PROPERTY LAW in stagecoach days

Edited by

John A. Greed

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PROPERTY LAW

IN

STAGECOACH DAYS

a set of pre-Victorian lecture notes on Property Law

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CONTENTS

Note:- the lecture-titles in italics do not appear in the text but may be implied therefrom.

INTRODUCTION

The story of how this book came to be published began very suddenly, when at the end of a real property law lecture in March 1976 a student, Mr. Gould, showed me a manuscript which he had acquired from his grandfather, and which he believed to be about 100 years old.

On reading the manuscript, four things soon became apparent to me:-

(1) it consisted of a complete set of property law notes taken by a Mr. T. C. Atkinson at a series of 67 lectures given by an unidentified lecturer,

(2) it was a good deal older than the 100 years we had at first supposed,

(3) it presented a very interesting picture of property law as it was at the time of the manuscript,

(4) the style of the lecturer and the handwriting of Mr. Atkinson combined to produce a most readable document.

Such a find seemed too good to keep to ourselves, so as soon as a machine capable of reproducing the rather faded manuscript could be found *(my thanks to Rank Xerox!)* it was published.

The date of the manuscript can be positively identified, but as part of its fascination is in trying to work out the date, I shall not spoil the fun by giving the answer here. It is to be found within the first 25 pages, but in case anyone misses it, I have given it again on page 150.

I considered editing and correcting the manuscript, but decided it was better to leave it as it was: it is therefore published in its original form, including mistakes. My editing has been limited to retouching the occasional letter where the original had faded into near-invisibility.

J.A.G.

Lectures on Real Property

Lecture 1st

Property is divided into two kinds
Land or Real Property
and
Personal Property as
Money, Goods & whatever
is moveable.

Estate in Lands means such Interest as the Tenant or Owner hath therein.

Now a man may have different Estates or Degrees of Interest in Land.

He may have it for ever and be the absolute Owner, or

He may have it only to him and his Children (i.e.) as long as he shall have any Family or He may have it only for life or He may have it only for Years or a term.

Lecture 2nd

1. A man who has Land for ever is said to have an Estate in Fee or Fee Simple; or to be Tenant in Fee Simple.
2. Where a Man has Land which is given to him & his Children or to him and the Heirs of his Body he is said to have an Estate Tail or Fee Tail, or to be Tenant in Tail or Fee Tail.
3. A Man who has Land only for his Life is said to be Tenant for Life
4. A Man who has Land only for a Number of Years is said to be Tenant for Years.

In this last case the Estate goes from him to some other person or back again to the former Owner as soon as the Years are expired.

In the last case but one (3) it goes from him when he dies.

In the second case it goes over to some other person or back again to the former Owner as soon as the Tenant in Tail and his Children or Family are all dead or extinct.

In the first case the Tenant in fee has the entire property or Ownership & may sell or dispose of his Estate as he pleases, and it will never go away as long as he has any Family or Relations living.

Lecture 3rd

Property is divided into two kinds

Real Property as Land

Personal Property as Goods &c

Estate in Lands means such Interest as the Tenant has therein, tho' it is also very often used to denote or mean the Lands themselves.

Now a man may have different Estates or Interests in Land i.e.

He may have it for ever and be the absolute Owner; in which case he is said to have an estate in Fee or be Tenant in Fee,

He may have it only for so long as he shall have Children or descendants living, in which case he is said to have an Estate Tail, or be Tenant in Tail,

He may have it for his Life only in which

case he is said to have an estate for Life.

He may have it only for a Number of Years.

In the last case the Estate goes from him as soon as the Term is expired.

In the last case but one it goes to the former Owner, or to some other person as soon as the Tenant for Life dies.

It goes from the Tenant in Tail, or his Family as soon as he or his Family are extinct by death or for want of Children.

Tenant in fee has the entire ownership or w property and may sell or dispose of his Estate as he pleases.

Obs: however, it must be remembered that tho the estate will go from the Tenant in Tail when he ceases to have any Family yet when he comes into possession he may make the Estate his own and become Tenant in fee by pretending to let himself be sued for the estate, and suffering what is called a Common Recovery, which is really nothing more than a fictitious Action by some third person who

pretends to claim the Estate.

Picture 4th

The four different names for Estates then are

Estates in Fee

Estates in Tail

Estates for Life

Estates for Years

Now though the degrees of Interest which a man may have in Land have been distinguished by these different names or Titles chiefly to point out the different degrees of their duration or continuance, yet there is another good reason for so distinguishing them, viz, because according to their different names, they have different Rights Incidents & Privileges.

Tenant in fee - may either sell or dispose of his Estate for 100 or for 1000 years, or for ever which a Tenant in Tail cannot do, because at his death, if he has no Children or Family to take it, it goes to some other person or back again to the former owner, and if the Tenant in Tail have Children, then they are intitled to it.

Tenant in Fee } may both of them fell Wood pull
and } down Houses and open Mines for
Tenant in Tail } Coal &c. which Tenant for life
or Years cannot do.

Obs:- there is a distinction bet: opening Mines and Working mines which are already open

Tenant for Life may work Mines which are already open tho' he cannot dig for or open mines.

The estate of Tenant in fee and Tenant in Tail is also subject to dower (see the defn of dower) which the Estate of Tenant for life or Tenant for 1000 Years is not.

Lecture 5th

Estate for Life

If I Grant or make over my Lands to A.B. without saying more ie. without expressing that it shall be to A.B. and his Heirs or A.B. & the Heirs of his Body, A.B. has an Estate in the Lands for his own Life, tho' no particular estate is mentioned.

It is not for my Life, because an Estate for a mans own life is supposed to be more beneficial

than for the life of any other person. & there is a Rule in Law "That all Grants are to be taken most strongly against the Grantor"

It is not for longer than his own Life, because there is a Rule in Law that Deeds or Grants shall not confer a greater estate than for life unless they contain the Word Heirs which word on that account is called a Word of Inheritance.

When a Tenant for Life dies, if he die before Harvest or before he has sown upon the Land his Executors shall have the Crop which is called Emblements; for the estate was determined by his death, which is the Act of God; and it is a Maxim in Law that the act of God does wrong to no body.

Lecture 6th.

Dower.

A Widow shall have the third part of all the Lands of Inheritance (... that is fee or fee Tail) which the Husband had during the marriage to hold to her for her life and this is called her dower.

Obs: a Widow is a Woman who was married, but

whose Husband is dead.

A third part is one part out of three where the whole is divided into 3 parts.

Freehold — what

Estates in Fee — Estates in Tail, and Estates for Life are said to be Freeholds or Estates of Freehold. Estates for Years are said to be less than Freehold, tho' they should be for 100 or 1000 Years so as to continue for a much longer time than any man could possibly live.

Obs: however, Lands held by Lease, tho' for Life, are not called Freehold, but Leaseholds for Life.

Meaning of Incorporeal Hereditaments explained, and Instance of one given.

The Word Hereditaments signifies not only Land but also whatever will descend or go to the Heir, where the Owner has not disposed of it by his Will.

Hereditaments are divided into

Corporeal — and — Incorporeal.

Corporeal Hereditaments means Lands, — but observe the word Lands will carry and include

the Houses which are built upon them; for whatever is upon the Land upwards and downwards belongs to the owner of the surface.

Incorporeal Hereditaments may be generally explained as being rights issuing out of things un Corporeal - however we will give one Instance of an Incorporeal Hereditaments & explain how it arises or is created.

A private way or the Right of going over another mans Ground is an Incorporeal Hereditament thus the right of going over another man's fields to Church or Market (where such right does not also belong to the Public, i,e, to everybody, but only authorizes particular persons to pass - as persons living at a certain Farm House or in an adjoining Village) is a private way and an Incorporeal Hereditament.

This Right or Privilege is grounded upon a Grant or Authority from the Owner of the Land.

To prove such right you must either produce the Actual Grant, or must shew that you have always claimed or had such Road, and then from proof of such content usage it will be presumed or supposed that there was such Grant in existance formerly tho' it may now be lost.—

Lecture 7.
On Estates for Years

An Estate for Years is where a Contract is entered into for the Possession of Lands or other Tenements for some certain and determinate period as 7, 14, 21, 29, 99, 500, 1000 Years, or the like, And where a Lease is granted for any such term the Estate is called Leasehold

All Leaseholders for Years tho' for 1000 or 2000 Years (and therefore in point of value as good as the fee simple itself) are yet but Chattel Interests & reckoned part of the Personal Estate, & if the Owner neglect to dispose of them by his Will they go to his Executors & not to his Heir at Law, the Executor being intitled to all the personal Estate to pay debts and divide amongst the Relations.

A Lease for Years may be made to commence in future i,e, a future time) as if I demise lease and to farm let my Lands at Chapel Allerton to hold the same from the 5th day of April in the Year of our Lord 1820 - this would be a good Lease tho' the Lessee would not have a right to enter or take possession for 10 Years to come.

A Lease is not perfected till the Tenant has entered into actual possession & he then, but not before, becomes possessed of the Term' till he has

actually enter, the Lease only gives him a right of Entry, which is called his Interest in the Term, or Interesse Termini.

Lecture 8a.

On Estates at Will and Copyholds

An Estate at will is where Lands and Tenements are let by one man to another, to have and to hold at the will of the Lessor, & the Tenant by force of the Lease obtains possession.

This sort of Estate was not uncommon formerly when the great Lords used to let their Followers have Lands for little or nothing, and intended to reserve to themselves a right of taking the Lands back again whenever they pleased, tho' even then the Law would not allow them to cheat or injure the Tenant by determining the will and taking the Lands back after a crop had been sown and before it was ripe; For to prevent such injustice the Law gave the Tenant a right to the produce of the Lands under the name of Emblements. - But now that Tenants pay a considerable Rent for Land; this mode of letting is very uncommon, because as either of the parties may put an end to the Tenancy, it subjects them to the caprice of each other, and is attended with great Inconveniences; and therefore if no particular time is mentioned when a man takes a Farm, the Law understands

or construes it to be from year to year; and neither the Tenant can give up the Farm, nor the Landlord turn the Tenant out, but at the end of a Year, and after having given half a Years previous Notice

Lecture 8 b
Copyholds

What are now called Copyhold Lands or Copyholders were formerly probably nothing better than Lands granted by Lords of Manors to their Followers, or poor Neighbours to hold at the will of the Lords. But in course of time, either from the kindness of the Lords or some Agreement between them and their Tenants, it became usual for the Lands to remain in the Tenants Family, and thus a custom having been suffered to grow up, the Lord could not break thro' it, but the Tenant had a right to hold according to the custom; and hence these Lands are now said to be held "at the will of the Lord and according to the custom of the manor".

Lands thus held of the Lord of a Manor and subject to the Copyhold Court of such Manor, are called Copyholds.

The Owners of Copyhold Lands have frequently to pay Fines to the Lord, as upon the death of the Owners when the Son succeeds to it, or takes it under his

Father's Will, or when the owner sells his Copyhold, in which case the Purchaser has to pay a Fine.
Sometimes this Fine is what the Lord chooses to demand; but the Law will not allow him to demand more than two Years value of the Land, as otherwise there would be an end to the Tenant's Interest, because the Lord might demand as much as the Land was worth.
Sometimes the fine is a known fixed Sum, & then it is called Fine Certain.

Lecture 9
Of Mortgages.

Obs: A Mans Freehold Estate (supposing him to die without a Will) goes to his heir, but his personal or Property goes to his Executors.
Now supposing A to have 6 Children viz 3 Sons & 3 daurs, and to die without a Will; though it might be very hard upon the rest of the Family, yet his Freehold Estate would go to his Eldest Son only as his Heir at Law, and his other Children would not be intitled to any part of it; - but his personal property would go to his Executors or Administrators, who first of all pay his debts out of it, & then divide what remained, equally amongst all the Children. Hence the material difference between a man's property being Freehold and being personalty.
Where A borrows £500 of B. and as a Security or

conveys his Estates to B upon Condition that if A repay the money on such a day, then that B. shall reconvey the Estate to him, this is called a Mortgage -
B's Interest in the Estate is conditional; until the day of payment, but if the money is not then paid it becomes absolute, & B in a Court of Law is considered as the complete owner. But stile the whole transaction, in a Court of Equity at least, is considered in its real light, viz, merely as a Loan of Money; and as such A's personal Estate is liable to the payment of it, & B's personal Representatives are intitled to receive it; & therefore if B die yet his heirs must convey the Estate to A without Fee or Reward, and the mortgage money must be paid to B's Executor; and on the other hand - A's Executors, if he die, must pay the money tho' his Heir at Law will be intitled to have the Estate reconveyed to him - The reason is, that the Estate was merely a pledge & not to be meddled with, provided A have the means of repaying the money, without meddling with it. /-

Lecture 10.

Estates are sometimes clafsed or divided into Estates in poſſeſsion, i,e, where the Owner has, or is intitled to the present enjoyment of them, and into Estates in Expectancy i,e, where the enjoyment or the

actual taking an apernancy of the profits, will not arise 'till some future time.

A Remainder what

If a man seized in fee simple grant Lands to A for 20 Years, & after the determination of the said term then to B and his heirs for ever; here A is Tenant for Years, Remainder to B in fee.

So if a Father upon the marriage of his Son limit his Estate to Trustees for a Term of Years to raise portions for younger Children and after the determination of the said term to A his son for life - and after the determination of ~~the said term~~ A's life Estate, then to B. and his heirs for ever - This makes the Trustees Tenants for Years with Remainder to A for life - Remainder to B, in fee; - And these latter Estates are properly enough called Remainders, because they are what remains of the Estate after the preceding Estate is determined, & the preceding Estate is what is called particular Estate (from particula, a small part) and there cannot be a Remainder properly so called without a particular Estate, because they both together only make up the Fee Simple. There must be a particular Estate to support a Remainder.

Remainder is a relative expression, implies that some part of the thing is previously disposed of. -

Lecture 11.
A vested Remainder what

If an Estate be limited or settled to A for life, - Remainder to B, in fee; here B's Estate is a - vested Remainder.
For tho' it is not to be enjoyed immediately, yet a present Interest passes to B.
It is completely fixed to happen to B. after the particular estate is determined i,e, as soon as A dies. - In short if A were to die immediately; B, - would be ready and capable of succeeding to the - Estate - And it is this present capacity of taking whenever the preceding Estate may happen to - determine, even if it should determine immediately, - which makes it a vested Remainder -

Lecture 12.
Contingent Remainders

A Contingent Remainder is where the remainder depends upon some uncertainty, so that possibly it may never take effect.
Thus if a man upon the marriage of A his Son limit and settle his Estate upon A. for his life - with remainder to his (A's) eldest Son, if he - should have any, in fee, Here the remainder to A's

eldest Son is contingent, because possibly A, may die before he had a Son: and it is this possibility of the preceding estate determining before the Remainders take effect which makes it contingent. For if A should once have a Son, the Remainder is no longer contingent, but becomes vested; for if A, should die the next moment, there would be a Son to take the Remainder; and therefore it has become vested.

Lecture 13.

Of Merger

Generally speaking - where a greater Estate & a less coincide & meet in one and the same person the less is immediately annihilated, or in the Law Phrase is said to be merged i,e, sunk or drowned in the greater.

Thus if a person who has a Lease of an Estate purchase the Fee Simple of the Landlord or Remainderman, & the Estate is conveyed to him; the Term of Years is merged in the Inheritance, & shall never exist any more. But they must come to one and the same person in one and the same right; for suppose A has a Lease for Years and B, has the remainder in Fee i,e, is intitled to the Estate upon the expiration of A's Lease.

Now if A make B his Executor, & die the remainder

of the Term vests in B, as A's Executor, & the — o Remainder in fee he had before, yet the Term shall not merge, for the Fee he had in his own right, but the Lease or Term of years he takes as Exor i,e, in right of the Testator. & subject to his debts and — Legacies. —

Lecture 14.
Of Joint Tenancy

Estate in Severalty — is where a Man is the sole Tenant i,e, hath the estate to himself — alone & no other person hath any share in it — along with him; therefore whatever the owner of such an Estate can do, he may do by himself — without the concurrence of other persons.

Joint Tenancy — is when an Estate is granted or devised to 2 or more persons together, and as one Grantee or Devisee; as if an Estate be granted to A, and B, and their heirs: — this makes them joint Tenants in fee of the Land.

Joint Tenants may be said to have four — Unities viz

1. Unity of Estate
2. Unity of Title
3. Unity of Time
4. Unity of Possession.

1. It must be the same Estate or Quantity of Interest; & therefore if it be to one for life and the other for — Years, it is not Unity of Estate.
2. It must be granted to them together. It must be by — one and the same Title, and therefore they must not take by different Deeds or by different Wills — This taking together constitutes what is called the — Unity of Title.
3. It must vest in both or all at one and the same — time, which is the Unity of Time, for if they take by — different Instruments and at different times, i,e, one Year and another another Year; it is a Tenancy in Common.
4. Together and as one, i,e, they must have an Unity of Possession — they have not one of them a Seizin in one half, or moiety, and the other in the other, but each has an undivided Moiety of the whole — they are — said to be seized per my et per Tout.

Where an Estate comes to & is held by different — persons in such manner as to constitute what the Law calls a Joint Tenancy, it is subject to several Rules — which do not apply to other estates.

The chief Incident, however, is that of Survivorship: Thus where A, and B, are joint Tenants, if A, die — — without having done any act to sever the Tenancy; the Estate belongs to B, and Vice Versa. This is what is — called the Jus accrescendi, and is the the natural — —

consequence of the Entirety and Unity of their Interest, the Survivor continuing to be as much seized of the whole after the death of his partner as, in fact, he was before. But in favor of Trade there is this exception to the Rule, viz: Jus accrescendi inter mercatores locum non habet - i.e. partnership property is not liable to Survivorship.

