum crimen majus est inobedientia. No crime is greater than disobedience. Jenk. Cent. p. 77, case 48. Applied to the refusal of an officer to return a writ.

Nullum exemplum est idem omnibus. No example is the same for all purposes. Co. Litt. 212a. No one precedent is adapted to all cases. A maxim in conveyancing.

NULLUM FECERUNT ARBITRIUM. L. Lat. In pleading. The name of a plea to an action of debt upon an obligation for the performance of an award, by which the defendant denies that he submitted to arbitration, etc. Bac. Abr. "Arbitr." etc., G.

Nullum iniquum est præsumentum in jure. 7 Coke, 71. No iniquity is to be presumed in law.

Nullum matrimonium, ibi nulla dos. No marriage, no dower. 4 Barb. 192, 194.

Nullum simile est idem nisi quatuor pedibus currit. Co. Litt. 3. No like is identical, unless it run on all fours.

Nullum simile quatuor pedibus currit. No simile runs upon four feet, (or *all fours*, as it is otherwise expressed.) No simile holds in everything. Co. Litt. 3a; 2 Story, 143.

NULLUM TEMPUS ACT. In English law. A name given to the statute 3 Geo. III. c. 16, because that act, in contravention of the maxim "*Nullum tempus occurrit regi*," (no lapse of time bars the king,) limited the crown's right to sue, etc., to the period of sixty years.

Nullum tempus aut locus occurrit regi. No time or place affects the king. 2 Inst. 273; Jenk. Cent. 83; Broom, Max. 65.

Nullum tempus occurrit reipublicæ. No time runs [time does not run] against the commonwealth or state. 11 Grat. 572.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam. Co. Litt. 134. No other than the king can command the bishop to make an inquisition.

Nullus commodum capere potest de injuria sua propria. No one can obtain an advantage by his own wrong. Co. Litt. 148; Broom, Max. 279.

Nullus debet agere de dolo, ubi alia actio subest. Where another form of action is given, no one ought to sue in the action *de dolo*. 7 Coke, 92.

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et

comfortavit. 3 Inst. 138. No one is called an "accessary" after the fact but he who knew the principal to have committed a felony, and received and comforted him.

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam. No one is called a "principal felon" except the party actually committing the felony, or the party present aiding and abetting in its commission.

Nullus idoneus testis in re sua intelligitur. No person is understood to be a competent witness in his own cause. Dig. 22, 5, 10.

Nullus jus alienum forisfacere potest. No man can forfeit another's right. Fleta, lib. 1, c. 28, § 11.

Nullus recedat e curia cancellaria sine remedio. No person should depart from the court of chancery without a remedy. 4 Hen. VII. 4; Branch, Princ.

Nullus simile est idem, nisi quatuor pedibus currit. No like is exactly identical unless it runs on all fours.

Nullus videtur dolo facere qui suo jure utitur. No one is considered to act with guile who uses his own right. Dig. 50, 17, 55; Broom, Max. 130.

NUMERATA PECUNIA. In the civil law Money told or counted; money paid by tale. Inst. 3, 24, 2; Bract. fol. 35.

NUMMATA. The price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds.

NUMMATA TERRÆ. An acre of land. Spelman.

NUNC PRO TUNC. Lat. Now for then. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i. e.*, with the same effect as if regularly done.

NUNCIATIO. In the civil law. A solemn declaration, usually in prohibition of a thing; a protest.

NUNCIO. The permanent official representative of the pope at a foreign court or seat of government. Webster. They are called "ordinary" or "extraordinary," according as they are sent for general purposes or on a special mission.

NUNCIUS. In international law. A messenger; a minister; the pope's legate, commonly called a "nuncio."

NUNCUPARE. Lat. In the civil law. To name; to pronounce orally or in words without writing.

NUNCUPATE. To declare publicly and solemnly.

NUNCUPATIVE WILL. A will which depends merely upon oral evidence, having been declared or dictated by the testator in his last sickness before a sufficient number of witnesses, and afterwards reduced to writing.

NUNDINÆ. Lat. In the civil and old English law. A fair. *In nundinis et mercatis*, in fairs and markets. Bract. fol. 56.

NUNDINATION. Traffic at fairs and markets; any buying and selling.

Nunquam crescit ex postfacto præteriti delicti æstimatio. The character of a past offense is never aggravated by a subsequent act or matter. Dig. 50, 17, 139, 1; Bac. Max. p. 38, reg. 8; Broom, Max. 42.

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium. We are never to resort to what is extraordinary, but [until] what is ordinary fails. 4 Inst. 84.

Nunquam fictio sine lege. There is no fiction without law.

NUNQUAM INDEBITATUS. Lat. Never indebted. The name of a plea in an action of *indebitatus assumpsit*, by which the defendant alleges that he is not indebted to the plaintiff.

