than two lives in being at the date of the instrument containing the limitation or condition, or, if it be a will, in being at the death of the testator.

18. *When there is an executory devise of the real estate, and the freehold is not, in the mean time, disposed of, to whom does the inheritance descend?*—284.

To the testator's heir, until the event happens. A similar rule applies to an executory devise of personal estate; and the intermediate profits, as well before the estate is to vest, as between the determination of the first estate and the vesting of a subsequent limitation, will fall into the residuary personal estate.

19. *Have not the New York Revised Statutes allowed the accumulation of rents and profits of real estate, for the benefit of one or more persons, by will or deed?*—286.

They have; but the accumulation must commence, either on the creation of the estate out of which the rents and profits are to arise, and it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or, if directed to commence at any time subsequent to the creation of the estate, it must commence within the time authorized by the statute for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and terminate at the expiration of such minority. If the direction for accumulation be for a longer time than during the minorities aforesaid, it shall be void for the excess of time; and all other directions for the accumulation of rents and profits of real estate are void. It is further provided, that whenever there is, by a valid limitation, a suspense of the power of alienation, and no provision made for the disposition, in the mean time, of the rents and profits, they shall belong to the persons presumptively entitled to the next eventual estate.

LECTURE LXI.

OF USES AND TRUSTS.

1. *What is a use?*—288.

A use is where the legal estate of land is in A, in trust that B shall take the profits, and that A will make and execute estates according to the direction of B.

2. *What was the trustee, to all intents and purposes?*—288.

He was the real owner of the estate at law.

3. *What title had the* cestui que use ?—288.

He had only a confidence or trust, for which he had no remedy at the common law.

4. *Did uses exist under the Roman law, and, if so, under what name?*—289.

They did, exist under the name of *fidei commissa*, or trusts.

5. *By whom were they introduced, and for what purpose?*—289.

They were introduced by testators, to evade the municipal law, which disabled certain persons, as exiles and strangers, from being heirs or legatees.

6. *Was not the contrast between uses and estates at law extremely striking?*—292.

Yes; when uses were created, before the statute of uses, there was a confidence that the feoffee would suffer the feoffor to take the profits, and that the feoffee, upon the request of the feoffor, or notice of his will, would execute the estate to the feoffor and his heirs, or according to his directions. When the direction was complied with, it was essentially a conveyance by the feoffor, through his agent the feoffee, who, though even an infant or *feme covert*, was deemed in equity competent to exe-

cute a power and appoint a use. The existing law of the land was equally eluded in the selection of the appointee, who might be a corporation, or alien, or traitor, and in the mode of the direction, which might be by parol.

7. *What was enacted by the Statute of Uses?*—294.

The statute of 27 Henry VIII., commonly called the Statute of Uses, transferred the uses into possession, by turning the interest of the *cestui que use* into a legal estate, and annihilating the intermediate estate of the feoffee; so that, if a feoffment was made to A and his heirs, to the use of B and his heirs, B, the *cestui que use*, became seised of the legal estate, by force of the statute. The legal estate, as soon as it passed to A, was immediately drawn out of him and transferred to B, and the use and the land became convertible terms.

8. *How were uses afterwards conveyed?*—296.

The statute having turned uses into legal estates, they were thereafter conveyed as legal estates, in the same manner and by the same words.

9. *How do shifting or secondary uses take effect?*—296.

They take effect in derogation of some other estate, and are either limited by the deed creating them, or authorized to be created by some person named in it.

10. *How are springing uses limited?*—297, 298.

They are limited to arise on a future event, where no preceding estate is limited, and they do not take effect in derogation of any preceding interest.

11. *How do future or contingent uses take effect?*—298.

They take effect as remainders. If lands be granted to A in fee, to the use of B, on his return from Rome, it is a future contingent use, because it is uncertain whether B will ever return.

12. *If the use limited by deed expired, or could not vest, or was not to vest but upon a contingency, to whom did the use result back?*—299.

To the grantor who created it.

13. *Is the rule the same when no uses were declared by the conveyance?*—299.

Yes.

14. *How are trusts created?*—305.

Though there be no particular form of words requisite to create a trust, if the intention be clear, yet the English statute of frauds (which has generally been adopted with us) requires the declaration, or creation, of trusts of lands to be manifested and proved by some writing signed by the party creating the trust; and all grants or assignments of any trust or confidence are also to be in writing, and signed in like manner.

15. *What are resulting trusts?*—305.

They are trusts implied by law from the manifest intention of the parties, and the nature and justice of the case; and such trusts are expressly excepted from the operation of the statute of frauds. Thus, where an estate is purchased in the name of A, and the consideration money is actually paid, at the time, by B, there is a resulting trust in favor of B, provided the payment of the money be clearly proved.

