fied property by occupancy. Animals *feræ naturæ*, so long as they are reclaimed by the art and power of man, are also the subjects of qualified property; but when they are abandoned or escape, and return to their natural liberty and ferocity, without the *animus revertendi*, the property in them ceases.

A qualified property in goods subsists by reason of the title, when they are bailed, pledged, or distrained. In those cases the right of property and the possession are separated; and the owner has only a property of a temporary or qualified nature, which is to continue until the trust be performed or the goods redeemed; and he is entitled to protect this property, while it continues, by action in like manner as if he were absolute owner.

9. *May personal property be held in joint tenancy, or in common?* —350.

Yes; and in the former case, the same principle of survivorship applies which exists in the case of a joint tenancy in lands. This right of survivorship does not, however, apply to stock used in any joint undertaking, either in trade or agriculture; when one of such joint tenants dies, his interest or share in the concern goes to his personal representatives.

10. *What are* choses in action?—351.

They are personal rights not reduced to possession, but recoverable by suit at law. Money due on bond, note, or other contract, damages due for breach of covenant, for the detention of chattels, or for torts, are included under this general head, or title of things in action.

11. *May chattels be limited over by way of remainder after a life interest in them is created?*—352, 353, *n.* (*d.*)

Yes; but not after a gift of the absolute property. The limitation may be either by will or deed. By the New York Revised Statutes, the absolute ownership of personal property can not be suspended for a longer period than two lives in being at the date of the instrument creating it, or, if by will, in being at the death of the testator. The accumulation of the profits of personal property may be made as aforesaid, to commence from the date of the instrument or death of the person executing the same, for the benefit of one or more minors then in being, and to terminate at the expiration of their minority; and if directed to commence at a period subsequent to the date of the instrument, or death of the person executing it, the period must be during the minority of the persons to be benefited, and terminate at the expiration of their minority. All directions for accumulation contrary hereto are void; and those for a longer term than such minority, are void as to the excess of time.

LECTURE XXXVI.

OF TITLE TO PERSONAL PROPERTY BY ORIGINAL ACQUISITION.

1. *How may title to personal property accrue?*—355.

In three different ways: 1. By original acquisition. 2. By transfer by act of law. 3. By transfer by act of the parties. The right of original acquisition may be comprehended under the heads of occupancy, accession, and intellectual labor.

2. *What is the modern rule as to the original acquisition of goods by occupancy?*—356.

The title by occupancy is becoming almost extinct under civilized governments, and it is permitted to exist only in those few special cases in which it may be consistent with public welfare; such as in case of goods casually lost by the owner and unreclaimed, or designedly abandoned by him.

3. *What is the rule as to the acquisition of property by accession?*—360.

That property in goods and chattels may be acquired by accession; and, under that head, is also included the acquisition of property proceeding from the admixture or confusion of goods.

4. *How is the right of accession defined in the French civil code?* —360, 361.

It is defined to be the right to all which one's own property produces, whether that property be movable or immovable, and the right to that which is united to it by accession, either naturally or artificially. The fruits of the earth, produced naturally or by human industry, the increase of animals, and the new species of articles made by one person out of the materials of another, are all embraced in this definition; as if a person hires, for a limited period, a flock of sheep or cattle of the owner, the increase of the flock, during the term, belongs to the usufructuary, who is regarded as the temporary owner. The Roman law made a distinction as to the offspring of slaves, and so does the civil code of Louisiana. By means of Bracton the rules of the civil law regulating title by accession were introduced into the common law of England, and they now prevail in the United States.

5. *What is the rule in the case of the confusion of goods?*—364.

With respect to the case where goods of two persons are so intermixed that they can no longer be distinguished, each of them has an equal interest in the subject as tenants in common, if the intermixture was by consent. But if it was willfully made, without mutual consent, then the civil law gave the whole to him who made the confusion, and compelled him to make satisfaction in damages to the other party for what he had lost. The common law gave the entire property, without any account, to him whose property was originally invaded, and its distinct character destroyed. But this rule is carried no further than the necessity requires; and if the goods can be equally distinguished and separated, no change of property takes place. It is for the party guilty of the fraud to distinguish his property satisfactorily.

