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.

10. *What is necessary in order to make a fine of any avail?*—356.

That the parties should have some interest or estate in the lands to be affected by it.

11. *What is the nature of a common recovery?*—357.

A common recovery is so far like a fine, that it is a suit or action, either actual or fictitious; and in it the lands are recovered against the tenant of the freehold; which recovery being a supposed adjudication of the right, binds all persons, and vests a free and absolute fee-simple in the recoveror.

12. *Why is the issue in tail held to be barred by a common recovery?*—360.

The supposed recompense, of equal value, is the reason.

13. *In what light have our modern courts of justice considered common recoveries?*—360.

Only as a formal mode of conveyance by which tenant in tail is enabled to alien his lands.

14. *By what deeds may the uses of a fine or recovery be applied and directed?*—363.

By deeds to lead, or to declare, the uses of fines, or of recoveries.

CHAPTER XXII.

OF ALIENATION BY SPECIAL CUSTOM.

1. *To what are assurances by special custom confined?*—365.

To copyhold lands, and such customary estates as are holden in ancient demesne, or in manors of a similar nature.

2. *How are copyhold lands, and such customary estates, transferred?*—365.

Generally by surrender.

3. *What is a surrender?*—366.

Surrender, *sursumredditio*, is giving the estate into the hands of the lord, for such purposes as in the surrender are expressed

4. *Are surrenders of feodal origin?*—366.

They are.

5. *May a copyhold estate be transferred by any other assurance?*—367.

It cannot. No feoffment or grant has any operation thereupon.

6. *How may the copyholder devise his estate?*—367, 368.

He must surrender it to the use of his last will and testament; and, in his last will, he must declare his intentions, and name a devisee, who will then be entitled to admission.

7. *What are the several parts of the assurance by surrender?*—368.

Its parts are three: the surrender, the presentment, and the admittance.

8. *What part of it, in effect, is the surrender?*—368.

A surrender by an admittance, subsequent whereto the conveyance is to receive its perfection and confirmation, is rather a manifestation of the alienor's intention, than a transfer of any interest in possession.

9. *What if the lord refuse to admit the nominee?*—369.

He may be compelled to admit him by a bill in chancery, or mandamus; for he cannot, either by force or fraud, be deprived, or deluded, of the effect and fruits of the surrender.

10. *Can the surrenderor retract, or defeat, his grant?*—369.

He cannot.

11. *What is admittance?*—370.

It is the last stage, or perfection, of copyhold assurances.

12. *Of what sorts is admittance?*—370.

Of three sorts: 1 Admittance upon a voluntary grant from

the lord; 2. An admittance upon surrender by the former tenant; 3. An admittance upon a descent from the ancestor.

13. *To what is the lord bound in admittances upon a voluntary grant?*—370.

Even upon a voluntary grant from the lord, when copyhold lands have escheated or reverted to him, he is considered as an instrument. For though it is in his power to keep the lands in his own hands, or to dispose of them at his pleasure, by granting an absolute fee-simple, a freehold, or a chattel interest therein, and quite to change their nature from copyhold to socage tenure; yet, if he will continue to dispose of them as copyhold, he is bound to observe the ancient custom precisely in every point.

14. *Is it in the election of heirs of a copyhold to be admitted or not?*—372.

The heirs of copyholders are enforced, in every manor, to come into court, and be admitted according to the custom.

CHAPTER XXIII.

OF ALIENATION BY DEVISE.

1. *What is meant by devise?*—373.

By devise, is meant the disposition contained in a man's last will and testament.

2. *When did the restraint of devising lands take place?*—373.

Before the conquest, lands, it is clear, were devisable by will, but upon the introduction of the military tenures, the restraint upon devising lands naturally took place, as a breach of the feodal doctrine of non-alienation without the consent of the lord.

3. *What is the common law as to devises by will?*—374.

By the common law of England since the conquest, no estate, greater than for a term of years, could be disposed of by

testament; except only in Kent, and in some ancient burghs, and a few particular manors.

4. *What may be devised?*—375, 376.

When the statute of uses had annexed the possession to the use, uses, being now the very land itself, became no longer devisable. The "Statute of Wills," (32 Henry VIII., c. 1, explained by 34 Henry VIII., c. 5,) however, enacted that all persons being seized in fee-simple, except femes covert, infants, &c., might by will and testament devise to any other person, except to bodies corporate, two-thirds of their lands, tenements, and hereditaments held in chivalry, and the whole of those held in socage: which now, through the alteration of tenures by the statute of Charles II., amount to the whole of their landed property, except their copyhold tenements.

5. *Why were corporations excepted in the statute of wills?*—376.

