for security and satisfaction of debts. Elegit is the name of a writ founded on the statute of Westminster 2d, by which, after a plaintiff has recovered judgment for his debt at law, the sheriff gives him possession of one-half the defendant's lands and tenements, to be occupied and enjoyed until his debt and damages are fully paid; and, during the time he so holds them, he is called tenant by elegit.

20. *Why are estates by statute merchant, statute staple, and elegit, chattels and not freeholds?*—161, 162.

Because, though tenants by statute and elegit may hold an estate of inheritance, or for life, *ut liberum tenementum*, until their debt be paid; yet it shall go to their executors, which is inconsistent with the nature of a freehold.

21. *Why do these estates vest in the executors, and not the heir, of the tenant?*—162.

It is probably owing to this, that, being a security and remedy provided for personal debts due to the deceased, to which debts the executor is entitled, the law has, therefore, thus directed their succession; as judging it reasonable, from a principle of natural equity, that the security and remedy should be vested in those to whom the debts, if recovered, would belong.

CHAPTER XI.

OF ESTATES IN POSSESSION, REMAINDER, AND REVERSION.

1. *What may estates be with respect to the time of their enjoyment?*—163.

They may be either in possession, or in expectancy.

2. *What sorts of expectancies are there and how are they created?*—163.

Remainder and reversion. The one is created by the act of the parties; the other by act of law.

3. *What is the difference between estates executed and estates executory?*—163.

Those executed are in possession, whereby a present interest passes to and resides in the tenant; estates executory depend on some subsequent circumstance or contingency.

4. *What is an estate in remainder?*—164.

An estate in remainder may be defined to be an estate limited to take effect, and be enjoyed, after another estate is determined.

5. *When lands are granted to A for twenty years, with remainder to B and his heirs for ever, are there not two estates?*—164.

Both these interests are, in fact, but one estate; A is tenant for years, remainder to B in fee.

6. *What are the rules laid down by law, to be observed in the creation of remainders?*—165–168.

1st. There must necessarily be some particular estate, precedent to the estate in remainder.

2d. The remainder must commence, or pass out of the grantor, at the time of the creation of the particular estate.

3d. The remainder must vest in the grantee during the continuance of the particular estate, or *eo instanti* that it determines.

7. *What is the particular estate?*—165.

The precedent estate is called the particular estate, as being only a small part, or *particula*, of the inheritance.

8. *Why cannot an estate of freehold be created to commence* in futuro?—166.

Because, at common law, no freehold in lands could pass without livery of seizin, which must operate either immediately, or not at all.

9. *Is a remainder an estate commencing* in præsenti *or* in futuro?—166.

It is, to all intents and purposes, an estate commencing *in præsenti*, though to be occupied and enjoyed *in futuro*.

10. *What particular estate will not support a remainder over?*—166, 167.

A lease at will is held not to be such a particular estate as will support a remainder over. For an estate at will is of a nature so slender and precarious, that it is not looked upon as a portion of the inheritance; and a portion must first be taken out of it, in order to constitute a remainder.

11. *If the particular estate is void, or afterward defeated, is the remainder defeated?*—167.

Yes; as where the particular estate is an estate for the life of a person not *in esse;* or an estate for life on condition, on breach of which the grantor enters and avoids the estate.

12. *Must the remainder and particular estate pass out of the grantor at the same time?*—167.

Yes; they must commence, or pass out of the grantor, at the same time.

13. *Must the remainder vest instantly upon the determination of the particular estate?*—168.

It must vest in the grantee during the continuance of the particular estate, or *eo instanti* that it determines.

14. *Of what sorts are remainders?*—168.

They are either vested or contingent.

15. *What are vested or executed remainders?*—168, 169.

They are where the estate is invariably fixed, to remain to a determinate person, after the particular estate is spent.

16. *When are remainders contingent, or executory?*—169.

When the estate is limited to take effect, either to a dubious and uncertain person, or upon a dubious or uncertain event.

17. *How must contingent remainders, to a person not in being, be limited?*—170.