Nunquam nimis dicitur quod nunquam satis dicitur. What is never sufficiently said is never said too much. Co. Litt. 375.

Nunquam præscribitur in falso. There is never a prescription in case of falsehood or forgery. A maxim in Scotch law. Bell.

Nunquam res humanæ prospere succedunt ubi negliguntur divinæ. Co. Litt. 15. Human things never prosper where divine things are neglected.

NUNTIUS. In old English practice. A messenger. One who was sent to make an

N excuse for a party summoned, or one who explained as for a friend the reason of a party's absence. Bract. fol. 345. An officer of a court; a summoner, apparitor, or beadle. Cowell.

NUPER OBIIT. Lat. In practice. The name of a writ (now abolished) which, in the English law, lay for a sister co-heiress dispossessed by her coparcener of lands and tenements whereof their father, brother, or any common ancestor died seised of an estate in fee-simple. Fitzh. Nat. Brev. 197.

NUPTIÆ SECUNDÆ. Lat. A second marriage. In the canon law, this term included any marriage subsequent to the first.

NUPTIAL. Pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit. Co. Litt. 33. Not cohabitation but consent makes the marriage.

NURTURE. The act of taking care of children, bringing them up, and educating them.

NURUS. Lat. In the civil law. A son's wife; a daughter-in-law. Calvin.

NYCTHEMERON. The whole natural day, or day and night, consisting of twenty-four hours. Enc. Lond.

O.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OBEDIENTIARIUS. A monastic officer. Du Cange.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

That legal relation subsisting between two persons by which one is bound to the other for a certain performance. The passive relation sustained by the debtor to the creditor is likewise called an "obligation."

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

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

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

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

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

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

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

Obligatio quasi ex contractu. Often persons who have not contracted with each other, under a certain state of facts, are regarded by the Roman law as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a similarity to a contract obligation, is therefore termed "*obligatio quasi ex contractu*." Such a relation arises from the conducting of affairs without authority, (*negotiorum gestio*;) from the management of property that is in common, when the community arose from casualty, (*communis incidens*;) from the payment of what was not due, (*solutio indebiti*;) from tutorship and curatorship; and from taking possession of an inheritance. Mackeld. Rom. Law, § 49L.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OBLIGATION SOLIDAIRE. This, in French law, corresponds to joint and several

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

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

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

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

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

In the law of evidence. Indirect; circumstantial.

OBLITERATION. Erasure or blotting out of written words.

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

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

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

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

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

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

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

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

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

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

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

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

OBSIGNATORY. Ratifying and confirming.

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

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

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

OBSTANTE. Withstanding; hindering. See **NON OBSTANTE**.

OBSTRUCTION. Obligation; bond.

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

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

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

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

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

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

OBTEST. To protest.

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

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

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

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

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

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

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

OCCASIONES. In old English law. Assarts. Spelman.

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

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

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

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

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

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

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

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

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

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

OCCUPARE. In the civil law. To seize or take possession of; to enter upon a vacant possession; to take possession before another. Calvin.

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

OCCUPATION. Possession; control; tenure; use.

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

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

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

OCCUPATIVE. Possessed; used; employed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An officer *de facto* is one whose acts, though he

was not a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the public and third persons. 38 Conn. 449.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

acting in the administration of the charity. Sweet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OMITTANCE. Forbearance; omission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OMNIBUS AD QUOS PRÆSENTES LITERÆ PERVENERINT, SALUTEM.

To all to whom the present letters shall come, greeting. A form of address with which charters and deeds were anciently commenced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ONCUNNE. Accused. Du Cange.

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

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

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

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

ONERATIO. A lading; a cargo.

ONERATUR NISI. See O. NI.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

commence their proceedings is thence termed the "commission day of the assizes." Brown.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The statement by a judge or court of the

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

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

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

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

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

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

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

OPPOSITE. An old word for "opponent."

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

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

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

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

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

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

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

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

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

OPTIMACY. Nobility; men of the highest rank.

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

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

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

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

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

In contracts. An option is a privilege existing in one person, for which he has paid money, which gives him the right to buy certain merchandise or certain specified securities from another person, if he chooses, at any time within an agreed period, at a fixed price, or to sell such property to such other person at an agreed price and time. If the option gives the choice of buying or not buy-

ing, it is denominated a "call." If it gives the choice of selling or not, it is called a "put." If it is a combination of both these, and gives the privilege of either buying or selling or not, it is called a "straddle" or a "spread eagle." These terms are used on the stock-exchange.

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

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

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

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

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

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

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

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

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

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

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

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

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

In Roman law, the term denoted an advocate.

