10. *May a feme covert purchase an estate without the consent of her husband?*—293.

She may purchase an estate without his consent, and the conveyance is good during the coverture, till he avoids it by some act declaring his dissent. And, though he does nothing to avoid it, or even if he actually consents, the feme covert herself may, after the death of her husband, waive or disagree to the same; nay, even her heirs may waive it after her, if she dies before her husband, or if in her widowhood she does nothing to express her consent or agreement.

11. *What only can an alien purchase and hold?*—293.

He may purchase anything; but after purchase he can hold nothing, except a lease for years of a house for convenience of merchandise.

12. *What are the legal evidences of alienation, or transfer of property, styled?*—294.

The common assurances of the kingdom; whereby every man's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed.

13. *Of what kinds are these common assurances?*—294.

They are of four kinds: 1. By matter *in pais*, or deed; which is an assurance transacted between two or more private persons *in pais*, in the country; that is, according to the old common law, upon the very spot to be transferred.

2. By matter of record, or an assurance transacted only in the king's public courts of record.

3. By special custom, obtaining in some particular places, and relating only to some particular species of property.

4. By devise, contained in a last will and testament.

CHAPTER XX.

OF ALIENATION BY DEED.

1. *What is a deed?*—295.

A deed is a writing sealed, and delivered, by the parties.

2. *What is an indenture?*—295.

Formerly, when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with some words or letters of the alphabet written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part, and half on the other. But at length indenting only has come into use; without cutting through any letters at all; and it seems at present to serve for little other purpose than to give name to the species of deed.

3. *Which is the original, and which the counterpart, of a deed?*—296.

When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original; and the rest are counterparts.

4. *What is a deed-poll?*—296.

It is a plain deed, made by one party only, not indented, but polled or shaved quite even; and, therefore, called a deed-poll, or a single deed.

5. *What are the requisites of a deed?*—296–308.

They are eight: 1st. There must be persons able to contract and be contracted with, for the purposes intended by the deed; and also a thing, or subject matter, to be contracted for; all which must be expressed by sufficient names.

2d. The deed must be founded upon good and sufficient consideration.

3d. The deed must be written or printed, on paper or parchment.

4th. The matter written must be legally and orderly set forth.

5th. The deed must be read, if any of the parties desire it.

6th. The party whose deed it is should seal and sign it.

7th. It must be delivered by the party himself, or his certain attorney.

8th. It must be attested, or executed, in the presence of witnesses.

6. *What are the usual formal and orderly parts of a deed?*—298-304.

They are eight: 1st. The premises. 2d. The habendum. 3d. The tenendum. 4th. The reddendum. 5th. The conditions. 6th. Warranty. 7th. Covenants or conventions. 8th. The conclusion.

7. *What are the premises in a deed?*—298.

The premises may be used to set forth the number and names of the parties, with their additions or titles.

8. *What are the habendum and tenendum?*—298, 299.

The office of the habendum is properly to determine what estate or interest is granted by the deed.

The tenendum, "and to hold," is now of very little use, and is only kept in by custom.

9. *What is the reddendum?*—299.

The reddendum is a reservation, whereby the grantor doth create or reserve some new thing to himself out of what he had before granted, or rent.

10. *What is a condition?*—299.

It is a clause of contingency, on the happening of which the estate granted may be defeated.

11. *What is the clause of warranty?*—300.

It is that part whereby the grantor doth, for himself and his heirs, warrant and secure to the grantee the estate so granted.

12. *What was the origin of express warranties?*—301.

They were introduced in order to evade the strictness of the feodal doctrine of non-alienation without the consent of the heir.

13. *What is an express warranty?*—301.

It is a kind of covenant real, and can only be created by the verb *warrantizo*, or warrant.

14. *What is the difference between lineal and collateral warranty?*—301, 302.

Lineal warranty was where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty.

Collateral warranty was where the heir's title to the land neither was, nor could have been derived, from the warranting ancestor.

15. *In case the warrantee was evicted, what was the obligation of the heir?*—302.

To yield him other lands instead of those from which the warrantee has been evicted.

16. *What are covenants?*—304.

They are clauses of agreement contained in a deed.

17. *What is a covenant real?*—304.

If the covenantor covenants for himself and his heirs, it is then a covenant real, and descends upon the heirs, who are bound to perform it, provided they have assets by descent, but not otherwise; if he covenants also with his executors and administrators, his personal assets, as well as his real, are likewise pledged for the performance of the covenant; which makes such covenant a better security than any warranty.

18. *Of what does the conclusion of a deed consist?*—304.

It mentions the execution and date of the deed, or the time of its being given or executed, either expressly, or by reference to some day and year before mentioned.

19. *Is a deed good with no date, or a false one?*—304.