They must be limited to some one that may, by common possibility, or *potentia propinqua,* be *in esse* at or before the particular estate determines.

18. *How is this explained?*—169, 170.

If an estate be made to A for life, remainder for heirs of B, if A dies before B, the remainder is at an end; for during B's life he has no heir, "*nemo est hæres viventis;*" but if B dies first, the remainder then immediately vests in his heirs, who will be entitled to the land on the death of A. This is a good contingent remainder, for the possibility of B's dying before A is *potentia propinqua,* and therefore allowed in law. But a remainder to the right heirs of B, (if there be no such person as B *in esse,*) is void. For here there must two contingencies happen; first, that such a person as B shall be born; and secondly, that he shall also die during the continuance of the particular estate; which make it *potentia remotissima,* a most improbable possibility.

19. *Why cannot a contingent remainder of freehold be limited on a particular estate less than freehold?*—171.

Because, unless the freehold passes out of the grantor at the time when the remainder is created, such freehold remainder is void: it cannot pass out of him without vesting somewhere, and, in the case of a contingent remainder, it must vest in the particular tenant, else it can vest nowhere.

20. *How may contingent remainders be defeated?*—171.

By destroying, or determining, the particular estate upon which they depend, before the contingency happens whereby they become vested.

21. *Is there a way of preventing this defeat?*—171.

Yes; trustees may be appointed to preserve the contingent remainders.

22. *What is an executory devise?*—172.

An executory devise of lands is such a disposition of them by will, that thereby no estate vests at the death of the devisor, but only on some future contingency.

23. *In what points does it differ from a remainder?*—172, 173.

1st. It needs not any particular estate to support it. 2d. By

it a fee-simple, or other less estate, may be limited after a fee-simple. 3d. By this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same.

24. *Why may a devise of freehold commence* in futuro?—173.

Because, a freehold may pass by devise, without corporeal tradition, or livery of seizin.

25. *Within what period must an executory devise take effect?*—174.

The utmost length of time that has been hitherto allowed for the contingency of an executory devise to happen in, is that of a life or lives in being, and one and twenty years afterward.

26. *What is an estate in reversion?*—175.

An estate in reversion is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. Sir Edward Coke describes a reversion to be the returning of land to the grantor or his heirs after the grant is over.

27. *From whence is the doctrine of reversions derived?*—175.

It is plainly derived from the feodal constitution.

28. *What are the usual incidents to a reversion?*—176.

Fealty and rent.

29. *What is the doctrine of merger?*—177.

Whenever a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated; or, is said, in law phrase, to be merged, that is, sunk or drowned in the greater.

CHAPTER XII.

OF ESTATES IN SEVERALTY, JOINT-TENANCY, COPARCENARY, AND COMMON.

1. *How may estates, with respect to the number and connections of their owners, be held?*—179.

They are held in four different ways: in severalty, in joint-tenancy, in coparcenary, and in common.

2. *What is an estate in severalty?*—179.

A tenant in severalty is he that holds lands in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein.

3. *What is an estate in joint-tenancy?*—179.

An estate in joint-tenancy is where lands or tenements are granted to two or more persons, to hold in fee-simple, fee-tail, for life, for years, or at will. It is sometimes called an estate in jointure.

4 *How may this estate be created?*—180.

Its creation depends upon the wording of the deed, or devise, by which the tenants claim title; for this estate can only arise by purchase or grant, that is, by the act of the parties, and never by the mere act of law.

5 *From what are the properties of a joint estate derived?*—180.

From its unity, which is fourfold: the unity of interest, the unity of title, the unity of time, and the unity of possession.

6. *What is meant by unity of interest?*—181.

That one joint-tenant cannot be entitled to one period of duration or quantity of interest in lands, and the other to a different.

7. *What is meant by unity of title?*—181.

The estates of joint-tenants must be created by one and the

same act, whether legal or illegal; as, by one and the same grant, or by one and the same dis-seizin.

8. *What is meant by unity of time?*—181.

The estates of joint-tenants must be vested at one and the same period, as well as by one and the same title.

9. *What is meant by unity of possession?*—182.