6. *What description of property is acquired by intellectual labor?* —365, 366.

Literary property, such as maps, charts, writings, and books; and mechanical inventions, consisting of useful machines or discoveries, produced by the joint result of intellectual and

manual labor. As long as these are kept within the possession of the author, he has the same right to the exclusive enjoyment of them as of any other species of personal property; but when they are circulated abroad, and published with the author's consent, they become common property, and subject to the free use of the community. The jurisdiction of this subject is vested by the Constitution in the federal government.

7. *What is a patent?*—366.

It is defined to be a grant, by the State, of the exclusive privilege of making, using, and vending, and authorizing others to make, use, and vend an invention.

8. *What provisions have Congress made in relation to patent rights for inventions?*—366, 367.

That any person, being a citizen of the United States, and any alien, who, at the time of his application, shall be a resident of the United States, and who hath invented any new and useful art, machine or manufacture, or composition of matter, or any new and useful improvement on the same, not known or used before the application, may apply to the Secretary of State for a patent for the exclusive right of making, constructing, using and vending, for fourteen years, his invention or discovery. The applicant must make oath, or affirmation, that he believes he is the true inventor or discoverer of the art, machine, or improvement; and must give a written description of his invention, and of the manner of using it, or of the process of compounding the same, in full, clear, and intelligible terms; he must particularly specify the part, improvement or combination, which he claims as his own invention; and accompany it with drawings, and references, and specimens, and models, according to the nature of the case; and cause the same to be attested and filed in the Secretary's office. The legal representatives and devisees of a person entitled to a patent, and who dies before it is obtained, may procure it. The patent may be renewed for a further term of seven years, and no person is to be debarred from receiving a patent for any invention, by reason of the same having been patented in a foreign country, if it have not been introduced into public and common use in this country prior to the application.*

* See Appendix, note D

9. *Is a patent right assignable?*—372.

Yes; and the patented article may be seized and sold on execution, but the patent right is not liable to sale on execution.

10. *What about trade marks?*—372, *note.*

Every manufacturer (including aliens), and every merchant for whom goods are manufactured, has the right to distinguish the goods he manufactures or sells by a peculiar mark or device, designating the origin or ownership of his articles, which no other person may assume. And this right may be protected by injunction and by action at law for damages.

11. *What is provided in relation to the copyrights of authors?*—373, 374.

That the authors of books, maps, charts, and musical compositions, and the inventors and designers of prints, cuts, and engravings, being citizens of the United States, or residents therein, are entitled to the exclusive right of printing, reprinting, publishing and vending them, for the term of twenty-eight years from the time of recording the title thereof; and if the author, inventor or designer of any them, where the work was originally composed and made by more than one person, be living, and a citizen of the United States, or resident therein, at the end of the term, or, being dead, shall have left a widow, or child or children, either or all of them living, she or they are entitled to the same exclusive right for the further term of fourteen years, on complying with the terms prescribed by the act of Congress. Those terms are, that the author or proprietor, before publication, deposit a printed copy of the title of the book, map, chart, musical composition, print, cut, or engraving, in the clerk's office of the district wherein he resides, and which copy is to be recorded; and that he cause to be inserted on the title page, or the next following, of each and every edition of the book, and cause to be impressed on the face of the map, chart, musical composition, print, cut, or engraving, or upon the title or frontispiece of a volume of the same, the following words: "Entered according to the act of Congress, in the year ——, by A B, in the clerk's office of the District Court of ——" (as the case may be). He is then, within three months after publishing the book or other work as aforesaid, to cause to be delivered a copy of the same to the clerk of the said District Court, who is once in every year to transmit a certified list of all such records of copyright, and the several books or other works deposited as aforesaid, to the Secretary of State, to be preserved in his office. The violation of the copyright, thus duly secured, is guarded against by adequate penalties and forfeitures.

On the renewal of the copyright, the title of the work must be recorded, and the copy of the work delivered to the clerk of the district, and the entry of the record noticed as aforesaid at the beginning of the work; and all these regulations must be complied with, within six months before the expiration of the first term. And in addition to these regulations, the author or proprietor must, within two months from the date of the renewal, cause a copy of the record thereof to be published, in one or more of the public newspapers in the United States, for the space of four weeks.