It is good, provided the real day of its being dated or given, that is, delivered, can be proved.

20. *When is the reading of it necessary for making a good deed?*—304.

When any of the parties desire it; and if it be not done on his request, the deed is void as to him. If he be blind or illiterate, another must read it to him.

21. *What if the deed be read falsely?*—304.

It will be void, at least for so much as is mis-recited; unless it be agreed, by collusion, that the deed shall be read false, on purpose to make it void, for in such a case it shall bind the fraudulent party.

22. *Is it necessary to sign as well as seal a deed?*—305, 306.

Signing seems to be, now, as necessary as sealing, though it hath been sometimes held that the one includes the other.

23. *By whom must the delivery of a deed be made?*—306, 307.

By the party himself, or his certain attorney.

24. *When does a deed take effect?*—307.

It takes effect only from its tradition or delivery; for if the date be false or impossible, the delivery ascertains the time of it.

25. *When is the delivery absolute?*—307.

When made to the party, or grantee, himself.

26. *What is the delivery as an escrow?*—307.

A delivery to a third person, to hold till some conditions be performed on the part of the grantee, is a delivery as an escrow; that is, as a scrowl or writing, which is not to take effect as a deed till the conditions be performed; and then it is a deed to all intents and purposes.

27. *What is the attestation of a deed?*—307.

It is the execution of it in the presence of witnesses.

28. *Of what use is this attestation?*—307, 308.

It is necessary rather for preserving the evidence, than for constituting the essence of the deed.

29. *What is the practice as to witnesses signing the deed?*—307, 308.

Ever since the reign of Henry VIII. the witnesses have usually subscribed their attestation, either at the bottom, or on the back of the deed.

30. *When is a deed void* ab initio?—308, 309.

When it wants either of these essential requisites:

1. Proper parties and a proper subject matter.
2. A good and sufficient consideration.
3. Writing on paper or parchment duly stamped.
4. Sufficient and legal words, properly disposed.
5. Reading, if desired, before the execution.
6. Sealing; and, by the statute, in most cases signing also.
7. Delivery.

31. *How may a deed be avoided by matter* ex post facto?—308, 309

1. By rasure, interlining, or other alteration in any material part unless properly noted. 2. By breaking off or defacing the seal. 3. By delivering it up to be cancelled. 4. By the disagreement of such, whose concurrence is necessary in order for the deed to stand. 5. By the judgment or decree of a court of judicature. In any of these cases the deed may be voided, either in part or totally, according as the cause of avoidance is more or less extensive.

32. *What species of deeds are generally used in the alienation of real estate?*—309.

Conveyances, commonly so called; which are either conveyances at common law, or such as receive their force and efficacy by virtue of the statute of uses.

33. *How are conveyances by the common law divided?*—309.

Some may be called original or primary conveyances, which are those by means whereof the benefit, or estate, is created, or first arises; others are derivative, or secondary, whereby the benefit, or estate, originally created, is enlarged, restrained, transferred, or extinguished.

34. *What are the original conveyances; and what the derivative conveyances?*—310.

The former are: 1. Feoffment; 2. Gift; 3. Grant; 4. Lease; 5. Exchange; 6. Partition.

The latter are: 1. Release; 2. Confirmation; 3. Surrender; 4. Assignment; 5. Defeasance.

35. *What is a feoffment?*—310.

It is a gift of any corporeal hereditament to another.

36. *What is necessary to the perfection of a feoffment?*—311.

Livery of seizin; without which the feoffee has but a mere estate at will.

37. *What if an heir dies before entry made?*—312.

His heir shall not be entitled to take the possession, but the heir of the person who was the last actually seized.

38. *By what delivery is conveyance of copyhold estates made?*—313.

To this day, it is usually made by the seller to the lord or his steward, by delivery of a rod or verge; and then, from the lord to the purchaser, by re-delivery of the same, in the presence of a jury of tenants.

39. *What is necessary, by the common law, to be made upon every grant of an estate of freehold in hereditaments corporeal?*—314.

Livery of seizin is necessary.

40. *Is livery of seizin necessary in leases for years, or other chattel interests?*—314.

It is not necessary; but, in leases for years, an actual entry is necessary, to vest the estate in the lessee, for the bare lease gives him only a right of entry.

41. *Can livery of seizin be made in grants of hereditaments incorporeal?*—314.

There it is impossible to make it; for hereditaments incorporeal are not objects of the senses.

42. *Why cannot freeholds be made to commence* in futuro?—314.

Because they cannot, at the common law, be made but by livery of seizin, which, being an actual manual tradition of the land, must take effect *in præsenti*, or not at all.

43. *Of what kinds is livery of seizin?*—315.

Two: it is either in deed, or in law.