Whatever makes the Estates cease to be held under the same Grant, Devise, or Conveyance by the parties together, makes it cease to be a joint Tenancy. And therefore if A, and B, joint Tenants of an estate, - agree to make Partition and execute a Conveyance accordingly tho' they do not make an actual division of the Estate so as to disunite the possession but merely convey the Estate as to one Moiety thereof to the use of A, and as to the other moiety thereof to the use of B, this destroys the Joint Tenancy, for tho' they are still holding the Estate along with each other, they are not holding as one person, they are not seized of the whole; they have not, if I may so say, that sort of Chemical Union and Interest which Joint Tenants have; - but they are become Tenants in Common only. So if one joint Tenant convey away his estate or Interest to a third person; - this severs the Tenancy, and turns it into a Tenancy in Common

Joint Tenants may, by mutual Consent, make an actual partition or Division, or may be compelled to

make it as Parceners may, – for which see the next Lecture.

Obs: there is no difference between Tenants in Common, and hence this is one reason why it is very material to distinguish clearly between what the Law considers a Tenancy in Common and a Joint-Tenancy.

Lecture 15.

Of Coparceners

An Estate in Coparcenary is where Lands of Inheritance descend from the Ancestor to two or more persons, they all make but one Heir, and are called Parceners.

They in many respects are like joint Tenants i.e. they have many of the same incidents to their Estate; but they are properly intitled each to the whole of a distinct moiety; and, of course, there is no jus accrescendi or Survivorship between them.

Supposing A. and B. to be parceners they may by mutual consent make an actual Partition or Division between them which is generally effected (after having the Estate valued and divided into two equal parts or shares) by both of them conveying the whole to R. R. as Releasee, to uses as to such a part of the Lands (describing them particularly.)

To the use of A. and his heirs as to the other part.

or share (describing them also,
To the use of B. and his heirs for ever,
But if either of them wish to make partition and the other will not consent to it, he may be compelled by legal process.— (A Bill in Equity is the most general and effectual mode of compelling a partition,

Lecture 16.
Of Tenancy in Common

Tenants in Common are where two or more persons hold together but not as joint tenants. They have, indeed, a mixed Possession something similar to that of Joint Tenants because they do not know their own but occupy promiscuously. But they want some of the 3 Unities of the Estate, Title or Time.

The best way of leaving no doubt, where the Estate is meant to be given as a Tenancy in Common is to add the Words "to hold to them as tenants in Common and not as joint tenants" for it is said that if a Man convey an estate by Deed to A. & B. and their heirs equally to be divided between them; this would be a joint Tenancy — The same Words by Will, however, would make a Tenancy in Common; the reason of the difference is that Wills are favorably construed for the Devisee, — — — — — — — — because they are often made by persons —

who do not understand the Laws; and when there is no time to get advice; whereas deeds are supposed to be made by persons who are acquainted with the Laws, and there is always time to take proper advice upon them, if necessary and therefore Deeds are construed strictly.

Tenancies in Common may be destroyed by one Tenant taking the whole, as by buying the shares of the rest, or becoming intitled to them as Heir, or else by making partition as before mentioned in the Section on Coparceners.

Lecture 17.

A Title signifies the right which a man has to his Estate.

He proves his Title by Deeds, and shewing that he, or those under whom he claims have enjoyed the Estate according to his Deeds.

Mere possession or the actual Occupation of the Estate by a man himself or by his Tenant is prima facie evidence of Title: and therefore in an Ejectment by a person claiming the Estate, he must prove his Title, otherwise the person in possession may continue in possession tho' he has in fact no Title to the Estate at all, Thus if A. take possession of a Close to which he has no kind of right, yet B. cannot turn him out by

Ejectment unless he has a right to the possession; for otherwise A, may just as well insist upon keeping the Land as B. may insist upon keeping it, from him. Hence it is laid down that in Ejectment the Lessor of the plaintiff i.e, the party who sues for the estate, must recover by the strength of his own Title, and not by the weakness of his Adversaries or Tenant in possession.

Right of Possession is where the owner of Lands, tho' he has lost or been turned out of possession, has notwithstanding, the legal Title to them and may recover his possession back again by Law. This is generally done by bringing an Ejectment. This, however must be done within proper time (say 20 Years) But tho' he should lose his remedy, and cease to have a right of possession; - still he may have an actual good Title to the property, which is called the Right of Property (jus proprietatis) and this he may prove at any time within 60 Years, by an Action called a Writ of Right. ~~But where a man, pretending he has a Right~~. But where a man, pretending he has a right to Lands gets into possession of them and holds them adversely (either by himself or his Tenants) i.e, in open defiance of all other Claimants for 60 Years; - that makes him a good Title against all the World; - tho' in truth he had no Title at all, at the time he first got possession.

A Writ of Right is a very uncommon Action as may be supposed; for there are few Estates so little worth looking after, or few people so careless and indifferent about their property, but they sue for it within 20 years, in which case an Ejectment is the best and easiest Remedy).

Where a man has both the right of property and the right of possession, it is deemed a good Title, - tho' still not such a Title as a person would purchase unless the seller should undertake to bring an action in order to obtain the actual possession; - for no man would choose to buy a Law Suit.

Lecture 18.

Of Title by descent

If a man, seized of an Estate of Inheritance, die without a Will; - his Estate will descend to his - Heir, viz.

To his eldest Son, if he has any Son, or To the Issue of such eldest Son: but if he (the Man) had no Sons, or they are all dead without Issue, then It goes equally amongst the daughters as - - coparceners.

But if he had neither Sons nor daughters, or they are all dead without Issue; then it goes amongst the deceased's other Relations in a similar manner.

Lineal Relations spring directly one from another all the way, as Grandfather, - Father Son.
Collateral Relations are those who are indeed descended from one Common Stock or Ancestor, but not directly one from another: such are Cousins - See the Table of Consanguinity in 2 Vol. Blackstone's Comm: p.
- Actual Seizin what - See the definitions, or 2. Vol: Blackstone's Comm: p. and see also middle of page
The Rules or Canons of descent.
That Inheritances lineally descend to the Issue of the person last a seized, but shall never lineally ascend. Thus if A. B. and C. be w o s - Grandfather, Father, and Son and B. purchase an Estate, and then die without a Will; - the Estate shall descend to C. his Son, as being his next lineal Representative below him. But if C. were dead A. could not inherit i,e, could not claim to be Heir to B. - The reason arises out of the Feudal System, by which B. could never have come to the Estate at all (if it were the Father's Family Estate) 'till after A's death and consequently in that case there could not be such a person as A. living to succeed B. - And if the Estate came to B. from his Mother, then A could have no claim to the Estate for other Feudal reasons.

2. Canon - That the Male Issue shall be admitted before the Female.
This Rule is also of Feudal Origin as connected with Military Service, which was the Life and Soul of the Feudal System - Originally Females could not in any case succeed to a proper Feud or Feudal Estate in as much as they were incapable of performing Military Services, for the sake of which that System was established.
3. Canon - That where there are 2 or more males in equal degree, the eldest, only, shall inherit, but the Females altogether as Coparceners thus.
Suppose a man has a daughter A. then a Son B. then another Son C. and then another daughter D. and dies without a Will, leaving an estate of Inheritance; it would first go to B. as the Eldest son; But if B. were dead before the Father, & without leaving Children Issue, then it would go to C. And if B. and C. were both dead without Issue; - then it would go to A. and D. as Coparceners.
4. The Lineal descendants in infinitum shall represent their Ancester, i,e, shall stand in the same place as the person himself would have done, had he been living. Thus in the last case, if B. had left any Children Grand children or Issue they would be intitled as Representatives of B. in preference either to C. or his descendants; or to A. and D. - But if B. C. and A.

had all died in their Father's life time; - B, and C, without leaving any descendants; but A, leaving Children; - then A's heir would be intitled to the same share as A, herself would have been intitled to if she had lived, viz, to half the estate, - D, being intitled to the other half as Coparcener.

This taking by Representation is called Succession in Stripes, since all the Branches inherit the same share that their Root, whom they represent - would have done, - See a Case illustrative of this Canon, beginning in the last line at the bottom of page 218, in 2 Vol: Blackstone.

Lecture 19.

5 - The fifth Rule or Canon in the Law of descents is - that on failure of lineal descendants or issue of the person last seized, the Inheritance shall descend to his Collateral Relations, being of the blood of the first Purchaser subject to the 3 preceding Rules, of Dignity of Blood, Right of Primogeniture, and Right of Representation.

The first Purchaser is he who first acquired the estate to his Family; - and the reason of this part of the Rule is evidently derived from Feudal principles. Hence if an estate come to a man by descent from his Mother; and he afterwards die without a Will; none of his Father's

Relations can ever be Heir to him; for this Estate - because none of them could be related to or of the blood of the first purchaser being evidently of the Mothers - family only, But where a Man takes an Estate by - purchase, it is now considered ut feudum antiquum, which may have come from either the Father's or Mother's side, but from whether is not known, and therefore the Owners Relations both by the Father's and the Mothers sides may inherit - (but the Father's is preferred,

Obs: this part of the Rule only applies or takes place where the Estate has come by descent, in which case that branch of the Family from which the estate did not descend, can never inherit it. - See, if necessary, the lower part of p. 223, in 2. Vol. Bl: Comm: - See also the same doctrine well expressed in the middle of p. 243. - See also Table of Descents, p. 237. -

Lecture 20.

Words of Purchase - and Words of Limitation

Where a person succeeds to an estate upon the death of his ancestor, having died without a Will; - he is - said to take by descent: but if he had had the Estate given to him by his Ancestors in his life time, or devised to him by his Ancestors Will; - he would be said to take

by purchase. In short any other mode of taking than by descent, is called Purchase. Now if an Estate is granted to A for life, Remainder to his right heirs in fee - here the Word Heirs is not (as Lawyers call it) a Word of Purchase, but a Word of Limitation - i,e, upon the death of A, his heirs would take not in their own right but by descent, and as Heirs of A: - and therefore the Grant is just the same as if it had been to A, his Heirs & Assigns for ever. But if the Grant had been to B. for life, Remainder to the right Heirs of A, - here A, would have taken nothing; and his eldest Son, or who ever answered the description of his Heir, would upon B's death, have succeeded to the Estate; not by descent from A, but in his own right, & in that case the Word Heirs would have been called a Word of purchase as contradistinguished from Words of Limitation.

Lecture 21.
Of Title by Escheat.

A Bastard cannot be Heir to any Body; neither can he have any Heirs, unless he have Children of his own: for he has no legal Ancestors, being nullius filius; And therefore if A Bastard purchase Land, and die seized thereof without Issue, & intestate, the Land shall escheat to the Lord of the Fee.

An Alien cannot take by descent, wherefore if a man leave no other Relations but Aliens, his Lands shall Escheat to the Lord: Neither can he buy Lands to hold them, but the King upon Office found shall have them. — This seems founded upon Public Policy to prevent Foreigners from becoming Numerous, and obtaining too much Influence in this Country. Where an Alien is made a denizen, and afterwards has Children; these Children may inherit his Lands; but not any Children he had before denization: But where an Alien has a Son and is afterwards naturalized such eldest may inherit; for naturalization cancels all defects and has a retrospective Energy.

By Attainder also for Treason or other Felony, the Blood of the person attainted is so corrupted as to be rendered no longer inheritable i,e, he can have no Heirs, nor indeed can he be Heir to any one; and therefore his Lands would escheat to the Lord of the Fee according to the established doctrine. Principles of the Feudal System.

Obs: the Lands as well as the Goods of a Felon were by the old Saxon Law to be forfeited to the King for Treason or Felony; and this forfeiture therefore is very different from Escheat. Where a person has committed Treason or Felony: his Lands are forfeited to the King (in case of Treason for ever: but in case of other

Felonies – for a Year and a day, only) and after the Kings Year and a day, the Lands escheat to the Lord of the fee of course they go to or rather continue in the King by escheat.

Obs:- To prevent the Hardships to Children and Heirs arising from this doctrine, in most new Felonies created by Act of Parliament it is now declared that they shall not extend to any Corruption of blood.

Lecture 22.

Of property without an Owner.

Where an Estate was granted to A. (but without mentioning his Heirs) during the life of B, Now if died before B, there was a part of the Estate, viz, – during the remainder of B's life without an Owner, and who ever could first get possession might hold it and was called Common Occupant.

But if the Grant had been to A and his Heirs, then A's Heir was intitled to enter, and was called Special Occupant, i,e, an Occupant specially pointed out by the Grant.

But now where there is no special occupant in whom the Estate may rest, it is provided by Act of Parliament that the Tenant per autre vie (i,e, during another's life) may devise it by Will, or it shall go to-

his Executors or Administrators if he do not devise it: so that the Statute Law has abolished Common Occupancy.

Obs: in the above case A, is called Tenant per autre vie. i.e. during another's life, B's life; and B. is called Cestui que vie.

If C. have Lands on one side of a River and D. have Lands on the opposite side, and the Bed or Soil of the River is equally divided between them (viz. that each has the Soil ad medium filum aquae) as is generally but not always the case, here if an Island arises in the middle of the River, it belongs to them both; but if it is on one side then it belongs to the owner of the Land on that side unless, perhaps where it happens by a sudden and violent Flood which changes the course of the River /—

Lecture 23.
Of Title by Prescription

Where a man can shew no other Title to what he claims than, that he and those under whom he claims have immemorially used to enjoy it, — this is called prescription

All prescription must be either in a man and his Ancestors, or in a man and those whose Estate he has (which last is called prescribing in a que—

Estate) for the right must have come down from some body, either from a man's Ancestors or from the persons from whom the Estate came in respect of which he claims the right: Also prescription is for something belonging to another it always presupposes a Grant to have existed, but which has been lost by time or accident, for if the Grant had been in existance it might have been produced, and would have amounted to a good Title at once, and the claim might have been made as by Grant.

Where a man prescribes in a que Estate, it must, of course, be for something which is capable of going along with an Estate. But where a man prescribes in himself and his Ancestors, it may be for any thing, which could be granted.

Lecture 24
Of Title by Forfeiture.

A Man may forfeit his Lands and Tenements and Hereditts (as well as his personal property) in several ways

1. For certain Crimes and Misdemeanors as Treason, Felony, popish recusancy &c
2. By Alienation or conveying them to another contrary to Law; as where he conveys them to a corporation in Mortmain, which has been or in

prohibited by many Acts of Parliament, and is now lawful only where it is for Charitable purposes, and conveyed according to the directions of the 9 Geo: 2 Ch. 36.

Or where he conveys them to an Alien which is contrary to the policy of our Laws.

Or where he Conveys a greater Estate than he has a right to convey, as if being Tenant for life he were (by Feoffment or Fine) to convey to another in fee.

3. By) lapse as when the patron of a Living neglects to present a proper Clergyman to take the Living, and suffers the Church to remain vacant for 6 Calendar Months; the Bishop or Ordinary may present.

4. Where a patron corruptly presents a Clergyman to a Benefice, for money, gift, or reward, i.e. Guilty of Simony, - the presentation is void, and the Crown may present instead of the patron: But it is not simoniacal for a Father to buy the Advowson of a Living, or even the next presentation only, and afterwards present his Son to it, provided the Living was not vacant, or the Incumbent dangerously ill at the time the purchase was made.

If a Clergyman purchase either in his own name, or in the name of another, the next presentation, and is thereupon presented at any future time to

the Living, it is called Simony).

5. By) breach of some Condition annexed to the Estate.
6. By committing) waste as where a mere Tenant for life (if the Words "without impeachment of waste" are not added to the Estate) cuts Timber pulls down a Houses: or ploughs out ancient meadow.
7. Where a Copyholder is guilty of some breach of the customs of the manor, he forfeits the Copyhold to the Lord.
8. Where a man becomes Bankrupt he may in one sense be said to forfeit or lose his Lands, because the Commissioners by virtue of the Statutes relating to Bankrupts convey them to the Assignees without the Bankrupts consent.

Lecture 25.

Of Title by Alienation.

As long as the Feudal System lasted, the owners of lands were under many restraints as to disposing of them to others, and could not devise them by Will, till about the time of Henry 8, when they were empowered by an Act of Parliament. Now, they may convey and devise them almost as they please, except in some particular cases, as, for instance, An Infant cannot convey or devise his Lands. Neither can a Conveyance be made to him or

effectually, for if he makes a purchase, he may waive such purchase or Conveyance when he comes of age.

So persons who convey under duress may avoid such Conveyance, when the duress ceases.

So a Feme Covert or married Woman cannot make a Conveyance but by Fine or Recovery, and if she make a purchase, she may waive or disagree to it after the death of her Husband.

So an Alien, tho' he may purchase Freeholds, cannot hold them: for upon an Inquest of Office, that is, upon a Jury being called to enquire of the matter, they will be forfeited to the King.

The right to have property being once established it may be allowed to continue in the Family of the Owner, or he must be permitted to dispose of it, This he does by a Conveyance in his life time or by his Will, which takes effect at his death; and if he neither sell it in his life time nor dispose of it at his death, the Law continues it in his Family by giving it to his Heir.

Lecture 26.

On Deeds

The Requisites of a Deed are

1. That there must be a Grantor and Grantee

and a thing granted; or, in Leases, a Lessor and Lessee, and a Thing demised.

2. There must be a sufficient consideration for the Deed, i,e: either a good Consideration or a Valuable one: the deed must not be made for the purposes of fraud or to cheat Creditors.

3. It must be written: formerly many Conveyances might have been made by word of mouth merely; but to prevent Frauds 29 Car: 2. Ch: 3, requires that they shall be in writting.