12. *Can a copyright exist in a translation?*—381, 382.

Yes; and this, whether the translation be produced by personal application and expense, or by gift. A copyright may also exist in a part of a work, without having an exclusive right to the whole; and also in a real and fair abridgment of a book.

LECTURE XXXVII.

OF TITLE TO PERSONAL PROPERTY BY TRANSFER BY ACT OF LAW.

1. *In what cases may goods and chattels change owners by act of law?*—385.

In cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy.

2. *In what case does the right of government to property by forfeiture take place in this country?*—385, 386.

In New York it is confined to the case of treason, and, that case, continues only during the life of the person convicted, and the rights of third persons, existing at the time of the commission of the treason, are saved. The right, so far as it exists in this country, depends upon local statute law; and the tendency of public opinion has been to condemn forfeiture of property, at least in cases of felony. Forfeiture of estate and corruption of blood, under the laws of the United States, and including cases of treason, are abolished.

3. *In what case may title to property be acquired by judgment?*—387.

In case of recovery by law, in an action of trespass or trover, of the value of a specific chattel, of which the possession has been acquired by tort, the title to the goods is altered by the recovery, and is transferred to the defendant; and the damages recovered are the price of the chattel so transferred by operation of law. There are conflicting decisions whether the recovery of a judgment, without satisfaction thereof, will thus transfer title.

4. *What is the rule as to the acquisition of title by bankruptcy or insolvency?*—390.

That the bankrupt's estate, as soon as an act of bankruptcy is committed, becomes a common fund for the payment of his debts, and he loses the character and power of a proprietor over it.

5. *What has the Constitution of the United States prescribed in relation to bankruptcies?*—390, 391.

It has given to Congress the power to establish uniform laws on the subject of bankruptcies throughout the United States. States may enact bankrupt and insolvent laws, provided they do not impair the obligation of contracts, nor affect the rights of the citizens of other States. At present, there is not any bankrupt system under the federal government, and the several States are left free to institute their own bankrupt systems, subject to the above limitations.

6. *Is there any bankrupt law in New York?*—393, 394.

No: but there is a permanent insolvent law enabling every debtor, with the assent of two thirds in value of his creditors, and on the due disclosure and surrender of his property to be discharged from all his debts contracted within the State subsequently to the passing of the insolvent act, and due at the time of the assignment of his property, or contracted before that time, though payable afterwards.

7. *How about the other States?*—395, *n.* (*a.*)

The statutes for the relief of insolvent debtors in Connecticut, Ohio, New Jersey, Pennsylvania, Illinois, North Carolina, Tennessee, Georgia, and Missouri, go only to discharge and exempt the person of the debtor from imprisonment; and this is understood to be the limitation of insolvent laws in the greater number of the States.

8. *What is the American rule respecting conflicting claims arising under our attachment laws, and under a foreign bankrupt assignment?*—404–406.

It may now be considered as part of the settled jurisprudence of this country, that personal property, as against creditors, has locality, and the *lex loci rei sitæ* prevails over the law of the domicil, with regard to the rule of preferences in the case of insolvents' estates.

9. *What force do we allow to the laws of other governments on this subject?*—406.

The laws of other governments have no force beyond their territorial limits; and if permitted to operate in other States, it is upon a principle of comity, and only when neither the State, nor its citizens, would suffer any inconvenience from the application of the foreign law. A prior assignment in bankruptcy, under a foreign law, will not be permitted to prevail against a subsequent attachment by an American creditor of the bankrupt's effects found here; and our courts will not subject our citizens to the inconvenience of seeking their dividends abroad, when they have the means to satisfy them under their own control.

10. *In what case is title to property acquired by intestacy?*—408.

When a person dies, leaving personal property undisposed of by will; and in that case, the personal estate, after the debts are paid, is distributed among the widow and next of kin.

11. *With whom does the power of granting letters of administration lie?*—410, 411.

Now, usually with the surrogate of the county; and he has generally discretionary power to elect among the next of kin any one in equal degree, in exclusion of the rest, and to make such person sole administrator. So, under the English law, he may grant administration to the widow or next of kin, or to both jointly, at his discretion.