44. *How is livery in deed performed?*—315.

The feoffor, lessor, or his attorney, if it be of land, delivers to the feoffee, all other persons being out of the ground, a clod or turf, or a twig or bough there growing, with words to this effect: "I deliver these to you in the name of seizin of all the lands and tenements contained in this deed." But if it be a house, the feoffor must take the ring, or latch, of the door, the house being quite empty, and deliver it to the feoffee in the same form.

45. *What is livery in law?*—316.

It is where the same is not made on the land, but in sight of it only; the feoffor saying to the feoffee, "I give you yonder land; enter and take possession."

46. *What is the conveyance by gift,* donatio?—316.

It is properly applied to the creation of an estate-tail, as feoffment is to that of an estate in fee, and lease to that of an estate for life or years. It differs in nothing from a feoffment, but in the nature of the estate passing by it.

47. *What are grants,* concessiones?—317.

They are the regular method, by the common law, of transferring the property of incorporeal hereditaments, or such things whereof no livery can be had.

48. *What is a lease?*—317, 318.

A lease is, properly, a conveyance of any lands or tenements (usually in consideration of rent, or other annual recompense), made for life, for years, or at will, but always for a less time than the lessor hath in the premises; for if it be for the whole interest, it is more properly an assignment than a lease.

49. *To what species of leases is livery of seizin incident and necessary?*—318.

To leases for life of corporeal hereditaments; but to no other.

50. *Who may make leases?*—319, 320.

By the common law, all persons seized of any estate might let leases, to endure so long as their own interest lasted. Now, by restraining and enabling statutes, this power is restrained or enlarged.

51. *What is an exchange?*—323.

An exchange, at common law, is a mutual grant of equal interests, the one in consideration of the other.

52. *Is livery of seizin, or entry, necessary in order to perfect the grant in exchange?*—323.

No livery of seizin, even in exchanges of freehold, is necessary to perfect the conveyance; but entry must be made on both sides.

53. *What is partition?*—323.

It is when two or more joint-tenants, coparceners, or tenants in common, agree to divide the lands so held among them in severalty, each taking a distinct part.

54. *Can partition be made by parol only?*—324.

By the common law, coparceners might have made it by parol only; but joint-tenants and tenants in common must have done it by deed.

55. *What are releases?*—324.

They are a discharge or conveyance of a man's right in lands or tenements, to another that hath some former estate in possession.

56. *How may releases enure?*—324, 325.

They may enure: 1st. By way of enlarging an estate. 2d. By way of passing an estate. 3d. By way of passing a right. 4th. By way of extinguishment. 5th. By way of entry and feoffment.

57. *What is a confirmation?*—325, 326.

It is of a nature nearly allied to a release. Sir Edward Coke defines it to be a conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unvoidable; or whereby a particular estate is increased; and the words of it are these, "have given, granted, ratified, approved, and confirmed."

58. *What is a surrender?*—326.

A surrender, *sursumredditio*, or rendering up, is of a nature directly opposite to a release; for, as that operates by the greater estate descending upon the less, a surrender is the falling of a less estate into a greater.

59. *Why is there not occasion for livery of seizin in a surrender?*—326.

Because there is a privity of estate between the surrenderor and the surrenderee; the one's particular estate, and the other's remainder, are one and the same estate; and livery having been once made at the creation of it, there is no necessity for having it afterward.

60. *What is an assignment?*—326, 327.

An assignment is, properly, a transfer, or making over to another, of the right one has in any estate; but it is usually applied to an estate for life or years; and it differs from a lease only in this; that by a lease one grants an interest less than his own, reserving to himself a reversion; in assignments he parts with the whole property.

61. *What is a defeasance?*—327.

A defeasance is a collateral deed, made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated, or totally undone.

62. *What are uses?*—327, 328.

Uses and trusts are, in their origin, of a nature very similar, or, rather, exactly the same. A use is a confidence reposed in another, who was tenant of the land, or terre-tenant, that he should dispose of the land according to the intentions of *cestuy*

que use, or him to whose use it was granted, and suffer him to take the profits.

63. *How and when were uses introduced?*—328.

The notion was transplanted into England from the civil law, about the close of the reign of Edward III., to evade the statutes of mortmain by obtaining grants of lands, not to the religious houses directly, but to the use of the religious houses.

64. *What distinctions grew up with reference to the use itself, or interests of* cestuy que use?—330, 331.

Many elaborate distinctions: 1. It was held that nothing could be granted to a use whereof the use is inseparable from the possession. 2. A use could not be raised without a sufficient consideration. 3. Uses were descendible, according to the rules of the common law in the case of inheritances in possession. 4. Uses might be assigned by secret deeds, between the parties, or be devised by last will and testament. 5. Uses were not liable to any of the feodal burdens. 6. No wife could be endowed, or husband have his curtesy, of a use. 7. A use could not be extended by writ of *elegit*, or other legal process, for the debts of *cestuy que use*.