4. A Deed must state and express every thing as necessary to effectuate the intention of the parties, i,e the Deed must be so drawn and worded that the legal construction of it in a Court of Justice will be such as the parties would wish it.

5. It should be read or explained to the parties.

6. It should be Sealed by the parties, and indeed Signed also.

7. It must be delivered by the parties or their Attornies, appointed for that purpose): - it should also be attested by Witnesses, i,e, a Memorandum should be subscribed or indorsed to inform who were the persons that saw the parties execute the deed.

Obs: in order to make a deed effectual, it is generally drawn with, and made to contain the following parts, viz. The parties, with their additions,

Vc, & Recitals explaining the Transactions, and how the Title stands, to shew who are the necessary parties and what Conveyance is necessary. An operative or Conveying part, The parcels, i.e. a description of the Lands or Tenements conveyed. The Habendum, stating what estate or Interest the Grantee is to have, or the uses to which the property is conveyed, i.e. whether it is for Years, for Life, or in fee. Covenants for the Title i.e. that the Grantee shall enjoy peaceably, Vc and that the Grantor will make further Assurances. In Leases, and frequently in other Deeds there is a clause reserving some Rent payment or, Return, And beginning with the words "Yielding and Paying". This, when introduced, comes after the Habendum.

In the latter part of the deed are often introduced Clauses provisoes and declarations adapted to the nature of the Transaction and the purposes of the Deed. Where there are outstanding Terms of years Assignments of them to a purchaser's Trustee or Trustees are generally introduced in the latter part of the Deed.

Lecture 27.

Analysis of a Deed

The following is a Skeleton of a very useful

Draft, being a Conveyance from the Owner of the Equity of Redemption and his Mortgee to a purchaser Between E. B, the Mortgagee in fee of the 1st part. I, C. the owner or proprietor of the 2d part, A, a Trustee in whom a Term is vested of the 3d part, B, another Trustee of a Term of the 4th part. C. the purchaser of the Estate of the 5th part, D, a Trustee to bar dower of the 6th part, and E, a Trustee for C. the purchaser to take an Assignment of the Terms of the 1st part; — Recitals that by such and such Deeds (describing them) the premises are in the Mortgagee to, E, B.

Obs: this mode of Reciting I call reciting passively.

Recites the Contract for the Sale to C.

Recites what Sum is due upon Mortgage — operative part in Consideration of the mortgage — money paid to the mortgagee, B, in discharge of his Mortgage, and the remainder of the Sum to I, C. — the Vendor, B. bargains sells and Releases and I C releases ratifies and confirms unto the said C, the Purchaser and his heirs All &c describing the — Estate sold and adding the general Words. Then come the Habendum and the usual uses to bar dower. Then a Covenant from B, the mortgagee that he has done no Act to incumber. Then come the usual Covenants for the Title. Then come the Recitals to shew what Terms are outstanding

and how and in whom they have become vested. And then assignments of those Terms to the purchasers Trustee. A Covenant from the assignors that they have done no Act to incumber.

Lecture 28.

Of Conveyances in use at Common Law

Feoffment. – A Feoffment is a Conveyance of a Feud or Fief or Fee.

He that gives or conveys an Estate by Feoffment is called the Feoffor: he to whom it is conveyed, the Feoffee.

The Words in the operative part of this Conveyance are "Hath given granted and Enfeoffed And by these presents doth give grant and Enfeoff" – Originally Feuds or Fiefs were frequently and probably indeed most commonly granted for life only. A Feoffment will not give the Grantee a greater Estate than for life unless it is conveyed to him and his heirs in order to convey a Fee the Word Heirs is equally necessary in this as in other Conveyances.

In order to perfect a Feoffment, Livery of Seisin must be given, which is putting the Feoffee into

actual possession of the Land.

Where a man seized of Lands sold them to another at Common Law (that is before the Statute of uses) a Feoffment was the regular, and indeed the only mode of Conveyance. And of course it was always necessary for the parties or their Attornies to go to the Land and make Livery of Seizin.

Grant

Grant is a Conveyance at Common Law to transfer Property of an incorporeal nature, that is of such things whereof no livery of Seizin could be had, for which reason all Corporeal Hereditaments as Lands and Houses are said to lie in Livery, and the other as Advowsons, Commons, Rents, Reversions, &c, are said to lie in Grant. Things lying in Grant pass merely by delivery of the deed.

The principal difference between a Grant and a Feoffment arises from the latter being for conveying things lying in Livery, and the former for conveying things lying in Grant, and that of course no Livery of Seizin is necessary to complete a Grant, but the deeds are much the same in point of form indeed altogether so, except

that the words in the operative part of the Grant are "Hath given and Granted" but the word "Enfeoffed" is not necessary, whereas in a Feoffment that word is essential to the Deed.

Lecture 30.
Of Leases

If the Lease be of Corporeal Hereditaments and for a Freehold Interest that is for Life there must be Livery of Seizin.

A Lessor cannot Grant a Lease for a longer time or greater Interest than he himself has in the property unless by a power as in the following Cases.

Tenants for life in Marriage Settlements have frequently powers to let Leases for 21 Years which will be good for that time tho' they themselves should die before the term expires.

So a Tenant in Tail and some other Persons have a power of granting Leases (by certain Acts of Parliament, called the enabling Statutes) under certain Restrictions for a longer time than they could have granted them before these Statutes were passed.

Lecture 31.

Of Exchanges

An Exchange is a mutual Grant of equal Interest the one in Consideration of the other. The technical Term Exchange must be made use of in this sort of deed. The Estates must be equal in quantity of Interest, that is a Fee for a Fee, or a Lease for 20 Years for a Lease for 20 Years. No Livery of Seizin is necessary — but if either of them die before they enter upon the Lands the Transaction becomes void. If a man loses the lands he has got in Exchange in — consequence of some defect in the Title, he may have his own Lands back again.

Of Releases

A Release is a discharge or Conveyance of a man's right in Lands or Tenements to another who hath some former Estate in possession: — Thus. — If A, is Tenant for Life or Years remainder to B, in fee and B, releases his right to A, this gives A, the fee. Or if A, disseizes B, of his Lands or gets into Possession wrongfully, but B, releases all right to him, this makes A, the — owner of the Estate. But Obs: A, must be —

in posſeſsion otherwise B's release will not take effect, for there would be nothing for the Release to work upon, and the meaning of Release is the giving up or abandoning ones claim and therefore if A. had no Estate in the Land, B's declaring by his deed that he will not disturb or claim any thing against him will not create any Estate in A, consequently he will have nothing.

Where a man has in himself the posſeſsion of the Lands, he must at the Common Law Convey the Freehold by Feoffment and delivery which makes a Notoriety in the Country. But if a Man has only a right or a future Interest he may convey that right or Interest by a mere Release to him, that is in a posſeſsion of the Land, for the occupancy of the Release is a matter of sufficient Notoriety already.

The Words generally used in the operative part of the Release are "Remised, Released, and for ever quit claimed" but indeed the operative part of the Conveyance now generally contains all the Words applicable to most deeds viz. "Grant bargain sell release and confirm" — and where the Title or situation of the conveying parties renders it proper, i.e., at all likely to be necesary, other words are added as "Remised Released and for ever quit claimed". — but the word "Enfeoffed" is rarely added unleſs delivery is intended to be given; because without

Livery of Seizin, that word would be of no avail.

Lecture 32.

Confirmation, Surrender, Assignment.

Where a voidable estate is made sure and unavoidable, the Deed making it so is a Confirmation; — thus if a Tenant for life grant a Lease for 40 Years, here, if the Tenant for life, the Grantor should die before the Term had run out the Lease might be avoided, being a greater length of time than as Tenant for life, he had any right to make it; but if the next owner in remainder or reversion should before the death of the Tenant for life confirm the Lease, it is then no longer voidable but sure.

The operative words in a Confirmation generally are "Hath granted ratified and confirmed" &c.

A Surrender (Surrendre redditio, or rendering up) is of nature directly opposite to a Release: for by a Surrender, the person who is in possession of an Estate for life, or an estate for years yields it up to him that hath the immediate Reversion or Remainder.

The Words generally used in the operative part are "Hath surrendered granted & yielded up.

Assignment

Where A has an Estate for Years and conveys it over to B, such Conveyance is called an Assignment, and B, stands in the place of it.

Lecture 33.

On uses, what they are, and the difference between Legal & Equitable Estates.

If a Feoffment was made to A, and his heirs to the use of (or in Trust for) B, and his heirs, here at the Common Law A, had the legal property & possession of the Land but B, was in consience and Equity to have the profits and disposal of it. A was the Terre Tenant and B. the cestui que use: A was the ostensible owner but B. the Real Owner and A, his Trustee only: A, was said to have the Legal estate but B, the equitable Estate.

This mode of Conveying Estates became usual about the Reign of Edward III and was introduced by the Clergy to evade the Statutes of Mortmain.

This notion was taken from the Civil Law: the practice being introduced, many consequences — followed, and not a few mischiefs: and inconveniences, and the feudal burthens were thereby evaded, —

particularly Escheats. This occasioned several Acts of Parliament with a View to prevent the practise, all tending to consider Cestui que use as the real Owner of the Estate: and at length that Idea was carried into full effect by the Statute 27th. Hen: VIII 10. which is usually called the Statute of uses, or, in Conveyances and Pleadings the Statute for transferring uses into possession.

By that Statute if A. becomes seized of Lands to the use of B it is declared that B. shall be considered as seized of the same Estate, in the Lands as he had in the use, and the Estate of A, shall be deemed to be in B, in such quality manner form and condition as B. had before in the use. The Statute executes the use, as our Lawyers call it i,es Conveys the possession to the use and Transfers the use into possession thereby making the cestui que use compleat Owner of the Lands and Tenements, as well at Law as in Equity. — Thus the Statute had not, observe, abolished the Conveyance to uses, but only annihilated the intervening Estate of the Feoffee, and turned the Interest of the Cestui que use into a legal instead of an equitable Ownership. The Statute the instant the use is raised converts it into an actual possession of the Land and the use and the Lands are now convertible Terms, the Feoffee or Releasee to uses being merely a Conduit-pipe

or Channel of Conveyance so that the Estate does not rest in him a moment.

The Estate therefore is not liable to the dower of the Feoffee's wife, but becomes liable to the dower of the Cestui que use in consequence of his being now actually seized or Seme Tenant.

(The Stat: of Uses makes Cestui que use complete owner of the Estate at Law as well as in Equity.

Lecture 34

Observe, however, the Statute was held not to act more than once, i, e, not to operate further than in executing the first use and therefore if a Feoffment was made to A, and his heirs to the use of B, and his heirs, to the use of C, and his Heirs In trust for D, and his Heirs - It was held that the Statute executed only the first use namely the use to B, that the second viz. that to C, and his Heirs was a mere nullity.

Observe also the word in the Statute is "seized" and therefore it has been held not to extend to terms for Years because a man is not said to be seized of any Estate less than a Freehold and therefore if a Term of 1000 Years be limited to A, to the use of B, the Statute does not execute this use but leaves it as at Common

Law i.e. the Estate remains in A, tho' B, is entitled to the benefit of it.

But where lands are given to A, and his Heirs, in trust to receive and pay over the profits to B, this is not executed by the Statute though the words to the use of A, and his Heirs, are not inserted, for the Land must remain in the Trustee to enable him to perform the trust and therefore it is supposed to be the evident intent that the use should remain in A, and not be executed in B,. Though an Estate is Conveyed to the use of A, but for the benefit of B; B's Interest is now denominated a trust estate and A, may be compelled to execute the trust in a Court of Equity. And such trust Estate will descend to the Heirs of B, and may be sold by him, and is liable to his Debts, as if it was a legal estate. - And the Owner of such trust estate, may make Leases and other Conveyances, as if the Estate were actually in himself and not in a Trustee for him: but to make a complete and perfectly unobjectionable Title, the Trustee should also join. - The only service of this Act of Parliament now, is to enable Conveyancers to model their Drafts more easily and effectually than they could do

formerly, and also to adopt some Conveyances which were unknown to the Common Law, as in the following Lecture.

Lecture 35.

Of Conveyances taking effect by the operation of the Statute of Uses.

Covenant to stand seized.

Where a man Covenants to stand seized to the use of another, provided the Consideration for such Covenant is, that of blood, or of marriage, the Statute of uses immediately executes the use, and gives the cestui que use the Estate as effectually, as if it had been conveyed by Feoffment with Livery of Seisin. This Conveyance can only be used amongst relations or upon a Marriage.

Bargain and Sale

Where a man seized of Lands bargains and sells them to another for a pecuniary or other Consideration mentioned in the Deed the seller by such deed becomes a Trustee for or is seized to the use of the Buyer and then the Statute completes the purchase as effectually as if the Seller had made a Conveyance by a Feoffment

with Livery of Seisin such deed first vests the use, and then the Statute vests the possession. A Purchaser who takes an estate by such a Conveyance is called the Bargainee.

But by an Act of Parliament (27th Henry 8th Chapter 16) a Conveyance by Bargain and Sale which is intended to pass a Freehold Interest must be enrolled within six months either at one of the Courts of Westminster Hall or with the Custos Rotulorum of the County. — This was to prevent Clandestine Conveyances and to protect Purchasers against the Fraud of persons pretending to sell estates which they had in effect secretly conveyed away to others before.

But a Bargain and Sale for a Term of years only, and not for a Freehold Interest, was not required to be enrolled. Terms of Years being at that time of no moment and of little use, and therefore if a man bargains and sells his Lands, in Consideration of five shillings or other sum of money, for a Year, to another it is a good Conveyance without any enrollment, and the Bargainee becomes actually in possession of the Estate for the Term, by the mere operation of the Deed under the Statute of uses.

Lease and Release

We have before seen (in Lecture 31) that the Owner of Lands may release all his right in them to a person having the preceding Estate in such Lands in possession and that such release is a good Conveyance.

It has now therefore become a very common mode of conveying an Estate.

The way is, first to put the purchaser into possession, by a Bargain and Sale for a Year, or as it is generally called a Lease for a Year, and then to make a Release to him, and this Lease for a Year and the Release superadded to it, gives him the Freehold without any other further Ceremony, than that of executing the Deeds, for by the Bargain and Sale he has the Estate for a Term and is by virtue of the Statute considered as in actual possession and by the Release he gains all the remainder of the Releasors right that is, where the releasor has the Fee, he gains the Fee.—

By the Common Law, a man could not be put into the actual possession of the Land by any other means than actual Livery of Seisin.—

Lecture 36.

Deeds to lead and Deeds to declare Uses.

By a Fine or Recovery the Cognisee or a Remaindant acquires the Estate to himself and therefore where it is not intended to be for his own use it is necessary to have a Deed to signify or make known to what use or for what purposes such Fine or Recovery shall operate.—

Where a married Woman is entitled to an Estate, which she and her Husband, wish to sell, she cannot on account of her being a married Woman, convey it in any other way than by levying a Fine, and in order to make known for what purposes the Fine is levied she and her Husband execute a Deed setting forth those uses and purposes.

If this Deed is executed before the Fine is levied it is called a Deed to lead the uses of a Fine.— But if it is made after the Fine is levied it is called a Deed to declare the uses of the Fine. It is the same thing with respect to Deeds to lead or declare the uses of a Recovery.— And so where any other Conveyance as a Feoffment is made to A B,—

and his heirs, and in fact such Conveyance - is made to A B, not for his own, but for the use of third persons, the uses may be declared by a separate Deed, which will then be called a Deed to declare the uses of such other Conveyance - and the Statute will execute the uses and give the parties actual estates according to the - Deed.

Of Bonds

If the condition of a Bond is not performed the Bond becomes forfeited or absolute at Law and the Obligor is liable to pay the Penalty. - And - if he dies before the Bond is put in Suit by the Obligee, yet his personal Estate is liable to pay it, that is, his Executors may be sued for it. But if he has no personal Estate, or - not sufficient, his Heir at Law or Devisee - is liable, in respect of the Lands.

Observe. If the condition of the Bond was impossible at the time of making it; such - condition is void, and the Obligor is liable to pay the Bond as if there was no Condition at all, for it was his own folly to make such a Bond. - But if the Condition becomes - - impossible by the Act of God. there the Bond itself becomes void, and the Obligor is not -

liable to pay the Penalty.1–

Lecture 37.
Of Grants from the King

The Draft or Bill, when a Grant is about to be made is first Superscribed at the top with the Kings Sign Manual and Sealed with his Privy Signet.– Then sometimes it passes immediately under the Great Seal.– But in general it must pass first under the Privy Seal also– The Kings Grants are construed strictly and will not confer more upon the Grantee than what is expressly and clearly given.– Whereas the Grant or Deed of a subject is construed favourably and liberally for the Grantee that is as much as reasonably may be for the Grantee's benefit.

Fine

Is an amicable agreement of a suit (to recover Lands or other Hereditaments) by leave from the King or his Justices and is sometimes called a Feoffment of Record as having the same effect as the Conveyance by Feoffment with Livery of Seisin.– Where a fine is necessary to be levied, in order to

convey Lands effectually, the party to whom they are to be conveyed, commences a suit, by suing out a writ of Covenant called a Precipe. On this writ the King is entitled to a Fine, called the primer Fine. The next step is, for the Defendant to ask leave to Compromise the suit, which is granted, but another Fine is then to be made to the King, which is some times called the Post Fine, & some times the King's Silver. The third step is the Agreement between the parties, to settle the dispute, whereby the Conusor acknowledges the Lands to belong to the Conusee. — The party who levees the Fine is called the Conusor. The party in whose favour or to whom it is levied is called the Conusee. —

His acknowledgment must be made openly, either in Court, or before Commissioners appointed for that purpose, by a Dedimus Potestatem. —

Where a married Woman joins in a Fine she must be questioned privately whether she joins in it of her own will.