To prevent the extension of gifts in mortmain.

6. *How may a will be revoked?*—376.

By burning, canceling, tearing, or obliterating it by the devisor, or in his presence with his consent; or impliedly by marriage and birth of a child.

7. *How is a will of lands now considered by the courts of law?*—378.

Not so much in the nature of a testament, as a conveyance declaring the uses to which the land shall be subject.

8. *In what respect do devises affecting lands and testaments of personal chattels differ?*—378.

There is this distinction: the latter will operate upon whatever the testator dies possessed of; the former only upon such real estates as were his at the time of executing and publishing his will.

9. *What are general rules and maxims, in construing deeds and wills, as laid down by the courts of justice?*—379–382.

They are as follows: 1. That the construction be favorable, and as near the minds, and apparent intents of the parties, as the rules of law will admit. For the maxims of law are, that "*verba*

intentioni debent inserviri;" and "*benigne interpretamur chartas propter simplicitatem laicorum.*" And therefore the construction must be reasonable, and agreeable to common understanding.

2. That *quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est;* but that where the intention is clear, too minute a stress be not laid on the strict and precise signification of words; *nam qui hæret in litera, hæret in cortice.* Therefore, by a grant of a remainder a reversion may well pass, and *e converso.* And another maxim of law is, that "*mala grammatica non vitiat chartam;*" neither false English nor bad Latin will destroy a deed.

3. That the construction be made upon the entire deed, and not merely upon disjointed parts of it; and, therefore, that every part of it be, if possible, made to take effect; and that there be no word but what may operate in some shape or other.

4. That the deed be taken most strongly against him that is the agent or contractor, and in favor of the other party.

5. That if the words will bear two senses, one agreeable to, and another against law, that sense be preferred which is most agreeable thereto.

6. That, in a deed, if there be two clauses so totally repugnant to each other that they cannot stand together, the first shall be received and the latter rejected: wherein it differs from a will; for there, of two such repugnant clauses, the latter shall stand.

7. That a devise be most favorably expounded to pursue, if possible, the will of the devisor, who, for want of advice or learning, may have omitted the legal or proper phrases.

CHAPTER XXIV.

OF THINGS PERSONAL.

1. *What are included under the name of things personal?*—384.

All sorts of things movable which may attend a man's person wherever he goes.

2. *When only are they objects of the law?*—384.

While they remain within the limits of its jurisdiction.

3. *Do things personal include things movable only?*—385.

Things personal do not only include things movable, but also something more; the whole of which are comprehended under the general name of chattels.

4. *How are chattels distributed by the law?*—386.

Into chattels real and chattels personal.

5. *What are chattels real?*—386.

Such as concern, or savour of, the realty.

6. *Why are they so styled?*—386.

As being interests issuing out of, or annexed to, real estates; of which they have one quality, viz., immobility, which denominates them real; but want the other, viz., a sufficient legal indeterminate duration, and this want it is that constitutes them chattels.

7. *What are chattels personal?*—387.

They are, properly and strictly speaking, things movable, which may be annexed to, or attendant on, the person of the owner.

CHAPTER XXV.

OF PROPERTY IN THINGS PERSONAL.

1. *How does property in chattels personal exist?*—389.

Either in possession, where a man hath not only the right to enjoy, but hath the actual enjoyment of the thing; or else it is in action, where a man hath only a bare right, without any occupation or enjoyment.

2. *Into what two sorts is property in chattels personal of the former nature divided?*—389.

Absolute and qualified property.

3. *When is property in possession absolute?*—389.

When a man hath, solely and exclusively, the right, and also the occupation, of any movable chattels, so that they cannot be transferred from him, or cease to be his, without his own act or default. Such may be all inanimate things, as goods, plate, money, jewels, implements of war, garments, and the like. Such, also, may be all vegetable productions, as the fruit or other parts of a plant, when severed from the body of it; or the whole plant itself when severed from the ground.

4. *Into what classes are animals distinguished?*—390.

Into such as are *domitæ*, and such as are *ferœ naturœ*, some being of a tame, and others of a wild disposition.

5. *What property can a man have in such animals as are* domitæ, *and what in such as are* feræ naturæ?—390.

In the former an absolute; in the latter a qualified property.

6. *How may a man be invested with this qualified property in animals* feræ naturæ?—391–395.

In three ways: 1. *Per industriam;* by a man's reclaiming and making them tame, or by so confining them within his own immediate power, that they cannot escape and use their natural liberty. 2. *Ratione impotentiæ*, on account of their own inability; as when birds build in a man's trees, or other creatures make their nests or burrows in his land, and have young ones there, he has a qualified property in those young ones, till they can fly or run away, and then it expires. 3. *Propter privilegium;* that is, a man may have the privilege of hunting, taking and killing them, in exclusion of other persons.