65. *How were uses finally transferred into possession?*—332.

By the statute 27 Henry VIII., c. 10, which is usually called the statute of uses. The statute "executes" the use, as it is termed.

66. *How are the old uses continued?*—336.

The doctrine of uses was revived under the denomination of trusts.

67. *How do the courts now consider a trust estate?*—337.

As equivalent to the legal ownership; governed by the same rules of property, and liable to every charge in equity which the other is subject to in law.

68. *To what species of conveyance has that to uses now given way?*—337.

To the covenant to stand seized to uses, by which a man,

seized of lands, covenants, in consideration of blood or marriage, that he will stand seized of the same, to the use of his child, wife, or kinsman, for life, in tail, or in fee. Here the statute executes at once the estate. But this conveyance can only operate when made upon consideration of blood or marriage.

69. *What other principal species of conveyance was introduced by the statute of uses?*—338.

That of a bargain and sale of lands.

70. *What others were so introduced?*—339.

1. The conveyance by lease and release. 2. Deeds to lead or declare uses. 3. Deeds of revocation of uses.

71. *What are the deeds used, not to convey, but to charge or discharge lands?*—340.

Obligations or bonds; recognizances; and defeasances.

72. *What is an obligation, or bond?*—340.

It is a deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to another at a day appointed. If this be all, the bond is called a single one, *simplex obligatio;* but there is generally a condition added, that, if the obligor does some particular act, the obligation shall be void.

73. *On the forfeiture of a bond, or its becoming single, what sum is recoverable?*—341.

The principal, interest, and expenses, in case the forfeiture accrued by non-payment of money borrowed, and the damages sustained upon non-performance of covenants, and the like. The whole penalty was formerly recoverable at law.

74. *What is a recognizance?*—341.

A recognizance is an obligation of record, which a man enters into before some court of record, or magistrate duly authorized, with condition to do some particular act.

75. *What is a defeasance?*—342.

A defeasance on a bond, or recognizance, or judgment re-

covered, is a condition which, when performed, defeats or undoes it, and discharges the estate of the obligor.

76. *What species of conveyance is most in use?*—343.

The conveyance to uses is by much the most frequent of any.

77. *What palpable defect is there in the conveyance to uses?*—343.

The want of sufficient notoriety, so that purchasers or creditors cannot know, with any absolute certainty, what the estate and the title to it in reality are, upon which they are to lay out, or to lend, their money.

78. *How far does a system of registry prevail in England?*—343.

Only in the counties of York and Middlesex.

CHAPTER XXI.

OF ALIENATION BY MATTER OF RECORD.

1. *What are assurances by matter of record?*—344.

Assurances by matter of record are such as do not entirely depend on the act or consent of the parties themselves; but the sanction of a court of record is called in to substantiate, preserve, and be a perpetual testimony of the transfer of property from one man to another; or of its establishment, when already transferred.

2. *What are they?*—344.

1st. Private acts of parliament. 2d. The king's grants. 3d. Fines. 4th. Common recoveries.

3. *How are private acts of parliament a mode of assurance?*—344.

In many cases, the power of Parliament is necessarily called in to unfetter an estate, to give its tenants reasonable powers, or

to assure it to a purchaser against remote or latent claims of infants or disabled persons, by a particular law enacted for the purpose.

4. *How is such an act regarded?*—346.

It is looked upon rather as a private conveyance, than as the solemn act of the legislature. It is a mere private statute, and is not printed or published among the other laws of the session. No judge or jury is bound to take notice of it, unless the same be specially set forth and pleaded to them. It remains, however, enrolled among the public records of the nation, to be forever preserved as a perpetual testimony of the conveyance, or assurance, so made or established.

5. *How are the king's grants made?*—346.

They are contained in charters, or letters patent, that is, open letters, *literæ patentes*.

6. *What is a fine of lands and tenements?*—348.

It is an acknowledgment of a feoffment on record, and may be described to be an amicable composition or agreement of a suit, either actual or fictitious, by leave of the king or his justices, whereby the lands in question become, or are acknowledged to be, the right of one of the parties.

7. *What was the origin of a fine?*—349.

In its origin, it was founded on an actual suit, commenced at law for recovery of the possession of land or other hereditaments; and the possession thus gained, by composition, was found to be so sure and effectual, that fictitious actions were, and continue to be, every day commenced for the sake of obtaining the same security.

8. *Why is a fine so called?*—349.

Because it puts an end, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter.

9. *What classes of persons are bound by a fine?*—355.

Parties, privies, and strangers.