The Chirograph or Indentures of a Fine, is the Deed or parchment containing the whole proceeding. — Fines are generally levied with proclamations, which is, where they are read aloud in open Court.

There are four sorts of Fines but that which

is called Sur Conuzance de droit come ceo is — the most usual as conveying the Fee Simple. Parties to a Fine. The Cognisors and Cognisees are held parties — Privies — are all persons claiming under, or as Representatives of the parties. — Strangers — are all others who are neither parties, nor claim under the parties — The general Case in which a Fine is necessary, is where an Estate belongs to a married woman, for if a married Woman wants to sell, convey, or settle the Estate, she can do it in no other way than by Fine, being by her Coverture — deprived of that free will and power, which she would have like any other person, if she were single. —

Lecture 38.

Recovery or Common Recovery

Is so far at least like a Fine, that in both of them, there either is, or is supposed to be, an Action or suit at Law, to recover Lands, but in a Fine the Action is compromised, whereas in a Recovery it is pretended to be fought out, which makes the form of proceeding take different names, and the effect of a Recovery is more extensive than that of a Fine — The Writ —

which is the commencement of the suit, is called the Precipe, as in a Fine, from its beginning with the word, "Command" (when in Latin, Precipe).
The Defendant is called the Tenant to the Precipe, the Plaintiff or Claimant is called the Demandant.
The Vouchee.- The Person who is principally concerned, and whose rights are to be barred by the Action is called the Vouchee, as being called upon by the Demandant, to vouch for and defend the Title which he neglects to do, and thereby the Estate is lost, and Demandant recovers it

Lecture 39.

A Conveyance of Copyholds is by Surrender, that is, an Instrument in writing rendering up the Lands to the Lord of the Manor to the uses mentioned in the Surrender.—
This Surrender may be made either to the Steward in Court, or if the Custom of the Manor warrants it, to the Steward or two Copyhold Tenants out of Court, and in the latter case, the Surrender must afterwards, on a Court day, be brought into Court, which is called Presenting it, and the person in whose favor the Surrender is made, is then admitted Tenant to

the Lord, and pays the Copyhold Fine. — When a Man means to dispose of his Copyhold Lands, by his Will, he must take care, and make a — Surrender to the use of his Will. — To perfect a Conveyance of a Copyhold, there must be three things viz.t Surrender, Presentment, and — Admittance.

Observe, nothing is vested, in the Surrenderee of the Copyhold before admittance, but it is different with respect to the Heir at Law, the Copyholder dying without a Will for such — Heir at Law is to most purposes Tenant even before he is admitted and may Surrender to the use of another.

Lecture 40.

Of Alienation by Devise

Till the Statute 32.nd and 34.th of Henry 8.th Freeholds could not be disposed of by Will, but they must have gone to the Heir.

The words of these Acts, being so loose and — general, that almost any thing was construed as a Will: the Statute 29.th Charles 2.nd Chapter 3 — was enacted, by which Wills are required — not only to be in writing but to be signed and to be subscribed by three witnesses in the — —

presences of the Testator.
By the Statute 25th Geo. 2nd both Creditors and Legatees are made good witnesses.
By the Statute 3 & 4 of William and Mary Bond Creditors may sue for the payment of their Debts, but Deirsees may still hold Lands devised to them without paying the simple Contract debts of the Testator; which however the Court of Chancery interferes with, and endeavours to prevent, by any contrivance in its power.. A Will of Lands is only in the matter of a Conveyance, and therefore only passes such Lands as the Testator had, at the time of making it, but a Will or Testament of the personal Estate, may be made so as to dispose of all the Testator dies possessed of.-
The intention of the parties in all Deeds and Instruments, but particularly in Wills, should prevail, and the context should be aid to explain the Intention.. But if two parts of a Deed are absolutely inconsistent with each other, the latter is rejected, and the former stands, whereas in Wills the former is rejected and the latter stands- The reason is that in Deirses the last Intention is the thing to be inquired after the question being which, is a Man's last Will.

Lecture 41.

Of property in things personal

Formerly no Property was accounted much of by the Law, but Feuds and Feifs, that is, the Feudal Freeholds in respect of which, Military Services were called, for personal property was then probably of little value, compared with what it is at present and long Terms of years were not in use. — A Man may have an absolute property in things personal or only a qualified property — In Animals Ferae Naturae, he can have no absolute property, not indeed even a qualified property until they are tamed, and reclaimed, and if after being reclaimed, they return again to their wild state, they may be taken by the first person that can seize them Observe, the Law calls only those Animals in ferae naturae, which are usually found at Liberty, and are generally in a wild state, as such as Foxes, Hares, Rabbits Pheasants or Partridges &c But all other Animals which we generally see tame, and which are seldom found wandering at large, such as Horses, and other Cattle, it considers as domitae naturae and capable of an absolute ownership, In wild animals a man's property is only a

qualified property, and lasts no longer than while they continue reclaimed, or have animum revertendi, that is, are in the habit of returning home, if they fly or stray away. - Bees are ~ ~ clearly ferae naturae but while they continue in a Man's Hive or he is in pursuit of them when they are leaving it, he has clearly a qualified ~ property in them, of course a person has a ~ qualified Property in the young of wild ~ ~ Animals till such time as they can run or fly away. - A Man may also have a ~ ~ ~ qualified property in light Air and Water, ~ thus, no person can stop up anothers ancient Windows, or corrupt the Air of his House, or Gardens, or spoil the water belonging to it. - Whenever a man has a property in a thing, he may bring an action against any person who disturbs him, in the enjoyment of it, - either by taking, detaining, or destroying it. - A Carrier is also said to have a qualified Property in the Goods which he is carrying, while they remain under his care, or in his Waggon - So a Pawnbroker has a qualified Property in Goods while they remain in ~ pledge. -

Personal Property may be settled and ~ ~ limited much in the same manner as real

property), but when ever personal property is given or comes to a Tenant in Tail, it belongs to him absolutely without levying any Fine or suffering any Recovery, as is necessary to make the property his own, if it were a Real Estate. — Personal Property may be held by two or more Joint Tenants, in which case the Survivor will be intitled to the whole, unless the Jointure were destroyed, but a little matter is sufficient to prevent its being construed as a Joint Tenancy, and to turn it into a Tenancy in Common, — and if there is not sufficient for that purpose, a Jointure may be severed by one party selling his share to a third person &c.

Lecture 42.
Of Title to things

Personal by Occupancy — Generally speaking things which have no owner belong to the King, as Treasure Trove &c — but where Moveables are found upon the Earth, or in the sea, unclaimed by any Owner, they are construed as if returned into the Common Stock, and belong to the first Occupant or finder, unless they fall within the description of Wafts, Estrays, or

Wreck.- It is said that a person may become intitled to the benefit of the Elements of Air, Light, and Water, by Occupancy -
But Query if this is exactly true, for it seems that merely first taking possession of them is not sufficient to give the exclusive Title to the enjoyment of them, for instance, a person cannot bring an Action against his Neighbour for building upon the adjoining Land, so as to block up or darken the Plaintiffs Windows unless they are ancient Windows, or at least Twenty Years standing so as to raise presumption of right by Grant or otherwise. - Mere prepossession it seems is not sufficient, which it would be if it depended upon the Doctrine of Occupancy. -
If A wilfully intermixes his money Corn, and Hay with that of B, the Law to prevent fraud, gives the whole to B, without allowing A, any part of it /-

Lecture 43
Of Title by Prerogative.

The King may be intitled to several things by his Prerogative Forfeiture. - Or a subject may be intitled to such things by a Grant

from the King or by Prescription which supposes a Grant. — Thus the King has the exclusive right of printing Acts of Parliament, Prayer Books, and the Bible, and hence arises what is called the Office of Kings Printer at whose Shop all such Books must be printed, but the King has granted the Universities of Cambridge, and Oxford, leave to print Prayer Books and Bibles. —

The King is also supposed to have a right to all the Game in this Kingdom, and if a subject claims to have a right to it, to the exclusion of other subjects, it must be by a Grant from the Crown.

No Man but he who has a Chase or free Warren by Grant from the Crown, or a Prescription which supposes one, can justify Hunting or sporting upon another Man's soil, nor indeed perhaps in thorough strictness of Common Law as it stood since the Conquest either Hunting or Sporting at all. — But every body is now however permitted and perhaps has a right to sport upon his own Grounds or upon any Grounds where he can get leave of the Owner or Tenant provided he is a Qualified Man unless such Grounds are part of a Chase or free Warren and then he

must have leave from the Grantee of the Crown.- As to who are Qualified to kill Game.- The Statute 22° & 23° of Charles 2° prevents persons who have not a Freehold Estate of £ 100 a year or a long Leasehold of £ 150 from keeping any Guns, Dogs, or Engines for taking and killing Game, and in order to raise a Revenue for the Crown, by taxing Sportsmen, they are obliged to take out a Certificate the Stamp upon which at present is £ 3 - 13 - 6 for a Gentleman's Licence, and one £ 1 - 5 - 0 for a Gamekeepers Licence.-

Of Title by Forfeiture

The whole of a Man's Goods and Chattels are forfeited to the King, by Manslaughter, & Larceny, and all other Felonies but it takes place, and is a complete Forfeiture only from the time of Conviction.-

Whereas Forfeitures of real property take place from the time of committing the Fact.

But a fraudulently Conveyance of them to defeat the Interest of Crown, is made void by Act of Parliament.(

Of Title by Custom

Heriots may be due by Custom, which -

however are for the most part confined to :-
Copyhold Tenures.
A Herit is always some personal Chattel.—
Sometimes the best Beast the Tenant dies -
possessed of. sometimes a Jewel or piece of -
Plate - sometimes there is a money payment
instead, by the Custom, for this must be an
ancient Custom otherwise it will not bind
either the Lord or the Tenant. — Mortuaries
formerly sometimes called corse presents, are
a sort of Ecclesiastical Heriot, being a -
customary Gift claimed by and due to the -
Minister of some Parishes on the death of his -
Parishoners. -
By Act of Parliament a small money present -
according to the ability of the deceased is now
substituted in their stead. -
Heir Looms are such Goods or personal - -
Chattels as by Custom go to the Heir along with
the Estate, these even the Owner of the property
cannot, if he has not done it in his life time,
seperate from the Estate by his Will. -

Lecture 44.

Of Title by Succession

A Corporation Aggregate may take in -

succession because tho' the Members change, it is in fact the same body Corporate, but generally speaking a Corporation sole cannot, for if a Lease or personal Chattel be given to a person and his Successors it will not go to his Successors but to the person's Executors.—

By Marriage

A Woman by her marriage becomes one with her Husband and most of the Husbands rights to her property may be explained by her existence being incorporated with his and as it were suspended during the Coverture.—

By the Marriage all her Chattels personal or Choses in possession immediately become the Husbands.— her Chattels real are considered as his during his life and he may make them absolutely his own by selling them &c But if he does not and his wife survives him they will continue to be hers and he cannot dispose of them by his Will that being an Act not taking effect in his life times her Choses in Action he may make his own if he pleases by suing for them but if not they will survive to the Wife.— In her real Estate however he only gains a Title to the Freehold (i e) in point of Interest to the Rents during the Coverture or to an in-

Estate by the Curtesy in case they have Children for it will remain to her and her Heirs unless she chooses to levy a Fine to enable her to dispose of it otherwise which she frequently does in order to divide it amongst all her Children or settle it upon her Husband or make a Will of it.

Of Title to Personalty by Gift.

That is where the Donor parts with his property to another voluntarily and without any Consideration but unless he also gives possession at the time it signifies little as the Giver cannot be compelled to deliver it. But if a man not only gives Money or Goods to a third person but actually delivers him possession of them then it is called a Gift executed and the want of a consideration is no Grant for impeaching or setting aside the Gift however where it is prejudicial to the King or bonâ fide Creditors it is set aside and declared a nullity by certain Acts of Parliament.

Title by Grant.

Is where a Man transfers personal property to another for some Consideration or return

such is the Case in the making of Leases &c where there is always a Consideration mentioned tho' it is sometimes very trifling or merely a nominal as a rent of a pepper corn or the like.

Lecture 45.

Of Title by Contract

That is where one person agrees to do something for another in Consideration of some reward or return.—

There must be an Agreement either expres or implied.—

Implied Agreements are such as the Law raises, though there is no expres declaration of the parties, either by writing or word of mouth, as for instance if I employ a person to do any busines for me the Law implies that I undertook to pay him what he deserves, or if I take up wares at a Tradesmans shop without any Agreement as to the price, the Law implies that I undertook to pay him their Value when the Agreement is carried into effect by the delivery of the thing, or the performance of the work agreed for, it is then said to be executed, while it remains unperformed, it is said to be executory it is a general Rule that contracts cannot be—

enforced which are not founded upon a sufficient consideration without it, the Agreement is said to be nudum pactum and is not binding (ex nudo pacto non oritur actio) But what is a sufficient Consideration in point of Law will require to be explained. - One instance is, where O, owes B, a sum of money, but the debt is of so old a standing, namly 6 Years that B, could not recover it; yet if O, comes and voluntarily promises to pay it, this is not a nudum pactum, but B, may then sue upon it, for the existance of the old debt is deemed in point of Law a sufficient consideration. - Here was a moral Obligation upon O, to pay thought it was of so long a standing that B, could not have recovered it. - And some o o contracts from their nature however are o o exceptions to the Rule and do require to be o supported by a consideration; thus a Bond o though given without a Consideration is binding upon the Obligor; it is under his hand and seal and he cannot refuse to pay it on the ground that he received no Consideration. -

So a Note or Bill of Exchange cannot (except the suit be between the very parties to such Note or Bill) be refused payment for want of a Consideration because it would be of very

mischievous consequence to Society if such negociable Instruments after having travelled perhaps thro' several Hands and come fairly to the Hands of the Holder who has paid the value for them could be resisted on account of what passed between the original parties with whose dealings perhaps the Holder is altogether unacquainted.

Lecture 46.

Of Contracts of Sale & Exchange

Contracts of Sale and Contracts of Exchange are in fact of the very same Nature for before the Introduction of money they were all Contracts of Exchange being Agreements to give a certain quantity of goods of one kind, in return for a certain quantity of Goods of another, but this being found very inconvenient, money was introduced very early as a measure of value, and through this Medium the Exchanges which were formerly made directly, are now made at twice the Owner of the goods who exchanges them for money afterwards going and exchanging that money for other goods which suit him better than those which he had before sold. - Though a man may sell his goods and Chattels as he pleases so long as they remain his

own yet if a Writt of Execution has been taken out against him, and delivered to the Sheriff, — then by the Statute of Frauds a subsequent sale is deemed fraudulent and even if the sale was before the Writ of execution still if it was for the purpose of evading it, it is held to be fraudulent. Contracts are in their nature either to be executed immediately or they are in their nature executory that is to be executed at some future time. —

When contracts are once executed the purchaser can have no cause to complain, and consequently can have no Action unless he has received some thing different from what he bargained for, and then if the Seller warranted the thing sold to be what it turns out not to be, the purchaser has a right to an Action, — though the Seller did not know of its being different at the time of the Sale. — And though the Seller did not warrant it, yet if he by fraud and trick, represented it to be different from what it really was, and thereby cheated the Purchaser, he may have an Action in the nature of deceit, for the wilful misrepresentation. — But in this sort of Action it must appear clearly that the Seller knew he was cheating; the Scienter must be proved. —

Contracts may be executed by delivering the whole or part of the Goods, or by paying the whole or part of the Purchase money. —
If a Man agrees with another for Goods at a certain price, he may not carry them away before he hath paid for them, for it is no Sale without payment, unless the contrary be expressly agreed therefore if the Buyer refuses to pay, the Seller may consider the Bargain as off, and sell them over again to a different person but if any part of the price is paid, or any part of the Goods delivered, the Contract is complete, and the Property of the Goods is absolutely bound by it, (i.e) they are the property of the Buyer, who may recover them by Action, as well as the Vendor may, the price of them, and it seems that where the Bargain is under Ten Pounds a Tender is the same thing as part delivery of the Goods, or part payment of the money. — But where it is for more than Ten Pounds, it must be in part executed, or else reduced into writting, for the Statute of frauds (29th of Charles 2nd Chap. 3. sec 17) enacts, that no Contracts for the sale of Goods, wares and merchandizes for the price of Ten pounds or upwards, shall be good, except the Buyer shall accept part of the goods so sold, and

actually receive the same, or give something in earnest to bind the Bargain, or in part of payment, or that some Note or Memorandum in writing of the said Bargain be made & signed by the parties to be charged by such Contract or their Agents thereunto lawfully authorised. — And with respect to executory Contracts not to be performed within a Year the Statute of Frauds (section 4) requires that they shall in all cases be reduced into writing. — Upon a regular Sale the Goods immediately become the property of the Buyer and therefore if A, sells a Horse to B, and B, pays him part of the price or signs a Note in writing of the Bargain and afterwards before the delivery of the Horse or money paid, the Horse dies in the Vendor's custody still he is entitled to the money because by the Contract the property was in the Vendee, regularly a Man cannot sell that which is not his own, but still if a person buys Goods bona fidae in open Market which happen to have been stolen, it is a good Sale, and the Buyer shall not afterwards be put to difficulties, because the Seller has been a Theef. — But if my Goods are stolen from me and sold out of Market overt, my

property is not altered, and I may take them wherever I find them.— Where a man sells Goods as his own, which it turns out belonged to some other person, the Buyer may require a satisfaction from the Seller, though there was no warranty.— But not so with regard to the Quality of the goods, for to this the Buyer must look, (caveat emptor) and the Seller is not liable to answer for any defect or unsoundness, unless he has either warranted the Goods, or used art or misrepresentation to disguise the Faults in them.—

Lecture 47.
On Bailments

Bailment from the French Bailler to deliver is a delivery of Goods upon some certain trust or for some certain purpose, as where a man delivers Goods to a friend to keep for him, or Cloth to a Tailor to make him Clothes, or Goods to a Carrier to carry. Holt chief Justice in the great Case of Coggs and Barnard 2 Lord — Raymond 914 divides Bailments into 6 sorts 1st Deposition — a Man naked Bailment — Where a man receives Goods to take care of as for a friend without reward for his

trouble, in this case the Bailee is not answerable for any Robbery or loss unless it happens through his gross neglect or wilful misconduct.-
2nd In the case of Borrowing the Borrower is not answerable for any Robbery or loss provided it happens without his neglect, but if it happens through, or in consequence of any neglect, he is:-
3d in the case of Hiring the Law seems to be the same.-
4th in the case of Pawns, the Law seems generally the same.-
The 5th sort is a delivery to the Bailee who is to have a reward for his trouble.- If the Bailee is not a Common Carrier, or person exercising some such public employment, he is not answerable for Robbery or Loss, unless occasion'd or facilitated by his neglect or mismanagement.- But if he be a Common Carrier, he is answerable for all Robberies, Losses, or Accidents, unless occasioned by the Kings enemies or by the Act of God or Lightnings.-
The 6th sort is acting by Commission as where a man undertakes to do something for another, though without Fee or Reward, yet having undertaken it, he must execute the Business properly, and without neglect, for if he

mismanage it, he is answerable, but he is not answerable for an Injury occasioned by a third person, as for instance, if a Man undertakes to remove a Pipe of Wine for a Friend, and while they have it slung, to get it into the Cart, a 3rd person were to come, and out of Malice to the Owner of the Pipe, were to cut the Rope and let it down, or if, while the Pipe was in the Cart, and the Driver going quietly and soberly along the Street, another person were to come with his Dray, and overturn the Cart, and stave the Pipe, the Bailee would not be answerable, but the Party who did the Injury - But Observe if a man undertakes, without Fee or Reward, to remove the Pipe of Wine on such a day, but afterwards refuses to perform his promise or set about it, he will not be liable to an Action for this breach of good Faith, though if he did once set about the trust he would have been liable for mismanaging it An Action will not lie for the breach of an executory promise, unless the promise is founded upon a Consideration, in which case an Action may be maintained as upon a breach of Contract.

