707. By the legislation of Justinian the law of *legata* was practically assimilated to that of *fideicommissa.* The only thing that distinguished the one from the other was the mode in which the gift was made : if by words of direct bequest, it was a *legatum,* if by precatory words, a *fideicommissum.* It may be noticed, as an illustration of the course afterwards taken by the law in England, that *fideicommissa* in favour of the church were so far favoured over others that if paid over by mistake they could not be recovered. In addition to *usus* and *fideicommissum,* the Roman division of ownership into quiritary and bonitary (to use words invented at a later time) may perhaps to some extent have suggested the English division into legal and equitable estate. The two kinds of ownership were amalgamated by Justinian. Legal and equitable estate are still distinct in England, though attempts have been made in the direction of amalgamation. The gradual manner in which the beneficiary became subject to the burdens attaching to the property of which he enjoyed the benefit was a feature common to both the Roman and the English system.

*Uses in Early English Law.—*The use or trust@@1 is said to have been the invention of ecclesiastics well acquainted with Roman law, the object being to escape the provisions of the laws against Mortmain *(q.v.)* by obtaining the conveyance of an estate to a friend on the understanding that they should retain the use, *i.e*., the actual profit and enjoyment of the estate. Uses were soon ex­tended to other purposes. They were found valuable for the defeat of creditors, the avoiding of attainder, and the charging of portions. A use had also the advantage of being free from the incidents of feudal tenure : it could be alienated *inter vivos* by secret conveyance, and could be devised by will. In many cases the feoffee @@2 to uses, as he was called, or the person seised to the use of another, seems to have been specially chosen on account of his rank and station, which would enable him to defy the common law and protect the estate of his *cestui que use,* or the person entitled to the beneficial enjoyment. The Act of 1 Ric. II. c. 9 was directed against the choice of such persons. This alienation of land in use was looked upon with great disfavour by the common law courts, in whose eyes the cestui que use was only a tenant at will. Possibly the ground of their refusal to recognize uses was that the assizes of the king’s court could only be granted to persons who stood in a feudal relation to the king. The denial of the right followed the denial of the remedy. The use was on the other hand supported by the Court of Chancery, and execution of the confidence reposed in the feoffee to uses was enforced by the court in virtue of the general jurisdiction which as a court of conscience it claimed to exercise over breach of faith. Jurisdiction was no doubt the more readily assumed by ecclesiastical judges in favour of a system by which the church was generally the gainer. A double ownership of land thus gradually arose, the nominal and ostensible ownership,—the only one acknowledged in the courts of common law,—and the beneficial ownership protected by the Court of Chancery. The reign of Henry V. to a great extent corresponds with that of Augustus at Rome, as the point of time at which legal recognition was given to what had previously been binding only in honour. The means of bringing the feoffee to uses before the court was the writ of *subpoena,* said to have been invented by John de Waltham, bishop of Salis­bury and master of the rolls in the reign of Richard II. By means of this writ the feoffee to uses could be compelled to answer on oath the claim of his cestui que use. The doctrine of the Court of Chancery as to the execution of a use varied according as there was transmutation of possession or not. In the former case it was unnecessary to prove consideration ; in the latter, generally a case of bargain and sale, the court would not enforce the use unless it was executed in law,—that is, unless there was a valuable considera­tion, even of the smallest amount. Where no consideration could be proved or implied, the use resulted to the feoffor. This theory led to the insertion up to a recent date in deeds (especially in the lease of the lease and release period of conveyancing) of a nominal consideration, generally five shillings. Lands either in possession, reversion, or remainder could be granted in use. Most persons could be feoffees to uses. The king and corporations aggregate

