dustry in the possession of a long line of lineal descendants, undisturbed by their folly or extravagance, it has a tendency on the other hand to destroy the excitement to action in the issue in tail, and to leave an accumulated mass of property in the hands of the idle and vicious.

Dr. Smith insisted, from actual observation, that entailments were unfavorable to agricultural improvement. The practice of perpetual entails is carried to a great extent in Scotland, and that eminent philosopher observed, half a century ago, that one third of the whole land of the country was loaded with the fetters of a strict entail; and it is understood that additions are every day making to the quantity of land in tail, and that they now extend over half the country. Some of the most distinguished of the Scotch statesmen and lawyers have united in condemning the policy of perpetual entails, as removing a very powerful incentive to persevering industry and honest ambition.

51. *What says Mr. Gibbon on the simplicity of the civil law?*—20.

It is said by him to have been a stranger to the long and intricate system of entails; and yet the Roman trust settlements, or *fidei commissa*, were analogous to estates tail. When an estate was left to an heir in trust, to leave it at his death to his eldest son, and so on by way of substitution, the person substituted corresponded in a degree to the English issue in tail.

52. *How far were entails formerly permitted to extend in France?*—21, 22.

To the period of three lives only; but in process of time they gained ground, and trust settlements, says the ordinance of 1747, were extended not only to many persons successively, but to a long series of generations. That new kind of succession or entailment was founded on private will, which had usurped the place of law, and established a new kind of jurisprudence. It led to numerous and subtle questions, which perplexed the tribunals, and the circulation of property was embarrassed. Chancellor D'Aguesseau prepared the ordinance of 1747, which was drawn with great wisdom, after consultation with the principal magistrates of the provincial parliaments, and the superior councils of the realm, and receiving the exact reports of the state of the

local jurisprudence on the subject. It limited the entail to two degrees, counted *per capita*, between the maker of the entail and the heir; and, therefore, if the testator made A his devisee for life, and after the death of A to B, and after his death to C, and after his death to D, etc., and the estate should descend from A to B, and from B to C, he would hold it absolutely, and the remainder over to D would be void. But the Code Napoleon annihilated the mitigated entailments allowed by the ordinance of 1747, and declared all substitutions or entails to be null and void, even in respect to the first donee.

LECTURE LV.

OF ESTATES FOR LIFE.

1. *What is an estate of freehold?*—23, 24.

An estate of freehold is a denomination which applies equally to an estate of inheritance and an estate for life. Sir William Blackstone confines the description of a freehold estate simply to the incident of livery of seisin, which applies to estates of inheritance and estates for life; and as those estates were the only ones which could not be conveyed at common law without the solemnity of livery of seisin, no other estates were properly freehold estates. Any estate of inheritance, or for life, in real property, whether it be a corporeal or an incorporeal hereditament, may justly be denominated a freehold.

2. *What, by the ancient law, did a freehold interest confer upon the owner?*—24.

A variety of valuable rights and privileges. He became a suitor of the courts, and a judge in the capacity of a juror; he was entitled to vote for members of Parliament, and to defend his title to the land; as owner of the immediate freehold, he was a necessary tenant to the *præcipe* in a real action, and he had a right to call in the aid of the reversioner or remainder-man,

when the inheritance was demanded. These rights gave him importance and dignity as a freeholder and freeman.

3. *How were estates for life divided?*—24.

Into conventional and legal estates. The first are created by the act of parties, and the second by the operation of law.

4. *In what two ways may life estates be created?*—25.

1. By express words, as if A conveys land to B for the term of his natural life. 2. They may arise by construction of law, as if A conveys land to B without specifying the time of duration, and without words of limitation. In this last case, B can not have an estate in fee, according to the English law, and according to the law of those parts of the United States which have not altered the common law in this particular, but he will take the largest estate which can possibly arise from the grant, and that is an estate for life.

5. *Of what two kinds are life estates?*—25, 26.

Either for a man's own life, or for the life of another person, and in this last case, it is termed an estate *pour autre vie*, which is the lowest species of freehold, and esteemed of less value than an estate for one's own life.

6. *How has the law in this respect proceeded?*—26.

It has proceeded upon the known principles of human nature, for, in the ordinary opinion of mankind, as well as in the language of Lord Coke, "an estate for a man's own life is higher than for another man's life."

7. *What third branch of life estate may also be added?*—26.

An estate for the term of the tenant's own life, and the life of one or more third persons. In this case, the tenant for life has but one freehold limited to his own life and the life of the other party or parties.