16. *Will not a court of equity regard and enforce trusts in other cases?*—307.

Yes, in a variety of them; where substantial justice and the rights of third persons are concerned.

17. *What objections were made to uses and trusts, as they then existed, in the remarks which accompanied the bill for the revision of the New York statutes?*—299.

The three following, viz.,

1. They render conveyances more complex, verbose and expensive than is requisite, and perpetuate in deeds the use of a technical language, unintelligible as a "mysterious jargon," to all but the members of one learned profession.

2. Limitations, intended to take effect at a future day, may be defeated by a disturbance of the seisin, arising from a forfeiture or a change of the estate of the person seised to the use.

3. The difficulty of determining whether a particular limit-

ation is to take effect as an executed trust, as an estate at common law, or as a trust.

18. *How were these objections regarded?*—299, 300.

They were deemed so strong and unanswerable as to induce the revisers to recommend the entire abolition of uses. They considered, that by making a grant, without the actual delivery of possession, or livery of seisin, effectual to pass every estate and interest in land, the utility of conveyances deriving their effect from the statute of uses would be superseded ; and that the new modifications of property, which uses have sanctioned, would be preserved by repealing the rules of the common law by which they were prohibited, and permitting every estate to be created by grant which can be created by devise.

19. *What have the New York Revised Statutes declared respecting uses and trusts, except as authorized or modified thereby?*—300.

They have declared, that they were abolished, and that every estate and interest in land is a legal right, or cognizable in the courts of law, except where it is otherwise therein provided ; and that every estate held as a use executed under any former statute is confirmed as a legal estate. The conveyance by grant is a substitute for the conveyance to uses ; and future interests in land may be conveyed by grant, as well as by devise. The statute gives the legal estate, by virtue of a grant, assignment, or devise ; and the word *assignment* was introduced to make the assignment of terms, and other chattel interests, pass the legal interest in them, as well as in freehold estates ; though, under the English law, the use in chattel interests was not executed by the statute of uses.

20. *Will not the operation of the statute of New York, in respect to the doctrine of uses, have some slight effect upon the forms of conveyance?*—300, 301.

Yes ; it may give them more brevity and simplicity. But, it would be quite visionary to suppose that the science of law, even in the department of conveyancing, will not continue to have its technical language, and its various, subtle, and profound learning, in common with every other branch of human science. The transfer of property assumes so many modifications, to meet

the varying exigencies of speculation, wealth, and refinement, and to supply family wants and wishes, that the doctrine of conveyancing must continue essentially technical, under the incessant operation of skill and invention. The abolition of uses does not appear to be of much moment, but the changes which the law of trusts has been made to undergo, becomes extremely important.

21. *What two classes of trusts are retained by the Revised Statutes?*—309.

First, Resulting trusts. And second, Express or active trusts, as where the trustee is clothed with some actual power of disposition or management, which can not be properly exercised without giving him the legal estate and actual possession.

22. *To what extent are express or active trusts allowed?*—310.

1. To sell land for the benefit of creditors.

2. To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of lands, and apply them to the use of any person ; or to accumulate the same for the purposes, and within the limits, already mentioned.

23. *May the court accept the resignation of a trustee?*—311.

Yes ; and it may also discharge him, or remove him for just cause, and supply the vacancy, or any want of trustees, in its discretion.

24. *Was it not the object of the New York Revised Statutes to abolish all trusts, except the express trusts which are enumerated, and resulting trusts?*—311.

It was,

LECTURE LXII.

OF POWERS.

1. *What are the powers with which we are most familiar in this country?*—315.

The common law authorities, of simple form and direct application; such as a power to sell land, to execute a deed, to make a contract, or to manage any particular business; with instructions more or less specific, according to the nature of the case.

2. *Are there not other powers?*—315.

Yes; powers deriving their effect from the statute of uses.

3. *What are those powers, and how have the estates, arising from the execution of them, been classed?*—315.

They are declarations of trust, and modifications of future uses; and the estates arising from the execution of them have been classed under the head of contingent uses.

4. *What are all these powers in point of fact?*—315.

Powers of revocation and appointment.

5. *Who are the parties concerned in making a power?*—316, *n.* (*c.*)

They are the donor, who confers the power, the appointor or donee, who executes it, and the appointee, or person in whose favor it is executed. The New York Revised Statutes have substituted the words *grantor* and *grantee* for *donor* and *donee*.

6. *How are powers usually classed?*—317.