12. *In case of a married woman dying intestate, who is entitled to administer to her estate?*—411.

The husband, in preference to any other person; and he is liable, as administrator, for the debts of his wife, only to the extent of the assets received by him. If he does not administer, he is presumed to have assets, and is liable for the debts.

13. *May letters of administration be revoked?*—413.

Yes, if they have been unduly granted; and administration may be granted upon condition, or for a limited time, or for a special purpose.

14. *What is the established doctrine regarding all* bona fide *sales by executors and administrators?*—413.

That all sales made in good faith, and all lawful acts by administrators, before notice of a will, or by executors or administrators who may be removed or superseded, or become incapable, shall not be impeached on any will appearing, or by any subsequent revocation or superseding of such executors or administrators.

15. *How is nearness of kin computed under the English law?*—413.

According to the civil law, which makes the intestate himself the *terminus a quo*, or point from whence the degrees are numbered.

16. *What are among the principal powers and duties of an administrator?*—414–416.

He should first give a bond with sureties, before a competent court, for the due execution of his trust. According to the common law, he should then make an inventory and appraisal of the goods and chattels of the intestate. On completion of the inventory and appraisal, he should collect outstanding debts, convert the property into money, and pay debts due from the intestate. In paying debts he should, under the common law, pay, first, funeral charges and probate expenses; next, debts due to the State; then debts of record, such as judgments, recognizances, and final decrees; next, debts due for rents, and debts by specialty, as bonds and sealed notes; and lastly, debts by simple contract. When debts are in equal degree, he may pay which he pleases first, and may prefer himself to other creditors in equal degree. But these common law rules have now been more or less altered, by statute law, in most of the States of the Union.

17. *What is the substance of the English statute of distributions?*—420–422.

That after the debts, funeral charges and just expenses are paid, a just and equal distribution of what remaineth clear, of the goods and personal estate of the intestate, shall be made amongst the wife and children or children's children, if any there be; or otherwise to the next of kin to the intestate, in equal degree, or legally representing their stock; that is to say, one third part of the surplusage to the wife of the intestate, and all the residue, by equal portions, to and amongst the children of the intestate, and their representatives, if any of the children be dead, other than such child or children who have any estate by settlement, or shall be advanced by the intestate in his lifetime, by portion equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made. And if the portion of any child who hath had such settlement or portion, be not equal to the share due to the other children by the distribution, the child so advanced is to be made equal with the rest. If there be no children, or their representatives, one moiety of the personal estate

of the intestate goes to the widow, and the residue is to be distributed equally among the next of kin, who are in equal degree, and those who represent them; but no representation is admitted among collaterals, after brothers' and sisters' children; if there be no wife, the estate is to be distributed equally among the children; and if no child, then to the next of kin in equal degree and their lawful representatives, as already mentioned.

18. *How are the next of kin determined?*—422–428.

By the rule of the civil law; and under that rule the father stands in the first degree, and the grandfather and the grandson in the second; and in the collateral line, the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person. According to that rule, the intestate and his brother are related in the second degree, and the intestate and his uncle in the third. The half blood are admitted equally with the whole blood, for they are equally as near of kin; and the father of an intestate, without wife or issue, succeeds in exclusion of the brothers and sisters, and the mother would have also succeeded as against collaterals, but for a special clause which gives her only a ratable share. The distribution of personal property of intestates, in these United States, has undergone considerable modification. In many of them, the English statute of distributions, as to personal property, is pretty closely followed. In a majority of the States, the descent of real and personal property is to the same persons and in the same proportions, and the regulation is the same in substance, as the English statute of distributions, with the exception of the widow, as to the real estate, who takes one third for life only, as dower.

19. *What is the rule where the place of the domicil of the intestate, and the place of the situation of the property are different?*—429.

That the disposition, succession to, and the distribution of personal property, wherever situated, is governed by the law of the country of the owner's or intestate's domicil, at the time of his death, and not by the conflicting laws of the various places where the goods happened to be situated. On the other hand,

it is equally settled in the law of all civilized countries, that real property, as to its tenure, mode of enjoyment, transfer and descent, is to be regulated by the *lex loci rei sitæ*.

LECTURE XXXVIII.