8. *May not these estates be made to depend upon a contingency, which can happen and determine the estate before the death of the grantee?*—26.

Yes. Thus if an estate be given to a woman *dum sola*, or

durante viduitate, or to a person so long as he shall dwell in a particular place, or for any other indeterminate period, as a grant of an estate to a man until he shall have received a given sum out of the rents and profits; in all these cases the grantee takes an estate for life, but one that is determinable upon the happening of the event on which the contingency depended. If the tenant for the life of B died in the lifetime of B, the estate was open to any general occupant during the life of B; but if the grant was to A and his heirs during the life of B, the heir took it as a special occupant.

9. *How, in New York, is an estate* pour autre vie *deemed, whether limited to heirs or otherwise?*—27.

It is deemed a freehold only during the life of the grantee or devisee, and after his death it is deemed a chattel real.

10. *What is tenancy by the curtesy?*—27, 28.

It is an estate for life, created by the act of the law. When a man marries a woman, seized, at any time during the coverture, of an estate of inheritance, in severalty, in coparcenary, or in common, and hath issue born alive, during the life of the mother, and which might by possibility inherit the same estate as heir to the wife, and the wife dies in the lifetime of the husband, he holds the land during his life, by the curtesy of England; and it is immaterial whether the issue be living at the time of the seisin, or at the death of the wife, or whether it was born before or after the seisin.

11. *How, in South Carolina, is tenancy by curtesy*, eo nomine?—29.

It has ceased by the provision of an act in 1794, *relative to the distribution of intestates' estates*, which gives to the husband surviving his wife the same share of her real estate as she would have taken out of his, if left a widow, and that is either one moiety or one third of it, in fee, according to circumstances.

12. *How in Georgia?*—29.

In Georgia it does not exist; because all marriages since 1785 vest the real equally with the personal estate of the wife in the husband.

13. *What four things are requisite to an estate by the curtesy?*—29.

1. Marriage.
2. Actual seisin of the wife.
3. Issue.
4. Death of the wife.

14. *Does the law vest the estate in the husband on the death of the wife, without entry?*—29.

It does.

15. *When is his estate initiate, and when consummate?*—29, *n.* (*a.*)

His estate is initiate on issue had, and consummate on the death of the wife. In Pennsylvania, the husband's curtesy is good by statute passed in 1833, though there be no issue of the marriage.

16. *How must the wife, according to the English law, have been seised to entitle the husband to his curtesy?*—29.

In fact and in deed, and not merely of a seisin in law, of an estate of inheritance.

17. *What is the law of curtesy in Connecticut?*—30.

The law of curtesy in that State is made to symmetrize with other parts of their system, and ownership without seisin is sufficient to govern the descent or devise of real estate.

18. *Has the severity of the ancient law on the right to curtesy been relaxed?*—30, *n.* (*b.*)

Yes; a constructive seisin of the wife is sufficient to sustain the husband's right to his curtesy, where it is not rebutted by an actual disseisin.

19. *Could the husband at common law be tenant by the curtesy of a use; and how is that point now settled in equity?*—30.

He could not; but it is now settled in equity that he may be tenant by the curtesy of an equity of redemption, and of lands of which the wife had only a seisin in equity as a *cestui que trust.*

20. *Is the receipt of the rents and profits a sufficient seisin in the wife?*—31.

It is.

21. *What if the lands be devised to the wife for her separate and exclusive use, and with a clear and distinct expression that the husband was not to have any life estate or other interest, but the same was to be for the wife and her heirs?*—31.

In that case the Court of Chancery will consider the husband a trustee for the wife and her heirs, and bar him of his curtesy.

22. *Is the husband of a mortgagee in fee entitled to his curtesy?*—32.

No.

23. *What has this rule now become?*—32.

It has now become common learning, and it is well understood that the rights existing in, or flowing from the mortgagee, are subject to the claims of the equity of redemption, so long as the same remains in force.

24. *To what estates does curtesy apply?*—32.

To qualified as well as to absolute estates in fee.

25. *Does the husband forfeit his curtesy by adultery?*—34.

No.

26. *What is dower, and when and where does it exist?*—35.

It is a species of life estate created by the act of the law, and it exists where a man is seised of an estate of inheritance, and dies in the lifetime of his wife.

27. *Of what, in such a case, is she at common law entitled to be endowed?*—35, *n.* (*d.*)

Of the third part of all the lands whereof her husband was seised, either in deed or in law, at any time during the coverture, and of which any issue, which she might have had, might by possibility have been heir, and these she held for the term of her

natural life. The statute law of New Jersey, Virginia, New York, Missouri and Arkansas omits the condition in respect to the wife's issue.