See the Definition of a Contract, it must

be founded upon a Consideration /-

Lecture 48.

Hiring and Borrowing

The Hirer and Borrower gains a temporary property in the thing Borrowed accompanied with an implied condition, to use it with moderation; and not to abuse it; and the Owner or lender, retains a Reversionary Interest in it. - Thus, if a Man hires a Horse for a month, he has the possession and a qualified property therein, during that period; after which his qualified property ceases, and the Owner is intitled to have it again together with the price for which the Horse was hired. -

When Money is lent and advanced to another, it is generally upon condition of having an allowance from the Borrower for the use of it, which Allowance is called Interest. - And though formerly upon Loans of money, the Lender might have taken even so late as the Reign of Henry the 8th as much as 10 per Centum: it was gradually reduced and at last fixed by - An Act of 12th of Ann at 5 per Cent: -

which it has continued at ever since, and it is unlawful now to take more in this Country.- This was deemed by Parliament a sufficient compensation, both by the inconvenience of lending Money, and for the danger of loosing it, if the Borrower should fail; To take more than 5 per Cent: upon common Loans is usury, and punishable with very heavy penalties by Act of Parliament -

But there are some Loans of money which are attended with more than common hazard such as lending money upon the Security or Mortgage of Ships under a Condition that if the Ship is lost during the Voyage the Lender is to lose his money: This is called Bottomry, and on Account of the risk with which it is attended, the Lender is not restricted, but may take more than 5 per Cent: Interest as he and the Ship Owner can agree, and in proportion to what he conceives to be the risk of the Voyage. -

Observe: the material difference between Bottomry, and Mortgage of Land, consists in this, that in a Mortgage of Land, the Borrower also gives his Covenant to pay the money, and his personal Estate is liable, as well as the Land mortgaged, but in Bottomry, if the Ship be lost, the money is lost also: this is

the reason why, in Bottomry the Parties may agree for Interest, as they think proper, but in Mortgages of land, the Lender of the money cannot take more, than 5 per Cent: Interest (Omit for the present) - Observe, the Statutes of Usury do not apply, to Grants of Life & Annuities, where the Lenders principal, is really put in Jeopardy, tho' they partake very much of the nature of Loans.-

If A who &c (see Defin.r Life Annuities) — Where therefore a man wants to borrow a Sum of money for his immediate present use, but has nothing to give as a Mortgage, having only a Life Estate, from which he receives an annual Income and he grants the Lender an Annuity for life; This will in effect be repaying every Year so much principal as the Annuity amounts to, after deducting the Interest of the Money lent, or remaining unpaid. Now as there is considerable hazard in this, the person who advances the money, is not restrained, but may make such a Bargain, as he thinks equal to the risk he runs, from the death of the party, but as many persons in want of a little ready money, did, in order to raise it, grant Annuities very imprudently. —

The late Lord Roslyn introduced an Act

of Parliament, called the "Annuity Act" which amongst other provisions, requires in most cases of Annuities, that the real consideration should be stated in the Deed. – And that the Deed – should be inrolled in Chancery, within Twenty days after it is executed: This Act has given – rise to more than Fifty cases, which have been brought before the Court, for their Opinion, – besides the numberless cases which were before matter of Enquiry, or of Litigation without – being proceeded upon so far. – In times, when money is procured with difficulty, this mode of purchasing Life Annuities, is not unfrequently adopted, in order to take more than 5 per Cent: without coming within the Statute of Usury – For by calculating what is the risk of the Life, which may be done pretty nearly, the Lender – knows how much to demand, so as to allow him more, together with 5 per Centum Interest for his money), than the real risk amounts to. And – thus in effect, takes usurious Interest, indeed many persons who lend money in this way, – insure the Life; upon which the Annuity is granted, for the amount of the money which they have lent, but as the Statutes against – Usury, have declared it to be unlawful to – take more than 5 per Cent Interest either –

directly, or indirectly, or by any shift or
contrivance, & it could be proved that the Real
Transaction between the parties, was an actual
Loan; and that. turning it into the shape of an
Annuity was a mere device, to evade the
Statute, such trick will not avail, if however
the Lenders of the principal, were really at
stake any specious circumstances could hardly
make it come within the Statute against Usury.
in cases where 5 per Cent: Interest only is taken
upon Annuities for Lives, it is usual to require
the Borrower, to insure his Life, which amounts
to the same thing, but Insurances on Lives, being
often converted into a species of Gaming, the
Statute 14th Geo 3d. ch 48 requires, that the party
insured must have some Interest in the event
of the Life. — And that the name of such
interested party should be inserted in the Policy.
See also with respect to Insurances upon Ships,
or Marine Insurances, the Statute 19th Geo. 2d.
Ch. 37. which had been passed long before, for a
similar purpose (viz) to prevent the practice of
Gaming, by entering into what were called
waging Policies where the parties insured,
without having any Interest in the Ship or
Cargo, and frequently also insured the same
property several times over, which was called

Reafswrances, and which is now prohibited, unless the former Insurer is Insolvent, or Bankrupt or Dead. — The Questions which arise upon Insurances either upon Lives, or against Fire, or upon Ships carried by Water, are, generally for some Fraud supposed to have been committed by the person insured, at the time of applying to obtain the Policy, for if he has been guilty of any fraud upon the underwriters, or of any undue concealment, with a view to deceive and mislead them, it vacates the policy, and he will lose the benefit of it. — Thus, if a person where to Insure his Life, and in order to induce the underwriter or Insurer, to venture upon the risk, were to state, that he was in perfect good health, or to swear that he was ten years younger than he really was, this will avoid the Policy or if he were to state, that the Ship was in excellent repair, and Condition, and every way sea worthy, when in fact, he knew her to be in a rotten and leakey state, this will vacate the Policy, or if he were to warrant that she was copper bottomed, and fit for a Voyage to the East Indies, when in fact she was not copper bottomed, this will vacate the Policy, though in fact, she afterwards be lost in the Channel,

only a few days after she left England, in a storm, which would have destroyed her tho' she had been in every respect as good as the owner had represented her to be, for these Frauds cannot be tolerated, and in order to repress them and remove every temptation to commit them, it is absolutely necessary that such bad faith, and misrepresentation should render the policy void, and the Law is the same, even though the falsehood and misrepresentation was the act of the Agent, without any Authority from the Principal, for in making Contracts, a person must be bound by the Acts of the Agents whom he employs, but as will be more fully observed in the Remarks upon the Relation of Master and Servant, a Man is not liable for the Acts of the other, who only pretends to be his Agent, which is the case, where a person employed as Agent for one purpose, pretends to act as Agent for other purposes, for in this case he is acting out of and beyond the Character in which he is employed.—

Where the acts fall within the Character of Agent, tho' they are such, as the principal never directed, nor will approve of still he is answerable for them, as falling within the scope of the authority which he had committed to the Agent, and if any person is to suffer by the

misconduct of a Servant it is fitter that the a-
Master should suffer who employs him than the
person who deals with him, upon the strength of
the character with which he is clothed by his
Master.

Lecture 49.

Contracts whereby a Debt becomes due from one person to another, are distinguished into three Classes, namely

1st. Debts of Record, where money is due upon some Record, as a Judgment, Recognizance, Statute — Merchant, Statute Staple (see Defin: Judgment, Recognizance)

2d. Specialty Debts, or Debts due upon Specialty - Contract, which is, where money becomes due - by Deed, or Instrument under Seal, such as by Deed of Covenant, by Lease reserving Rent, or by Bond. -

3 Debts by Simple Contract, which is the case, - where the Debt is not due upon Record, or - Specialty but upon an Agreement by word of mouth only, or which if reduced into writing is not under Seal. -

Wherever a Debtor can pay all he owes, there - is little or no difference between a Creditor,

who has a Bond or Specialty to shew for his money and one whose Demand is merely upon a simple Contract, but where the Debtor, cannot pay all his Debts, it then becomes material, as Specialty Debts have a right to take precedence of Simple Contract Debts, and it must be remembered, that Lands are not liable to the payment of Debts, unless they are charged with the payment of them, by the Owner either expressly, or by his Will, or indirectly by his having Bonds, or other Specialties, which will reach them, but then for, and in what cases, specialty debts are superior to simple Contract Debts, will be explained more fully hereafter.-

Though generially speaking, therefore there is no great objection to Contracts, by word of mouth merely, provided they can be fairly proved.-

The Statute of Frauds has thought it prudent to require, in some cases that the Contract should be reduced into writing, thus, no person shall be charged upon any promise, to answer for the Debt, or Default of another, or upon any Agreement, in consideration of marriage, or upon any Contract, or Sale of any real Estate, or upon any Agreement, that is not to be performed within one year, from the making, unless the Agreement, or some Memorandum thereof, be in

writing and signed by the party, to be charged - or by his authority. - There are many cases - however, where a person not deeply read in the Law, would suppose them to fall within, and be governed by this Act of Parliament, which have been determined not to be within it, and which are therefore good though by word of mouth only. notwithstanding the Act. - See these two last - Lectures in a different form in the Original.

Lecture 50.

On Bills of Exchange

Bills of Exchange, were originally (no doubt) invented, for the more easy remittance of money, from one place to another, and they have still that great use. - Thus, if A. is going from here to the East Indies, he may apply to B, a person, who has sent Goods to the East Indies, and offer to - pay him for the Goods here in England provided he, B, will let him receive the money. in the East Indies, on his arrival there, B agrees to do so, - and upon A's paying him the money, he draws - him a Bill of Exchange for the amount, upon the person who purchased his Goods, which Bill, A takes with him instead of Cash, and thus - this operates as an Exchange of money in one place,

for money in another, and provided the Drawer, and Drawee are respectable, and responsible Men, there is no danger in such Exchanges, but great convenience, as a Man carries his money in paper credit, without the Danger of Robbery, or Loss. — But though formerly, Bills were the mode of Exchanging money in one place for money in another, and probably took their name from that, being the use of them, they are now frequently used, especially by East India men, for the purpose of raising capital, or deferring the day of payment of a Debt; the properties of a Bill in a great measure appears upon the face of it, thus, the time of payment appears upon the Bill, but 3 days more are to be added as an indulgence to the Acceptor, which are called days of Grace, but if the last of these three days, will fall on a Sunday then only two days are allowed, and not three, for the demand of payment must be made on the Saturday, it also must be ascertained by examining the Bill or the back of it who is the person entitled to receive the money, if it orders the Bill to be paid to a particular person, such person must of course receive it, but if the Indorser merely puts his name upon it, without saying more it is the same

indorsing it "pay the bearer" and the person, in whose possession, the Bill happens to fall to, is the person entitled to receive it, of course an application must be made for payment, in the first instance to the Drawee; he is the proper person to pay it. — This application should be made when the Bill becomes due, in order to inquire and know whether he will undertake to pay it when it does become due. This is called presenting it for Acceptance and it is in many cases advisable though not necessary to do this, if the Drawee, either, refuses to accept it, or when the Bill becomes due, refuses to pay it, it may be protested though these protests are not of very great importance, or consequence, except as to Foreign Bills of Exchange, every holder of a Bill has a right to call upon all, or any of the prior Indorsers, upon the Drawer, for every Indorser is considered by Law, as undertaking for the due payment, of the Bill, to those who take it after him, whenever a Bill is refused, whether, presented for Acceptance, only, or presented for payment, upon its becoming due immediate notice, should be given to the Drawer, or prior Indorsers. — Generally speaking, where the parties, live at a distance, a Letter by the same

day's post, or at least not later than the next, is the proper Notice; and by the slightest neglect in not giving Notice, the parties who would otherwise, be liable to pay the Bill, are discharged. - There must be no false delicacy, or dunning, for a Bill of Exchange where persons, are not much accustomed to Bills, the best way is, to pay them into the Hands, of their Bankers, who will see, that they are presented in due time, and due Notice given, if necessary. -

Lecture 51.
On Bankruptcy

A Bankrupt, is a Trader, who commitits an Act of Bankruptcy, upon which a Commission, is taken out against him, he must be a Trader, and he is generally a broken Trader, or one, who cannot pay his Debts, because the most common Acts of Bankruptcy, are secreting ones self at Home, and being denied to Creditors, or running away from home, and to escape from Arrest. - Where a person, not in Trade, owes a man money, and will not, or cannot pay, the Creditor has no other remedy, but to bring an Action against him, and at last, to take out

an Execution, against his property, if he has any, or if he has no property, against his person, to send him to Goal - But as a man, may pay any of his just Debts, he pleases, the consequence is, that by giving a preference to one Creditor, he sometimes defrauds, and leaves nothing for another; and the Debtor who is sued, sometimes practices this Trick, instead of paying all his Creditors equally, and in proportion to each other. — But where a Man, once becomes a Bankrupt, all his Creditors must come in together, and share equally, unless a Creditor, has got a Mortgage, in which case, he is entitled to apply, as far as it goes, towards payment of his Debt. - (Here) give the concise and general account of Bankruptcy which is given amoungst the Definitions)

In Order to make a man a Trader, he must both buy and sell; a person is no particular Trader, if he buys and sells any thing, and every thing, which he thinks, he can make a penny by, he is then called by the General name of Chapman. - Some persons who buy and sell, are held to be Traders tho' a great part of their profits, arise from manual labour. - Shoemakers are Traders and liable to be made Bankrupts for the labour is restored upon the

Goods only for the purpose of bringing them to Market, and in amelioration of the Commodity, but it is the buying and selling that makes the Trader. —

As to the Act of Bankruptcy

Most of the Acts of Bankruptcy arise out of a Man's endeavours to avoid, and get out of the way of his Creditors, or to evade payment of their just Demands. If a Trader who wishes not to become a Bankrupt will appear publicly, attend his Compting House, and Warehouse, see his Creditors, when they ask for him; tho' in fact it is to tell them that he cannot pay, and will not, but of the way to avoid his being dunned or arrested, it is difficult and indeed impossible to make him a Bankrupt, unless upon being arrested, he should go to prison, and lie there two months. — It is often very material, to ascertain the exact time, when the Act of Bankruptcy was committed, because all the Assignees from that time, and consequently, any Sales of Goods, or Disposition of the property, after that time, are, generally speaking, void; the Bankrupt has been disposing of property which did not belong to him, such Sales however, are frequently ratified by the Assignees, upon the Buyers, agreeing to pay them the price,

it saves the trouble of selling the Goods over again, but payment made, in the regular course of Trade, and Dealing, though after a secret Act of Bankruptcy, has been committed, or protected by Act of Parliament, for that purpose, after the Assignees are chosen, and an Assignment has been made to them, by the Commissioners, they take the property of the Bankrupt, and stand as nearly as may be, in his Shoes and may bring Actions to recover any property, which belongs to him, or any Debts, which are owing to him. — Persons who want money of a Bankrupt, may attend at any of the three Meetings, under the Commission, or on the day appointed for making a Dividend, to prove their debts, which is done in this manner, into a Room where the Commissioners are sitting, upon which, some of the Commissioners will ask, if you come to prove a Debt, you then either explain to them by word of mouth, or give them a short, — Statement upon paper, of the amount, and nature of your demand, and they will draw you a Deposition and after read it to you, and sweare you to it, and you have then done and are at liberty. —

As the Deposition must begin with stating your name, place of Abode, and Trade, or —

profession, set out the amount your demand, and what it is for, and whether you received any Security for it; the best way is, just to state these things upon paper, and deliver it to the Commissioners, the Paper may be in this form — I A.B. of &c Merchant, want a debt of £50 due to me, and C.D. my Partner (upon the Balance of Account for Goods sold and delivered for which I or we have no Security except a Bond or Bill of Exchange. — if you have a Bond or other Security for your debt, it must be produced to the audit, as a general rule, that the Creditor must, if he does not prove his debt by Affidavit, attend, to prove it in person. — It is necessary, that the Creditor should swear to his debt himself, or otherwise claims a right, to be made by Agents or pretended Agents, who were offended or had been discharged; no Creditor can vote in the choice of Assignees, — whose debt does not amount to £10, nor — any Creditor sign the Bankrupt's Certificate, whose debt does not amount to £20, which may be thus Remembered Decem Assignati, — Veginti Certificate. —

As it is the amount in value, which carries the Assigneeship, a single Creditor, if his Debt be large enough, may choose what Assignee he.

likes . in spite of all the other Creditors. –
If the Bankrupt conducts himself fairly, the
Creditors generally sign a Certificate, of his having
made a full discovery of his Estate and Effects,
and of his having conformed to the directions, of
the Bankrupt Laws, which Certificate, is
afterwards authenticated by the Commissioners
and will then be allowed by the Chancellor; –
this Certificate must be signed by 3/5ths in
number, and value of the Creditors, whose debts
are £20 or upwards, after this Certificate the
Bankrupt will be entitled to an allowance
out of his Estate, in proportion to the amount
of the Dividend he has paid, and he is then also
discharged from all debts which were owing at
the time he became Bankrupt, and might have
been proved under the Commission as soon as
conveniently may be after the expiration of six
months from the date of the Commission, the
Assignees upon an order from the Commissioners,
at a Meeting for that purpose, should make a
Dividend, or distribution of the Bankrupts
Effects, amongst his Creditors. – Debts though
the time of payment is not arrived, as upon
Bonds or Notes payable at a future day, may
be proved under a Commission deducting 5 per
Cent Interest as a Discount for the time the

Debt has to run.