Into, 1. Powers appendant, or appurtenant. 2. Powers collateral, or in gross. And 3. Powers simply collateral. This classification of powers is admitted to be important only with reference to the ability of the donee to suspend, extinguish, or merge the power: and it is condemned as being too artificial and arbitrary.

7. *How is a power defined by the New York Revised Statutes?*—318, *n.* (*f.*)

The New York Revised Statutes have abolished powers at common law, as well as powers under the statute of uses, so far as they related to land, except it be a simple power of attorney to convey lands for the benefit of the owner. They have defined a power to be an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner, granting or reserving such power, might himself lawfully perform; and it must be granted to some person capable at the time of alienating such interest in the land.

8. *How has the statute of New York divided powers?*—318.

Into general and special. A general power authorizes the alienation in fee, by deed, will, or charge, to any alienee whatever. The power is special when the appointee is designated, or a lesser interest than a fee is authorized to be conveyed.

9. *When is a power beneficial under the New York law?*—318.

It is beneficial when no person other than the grantee has, by the terms of its creation, any interest in its execution.

10. *When is a general, and when a special, power said to be in trust, under the New York Revised Statutes?*—318, 319.

A general power is in trust, when any person other than the grantee of the power is designated as entitled to the whole, or part of the proceeds, or other benefit to result from the execution of the power. And a special power is in trust, when the dispositions it authorizes are limited to be made to any person other than the grantee of the power; or when any person other than the grantee is designated as entitled to any benefit from the disposition or charge authorized by the power.

11. *Is any formal set of words requisite to create or reserve a power?*—319.

None at all; it may be created by deed or will; and it is sufficient that the intention be clearly defined.

12. *What is the effect of a devise of an estate for life, with a power to appoint the fee, annexed?*—319.

The devisee takes only an estate for life, unless there should be some manifest general intent of the testator which would be defeated by such a construction.

13. *What have the New York Revised Statutes provided in such a case?*—320.

They have declared that where an absolute power of disposition, not accompanied by any trust, or a general and beneficial power to devise the inheritance, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands sold for debt. So, if a like power of disposition be given to any person to whom no particular estate is limited, he takes a fee, subject to any future estates limited thereon, but absolute in respect to creditors and purchasers. The absolute power of disposition exists, when the grantee is enabled, in his lifetime, to dispose of the entire fee, for his own benefit.

14. *Is there any distinction between a devise of lands to executors to sell, and a devise that executors shall sell the lands?*—320.

Yes; the former gives them an interest in the lands, the latter gives them but a power.

15. *Have the New York Revised Statutes interfered with this distinction?*—321.

Yes; they declare that a devise of lands to executors, or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

16. *Who may execute powers?*—324, 325.

Every person capable of disposing of an estate actually vested in himself may exercise a power, or direct a conveyance of the land. Infants may execute powers simply collateral, and a *feme covert* may execute any kind of power without the concurrence of her husband.

17. *Who may execute under the New York Revised Statutes?*—325.

By the New York Revised Statutes, though a power may

be vested in any person capable in law of holding, it can not be exercised by any person not capable of aliening lands, except in the case of a married woman.

18. *Whence does the appointee under a power derive his title?*—327.

From the instrument by which the power of appointment was created.

19. *When the mode in which a power is to be executed is not defined, in what way may it be executed?*—330.

It may be executed by deed or will, or simply by writing. But the conditions annexed to the execution of the power should be strictly complied with.

20. *Have not the New York Revised Statutes made some amendments to the law respecting the execution of powers?*—333.

Yes; they have enacted (among other things), that if the conditions annexed to a power be merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power. In all other respects, the intention of the grantor of a power, as to the mode, time and conditions of its execution, must be observed, subject to the power of the court to supply defective executions.

21. *May the power be executed without reciting it?*—334.

It may; or even referring to it, provided the act shows that the donee had in view the subject of the power.

22. *May a power of revocation and new appointment be reserved in a deed executing a power?*—336.

Yes; though the deed creating the power does not authorize it, and such powers may be reserved *toties quoties*.

23. *What have the New York Revised Statutes enacted on this point?*—337.

They have declared that powers that are beneficial, or in trust, are irrevocable, unless an authority to revoke them be granted or reserved in the instrument creating the power. They

have also declared, that where the grantor in any conveyance shall reserve to himself for his own benefit an absolute power of revocation, he shall be deemed the absolute owner of the estate, so far as the rights of creditors and purchasers are concerned.

24. *What is the rule of equity with regard to a general power of appointment?*—339.