28. *For what was this humane condition of the common law intended?*—35.

For the sure and competent sustenance of the widow, and the better nurture and education of her children.

29. *What three things are requisite to the consummation of the title to dower?*—36.

1. Marriage. 2. Seisin of the husband. 3. His death.

30. *Upon what marriage does dower attach?*—36.

It attaches upon all marriages not absolutely void, and existing at the death of the husband; it belongs to a wife *de facto*, whose marriage is voidable by decree, as well as to a wife *de jure*.

31. *Are alien widows entitled to dower?*—36, 37.

Not at common law; but the rule has been relaxed in some of the States.

32. *What must the husband have had, and at what time, to entitle the wife to dower?*—37.

The husband must have had seisin of the land in severalty, and at some time during the marriage.

33. *Does a title to dower attach on a joint seisin?*—37.

No.

34. *Will a mere possibility of the estate being defeated by survivorship prevent dower?*—37.

It will.

35. *How far did the old rule go on this subject?*—37.

It went so far as to declare, that if one joint-tenant aliens his share, his wife shall not be endowed, notwithstanding the

possibility of the other joint-tenant taking by survivorship is destroyed by the severance; for the husband was never sole seised.

36. *Is it sufficient to give a title to dower, that the husband had a seisin in law, without being actually seised?*—37.

It is.

37. *What reason is given for the distinction on this point between dower and curtesy?*—37.

The reason is, that it is not in the wife's power to procure an actual seisin by the husband's entry, whereas the husband has always the power of procuring seisin of the wife's land.

38. *If land descends to the husband as heir, and he dies before entry, will his wife be entitled to her dower?*—37, 38.

She will, and this would be the case, even if a stranger should, in the intermediate time, by way of abatement, enter upon the land; for the law contemplates a space of time between the death of the ancestor, and the entry of the abator, during which time the husband had a seisin in law as heir.

39. *But is it not necessary that the husband should have been seised either in fact or in law, to entitle to dower?*—38.

It is; and where the husband had been in possession for years, using the land as his own, and conveying it in fee, the tenant deriving title under him is concluded from controverting the seisin of the husband, in the action of dower. If, however, upon the determination of a particular freehold estate, the tenant holds over and continues his seisin, and the husband dies before entry, or if he dies before entry in a case of forfeiture for a condition broken, his wife is not dowable, because he had no seisin either in fact or in law.

40. *Will the laches of the husband prejudice the claim of dower, when he has no seisin in law?*—38.

When he has no seisin in law they will, but not otherwise. So, if a lease for life be made before marriage, by a person seised in fee, the wife of the lessor will be excluded from her dower, unless the life estate terminates during coverture, because the

nusband, though entitled to the reversion in fee, was not seised of the *immediate* freehold. If the lease was made subsequent to the time that the title to dower attached, the wife is dowable of the land, and defeats the lease by title paramount.

41. *Will a transitory seisin for an instant, when the same act that gives the estate to the husband conveys it out of him, as in the case of a conusee of a fine, be sufficient to give the wife dower?*—38, 39.

It will not. The same doctrine applies when the husband takes a conveyance in fee, and at the same time mortgages the land back to the grantor, or to a third person, to secure the purchase money in whole or in part. Dower can not be claimed as against rights under that mortgage. The husband is not deemed sufficiently or beneficially seised by such an instantaneous passage of the fee in and out of him, to entitle his wife to dower as against the mortgagee, and this conclusion is agreeable to the manifest justice of the case. The widow, in this case, on foreclosure of the mortgage and sale of the mortgaged premises, will be entitled to her claim to the extent of her dower in the surplus proceeds, after satisfying the mortgage ; and if the heir redeems, or she brings her writ of dower, she is let in for her dower, on contributing her proportion of the mortgage debt.

42. *How must the husband be seised, to create a title to dower?*—39.

He must be seised, *simul et semel*, of a freehold in possession, and of an estate of immediate inheritance in remainder or reversion. No freehold estate in a third person must intervene between the freehold and the inheritance of the husband ; the intervention of a term of years will not prevent dower from attaching.

43. *Does dower attach to all real hereditaments?*—40–42.

It does at common law, but in several of the States it has been reduced down to the lands whereof the husband died seised, and in Maine, New Hampshire, and Massachusetts, the widow is not dowable of land in a wild state, unconnected with any cultivated farm.