were, however, exceptions, and were entitled to hold the lands dis­charged of the use. On the accession of Richard III., who from his position of authority had been a favourite feoffee, it was necessary to pass a special Act (1 Ric. III. c. 5), vesting the lands of which he had been feoffee either in his co-feoffees or, in the absence of co­feoffees, in the cestui que use. The practical convenience of uses was so obvious that it is said that by the reign of Henry VII. most of the land in the kingdom was held in use. The freedom of uses from liability to forfeiture for treason must have led to their general adoption during the Wars of the Roses.@@3 The secrecy with which a use could be transferred, contrary as it was to the publicity required for livery of Seisin (*q.v.)* at common law, led to the inter­ference of the legislature on several occasions between the reigns of Richard II. and Henry VIII., the general tendency of the legislation being to make the cestui que use more and more subject to the burdens incident to the ownership of land. One of the most important statutes was the Statute of Mortmain (15 Ric. II. c. 5), forbidding evasion of the Statute *De Religiosis* of Edward I. by means of feoff­ments to uses. Other Acts enabled the cestui que use to transfer the use without the concurrence of the feoffee to uses (1 Ric. III. c. 1), made a writ of *formedon* maintainable against him (1 Hen. VII. c. 1), rendered his heir liable to wardship and relief (4 Hen. VII. c. 17), and his lands liable to execution (19 Hen. VII. c. 15). At length in 1535 the famous Statute of Uses (27 Hen. VIII. c. 10) was passed.@@4 The preamble of the statute enumerates the mischiefs which it was considered that the universal prevalence of uses had occa­sioned, among others that by fraudulent feoffments, fines, recoveries, and other like assurances to uses, confidences, and trusts lords lost their feudal aids, men their tenancies by the curtesy, women their dower, manifest perjuries in trials were committed, the king lost the profits of the lands of persons attainted or enfeoffed to the use of aliens, and the king and lords their rights of year, day, and waste, and of escheats of felons’ lands. To remedy this state of things it was enacted, *inter alia,* that, where any person was seised of any here­ditaments to the use, confidence, or trust of any other person by any means, the person having such use, confidence, or trust should be seised, deemed, and adjudged in lawful seisin, estate, and possession of such hereditaments. Full legal remedies were given to the cestui que use by the statute. He was enabled to distrain for a rent charge, to have action, entry, condition, &c. The effect of this enactment was to make the cestui que use the owner at law as well as in equity (as had been done once before under the ex­ceptional circumstances which led to 1 Ric. III. c. 5), provided that the use was one which before the statute would have been en­forced by the Court of Chancery. For some time after the passing of the statute an equitable as distinct from a legal estate did not exist. But the somewhat narrow construction of the statute by the common law courts in Tyrrel's case@@5 (1557) enabled estates cognizable only in equity to be again created. In that case it was held that a use upon a use could not be executed ; therefore in a feoffment to A and his heirs to the use of B and his heirs to the use of C and his heirs only the first use was executed by the statute. The use of B being executed in him, that of C was not acknowledged by the common law judges ; but equity regarded C as beneficially entitled, and his interest as an equitable estate held for him in trust, corresponding to that which B would have had before the statute. The position taken by the Court of Chancery in trusts may be compared with that taken in Mortgage (*q.v.*). The Judicature Act, 1873, while not going as far as the Statute of Uses and combining the legal and equitable estates, makes equit­able rights cognizable in all courts. From the decision in Tyrrel's case dates the whole modern law of uses and trusts. In modern legal language use is restricted to the creation of legal estate under the Statute of Uses, trust is confined to the equitable estate of the cestui que trust or beneficiary.

*Uses since 1535.—*The Statute of Uses is still the basis of con­veyancing. A grant in a deed is still, after the alterations in the law made by the Conveyancing Act, 1881, made “to and to the use of A.” The statute does not, however, apply indiscriminately to all cases, as only certain uses are executed by it. It does not apply to leaseholds or copyholds, or to cases where the grantee to uses is anything more than a mere passive instrument, *e.g.*, where there is any direction to him to sell the property. The seisin, too, to be executed by the statute, must be in another than him who has the use, for where A is seised to the use of A it is a common law giant. The difference is important as far as regards the doctrine of Possession (*q.v.).* Constructive possession is given by a deed operating under the statute even before entry, but not by a common law grant (at any rate sufficient to entitle the grantee to be registered as a voter), until actual receipt of rent by the

@@@l Use seems to be an older word than trust. Its first occurrence in statute law is in 7 Ric. II. c. 12, in the form *œps.* In Littleton “con­fidence ” is the word employed. The Statute of Uses seems to regard use, trust, and confidence as synonymous. According to Bacon, it was its permanency that distinguished the use from the trust.

@@@2 Feoffment, though the usual, was not the only mode of conveyance to uses. The preamble of the Statute of Uses mentions fines and re­coveries, and other assurances.

@@@3 The use, as in later times the trust, was, however, forfeited to the crown on attainder of the feoffee or trustee for treason.

@@@4 It was adopted in Ireland exactly a century later by 10 Car. I. c. 1 (Ir.). The law of uses and trusts in Ireland is practically the same as that in England, the main differences being in procedure rather than in substantive law.

@@@5 Dyer’s *Reports,* 155a.