7. *Are bees* feræ naturæ?—392.

They are; but, when hived and reclaimed, a man may have a qualified property in them

8. *What animals* feræ naturæ *is it felony to steal?*—393.

It is as much a felony, at common law, to steal such of them as are fit for food, as it is to steal tame animals; but not so, if they are only kept for pleasure, curiosity or whim. Then stealing them is such an invasion of property as may amount to a civil injury, and be redressed by a civil action.

9. *How may property subsist in the elements of fire, air, earth and water?*—395.

A man can have no absolute permanent property in these. They admit only of a precarious and qualified ownership, which lasts only so long as they are in actual use and occupation. If a man disturbs another and deprives him of the lawful enjoyment of these; as if one obstructs another's ancient windows, corrupts the air of his house or gardens, fouls his water, or unpens and lets it out, or if he diverts an ancient water-course, the law will animadvert thereon as an injury, and protect the party injured in his possession.

10. *Hath a servant, in the care of his master's goods or chattels, any property in them?*—396.

He hath not any property, or possession, in them, either absolute or qualified, but only a mere charge or oversight.

11. *What is a chose in action?*—396, 397.

It is the mere right to a thing incorporeal, as an annuity: money due on a bond, is a chose in action.

12. *How may property in action be reduced to possession?*—396, 397.

The possession may be recovered by suit, or action, at law; from whence the thing so recoverable is called a thing, or *chose*, in action.

13. *Upon what does all property in action depend?*—397.

It depends entirely upon contracts, either express or implied; which are the only regular means of acquiring a chose in action.

14. *Are limitations of personal goods and chattels in remainder allowed?*—398.

Yes; in last wills and testaments, after a bequest for life, they are permitted.

15. *May things personal belong to their owners in joint-tenancy, in common, and in coparcenary?*—399.

They may so belong in joint-tenancy and in common, but not in coparcenary.

16. *Is stock used in a joint undertaking, as by way of partnership in trade, considered as common or joint property?*—399.

It shall always be considered as common property, and there shall be no survivorship therein.

CHAPTER XXVI.

OF TITLE TO THINGS PERSONAL BY OCCUPANCY.

1. *What are the means of acquiring and losing such property as may be had in things personal?*—400.

The methods of acquisition and loss are principally twelve: 1. By occupancy; 2. By prerogative; 3. By forfeiture; 4. By custom; 5. By succession; 6. By marriage; 7. By judgment; 8. By gift; 9. By contract; 10. By bankruptcy; 11. By testament; 12. By administration.

2. *What restrictions are there upon the right to seize the goods and person of an alien enemy?*—401, 402.

The right of taking the goods of an alien enemy is restrained to such captors as are authorized by the public authority of the state, residing in the crown. As to his person, a man may acquire a sort of qualified property by taking him a prisoner of war; at least, till his ransom be paid.

3. *What is the doctrine of property arising from accession by natural or artificial means, (as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood or metal into vessels and utensils,) grounded upon?*—404.

On the right of occupancy.

4. *What is understood by "confusion of goods"?*—405.

It is where the goods of two persons are so intermixed that the several portions can be no longer distinguished. If the intermixture be by consent, the proprietors have an interest in common, in proportion to their respective shares. But if one willfully intermixes his money, corn, or hay with that of another man, without his approbation or knowledge, our law, to guard against fraud, gives the entire property, without any account, to him whose original dominion is invaded.

5. *What is property in copyright founded on?*—406.

Being grounded on labor and invention, it is more properly reducible to the head of occupancy than any other; since the right of occupancy itself is supposed, by Mr. Locke and many others, to be founded on the personal labor of the occupant. And this is the right which an author may be supposed to have in his own original literary compositions; so that no other person, without his leave, may publish or make profit of the copies.

6. *In what consists the identity of such a composition?*—406.

Entirely in the sentiment and the language; the same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited.

7. *What hath the statute declared as to literary and other copyrights?*—407.

That the author and his assigns shall have the sole liberty of printing and reprinting his works for the term of fourteen years, and no longer. But if, at the end of the term, the author himself be living, the right shall then return to him for another term of the same duration.

CHAPTER XXVII.

OF TITLE BY PREROGATIVE AND FORFEITURE.

1. *May property be acquired in personal chattels by the king's prerogative?*—408.

Yes; a right in them may accrue to the crown, or to such as claim under the title of the crown; as by the king's grant, or by prescription, which supposes an ancient grant.

2. *Is there a property of this species in tributes, taxes and customs?*—408.