44. *What is the reason of the American rule, giving dower in equities of redemption?*—45, 46.

The reason is, that the mortgagor, so long as the mortgagee does not exert his right of entry or foreclosure, is regarded as being legally as well as equitably seised in respect to all the world but the mortgagee and his assigns. But if she claims dower in an equity of redemption, she is bound to contribute towards the redemption of the mortgage.

45. *Is the widow of a mortgagee who dies before foreclosure or entry, though after the technical forfeiture of the mortgage by non-payment on the day it came due, entitled to dower?*—47.

The better opinion is, that she is not, and in New York it is specially provided by statute that she shall not have dower in the mortgaged lands unless the husband acquired an absolute estate therein during marriage.

46. *Will dower be defeated upon the restoration of the seisin under the prior title in the case of defeasible estates, as in the case of reëntry for a condition broken, which abolishes the intermediate seisin?*—48.

It will.

47. *Will a recovery by actual title against the husband, also defeat the wife's dower?*—48.

Yes.

48. *But what if he gives up the land by default and collusively?*—48, *n.* (*b.*)

The statute of Westminster 2, chapter 4, preserved the wife's dower, unless the tenant could show affirmatively a good seisin out of the husband and in himself. This statute has been adopted and enlarged by the New York Revised Statutes.

49. *By what is the wife's dower liable to be defeated, on a general principle?*—50.

By every subsisting claim or incumbrance, in law or equity, existing before the inception of the title, and which would have defeated the husband's seisin.

50. *If the husband and wife levy a fine, or suffer a common recovery, is the wife barred of her dower?*—51.

She is.

51. *Does a divorce,* a vinculo matrimonii, *bar the claim of dower?*—54.

It does. But in case of divorce for adultery of the husband, it is provided in those States which authorize the divorce, that dower shall be preserved, or a reasonable provision made in lieu thereof.

52. *May the wife be barred of her dower, by having a joint estate, usually denominated a* jointure, *settled upon her and her husband, and in case of his death to be extended to the use of the wife during her life?*—54.

She may.

53. *What four provisions must be complied with, in a jointure, to bar a dower?*—54.

1. It must take effect immediately on the death of the husband. 2. It must be for the wife's life. 3. It must be made and declared to be in satisfaction of her whole dower. 4. It must be to the wife herself, and not to any other person in trust for her.

54. *Is a conveyance to trustees, for the use of the wife after the husband's death, in point of law a jointure?*—55, 56.

No; but such a settlement, if in other respects good, will be enforced in chancery as an equitable bar of dower; and courts of equity have greatly relieved the parties from the strict legal construction given to the statute concerning jointures. It has also been settled in England, after great discussion in the House of Lords, and in New York, that a jointure on an infant before coverture bars her dower, notwithstanding her infancy, on the ground of its being a provision by the husband for the wife's support. It was considered to be a bar, *a provisione viri* and not *ex contractu;* and the assent of the wife was held not to be an operative circumstance, though the ante-nuptial contract was, in the English case, executed by the infant in the presence of her guardian. An equitable jointure, or a competent and certain provision for the wife, in lieu of dower, if assented to by the father or the guardian of the infant before marriage, will also, in analogy to the statute, constitute an equitable bar. But the conveyance before marriage of an estate to the wife, to continue during widowhood, by way of jointure, or if made to depend on any other condition, will not bar her dower, even if she be an adult, unless, when a widow, she enters and accepts the qualified freehold. The legal or equitable provision must be a fair equivalent to the dower estate, to make it absolutely binding in the first instance. In New York, the statute of 27 Hen. VIII. concerning jointures, was, in 1787, adopted *verbatim;* but it has been altered and improved by the new Revised Statutes; and the principle in equity, allowing jointures to exist also by conveyance of lands to a trustee, in trust for the wife, has been introduced into the statute law, which provides, that if "an estate in lands be conveyed to a person and his intended wife, or to such intended wife alone, or to any other person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim of dower, etc.; and the evidence of the assent of the wife shall be, by her becoming a party to the conveyance, if of age, and, if an infant, by her joining with her father or guardian therein."

The statute of 27 Hen. VIII. further provided, that if the settlement in jointure was made after marriage, the wife should have her election, if she survived her husband, to take it in lieu of dower, or to reject it, and betake herself to her dower at common law. So, if she was fairly evicted by law from her jointure, or any part of it, the deficiency was to be supplied from other lands, whereof she would have been otherwise dowable. Both these provisions formed a part of the statute of New York, in 1787, and they have probably been adopted in all the States where the law of jointure in bar of dower has been introduced.