Lecture 52
Of Title

To personal property, under a Testament, where the deceased has made one, or under Letters of Administration, where he has not made any; formerly a Man could only devise a third part of his personal Estate, but now he may devise all of it. —

Where a man died Intestate, that is without any Will, or disposition of his Goods, the King was by the old Law, entitled to them: afterwards the Goods of Intestates were given to the Bishop or Ordinary. — Statute Westminster 2nd & 3d Edward 1st) the Bishop was ordered to see that the Goods were, in the first place applied towards payment of his Debts. —

By the 31st Edward 3d the Bishop was also ordered to appoint the next of Kin to the deceased, to administer his Goods, the person thus appointed, was called Administrator, and is put upon much the same footing, as an Executor; all persons may make Wills, of their Personal Estate, except Infants, who if they are Males, are under the age of 14 years, if Females, 12

years. — Idiots or persons non compos mentis, — persons under duress, married women, unless the Husband consents to the Will. — Traitors, and Felons. — a mere verbal Will is called a — nuncupative Will, and is not good, except under particular restrictions. —

Where the property bequeathed does not exceed £30 the Statute of Frauds requires that there — should be three Witnesses of lands, but a Will or Testament of personal property merely does — not require any witnesses; tho' it is usual and better to have them. —

It is a Rule in Law that the first Deed and the last Will stands. — A Man may alter his Will as long as he lives. — A Will does not take — effect till the death of the Testator, it is — — ambulatory till his death. — If a man, who is a Bachelor, makes his Will, and afterwards — marries, and has a Child, this is a presumptive or implied Revocation of his former Will, it — would be strange if it were not so; for it is — much more probable, he should wish his — property to go to his Wife or Children, than to a more distant Relation —

An Infant or married Woman, may be — Executor, or Executrix to a Man's Will. —

If a Man makes a Will, but names no —

Executor, the Ordinary must name one for him, who is called Administrator cum testamento annexo - As to whom are entitled to be Administrators the Husband is entitled to Administration of his Wife's Goods, and Chattels the Wife or the next of kin, to Administration of the Husband's, then the Children of the deceased, are entitled to Administration, if no Children, then the Parents of the deceased. - the next of Kin is reckoned according to the computation of the Civil Law, that is the person nearest in degree beginning to reckon the degrees from the deceased and not from the common Ancestor, is called the next of Kin. Observe, - The half blood are deemed of Kin, so as to be intitled to Administration, tho' they cannot be Heirs, to the real Estate, of the deceased. - The Executors of A's Executor, is considered as the Representative, and Executor of A. himself. -

Lecture 53.

An Executor may do many acts, before he proves the Will, for he is the Agent, and Representative of the Testator, appointed by the Testator himself, to manage his affairs,

and derives his Power from the Will, but an Administrator may do nothing, until Letters of Administration, are issued, for the owes his power entirely to the appointment of the Ordinary... An Executor de son tort is liable to actions, as if he were a rightful Executor, the Will must be proved before the Ordinary of the Diocese, or if the deceased, had Bona Notabilia in two different Dioceses, then in the prerogative Court of the Province, that is, the Court of the Archbishop or Metropolitan. —

An Executor or Administrator must collect the property of the deceased, and sue for the debts if necessary. —

The Executor or Administrator must pay the Debts of the deceased, according to their legal property; thus he must pay specialty Debts, that is, those that are due upon Bonds, Leases, Covenants or Instruments under Seal, before Simple Contract Debts (i.e.) those which are due upon Notes, Bills of Exchange, or Contracts by word of mouth, or in writing. not under seal; but if a rightful Executor has himself a Debt of equal degree, he is allowed to pay himself first, and must also afterwards pay the Legacies, but if there is

not sufficient to pay them all, then the general Legacies must abate proportionably. — If a Legacy lapses, it sinks into the property, and does not become payable. — Thus if the Legatee dies in the Testators life time, the Legacy is lapsed, for the Will has not taken effect: if the Legatee dies before the Legacy becomes a vested Interest, it lapses; as for instance, where a Legacy is given to a man, if he attains 21, or on condition that he attains 21, or if he dies before that age — the Legacy has never become vested, it was a contingent during his Infancy, and having died under twenty one, the Legacy lapses. — But if he has once become intitled to the Legacy, if it has once become a vested Interest in him, tho' directed not to be paid till a future time then it will not lapse, tho' he should happen to die before the day of payment, but it will go, and belong to his Representatives, and even in this case, if it were charged upon Lands it would sink into the Estate, for the benefit of the Heir. A vested Legacy carries Interest if the whole property, is not exhausted by the Legacies, and there is any residue, it either devolves to the Executor, for his own use, or if there is any thing in the Will, it can be collected, that Testator did not intend that such residue,

shall go to and be divided amongst the Testators next of Kin in the proportions following by the Statute of Distributions 22d & 23d of Ch. 2 c 29. viz 1/3d to the Widow, the other 2/3ds to the Children or their lineal descendants; if no Widow, the whole to the Children, if no Children, or legal Representatives of Children, then 1/2 to the Widow, and the other half to the next of Kin, according to the computation of the Civil Law, or their Representatives. — Observe! however that no Representations are not admitted further than the Children of the Intestates Brothers and Sisters, and hence it frequently happens, that the Representatives are intitled to nothing, tho the person whom they represent, could have been intitled to a share of the property, if he had been living. —

Observe also the distinction between dividing the property per capita, that is to each Claimant in his own right, and per stirpes, that is where some of the parties claim jure representationis in right of any person; this if the deceased has 3 Brothers, A, B & C, his Effects will be divided between them 1/3d to each, dividing his effects per capita. But if A, happens to be dead leaving two Children then B, and C, are entitled to the whole of

the 1/3d between them which is called taking per jure representationis. But the Statute of Distributions, do not entirely control the customs of the City of London, or the Province of York, and by the custom of the Province of York, one third is to go to the Widow (i.e.) 3/9ths 1/3d to the Children, and 1/3d to the Administrator, And as under the Statute of Distributions the Widow is entitled to a third of this last mentioned 1/3d which goes to the Administrator that is to 1/3d of 1/3d or 1/9 that together with the former 3/9ths makes 4/9ths and therefore in the Province of York the Widow is entitled to 4/9ths.—

Lecture 54.

There are some cases, where a person may give himself redress for Injuries, without having recourse to Law, thus, a Man may defend himself, his Wife, Child, or Servant, if attacked, but he must take care not to do more, than self defence seems to require; — A Man may lawfully claim, and retake his property wherever he can, if it be not in a riotous manner, or attended with a breach of the peace, for instance, If my Horse is taken away, and I find him upon a Common, a Fair,

or public Inn, I may lawfully seize him to my own use; but I cannot justify breaking open a private Stable, strictness even committing a Trespass on the Ground of a third person to take him. —
A Man may abate or pull down a Nuisance, — thus, if a Wall is erected so near to my ancient Windows, that it obstructs the Light, I may enter my Neighbours Land, and pull the Wall down, provided, I can do it peaceably; or if a new Gate be erected across a public Highway, — which is a common Nuisance as affecting all the Kings Subjects, any person may cut it down and destroy it. —
A Landlord who wants rent, may distrain the Cattle upon his Farm, to pay himself, or a Tenant or Occupier of Land, may impound Cattle, which are trespassing upon his Closes, till a compensation is made, for the damage they have done him. —
As to Distresses for Rent, generally speaking, where there is Rent in Arrear, to a Landlord, he may distrain whatever he finds on the premises, whether it is the Tenants property, or not, unless they be Cattle of a Stranger, which have escaped into the Land, through defect of fences which it is the Tenants business to repair; formerly a distress was merely a pledge, or

Security for payment of the Rent, or satisfaction of the damage done, and so it still continues, with respect to Trespass, but in distress for Rent, if the Tenant do not pay, within days after the distress has been taken, or replevy the Goods, and undertake to try the question, the Landlord may proceed to sell the property, and pay himself. — The distress should be made, in the day time, and upon the premises, but if the Goods have been fraudulently removed the Landlord, or his Agent, may follow them, and even break open doors, to take them, taking a Peace Officer along with them, if the Cattle are put into an open Pound, it is the business of the owner of the Cattle, to supply them with food, and take care of them. — But if they are put into a Pound covert, the Distrainer must take care to feed them, formerly there was some danger, in making distresses, and a good deal of nicety, was to be observed, — least the Distrainer, should take any irregular step, which would subject him to an Action, But by the Statute 11 Geo. 2d. c 19. that for any unlawful act done, the whole should not be unlawful, nor the parties Trespasses ab initio; but that the party grieved, should only have an Action, for the real damage he has

sustained, by any Irregularity in the making of the distress, and not even thus, if tender of amends is made, before the Action is brought.—

Lecture 55.

If A, who owes money to B, makes B, his Executor, and dies B, may retain out of A's Effects, the amount of his own Demand, and pay himself before any other, of A's Creditors, whose debts are of equal degree with his own. Tho' a Landlord may distrain, and pay himself his Rent, yet, if he either cannot distrain, for want of some thing, upon the premises, or does not choose it, he may bring an Action against the Tenant, to recover the Rent, so tho' I may take my Goods, which I find in the possession of another person, if I have a fair and peaceable opportunity, this power of doing myself right, without recourse to Law, I am not under the necessity of making use of, but may bring an Action of Trover to recover them; so if my Neighbours Cattle, have trespassed into my Close, I am not absolutely obliged to put them into the pound, but may turn them out of my close, and afterwards bring an Action to recover Damages, for the —

the Trespass, wherever a Man has a clear right, the Law provides him with a remedy, if that right is invaded, as the King is the fountain of Justice, Courts are supposed to be derived from the Crown. — The Court of Record is, that where the Acts of Judicial proceedings, are inrolled on parchment, for a perpetual Memorial, and testimony; such Courts only, as are Courts of Record, have authority to Fine and Imprison. —

Courts of inferior Jurisdiction, where the Proceedings are not inrolled, or recorded, such as the Courts Baron of Manors, are not Courts of Record. —

A Court Baron is a Court, incident to every Manor in the Kingdom, to be holden by the Steward, within the said Manor, it is divided into two kinds; one a Customary Court, for the Copyholders, in which their Estates are transferred by Surrender, and Admittance, and the other, a Court of Common Law, to determine disputes, and actions, respecting debts, and property within the Manor. The latter is perhaps, more properly a Court Baron, tho' they are generally united, and go by one name. —

The proceedings in the Court Baron may be removed into the Sheriff's or King's Courts,

which is perhaps the reason, why suits are seldom tried in the Court Baron. — The County Court is a Court, incident to the Jurisdiction of the Sheriff, and it is not a Court of Record. Pleas of Debt or Damages under the value of 40/, and in order to prevent vexation, and expence by bringing Actions, in the superior Courts at Westminster, for trifling sums, the Statute 43° Eliz.th enables the Judges, to deprive the Plaintiff of his Costs, if he sues in the superior Courts for less than 40/ and is not content with bringing his action, in the inferior Court. —

The County Court may also try, Suits for demands to any amount, by a special Writ of Justicies, but as the proceedings may be removed, by Writ of Pone or Recordari, or False Judgment, into the superior Courts, Actions even in the County Court are not very common. —

Lecture 56.

Formerly, the Business of the King's superior Courts, and they did not interfere with the subjects, which peculiarly belong to each other, the Court of Chancery, issued all original

Writs, under the Great Seal, to the other Courts, the Court of Common Pleas determined all ~ cases, between private subjects, that is, all civil Actions, or Common Pleas.— The Court of ~ Exchequer, decided matters relating to the ~ Kings Revenue.— The Court of Kings Bench, tried all Crimes and Mis-demeanors, that is, ~ Pleas of the Crown, and had power of ~ ~ receiving Appeals, from the inferior Courts.— The Court of Kings Bench, and also the ~ Court of Exchequer, have even a Jurisdiction over all civil Suits or Actions, as well as the ~ Court of Common Pleas.— The Court of ~ Kings Bench is not absolutely fixed at ~ Westminster, as the Court of Common Pleas, ~ but may accompany the King, for which ~ reason all process issuing out of this Court in the Kings name, is returnable ubicunque fuerimus in Anglia, tho' it has now been in fact regularly, stationed at Westminster for some Centuries.— The Court of Kings Bench takes Cognizance both of criminal, ~ and civil cases, the former, in what is called the Crown side, or Crown Office, the latter, in the Plea side Court.— The Court of ~ Kings Bench is also a Court of Appeal, ~ into which may be removed by Writ of ~

Error, all determinations of the Court of Common Pleas, and all inferior Courts of Record. — The Court of Exchequer has also two Branches, a Court of Equity, and a Court of Common Law, from the Common Law, an Appeal lies, if the parties are dissatisfied, to the House of Lords, from the Equity, an Appeal lies, to the Court of Exchequer chamber. — The Court of Kings Bench, Common Pleas, and Exchequer, have four Judges each. — All original writs that pass under the Great Seal, all Commissions of Bankrupt; Commissioners to enquire, whether A, is an Idiot or Lunatic, and the like, and all writs in suits, which are commenced by Original Ifsue, out of the Court of Chancery, from an Office, called the Hanaper Office. — The Court of Chancery is a Court of Equity, where questions and disputes are litigated, which either, do not fall, within the cognizance of the Courts of Common Law, supposed to require the interference of Courts of Equity, or, to afford compleat redress to the parties. — All points of Law, arising in Bankruptcy belong peculiarly to the Court of Chancery matters of account, are generally settled in Courts of Equity, and Disputes in partners-hips,

which indeed generally involve an account, between the Partners Suits, for the specific performance of the Agreements, as Courts of Common Law could only at the most, give damages for the breach of them, Suits to obtain Relief, against Frauds, Questions, and Disputes, respecting Charities, and Charitable Corporations. — Suits to be relieved against Forfeitures, which are absolute at Law. — Questions respecting Legacies, and Executors. — Injunctions to stay waste, that is, to prevent the Commission of it, and to stay Actions which are found to a Defendant, and to which he has a good equitable defence, tho' not such as will avail him in a Court of Law. — Redemption and foreclosures of Mortgages, and all Questions respecting trusts, and trust estates, as opposed to Legal Estates, which opens a wide field of Business, for Courts of Equity, as the construction of trusts, and carrying them into effect, must necessarily require much attention, and take up a great deal of time, in a populous commercial Country. — From the decisions of this Court, an appeal lies to the House of Peers, the Chancellor is the only Judge in this Court, he seldom in matters of great difficulty, takes upon himself, to decide by his own

single Judgment, but either calls in the assistance of some Judges, or sends the case with the opinion, to the Courts of Kings Bench. — The Chancellor has under him, the Masters of the Rolls to assist, in the dispatch of Cases and Equity Business, and also twelve masters in Chancery, to some of whom, all Questions of Account, are generally referred, and taken, and investigated upon the production of Vouchers, and Witnesses, and by whom, also Abstracts are produced, as Titles, ascertained in Suits, respecting purchases and the like. —

The Court of Exchequer Chamber, is a great Court of Appeal, but the House of Lords, is the dernier resort, ultimately deciding, all difficult points of Law, and Questions of suit, between the Kings subjects. — The Courts of Assize, & Nisi prius are the Courts, which are held in every County, twice in every Year, (except in the four Northern Counties) where they are held once only, before two or more Commissioners, appointed by his Majesty, to try such Questions, as have been brought to an Issue, upon the pleadings of superior Courts, and to try Indictments for Crimes, and Misdemeanors, in the respective Counties. — The Spring or Lent Assizes of Yorkshire, generally commence, Saturday 3 —

weeks after the end of Hilary Term, and the Summer or Lammas Assizes, Saturday 3 Weeks after the end of Trinity Term — the Commissioners appointed, are the Judges of the Superior Courts, together with some Sergents, and others of Rank, tho' the Judges are in fact, generally, the only acting Commissioners. —

Lecture 57.