Joint-tenants are said to be seized *per my et per tout*, by the half or moiety, and by all; that is, they each of them have the entire possession, as well of every parcel as of the whole.

10. *If an estate in fee be given to a man and his wife, are they joint-tenants, or tenants in common?*—182.

They are neither properly joint tenants, nor tenants in common; for husband and wife being considered as one person in law, they cannot take the estate by moieties, but both are seized of the entirety, *per tout et non per my;* the consequence of which is, that neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor.

11. *What is the doctrine of survivorship?*—183, 184.

When two or more persons are seized of a joint estate of inheritance, or are jointly possessed of any chattel interest, the entire tenancy remains to the survivors, and at length to the last survivor. This is the nature and regular consequence of the union and entirety of their interest.

12. *Why cannot the king, or any corporation, be joint-tenant with a private person?*—184.

Because the right of survivorship, *jus accrescendi*, ought to be mutual; and the private person has not even the remotest chance of being seized of the entirety, by benefit of survivorship, for the king and the corporation can never die.

13. *How may an estate in joint-tenancy be severed and destroyed?*—185.

By destroying any of its constituent unities; as, by merely disuniting the joint-possession, as if joint-tenants agree to part

their lands and hold them in severalty, or by destroying the unity of title, as if one joint-tenant alienes and conveys his estate to a third person; or, by destroying the unity of interest, as if there be two joint-tenants for life, and the inheritance is purchased by or descends upon either, it is a severance of the jointure.

14. *Why is a devise of one joint-tenant's share by will, no severance of the jointure?*—186.

Because no testament takes effect till after the death of the testator, and by such death the right of the survivor (which accrued at the original creation of the estate, and has therefore, a priority to the other,) is already vested.

15. *When is it disadvantageous for joint-tenants to dissolve the jointure?*—187.

In the case of joint-tenants for life, and they make partition; for though before they each of them had an estate in the whole, for their own lives and the life of their companion, now they have an estate, in a moiety only, for their own lives merely; and on the death of either, the reversioner shall enter on his moiety.

16. *What is an estate in coparcenary?*—187.

An estate held in coparcenary is where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law, or by particular custom.

17. *Who are parceners by common law?*—187.

Where a person seized in fee-simple or fee-tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they shall all inherit; and these coheirs are called parceners.

18. *Who are parceners by particular custom?*—187.

Where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, &c., such coheirs are parceners by particular custom. All the parceners, put together, make but one heir, and have but one estate among them.

19. *What are the properties of estate in coparcenary?*—188.

The properties of parceners are in some respects like those of joint-tenants; they have the same unities of interest, title, and possession; they may sue and be sued jointly, for matters relating to their own lands; and the entry of one of them shall, in some cases, inure as the entry of them all.

20. *In what respects do parceners differ from joint-tenants?*—188.

First, they always claim by descent, whereas joint-tenants always claim by purchase. Secondly, there is no unity of time necessary to an estate in coparcenary. Thirdly, parceners, though they have a unity, have not an entirety of interest. Fourthly, in that they may be constrained to make partition.

21. *How may parceners make partition?*—189.

There are five methods of making it: First, where they agree to divide the lands in equal parts. Second, where they agree to choose some friend to make a partition for them. Third, where the eldest divides, and then she shall choose the last; for the rule of law is, *cujus est divisio alterius est electio.* Fourth, where the sisters agree to cast lots for their shares. Fifth, where one or more sue out a writ of partition against the others.

22. *What things are in their nature impartible?*—190.

The mansion house, common of estovers, common of piscary uncertain, or any other common without stint, shall not be divided.

23. *What becomes of them?*—190.

The eldest sister, if she pleases, shall have them, and make the others a reasonable satisfaction in the other parts of the inheritance; or, if that cannot be, then they shall have the profits of the thing by turns.

24. *What is the law of hotch-pot, incident to this estate?*—190, 191.