55. *Is it not settled that a collateral satisfaction, consisting of money or other chattel interests, given by will, and accepted by the wife after her husband's death, will constitute an equitable bar of dower?*—57.

It is.

56. *Have not the New York Revised Statutes embodied most of these principles of law and equity, with some variations and amendments?*—58.

They have.

57. *What do the New York Revised Statutes, together with the laws of Massachusetts and Connecticut, declare respecting dower?*—58.

They declare, that any pecuniary provision made before marriage in lieu of dower, if duly assented to by the wife, shall bar her dower.

58. *What was a principle of the common law, in case the husband seised of an estate of inheritance exchanged it for other lands?*—59.

The wife could not have dower of both estates, but should be put to her election.

59. *Is not this principle also introduced into the New York Revised Statutes?*—59.

Yes; and the widow is required to evince her election to take dower out of the lands given in exchange, by the commencement of proceedings to recover it, within one year after her husband's death, or else she shall be bound to take her dower out of the lands received in exchange.

60. *What is the usual way of barring dower in this country?*—59, 60.

It is usually done by the wife's joining her husband in a deed of conveyance of the land, containing apt words of grant or release on her part, and acknowledging the same privately, apart from her husband, in the mode prescribed by the statute laws of the several States. In New York and Illinois, if she resides out of the State, the simple execution of the deed by her will be sufficient to bar her dower, as to the lands within the State, equally as if she were a *feme sole*.

61. *What rights has the widow previous to assignment of dower?*—61.

She has the right to tarry in the chief house of her husband for forty days after the death of her husband, within which time her dower should be assigned her; and in the mean time she should have reasonable *estovers*, or maintenance, out of the estate.

62. *How may dower be assigned?*—63.

The assignment may be made *in pais* by parol, by the party who hath the freehold; but if it be not assigned within forty days, the widow has her action at law by writ of dower, *unde nihil habet*, against the tenant of the freehold, and she may recover damages for non-assignment of her dower.

63. *May two or more widows be endowed out of the same messuage?*—64.

Yes. If A be seised and has a wife, and sells to B who has a wife, and the husbands then die leaving their wives surviving, the wife of B will be dowable of one third of two thirds in the first instance, and of one third of the remaining one third on the death of the widow of A, who, having the elder title in dower, is to be first satisfied of her dower out of the whole farm.

64. *What is the general rule in cases of alienation by the husband?*—65–68.

That the widow takes her dower according to the value of the land at the time of the alienation, and not according to its subsequent or increased value. The better opinion seems to be that the improved value, from which the widow is to be excluded, is that which has arisen from the actual labor and money of her husband's alienee, and not that which has arisen from extrinsic or general causes unconnected with the direct improvement of the alienee.

65. *As of what time is the widow seised when her estate is ascertained by assignment?*—69.

As of the time of the seisin of her husband. The estate is not deemed to pass by the assignment.

66. *Is the right to dower barred by lapse of time?*—70.

Not at common law; but the statutes of New York and other States have limited the time for recovery of dower.

67. *May dower be recovered by bill in equity, as well as by action at law?*—71, 72.

Yes. The jurisdiction of chancery over the claim of dower has been thoroughly examined, clearly asserted, and definitively established. It is a jurisdiction concurrent with that of law; and when the legal title to dower is in controversy, it must be settled at law; but if that be admitted or settled, full and effectual relief can be granted to the widow in equity, both as to the assignment of dower, and the damages. The equity jurisdiction was so well established, and in such exercise in England, that Lord Loughborough said that writs of dower had almost gone out of practice. The equity jurisdiction has been equally entertained in this country.

68. *How is the claim of dower considered in New Jersey?*—72.

It is considered as emphatically, if not exclusively, within the cognizance of the common law courts.

69. *What are the surrogates in New York, in addition to the legal remedies at law and in equity, empowered and directed to do, upon the application either of the widow, or of the heirs or owners?*—72.

To appoint three freeholders to set off by admeasurement the widow's dower. This convenient mode of assigning dower under the direction of the courts of probate, or upon petition to other competent jurisdictions in the several States, has probably in a great degree superseded the common law remedy by action.

70. *When a widow is legally seised of her freehold estate, as doweress, may she bequeath the crop in the ground of the land holden by her in dower?*—72.

She may.

71. *To what is every tenant for life entitled of common right?*—73.