One of the principal Ecclesiastical Courts, — is the Prerogative Court, of the Archbishop, — established for the Trial of all Testamentary — Cases, that is, Cases relating to Wills and — Testaments. — This is the Court which grants Probates of Wills, where the deceased left Bona Notabilia. — The Court of Delegates or persons appointed by the Kings Commission, under the Great Seal, is the great Court of Appeal in all Ecclesiastical Cases; none of the Ecclesiastical Courts are allowed to be Courts of Record. — The Palace Court held, once a Week in the — Borough of Southwark, on the South side of the River Thames, was formerly a Court of — considerable Business, holding Plea for all manner of Actions arising within twelve — Miles of his Majesty's Palace, at White Hall. —

The Palace where was beheaded
about 400 yards from Westminster, towards
Charing Cross, but as cases of any consequence,
were usually removed into the Court of King's
Bench, or Common Pleas, by Writ of Habeas
Corpus cum causâ, and as suits of small
debts, and trifling value, are now generally
brought in the Courts of Conscience, established
near London, the business has been much
reduced.
The Counties Palatine, Chester, Lancaster,
and Durham have a sort of petty Sovereignty,
and issue writs out of Courts of their own, so
that parties suing there, apply to the proper
Courts, of the Counties Palatine, to the Courts
at Westminster.
A similar Observation, applies to the
Principality of Wales, and also in a degree, to
the Duchy of Lancaster which has possessions
in various parts of the Kingdom, as well as
in the County Palatine of Lancaster itself.
There are also Courts established by
prescription, Charter, or Act of Parliament,
in various Cities, Boroughs, and Corporations,
for the convenience of the Inhabitants, that
they may prosecute their suits, and receive
Justice at home, but as the Courts at

Westminster, a nerally a concurrent
Jurisdiction with them, it is not often, they
try cases of much importance, even where
they have authority to do so, but cases of
importance, are tried at the Assizes. -
But the petty Courts which have most
business in small matters, are, the Courts
of Conscience, or Courts of Requests, so
established by Act of Parliament, in many
of the populous parts of the Kingdom, and
are called Courts of Conscience, because the
Judge, or Judges, do not proceed, to try by a
Jury, and by disinterested witnesses, according
to the Rules of Common Law, but examine
the matter in a summary way, upon the Oaths
of the parties themselves, or otherwise, and
make such determination, as they shall think
agreeable to good conscience. - The Universities
also have Courts, which have an exclusive
Jurisdiction, in Actions, and suits, where a
Scholar or University Man, is a party, but
Observe, all these particular Courts, are
strictly confined to their authority, and
cannot be extended further, than the
proper steps, of their privileges most expressly
warrant. /-

Lecture 58.

The Ecclesiastical Courts, take Cognizance of the following matters,

1st. Where a dispute, arises between a parson, and one of his parishoners, whether the Parishoner, hath part of his Tithes, and omitted to pay them, the Ecclesiastical Court may of fact try, — whether they have been really withheld, and substracted, but cannot try the Question of Right, if the Parishioner disputes the Parsons Title. — But for the Recovery of small Tithes, 7 & 8. — Will. 3.d enables a Vicar, or Clergyman, to — recover them, by complaint to 2 Justices, if — they are under the value of 40/ or even to the value of £10, for any Tithes with held by Quakers, there are also other matters relating to the — Repairs &c. of the Church, which may be tried before the Ecclesiastical Court, but if the right of Patronage is in dispute, this can't be tried by the — Ecclesiastical Court, but by some of the Courts of — Common Law. —

2dly Suits respecting marriage, as the Question of whether married or not married.

3dly to compel the parties to live together, or which is — much more common, to compel them to separate by a Divorce, a mensâ et thoro, for brutal usage and the like, or by a Divorce a vinculo matrimonio, —

where the marriage was unlawful ab initio, — and therefore void. — to compel the Husband to allow the wife Alimony in case of a separation. —

4thly Suits and proceedings respecting Wills and — — Testaments, to compel Executors to pay Legacies, — but the Courts of Equity, have a concurrent — — Jurisdiction, with the Ecclesiastical Court in this. —

5 In the Granting Probates of Wills, in the granting Letters of Administration, which is pretty much — matter of course except, where the right to prove the Will, or take out Letters of Administration, is — — disputed by some of the Relations, or Creditors of the deceased. — The manner of proceeding in the — Ecclesiastical Courts, is generally according to the — Civil and Canon Laws, but it must not be — — repugnant to the Common Law of the Land, for instance they must not insist upon 2 Witnesses to prove a fact, where One is held to be sufficient. — their process is called Citation, their Declaration — Libel, their Plea, Defensive Allegation, their sentence Interlocutor, a Degree if not absolutely determined, definitive Sentence if not meant to be reconsidered. — Their execution, is by means of excommunication which if necessary to carry it into full effect, the temporal Courts will be assisting; but in the case of Subtraction of Tithes, the Sentence is more — effectual and expeditious — to prove the party — —

committed to prison under the Authority of an Act of Parliament. —

Court Maritime or Admiralty Courts, have no power to try all Causes & Injuries arising upon the High Seas, but as Debitum et contractus non sunt mullius loci may be held any where, the Plaintiff by stating the Contract, which was in fact made at Sea, was made upon Land, may bring his Action in one of the Courts at Westminster. —

And all other civil Injuries, for which redress can be had by Law, the Common Law Courts take notice. — In many cases, where persons refuse or neglect to do something, which they ought to do, the Court of Kings Bench will grant a Mandamus, to compel them thus, where a person has the possession or custody, of public Books or papers, which a person has a right to inspect, the Court will grant a Mandamus to compel him to produce them, and permit them to be inspected; it will grant a Mandamus, to compel a Court to be held, if necessary, to compel a Corporation, to fix its Seal to an Instrument, which requires it, to compel them to admit a person who has been duly chosen, to an Office or Franchise, or to restore him to his Office if he has been displaced. —

A Mandamus must be moved for, upon Affidavits of the facts, but in general, the Court gives time,

to shew cause why it should not, or as it is called, grants only Rule to shew Cause.—
Writ of Prohibition, is a Writ directed to some inferior Court, to put a stop to some Suit depending therein, because it is a matter, either out of, or beyond its Jurisdiction: Thus, if the County Court or Court Baron, attempts to hold plea of any matter of the value of 40/- or if the Ecclesiastical Court, should require the payment of a Legacy, or Release of Tithes &c to be proved by two witnesses, the common Law only requiring one, a Prohibition will be granted, but where the Grounds, upon which the prohibition is applied for, are doubtful, the Court will direct the party applying, to declare in prohibition, for the purpose of discussing the question, which gives rise to the doubt, if the Judges think, that there is no ground for the prohibition.— They then by writ of Consultation, so called, because it is after they have deliberated upon the point, return the case to its original Jurisdiction, and order the inferior Court to determine it there.—

Lecture 59.
On Actions

Actions are divided into real personal, and

mixed.—
Real Actions for trying Titles to Land, are now fallen into disuse.— The mixt Actions of ~ ~ Ejectment being adopted instead.—
Personal Actions are those first, in which a Man claims personal property, or damages in lieu thereof 2dly Those in which he claims ~ satisfaction in damages, for some Injury done to his person or property.— The former, is said to be founded on Contracts, as Debt or promises.— The latter, on Torts, or wrongs, such as Trespasses, Nuisances.—
Mixt Actions are such, as partly partake of real Actions, as pretending to Land, and partly to personal Actions, for injuries to a Man's person, as threats or menaces, to do a person some ~ ~ bodily harm, the person threatened, generally exhibits Articles of peace, or as it is called; ~ Swears the peace, and gets the party bound over, to his good behaviour for an Assault, and Battery, the party assaulted, may either Indict ~ the Defendant, or bring an Action against him, to recover Damages; but to entitle the Plaintiff to recover the Battery, must be unlawful; for if the Defendant can justify the Battery, he may plead such justification, as on Assault Demesne, or, that being a Churchwarden, he turned the

Complainant out of the Church, because he was making a Disturbance, or, that he was tresp[a]ssing upon the Defendant's Close, and because he would not go quietly away; the Defendant took him by the arm to remove him. —

For injuries to a Man's Health, as by selling him an wholesome provisions, by a Nuisance near his House, or from the want of skill, or want of care in a Surgeon and Apothecary; for Injuries to a man's character, as by a Libel, or by Slander, in calling him a Thief &c. — Some words are slanderous words are actionable of themselves, & some are not Actionable, unless the party of whom they are spoken; can prove, that they have done him some actual injury, to call a Man a Thief is actionable of itself, whether he sustains any injury from it, or not; but to call him a Bastard, or a Fool, is not actionable, unless he sustains some loss, in consequence of it, in this case, the Declaration must state, what injury it is, the Plaintiff hath sustained; which is called, laying the Declaration with a per quod. — But if, what the Defendant has said is true, — and he can justify it, no Action will lie, but still an Indictment may, for truth is no justification for an Offence, towards the public, in endangering the peace of the

Community, by provoking the party to quarrel and fight. —

In considering the form of, and preparing the Declaration, it is necessary to distinguish, between such injuries as are with force, and such as are without force; where the injury is immediate, — as Battery, Trespassing upon a Man's Close, and the like, the form of the Action, must be — Trespass vi et armis, and it must be laid — with force and arms, in the Declaration, but where the injury is only consequential, as the loss which a Man sustains, by the nonpayment of a debt; or the nonperformance of a contract. the nondelivery of Goods by a Carrier, or some — neglect and want of care about them, and the like, then the remedy is by an Action on the case. If the pleader mistakes the proper form, of the Action of Trespass, where it should have been on the case, he is said to have misconceived the Action, and the Plaintiff is tripped up. — Another injury to a Man's Character is, for a malicious Prosecution by accusing him of some Crime out of Malice, and without any reasonable probable cause, for this, the party injured, may maintain an Action on the Case. — Redress for False Imprisonment. — If a Man is falsely imprisoned, by an unlawful —

detention of his person, he may, not only have an Action of Trespass vi et armis, to recover Damages for the injury, but in general be released from — prison, by a Writ of Habeas corpus. — Some of the Writs of Habeas corpus, for there are different kinds, are merely to remove a prisoner, from one Court to another, but the great Writ to release a prisoner from Imprisonment, where it is unlawful, is the Writ of Habeas corpus ad satisfaciendum, directed to the Gaoler, commanding him to — produce the prisoner, with the day of his caption, and detention. — This Writ, issues either out of the Court of Kings Bench, or Court of Common Pleas, or from one of the Judges of these Courts — in Vacation, upon shewing probable cause that the party is imprisoned without just cause, hence it is, that every commitment, must express the — reasons for which it is made, that the Court upon the Corpus, may examine its validity, and — — according to the circumstances of the case, may discharge, admit to Bail, or remand the — — prisoner, by this Writ, the Injury of unjust and illegal confinement, may be removed immediately, 'till the party can take his Trial, provided he has not committed Treason or Felony, he is — — entitled to his Release, by the Law of the Land, in Bail, if the offence is such, as to require it. —

If a person beat another Man's Wife, the Husband and Wife must bring the Action of Trespass, vi et armis jointly, but if the beating be so severe, as to deprive the Husband of his Wife's company, and assistance, the Husband may then bring an Action of Trespass separately, for the injury which he himself hath sustained, in the usage of his wife, per quod consortium amisit, The inveighing away a man's Servant, before his time is out, entitles the Master to an Action on the case, against the party who is guilty of such improper conduct; and the Master may also sue the Servant himself for his breach of the Agreement.— And the beating of a man's Servant, by which the Master hath lost the benefit of his service per quod servitium amisit, entitles the Master to an Action for the loss he sustains thereby.—

Lecture 60.

Where Goods are taken from a Man unlawfully by a wrongful Distress, the owner may by an Action of Replevin, recover back the Goods and also Damages for the taking of them but as Goods once distrained, are in the Custody of the

Law, even where there is no good foundation for the distress, for that is the Question to be tried, afterwards if the Owner is dissatisfied, the Owner cannot take them of his own authority, and without application to have them restored to him again, by regular legal steps, - namely by the Sheriff or his Deputy, appointed for that purpose, for if he takes them by force, on their way to the pound, it is an Offence called a Rescue. - If he takes them by force, after they are in the Pound, it is an offence called Pound Breach. - But he may either Replevy the goods, and afterwards bring his Action, or if he is not anxious to have his goods restored, he may sue for Damages, for the injury which hath been done to him. -

An Action of Replevin, may be prosecuted in the County Court, but it is more usually, carried up to the Courts at Westminster, in the first instance, as it may be removed thither, by Recordari or Pone. -

The Owner of the Goods declares and the Defft puts in his plea, and the Issue, as in the legality of the Distress, and the truth of the Defendants plea, is regularly brought to Trial at the Assizes, and if the Plaintiff succeeds in the Action, he keeps his Goods, and

recovers some damages, but if the Denfendant succeeds, the Goods are to be returned to him, by a Writ of Returno habiendo, for other unlawful takings of Goods. The Owner may have an Action of Trespass vi et armis, or an Action of Trover to recover Damages. Where a person came unlawfully into posfession of my Goods, but afterwards refused to deliver them up, I may have an Action of Detinue, to recover Damages for the detention, but in this Action, the Deft. might have discharged himself, by his own Oath merely; and the Action of Trover is now the Remedy, as universally adopted in such cases.

Thus, if I lend a Man my Horse, and he afterwards refuses to return it, I may bring an Action of Trover against him, to recover Damages for the Injury, and in my Declaration, I may suggest, that I lost the Horse, for that is a matter of form only, and cannot be disputed or traversed by the Defendant, the real cause of Complaint being, that he unlawfully keeps my property, that the Defendant found it, and refusses to deliver it up, and converts it to his own use, and if the Jury find, that he does so convert it to his own use, there will be a verdict for the Plaintiff.

If a man keeps a Dog, which he knows is

accustomed to bite, or do mischief, he is liable to an action, for any mischief which the Animal may do. –

Where A B. owes money to C D the general – way of declaring, used formerly to be in Debt, but the Law holding, that A B, has promised to pay, even though there is no express promise, the general form of declaring, is now in – a Assumpsit. – In many cases the difference between the two forms of Action, is nothing – more than in form, and what that difference is, will best appear, by exhibiting a form of both in a simple Instance. –

Declaration in Assumpsit, for the purchase money of a Freehold Estate, sold and conveyed In the King's Bench

Markham v Le Blanc

Hilary Term 51st George 3d

(Middlesex to wit) A B. complains that C D. being in the Custody of the Marshall, of the Marshalsea, of our Lord the now King, before the King himself, of a plea of Trespass on the Case &c for that, Whereas the said C.D. on the 1st day of June in the Year &c at Snow Hill in the parish of — in the County aforesaid, was indebted to the said A B. in the sum of £ 500, – of lawful money of Great Britain, for a certain

Messuage, Tenement, and premises with the ~ Appurts, of the said A B, situate lying and being in the Parish of – in the County aforesaid, before that time Bargained, sold and Released, by the said A B. to the said C D. at his special instance and request, & being so indebted, he the said C D at Snow Hill aforesaid, in the County aforesaid, undertook, and then and there ~ ~ faithfully promised, the said A B to pay to – him the said sum of money, when he the said C D should be thereunto requested. – Then are added other Counts, if any are applicable to the case, with the general Breach that C D. not regarding his promises hath neglected and refused to pay. –

Form of Declaration in Debt

In the King's Bench

Markham & Le Blanc

Hilary Term 51st Geo: 3d Middlesex to wit ~ A B complains of C D. being in the Custody of the Marshall, of the Marshalsea of our ~ Lord the now King, before the King himself of a Plea, that he renders to the said A B, ~ the sum of £1000 of lawful money of Great Britain, which he owes to and unjustly detains from him, for that Whereas &c as in the ~ ~

preceding precedent, as far as the Words (and — being so indebted) then say by the said C D to — the said A B. when he the said C D. should be thereunto afterwards requested, whereby and by reason of the said sum of money being, and remaining wholly unpaid, an Action hath — accrued to the said A B, to demand and have of and from the said C D, the said Sum of £ — Then are added such other Counts as are — — — applicable to the case, with the General Breach that C D. hath not paid the sum or any part thereof but refuses so to do: Upon a Bond. — Record, or Deed; the Action will be Debt, or — Covenant, not Assumpsit, for the non performance of a Contract, where there is no Debt but the — Plaintiff is intitled to unliquidated damages, only the Action will be Assumpsit and not — Debt are now seldom brought except upon — simple Contracts under Seal. —

Lecture 61.