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

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

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

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

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

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

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

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

ORDENAMIENTO DE ALCALA. A collection of Spanish law promulgated by

the Cortes in the year 1348. Schm. Civil Law, Introd. 75.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORIGINAL PROCESS. That by which a judicial proceeding is instituted; process to

compel the appearance of the defendant. Distinguished from "mesne" process, which issues, during the progress of a suit, for some subordinate or collateral purpose; and from "final" process, which is process of execution.

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

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

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

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

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

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

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

N land, namely, that a father should not by his will bequeath the entirety of his personal estate away from his family, but should leave them a third part at least, called the "children's part," corresponding to the "bairns' part" or *legitim* of Scotch law, and also (although not in amount) to the *legitima quarta* of Roman law. (Inst. 2, 18.) This custom of London was abolished by St. 19 & 20 Vict. c. 94. Brown.

ORPHANOTROPHI. In the civil law. Managers of houses for orphans.

ORPHANS' COURT. In American law. Courts of probate jurisdiction, in Delaware, Maryland, New Jersey, and Pennsylvania.

ORTELLI. The claws of a dog's foot. Kitch.

ORTOLAGIUM. A garden plot or hortilage.

ORWIGE, SINE WITÂ. In old English law. Without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *fehth*, or deadly feud, on the part of the family of the slain. Anc. Inst. Eng.

OSTENDIT VOBIS. Lat. In old pleading. Shows to you. Formal words with which a demandant began his count. Fleta, lib. 5, c. 38, § 2.

OSTENSIBLE PARTNER. A partner whose name is made known and appears to the world as a partner, and who is in reality such. Story, Partn. § 80.

OSTENSIO. A tax anciently paid by merchants, etc., for leave to show or expose their goods for sale in markets. Du Cange.

OSTENTUM. In the civil law. A monstrous or prodigious birth. Dig. 50, 16, 38.

OSTIA REGNI. Gates of the kingdom. The ports of the kingdom of England are so called by Sir Matthew Hale. De Jure Mar. pt. 2, c. 3.

OSTIUM ECCLESIAE. In old English law. The door or porch of the church, where dower was anciently conferred.

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

OSWALD'S LAW HUNDRED. An ancient hundred in Worcestershire, so called

from Bishop Oswald, who obtained it from King Edgar, to be given to St. Mary's Church in Worcester. It was exempt from the sheriff's jurisdiction, and comprehends 300 hides of land. Camd. Brit.

OTER LA TOUAILLE. In the laws of Oleron. To deny a seaman his mess. Literally, to deny the table-cloth or victuals for three meals.

OTHESWORTHE. In Saxon law. Oathsworth; oathworthy; worthy or entitled to make oath. Bract. fols. 185, 292b.

OUGHT. This word, though generally directory only, will be taken as mandatory if the context requires it. 49 Mo. 518.

OUNCE. The twelfth part; the twelfth part of a pound.

OURLOP. The hierwite or fine paid to the lord by the inferior tenant when his daughter was debauched. Cowell.

OUST. To put out; to eject; to remove or deprive; to deprive of the possession or enjoyment of an estate or franchise.

OUSTER. In practice. A putting out; dispossession; amotion of possession. A species of injury to things real, by which the wrong-doer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession. 2 Crabb, Real Prop. p. 1063, § 2454a.

OUSTER LE MAIN. L. Fr. Literally, out of the hand.

1. A delivery of lands out of the king's hands by judgment given in favor of the petitioner in a *monstrans de droit*.

2. A delivery of the ward's lands out of the hands of the guardian, on the former arriving at the proper age, which was twenty-one in males, and sixteen in females. Abolished by 12 Car. II. c. 24. Mozley & Whitley.

OUSTER LE MER. L. Fr. Beyond the sea; a cause of excuse if a person, being summoned, did not appear in court. Cowell.

OUT OF COURT. He who has no legal *status* in court is said to be "out of court," *i. e.*, he is not before the court. Thus, when the plaintiff in an action, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to put himself "out of court." Brown.

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

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

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

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

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

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

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

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

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

OUTHOUSE. Any house necessary for the purposes of life, in which the owner does

not make his constant or principal residence, is an outhouse. 2 Root, 516.

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

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

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

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

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

OUTPARTERS. Stealers of cattle. Cowell.

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

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

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

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

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

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

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

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

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

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

OVELTY. In old English law. Equality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OVERTURE. An opening; a proposal.

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

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

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

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

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

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

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

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

He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to

enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. Bouvier.

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

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

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

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

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

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

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

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

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

- N** rage or insurrection in any place. In the United States, the higher criminal courts are called "courts of oyer and terminer." Burrill.
- O** **OYER DE RECORD.** A petition made in court that the judges, for better proof's sake, will hear or look upon any record. Cowell.
- OYEZ.** Hear ye. A word used in courts by the public crier to command attention when a proclamation is about to be made. Commonly corrupted into "O yes."