To take reasonable *estovers*, that is, wood from off the land, for fuel, fences, agricultural erections, and other necessary improvements.

72. *Is he entitled, through his lawful representatives, to the profits of the growing crops, in case the estate determines by his death, before the produce can be gathered?*—73.

He is.

73. *What are these profits termed, and on what principles are they given?*—73.

They are termed emblements, and they are given on very obvious principles of justice and policy, as the time of the determination of the estate is uncertain.

74. *In what cases does this rule apply?*—73.

It extends to every case where the estate for life determines by the act of God, or by the act of the law, and not to cases where the estate is determined by the voluntary, willful, or wrongful act of the tenant himself.

75. *To what only is the doctrine of emblements applicable?*—73.

To the products of the earth which are annual, and raised by the yearly expense and labor of the tenant.

76. *Can tenants for life make under-leases for any lesser term?*—73, 74.

Yes; and the same rights and privileges are incidental to those under-tenants which belong to the original tenants for life.

77. *Are the tenants by the curtesy, and in dower, and for life or years, answerable for waste committed by a stranger?*—77.

They are; and they take their remedy over against him; and it is a general principle that the tenant, without some special agreement to the contrary, is responsible to the reversioner for all injuries amounting to waste, by whomsoever the injury may have been committed, with the exception of the acts of God, and public enemies, and the acts of the reversioner himself.

78. *Is the tenant like a common carrier?*—77.

He is; and the law in this instance is founded on the same great principles of public policy. The landlord can not protect

the property against strangers; and the tenant is on the spot, and presumed to be able to protect it.

79. *What were the ancient remedies for waste?*—77, 78.

The ancient remedies were writs of *estrepement*, and waste; but they are now essentially obsolete. And the modern practice is to resort to an injunction bill, when the injury would be irreparable, or to an action on the case in the nature of waste, to recover damages.

80. *Was not the provision in the statute of Gloucester giving, by way of penalty, the forfeiture of the place wasted, and treble damages, reënacted in New York and Virginia?*—80, 81.

It was; and it is the acknowledged rule of recovery, in some of the other States, in the action of waste. But the writ of waste is gone out of use, and a special action on the case, in the nature of waste, is the substitute.

LECTURE LVI.

OF ESTATES FOR YEARS, AT WILL, AND AT SUFFERANCE.

1. *What is a lease for years?*—85.

It is a contract for the possession and profits of land, for a determinate period, with the recompense of rent; and it is deemed an estate for years, though the number of years should exceed the ordinary limit of human life.

2. *Is an estate for life a higher and greater estate than an estate for years?*—85.

It is; notwithstanding the lease, according to Sir Edward Coke, should be for a thousand years or more; and if the lease be made for a less time than a single year, the lessee is still ranked among tenants for years.

3. *Have we any instances of long leases in this country?*—93, 94, *n.*

Yes; some of terms of nearly one thousand years. But the revised Constitution of New York, of 1846, declared that no leases or grants of agricultural lands, to be thereafter made, for longer than twelve years, and reserving rent or service of any kind, should be valid. There is a similar provision in Wisconsin, the longest term there allowed being fifteen years, and in Alabama no leasehold estates can be created for more than twenty years. In Massachusetts, since 1836, lessees and assignees of lessees of real estate, for terms of one hundred years or more, of which at least fifty are unexpired, are regarded as freeholders, and the estate subject, like freehold estates, to descent, devise, dower and execution. In Ohio, since 1821, lands held under permanent leases are considered real estate in regard to judgments and executions. And in the purview of the Ohio statutes, leasehold estates, for the most essential purposes, as judgments, executions, descent and distribution, are regarded as freeholds or real estate.

4. *May leases for years be made to commence* in futuro?—95.

Yes; for, being chattel interests, they never were required to be created by feoffment and livery of seisin.

5. *How may leases for years be created?*—95.

The statute of frauds (which has been very generally adopted in this country) declared that all leases for years not put in writing should have the force of estates at will only, except leases not exceeding the term of three years, whereupon the rent reserved during the time shall amount to two third parts of the full improved value of the thing demised. In New York, the statute declares that no estate or interest in lands, other than leases for a term not exceeding one year, shall be created unless by deed in writing, signed by the party; and every contract for leasing longer than one year, or for the sale of lands or any interest therein, is declared void unless in writing and subscribed by the party.

6. *If land be let upon shares, for a single crop only, does that amount to a lease?*—95.

No; the possession remains in the owner.