A Covenant is a promise under Seal, for the Breach of which, of course an Action will lie. — The Writ which commences this Action, is — called a Writ of Covenant, because it directs the Sheriff to command the Defendant to —

keep his Covenant, or shew cause to the contrary. — After the Defendant has appeared, the Plaintiff declares, setting forth the Covenant or Agreement, and shewing how and in what respects, it has been broken. —

Writ of Covenant

The first process in levying a Fine, in purchases of Land, where a Fine is necessary, in order to complete the Title, the purchaser or some other person on his behalf, sues out a Writ of Covenant against the Vendor. — A person who has to levy a Fine by this Writ &c. is commanded to keep the Covenant made by the Plaintiff, concerning the Lands in question, the Defendant called the Deforceant, acknowledges the Lands to be the right of the Plaintiff, for which reason, the Deforceant then takes the name of Conuzor, and the person to whom the acknowledgment is made, the Conuzee; this acknowledgment is made, in consequence of an Agreement between the parties, concordia, which as it is to be finalis concordia, gives the name of Fine, to this suit or proceeding. —

The difference between a promise, and a Covenant is, that the latter is a promise under Seal, whereas the former is an

Engagement either by word of mouth only, or put into writing, by writing without Seal. –

An Action upon a promise, is an Action upon the case, to recover Damages for the breach of a Defendant's Engagement, and is called an Action of Assumpsit, but for every promises there must be a good Consideration, as a foundation. –

The Statute of Frauds 29 Car: 2. c 19 requires, that some promises should be put into writing, otherwise they are void, viz: where an Executor charges himself, where a person engages for the debt or default of another, the Agreements in Consideration of marriage, respecting the Sale of Lands, not to be performed within a Year. – – There are also implied promises, as well as promises arising out of express Contracts of the parties. Thus where a man takes up Goods at a Shop, without making a Bargain for them, the Law implies that he will pay the value of them, and if he refuses to pay, the Tradesman may bring an Action, and upon proving the delivery of the Goods, and the value of them, he will be entitled to recover. –

The Court upon which he will recover will be, what is called the quantum valebant, that is the Court which charges

the Goods, to have been delivered to the ~ ~
Defendant, at his special Instance and request,
and that he promised to pay as much as they
were reasonably worth. —

Where a Man performs a Job, or does a ~
piece of work for another, the Law implies
that he will pay the Workman for the ~ ~
Materials, and as much as he deserves for his
labour; and if he refuses to pay the Workman,
upon proving that the materials were supplied
and the value of them, and that the work was
done, and what he deserves for it, in a fair ~
way of Trade, will be entitled to recover. —

The Counts, upon which the Plaintiff will
recover in this Action, are 1st for Materials
found and provided, and the other a quantum
meruit, for work and labour done, and performed.

Where a Man has received money belonging
to another, which he ought to pay over to him,
the law implies that he undertakes to do so, —
and An Action lies for money had & received. —

This form of Action tries a vast number of
questions, indeed as it brings to Issue, whether
the money belongs to the Plaintiff, or to the ~
Deft. or some other person, and it decides the
right to the money, that is, whether the ~
money, is the money of the Plaintiff, or not.

Where a person has laid out and expended his own money for the use of another, at his request, the Law implies a promise of repayment and an Action lies for money laid out and expended. — Where parties have settled Accounts, and struck a Balance, the Law implies that the party indebted, promises to pay the Balance; and the Plaintiff stating these facts, for which reason, the Count is generally called the insimul computavirsent, may recover it by Action, but where one party refuses to account, the general way of compelling him is, by a Bill in Equity, in which Court, the Plaintiff has the advantage, of a Discovery from the Defendant, upon his Oath, but most of the above Counts, are generally added in Assumpsit, that the Plaintiff stands a better chance of proving, what money is due upon some of them, even if he fail in proving the rest. —

There are many other promises and undertakings, which the Law implies, even where there is no express contract, or direct communication between the parties, and such contracts, the Law will of course inforce. for instance, the Law implies, that the

Innkeeper undertakes to take care of the Goods of his Guest. —
A Carrier to be answerable for the goods he carries. — A Farrier that he will shoe the Horse well without laming him. — A Surgeon that he will perform an operation with proper skill. — A person who sells Goods that the Goods are his own. — And where there has been some fraud committed in the sale of Goods, by contrivances to make them appear better than they really are; the party who is deceived, may bring an Action in the nature of Deceit, in which however the Plaintiff the as it is called viz.t that the Defr. knew that the Articles was not such, as he represented it to be, for if the Seller acted Bona fide, — afterwards unexpectedly appears in the thing sold, the Seller will not be answerable for it; Thus if a Man sells a Horse to another, and it afterwards turns out, that the Horse had some blemish growing upon him, at the time of the Sale, as a Sprain, which is sometime in shewing itself or the like, but the Seller did not know of it, and use no art to conceal it, and cheat the buyer, the Seller will not be answerable for such defect, unless he expressly warranted the Horse to be sound. —

But in case he warranted him to be sound, he must stand to his Engagement. — And if it can be proved that the Horse was unsound at the time of the sale, the Seller is liable to make the Buyer amends in damages. —

Lecture 62.

Where a Man is ousted or dispossessed of a Land, in which he has an Estate for life, or Inheritance, it is called an ouster of the Freehold. — Where upon the death of the owner of the Land, a Stranger gets possession before a Devisee enters, it is called Abatement. — Where a Stranger gets possession of Lands, upon the death of the Tenant for life, and before he, who is entitled in Remainder, has entered, it is called Intrusion, because he thrusts himself in the place, of the Tenant for life and Remainder.

Where the Owner of lands, being peaceably seised, is turned out of possession, by the wrongful entry of a Stranger, he is said to be disseised. — If a person has unlawfully got into possession of another's Lands, the Owner may enter and regain his possession, if he can do it peaceably, but not otherwise as the law —

will not allow a Man, to remedy his own grievances by force, and particularly in the turbulent Reign of King Richard the 2nd a Statute was enacted to prevent forcible Entries, but observe, a mere entry and claim of the Owner, will keep alive his Title to the property, and enable him to convey and dispose of it, although he is out of possession, and if he repeats this entry and claim, every Year, it is called continual claim, but the general way, is at once to bring an action of Ejectment, and the owner upon proving his Title, and the unlawful possession of the Defendant, recovers a verdict, and the Defendant will be turned out by the Sheriff, upon a Writ of possession being sent to him for that purpose.

Recipe quod reddat is a Writ of Entry to recover possession of Lands, which the Claimant says, the Defendant wrongfully expelled him from, in such manner, and at such time, and it is so called, because it commands the Defendant that he give up the Lands to the Demandant, or shew cause why he does not. — It generally states, that the Defendant came to the Lands, subsequent to the Ouster of the person, who originally took unlawful possession, in which case it is

called a Writ of Entry in the post, and upon this Writ of Entry, Sur disseisen in the post, it is, that the fictitious suit of a common Recovery is generally founded. –

Observe a man may in several ways, have lost his right to claim the possession of an Estate, and may yet have a real Title, and be the legal Owner, in this case, he can recover the Estate only by a Writ of Right, or other Writ in the nature of a Writ of Right, and not by a mere possessory Action, which only decides the right of possession. –

To give one Instance, A Man who has claimed, and held an Estate for Twenty years, has acquired a Right of possession, and may stand upon that Right, in a possessory Action as Ejectment, if another person has a real Title to the Estate, tho' he has lost the Right of possession, he may assert his right of property, by an Action for that purpose, namely by a Writ of Right, and upon proving his Title, he will recover the Estate, tho' he cannot dispute the possession, unless by proving his right of property. – An Action of Formedon is in the nature of a Writ of Right, for if Tenant in Tail who claims secundum formam doni, but this Action is limited to be brought within 20 Years, after his Title accrues, (id est) from the

time the Claimant is entitled as Issue in Tail.
A Writ of Right must be brought within 60 Years, as a clear possession for 60 Years back adversa that is against the whole world, and in despite of a person who might have claimed the Estate at that time, if he had had any right against all the world, but even 60 Years can seldom be relied upon, if there is any strong objection to the Title. A Demandant in a Writ of Right must prove seisin in some person under, and of whom he claims, and then derive the right from the person so seised to himself.
The preceding Writs claim an Estate of Freehold. An Ejectment claims the Estate of Years.

Lecture 63

Of the Action of Ejectment.

An Ejectment is regularly and in its form, an Action of Trespass, brought by the Tenant of a Lease, who has been turned out of possession of his Farm, but though this is the form of Ejectment, it is now the general method, adopted to try Titles to Estates of Freehold, as well as to recover the possession of a Term of Years. The Declaration

gones only for Damages for the Tresspass — complained of. — If the Plaintiff make out a good Title, and recover a Verdict, the Judgment of the Court is, that Plaintiff do also recover his Term, and he may have a Writ of possession issued, in the Term next after the Trial, which the Sheriff's Bailiff will execute, by turning out of, and delivering the Plaintiff, undisturbed and peaceable possession of the Term. — The proceedings in Ejectment are as follow. A, who claims the right to the Estate, applies to his Attorney, who draws the necessary Declaration, which is the first proceeding in this Action. — The Declaration states, that A. made a Lease to B. the Plaintiff, and therefore A the Claimant is called of the Plaintiff, that C entered, that D, who is John Doe or any other fictitious person, ousted him, for which C, brings the Action D is called the Casual Ejector, D, or rather the Plaintiffs Attorney in the name of D. serves a Copy of the Declaration upon the Tenant in possession with a Notice, informing him of the Action, in order that the real Tenant, the person who claims to be his Landlord, may appear to defend the Action, which the Court allows him to do, upon his agreeing to confess Lease, Entry and Ouster, which renders it —

unnecessary to prove it at the Trial, and the only question then is the Title. — The Defendant then pleads the General Issue, and the Record is made up, and brought for Trial, in the same way as other causes. — The Entries in Page 4 are good, at least the top of p. 20 — If a person who recovers the Estate, has been kept long out of possession, he may bring a further Action for the recovery of the profits, which the Defendant or Tenant received, for the time he wrongfully kept possession. — This Action is called an Action for the mesne profits. /—

Lecture 64

Of Trespass to Lands

Trespass to lands, is the entering upon another Man's Grounds, without lawful authority and doing him some damage. — Every entry upon anothers Lands, without the Owners leave, or in some very particular cases, is a Trespass, for which the Owner of the lands, may maintain an Action to recover damages, and it is called breaking the Plaintiffs Close. — To maintain Trespass, the Plaintiff should have possession of the Lands, possession without

a good Title, is however sufficient against a wrong doer, or mere trespasser. — If a Tenant holds over after the determination of his Tenancy, he is a Trespasser, and by Act of Parliament if Notice was given by the Landlord, he is liable to double the value of the premises, but if it was given by the Tenant, he is liable to pay double the Rent. — If Cattle Trespass upon another's Lands, he may distrain them, and keep them in the pound 'till the Owner make satisfaction for the damage, or he may bring an Action, pages and are good, but perhaps rather more diffuse than proper, for a first reading. —

Trespasses sometimes tho' rarely used, as the mode of trying a Title to Land, for by the pleadings in Trespass, the Freehold may come in question, but Ejectment is the general way, of trying Titles to Land, because upon Ejectment the Court can Award a Writ of possession. — whereas in Trespass, the plaintiff merely recovers Damages. —

Stopping a man's ancient windows, or corrupting the Air with noisome smells are — nuisances, for Light, and Air, are two indispensable requisites to every Dwelling, but depriving a person of a fine prospect, by

building a Wall or the like, is no nuisance - for which a person can maintain an Action, if my Neighbour ought to scour a ditch, but does not, whereby my land is overflowed; - this is a Nuisance, for which I may maintain an Action on the case. - So for corrupting a Watercourse, by erecting a Dyehouse &c or - stopping or diverting the Water, which ought to return to another Mill, lowering the stream, or for stopping a right of way, to a mans farm, and the like. -

For a public Nuisance, an Indictment - only will lie, and not an Action, unless the Plaintiff has received some special and - particular damage.+

Lecture 65.

Where a Tenant for life or Years commits - waste, the Remainder man or Reversioner may have an Action against him, where it is foreseen, that such waste is about to be committed. the usual mode of preventing it, is, by moving for an Injunction in a - Court of Equity. -

If a Commoner over Stock or Surcharge a Common, any other Commoner may

bring an Action on the Case, to recover Damages for the injury he sustains thereby, So if A. has a Right of way, over the Farm of B, and B. plants a Hedge, or ploughs across it, he may have an action against him, for the obstruction. Quare impedit or Ecclesiastical Ejectment. — The proper mode of trying the Right to a Living, where the Bishop refuses to admit, and the Title to the Living, is the matter in dispute, but where once a Clerk is admitted, the Law gives him the same remedies to recover his Glebe, his Rents, his Tithe & other Ecclesiastical dues, by Ejectment, Debt, or Trespass, as other owners of Lay property are entitled to. —

The Exchequer being more particularly the Kings Court of Revenue, an Information there, is a method adopted by the Crown for the recovery of Goods or other Chattels, or to obtain damages for some Trespass committed, to the possession of the Crown, the most usual, is, an information of Debt for some forfeiture or penalty, under the laws of Excise or Customs. —

A Criminal Information in the Court of Kings Bench is, for the punishment of public wrong, or Heinous misdemeanors, which is prosecuted as a public Offence. —

An Information in the nature of a quo w —

warranto, is, a proceeding applied to the decision of Corporation disputes, between party and party, which the Court of Kings Bench commits to be brought, upon the relation of any person interested, and who is then called the Relator, against any person usurping, intruding into, or unlawfully holding any a Franchise, or Office in any City, Borough, or Town Corporate, also it calls upon the party to shew, by what authority he holds the Office, or Franchise in question. — A Mandamus is also a Writ out of the Court of Kings Bench, of Corporation disputes. —

Where a Corporation refuses to admitt a person duly elected to an Office, or place as Mayor, or Alderman, or Burgess, or where they remove a person who has been duly admitted. A Return is made to this Writ by the party against whom it is issued which may be pleaded to, so that Issue may be taken upon it, and regularly tried like an Action at Law. —

Lecture 66.

Of the mode of proceeding in an Action or the steps to be pursued and prosecuted, the same differ but very little in material points,

at least in their mode of proceeding. –
The first stage of Action, is the proceeding to bring parties into Court, the second, is the pleading till they come to Issue, the third, is the Trial and Judgment thereupon, the fourth, is the Execution to carry that Judgment into effect. – In some cases for the most part, – where the Defendant is out of the way, and can't be come at, or where he is likely to – dispute the matter to the last extremity, the Plaintiff proceeds by Original (ie) by Original Writ, out of Chancery, of which there are two – Kinds, a Praecipe, and sic te fecerit securum, but in general the first step which the Attorney takes is a Latitat where the suit is to be in – the Kings Bench or a Capias if in the common Pleas, or Quo minus if in the Exchequer, – upon which if for a cause of Action above £ 15, the Deft. may be arrested, or he may be served with a Copy of it, summoned to appear. –
The day on which the Sheriff is to send back the Writ, and inform the Court what he has done – upon it, is called the Return of the Writ, and is the day upon which the Deft ought to – appear, or within three days of Grace afterwards. Of course the Return day is some day during Term Time, while the Judges are supposed to

be sitting, when the Defendant has appeared by his attorney, and where he was arrested, has also put in good Bail, the Plaintiff then goes on with his Action by preparing his Declaration. The parts marked in my Blackstone, beginning at to the end are good.—

Lecture 67.
On Pleading

In preparing the Declaration, the Plt: must state the injury to have arisen in some Parish or Township, of the County in which he means the Action to be tried, and if it be a local Action, he must state it according to the fact, that is, in the place where it really did arise, indeed transitory Actions also, are generally brought in the County where they arise, because otherwise, they may be removed by the Deft. unless the Plt: will undertake to give some material evidence, in the Count in his Declaration.— It is usually advisable to set forth as many distinct charges, or separate cases in the Declaration, as the nature of the fact seems to admit of in order that if the Plt: fails in the proof of one of his accusations, he may

succeed in another, this is done by different Counts each of which is in its effect a separate Declaration :- Thus if an Action is brought for Goods sold, the first Count is, for the price agreed upon between the parties, and if the Contract can be proved, this Count alone is sufficient, but lest there should be any difficulty in proving what was the sum agreed on, a 2nd Count is added upon the quantum valebant demanding to be paid what the Goods were worth :- The Plaintiff must declare within the time allowed for that purpose, otherwise the suit is considered as dropped, and he is said to be non prosed, and he will have to pay Costs. So the Deft must put in his plea within a limited time, the Plt will take Judgment against him by default, where the Defendant does not raise any objection to the form of the Action, as by pleading, he pleads to the Action, as it is called, that is, to the real cause of, and merits of the Plaintiffs Declaration this may be done, either by the whole of the charge and avoiding it, as it is called, that is pleading something in discharge of it or by confessing a part, & denying the rest, or by denying the Charge altogether, for instance, a man may confess a

Debt, but plead that he, on such a day, &c
tendered the money, and has been willing at all
times since, to have paid it, if the Plaintiff &c
would have accepted it, or he may confess that
he owes part of it, and deny that he owes the
Remainder, the Defendant may also insist,
that he has a demand against the Plaintiff,
which is called a set off, and this is some
times pleaded, but in general is signified by
a mere Notice, delivered along with the general
Issue. — In this case, he must generally pay
the money which he admits to be due, into
Court, where the Defendant denies the charge
altogether, that is denies the whole Declon,
he must plead the general Issue (viz:) to a
Declaration for breach of promise, Non
Assumpsit, To a Declaration upon a Deed,
non est factum, To a Declaration in Debt,
nil debet, To a Declaration for a Trespass,
not Guilty. — When the Defendant does not
wholly deny, but means to parry, it is &c
generally necessary to plead specially that is,
to set forth the particular facts, which he
means to insist upon as a defence, in many
cases however, a Defendant may enter into
such particulars of defence, even upon the
General Issue. — One sort of special plea in

bar, is a Justification, as where to an Action of Assault and Battery, the Defendant pleads that the Plaintiff assaulted him first. — To an Action of Trespass, the Deft: pleads that what he did, he did in discharge of the duties of his Office. — To an Action of Slander, the Defendant pleads, that what he said, was true. — The Defendant may also in many cases, plead the Statute of — Limitations as in Actions for words, that is above two Years since they were spoken, and before the Action was brought, in Actions of Assault and Battery, that is above four Years since the Assault was made./—

Did you spot the Date?

On page 4 there is no mention of the 1833 Fines and Recoveries Act: therefore the manuscript was written before 1833.

On page 9 there is no mention of the Prescription Act, so it is before 1832.

On page 10 it is apparent from the statement "if I demise ... my lands ... from ... 1820 this would be a good lease though the lessee would not have a right to enter or take possession for 10 years to come" the date of the manuscript must be 1810.