It is, in the words of Littleton, as follows: "It seems that this word hotch-pot, is in English, a pudding; for in a pudding is not commonly put one thing alone, but one thing with other things together." By this housewifery metaphor, our ancestors meant to inform us that the lands, both those given in frank-

marriage and those descending in fee-simple, should be mixed and blended together, and then divided in equal portions among the daughters. But this was left to the choice of the donee in frankmarriage.

25. *Who are tenants in common?*—191.

Tenants in common are such as hold by several and distinct titles, but by unity of possession; because none knoweth his own severalty, and, therefore, they all occupy promiscuously.

26. *Is unity of interest, of title, and of time, necessary to tenancy in common?*—191.

No; unity of possession, only, is necessary to it.

27. *How may tenancy in common be created?*—192, 193.

Either by the destruction of the two other estates, joint-tenancy and coparcenary, or by special limitation in a deed.

28. *Does the law, in its constructions, favor joint-tenancy, or tenancy in common?*—193.

It is apt to favor joint-tenancy rather than tenancy in common.

29. *What are the incidents attending tenancy in common?*—194.

Tenants in common (like joint-tenants) are compellable, by the statutes of Henry VIII. and William III. to make partition of their lands, which they were not at common law. They properly take by distinct moieties, and have no entirety of interest. Their other incidents are such as merely arise from unity of possession; and are, therefore, the same as appertain to joint-tenants.

30. *How can estates in common be dissolved?*—194.

In two ways: 1. By uniting all the interests and titles in one tenant, by purchase or otherwise. 2. By making partition between the several tenants in common.

31. *In what do tenancies in common differ from sole estates?*—195.

In nothing, but merely the blending and unity of possession.

CHAPTER XIII.

OF THE TITLE TO THINGS REAL, IN GENERAL.

1. *What is a title?*—195.

A title is the means whereby the owner of lands hath the just possession of his property.

2. *What are the several stages or degrees necessary to form a complete title to lands and tenements?*—195–199.

They are, progressively: 1st. Naked possession; 2d. Right of possession; 3d. Right of property; 4th. A complete title.

3. *What is the lowest and most imperfect degree of title?*—195.

The mere naked possession, or actual occupation of the estate; without any apparent right, or any shadow or pretence of right, to hold and continue such possession.

4. *Does actual possession confer title?*—196.

No; it is only *prima facie* evidence of a legal title in the possessor.

5. *When may naked possession of lands happen?*—195.

When, for instance, one man invades the possession of another, and by force or surprise turns him out of the occupation of his lands; which is termed a *dis-seizin.*

6. *May actual possession ripen into title?*—196.

It may, by length of time, and negligence of him who hath the right, by degrees ripen into a perfect and indefeasible title.

7. *Of what sorts is the right of possession?*—196.

An apparent right of possession, which may be defeated by proving a better; and an actual right of possession, which will stand the test against all opponents.

8. *What is the right of property?*—197.

The mere right of property, *jus proprietatis,* without either possession, or even the right of possession, is frequently spoken of under the name of the mere right, *jus merum.* A person with this mere right, may have the true ultimate property of the lands in himself; but by the intervention of certain circumstances, either by his own negligence, the solemn act of his ancestor, or the determination of a court of justice, the presumptive evidence of that right is strongly in favor of his antagonist, who has thereby obtained the absolute right of possession. By proving such better right, he may at length recover the lands.

9. *When is title complete?*—199.

No title is completely good, unless the right of possession be joined with the right of property. When to this double right the actual possession also is united, then is the title completely legal.

CHAPTER XIV.

OF TITLE BY DESCENT.

1. *What are the methods of acquiring on the one hand, and of losing on the other, the title to estates in things real?*—201.

They may be acquired by descent, where the title is vested in a man by the single operation of the law; and by purchase, where the title is vested in him by his own act or agreement.

2. *What is title by descent?*—201.

Title by descent, or hereditary succession, is where a man, on the death of his ancestor, acquires his estate by right of representation, as his heir at law. An heir, therefore, is he upon whom the law casts the estate immediately on the death of the ancestor; and an estate, so descending to the heir, is in law called the inheritance.

3. *What is to be said as to the importance of the doctrine of descents?*—201.

That it is the principal object of the laws of real property, in England.