Yes; in these the king acquires, and the subject loses, a property the instant they become due; if paid, they are a *chose* in possession; if unpaid, a *chose* in action.

3. *What if the titles of the king and a subject, in a chattel, concur?*—409.

The king shall have the whole.

4. *In what books hath the king a prerogative copyright?*—410.

There is a kind of prerogative copyright subsisting in certain books, which is held to be vested in the crown: 1. Acts of parliament, proclamations, and orders of council; 2. Liturgies, and books of divine service; 3. Such law-books, and other compositions, as were compiled or translated at the expense of the crown.

5. *In whom is the property of such animals* feræ naturæ *as are known by the denomination of game, with the right of pursuing, taking, and destroying them?*—410.

It is vested in the king alone, and from him derived to such of his subjects as have received the grants of a chase, a park, a free warren, or free fishery. No person whatever, but he who has such derivative right from the crown, is by common law entitled to take or kill any beasts of chase, or other game whatsoever.

6. *Who can justify hunting or sporting on another man's soil?*—417.

No man but he only who has a chase or free warren, by grant from the crown or prescription, which supposes one, can justify hunting or sporting upon another man's soil; nor, indeed, in thorough strictness of common law, either hunting or sporting at all.

7. *For what are all the goods and chattels of the offender forfeited to the crown?*—421.

They are totally forfeited by: Conviction of high treason or misprision of treason, of petit treason, of felony in general, and particularly of felo de se, and of manslaughter; nay, even by excusable homicide, outlawry for treason or felony, &c.

8. *When does this forfeiture commence?*—421.

From the time of conviction; not the time of committing the fact, as in forfeitures of real property.

CHAPTER XXVIII.

OF TITLE BY CUSTOM.

1. *What is title by custom?*—422.

It is that whereby a right vests in some particular persons, either by the local usage of some particular place, or by the almost general and universal usage of the kingdom.

2. *What three sorts of customary interests obtain pretty generally throughout most parts of England?*—422.

Heriots, mortuaries, and heir-looms.

3. *What are heriots?*—422.

They are defined to be a customary tribute of goods and chattels, payable to the lord of the fee on the decease of the owner of the land.

4. *Into what sorts are heriots usually divided?*—422.

Into heriot-service, and heriot-custom.

5. *What is heriot-service?*—422.

It amounts to little more than a mere rent; it is due upon a special reservation in a grant or lease of lands.

6. *Upon what does heriot-custom arise?*—422.

Heriot-custom depends merely upon immemorial usage and custom, and arises upon no special reservation whatsoever.

7. *To what species of tenures is heriot-custom, now, for the most part confined?*—423.

To copyhold tenures; and is due by custom only, which is the life of all estates by copy.

8. *Of what does the heriot now consist?*—424.

Sometimes of the best live beast, or averium, which the tenant dies possessed of; sometimes, the best inanimate good, under which a jewel or piece of plate may be included; but it is always a personal chattel.

9. *Why can no heriot be taken on the death of a feme-covert?*—424.

Because she can have no ownership in things personal.

10. *Can a heriot be compounded for by the payment of money?*—424.

In some places there is a personal composition in money.

11. *What are mortuaries?*—425.

They are a sort of ecclesiastical heriots, being a customary gift claimed by and due to the minister, in very many parishes, on the death of his parishioners.

12. *What are heir-looms?*—427, 428.

Heir-looms are such goods and personal chattels as, contrary to the nature of chattels, shall go by special custom to the heir along with the inheritance, and not to the executor of the last proprietor. They are, generally, such things as cannot be taken away without damaging or dismembering the freehold.

13. *What are heir-looms by special custom?*—428.

In some places, carriages, utensils, and other household implements may be heir-looms; but such custom must be strictly proved.

14. *What are heir-looms by general custom?*—428.

By almost general custom, whatever is strongly affixed to the freehold or inheritance, and cannot be severed from thence without violence or damage, are heir-looms.

15. *What other personal chattels are there which descend to the heir in the nature of heir-looms?*—428, 429.

A monument or tombstone in a church, or the coat of armor of his ancestor there hung up, with the pennons and other ensigns of honor suited to his degree. Charters, likewise, and deeds, court-rolls, and other evidences of the land, with the chests in which they are contained.

16. *May heir-looms be devised away from the heir by will?*—429.

They cannot.

17. *Has the heir any property in the bodies or ashes of his ancestors?*—429.

He has none.

CHAPTER XXIX.

OF TITLE BY SUCCESSION, MARRIAGE, AND JUDGMENT.

1. *To what is title by succession applicable?*—430.

In strictness of law, only to corporations aggregate of many, as dean and chapter, mayor and commonalty, master and fellows,