The Court of Chancery holds that where a person has a *general* power of appointment over property, and he actually exercises his power, whether by deed or will, the property appointed shall form part of his assets, and be subject to the claims of creditors, in preference to the claim of the appointee. The party must have executed the power, or done some act indicating an intention to execute it; for it is perfectly well settled in the English law, that though equity will in certain cases aid a defective execution of a power, it will not supply the total want of any execution of it.

25. *What provision has been made on this point by the New York Revised Statutes?*—341.

By them every special and beneficial power is made liable in equity to the claims of creditors, and the execution of the power may be decreed for their benefit.

26. *What is a leading rule as regards the construction of powers?*—345.

The intention of the donor of the power is the great principle that governs in the construction of powers; and, in furtherance of the object in view, the courts will vary the form of executing the power, and, as the case may require, either enlarge a limited to a general power, or cut down a general power to a particular purpose.

LECTURE LXIII.

OF ESTATES IN REVERSION.

1. *What is a reversion?*—353.

A reversion is the return of land to the grantor and his heirs, after the grant is over; or, according to the formal definition in the New York Revised Statutes, it is the residue of an estate left in the grantor, or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

2. *What does a reversion necessarily assume?*—353.

That the original owner has not parted with his whole estate or interest in the land.

3. *From what does Sir William Blackstone say that the doctrines of reversion are derived?*—353, 354.

From the feudal constitution; but it would have been more correct to have said, that some of the incidents attached to a reversion were of feudal growth, such as fealty, and the varying rule of descent between the cases of a reversion arising out of the original estate, and one limited by the grant of a third person.

4. *Does a reversion arise by operation of law, or by deed or will?*—354.

By operation of law. And it is a vested interest or estate, inasmuch as the person entitled to it has a fixed right of future enjoyment.

5. *Is not a reversion an incorporeal hereditament?*—354.

It is, and may be conveyed, either in whole or in part, by grant, without livery of seisin.

6. *Are reversions expectant on the determination of estates for years, immediate assets in the hands of the heir?*—354.

They are. But the reversion expectant on the determina-

tion of an estate for life, is not immediate assets during the continuance of the life estate, and the creditor takes judgment for assets *in futuro*.

7. *Is the reversioner entitled to his action for an injury done to the inheritance?*—355.

He is, because he has a vested interest.

8. *What are the usual incidents to the reversion under the English law?*—355, 356.

Fealty and rent. Fealty, in its feudal sense, does not now exist in this country; but rent is a very important incident, and passes with a grant or assignment of the reversion. It is not inseparable, and may be severed from the reversion, and excepted out of the grant by special words.

LECTURE LXIV.

OF A JOINT INTEREST IN ESTATES.

1. *In what two ways may a joint interest in land be had?*—357.

Either in the title or in the possession.

2. *What are joint tenants?*—357.

Joint tenants are persons who own lands by a joint title, created expressly by one and the same deed or will. They hold uniformly by purchase.

3. *How are they seised?*—359.

Joint tenants are said to be seised *per my et per tout*, and each has the entire possession, as well of every parcel as of the whole. They have each (if there be two of them, for instance) an undivided moiety of the whole.

4. *What is the doctrine of survivorship, or* jus accrescendi?—360.

It is the distinguishing incident of title by joint tenancy;

and, therefore, at common law, the entire tenancy or estate, upon the death of any of the joint tenants, went to the survivors, and so on to the last survivor, who took an estate of inheritance.

5. *Did the common law favor the title by joint tenancy?*—361.

It did, by reason of the right of survivorship.

6. *When were estates in joint tenancy abolished in New York?*—361.

As early as February, 1786, estates in joint tenancy were abolished, except in executors and other trustees, unless the estate was expressly declared, in the deed or will creating it, to pass in joint tenancy. The New York Revised Statutes have reënacted the provision, and with the further declaration that every estate vested in executors and trustees, as such, shall be held in joint tenancy.

7. *Can husband and wife take by moieties?*—362.

They can not. But they are both seised of the entirety, and the survivor takes the whole; and, during their joint lives, neither of them can alien so as to bind the other. If an estate be conveyed expressly in joint tenancy to a husband and wife, and to a stranger, the latter takes a moiety, and the husband and wife, as one person, the other moiety.

8. *How would it be if the husband and wife had been seised of the lands, as joint tenants, before their marriage?*—363.

They would continue joint tenants afterward, as to that land, and the consequences of joint tenancy, such as severance, partition, and the *jus accrescendi*, would apply. It is said, however, to be now understood that husband and wife may, by express words, be made tenants in common by a gift to them during coverture.

9. *How may joint tenancy be destroyed?*—363.

It may be destroyed by destroying any of its constituent unities, except that of time.