OF TITLE TO PERSONAL PROPERTY BY GIFT.

1. *What two kind of gifts are there?*—438.

1. Gifts, simply so called, or gifts *inter vivos*. 2. Gifts *causâ mortis* are those made in apprehension of death. Gifts *inter vivos* have no reference to the future, and go into immediate and absolute effect. Delivery is essential, both at law and in equity, to the validity of a parol gift of a chattel or *chose in action;* and it is the same whether it be a gift *inter vivos*, or *causâ mortis*. The subject of the gift must be certain, and there must be the mutual consent or concurrent will of both parties.

2. *What kind of delivery is requisite to perfect a gift?*—439.

Delivery, in this, as in every other case, must be according to the nature of the thing. It must be an actual delivery, so far as the subject is capable of delivery. If the thing be not capable of actual delivery, there must be some act equivalent to it. The donor must part not only with the possession, but with the dominion of the property.

3. *How do gifts affect creditors?*—440.

They do not affect the rights of creditors; as gifts of goods and chattels, as well as of lands, by writing or otherwise, made with intent to delay, hinder and defraud creditors, are void, as against the person to whom such fraud would be prejudicial.

4. *What is the nature of gifts* causâ mortis?—444.

They are conditional, like legacies; and it is essential to

them that the donor make them in his last illness, or in contemplation and expectation of death. If the donor recovers, they are void; if he die, they are good notwithstanding a previous will. The apprehension of death may arise from infirmity or old age, or from external and anticipated danger.

5. *What is the rule as to the revocation of gifts?*—444.

That gifts *inter vivos* are irrevocable, but that gifts *causâ mortis* are conditional and revocable.

LECTURE XXXIX.

OF CONTRACTS.

1. *What is an executory contract?*—449.

It is an agreement of two or more persons, upon a sufficient consideration, to do or not to do a particular thing.

2. *Into what classes are contracts divided?*—450.

Into contracts under seal and not under seal. If under seal, the contract is denominated a specialty, and if not under seal, an agreement by parol; and the latter includes equally verbal and written contracts not under seal.

3. *What is the distinction between a contract* executed *and a contract* executory?—450.

It is this; if one person sells and delivers goods to another for a price paid, the agreement is *executed*, and becomes complete and absolute; but if the vendor agrees to sell and deliver at a future time, and for a stipulated price, and the other party agrees to accept and pay, the contract is *executory*, and rests in action merely. There are also *express* and *implied* contracts. The former exist when the parties contract in express words, or by writing; and the latter are those contracts which the law raises.

4. *What qualifications of the parties are essential to render a contract valid?*—450.

That they have sufficient understanding, and age, and freedom of will, and of the exercise of it, for the given case.

5. *What is the rule as regards contracts made by lunatics?*—450-452.

The contracts of lunatics are generally void, from the period at which the inquisition finds the lunacy to have commenced. But the inquisition is not conclusive evidence of the fact; and the party affected by the allegation of lunacy may gainsay it by proof, without first traversing the inquisition. The general rule is, that sanity is to be presumed until the contrary be proved; and when an act is sought to be avoided on the ground of mental imbecility, the proof of the fact lies upon the person who alleges it. On the other hand, if a mental derangement be once established or conceded, the presumption is shifted to the other side, and sanity is then to be shown.

6. *What as to contracts made by an intoxicated person?*—451.

A contract made by a person so destitute of reason as not to know the consequences of his contract, though his incompetency be produced by intoxication, is void. And it has been decided that an obligation, executed by a man when deprived of the exercise of his understanding by intoxication, was voidable by himself, though the intoxication was voluntary, and not procured through the circumvention of the other party.

7. *What is the rule where a general imbecility of mind exists?*—452.

That imbecility of mind is not sufficient to set aside a contract, when there is not an essential privation of the reasoning faculties, or an incapacity of understanding and acting with discretion in the ordinary affairs of life. This incapacity is now the test of that unsoundness of mind which will avoid a deed at law. The law can not undertake to measure the validity of contracts by the greater or less strength of the understanding; and if the party be *compos mentis*, the mere weakness of his mental powers does not incapacitate him. Weakness of understanding may, however, be a material circumstance in establishing an in-