1785 (which was never afterwards called up in Congress) there was no provision for reclaiming fugitives; and without such a provision it could not have been carried at all; besides, the clause, as it now exists in the ordinance, was proposed by Mr. Dane on the 12th of July, 1787, and carried by the unanimous vote of Congress when Mr. King was not present.

Mr. King was a member of the convention for framing the Federal Constitution. He was present and voted in the convention on the 12th of July, 1787. The whole of that day was occupied in settling the proportion of representation and direct taxation, which was then determined as it now stands in the Constitution, viz, "by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, *three-fifths of all other persons.*"

The Congress and the convention were both in session at the same time in Philadelphia; there was of course free intercourse and interchange of opinion between the members of the two bodies. To this may be attributed the adoption on the same day of the clause in the ordinance and the clause in the Constitution.*

REVIEW OF THE ORDINANCE OF 1787, AND CHANGE IN TENURES AND ESTATES THEREUNDER.

The ordinance of 1787 was the first general legislation by the Congress of the United States on the subject of real property. In it the leading features of feudalism are specifically repealed. Since the period of its passage the policy of the jurisprudence of the United States is not to encourage restraints upon the power of alienation of land. Free and unconditional alienation is now the rule of the National Government in the disposal of the public domain, and encouraged by all the States and Territories in land transfers.

The failure of the first aristocratic efforts at colonization upon the basis of feudalistic social organization now appears as an event giving decisive advantages to the development of freedom. Under the charter of King James I., the lands of the first and second colonies of Virginia were to be held by the mildest form of tenure, of free and common socage, which in many of the States of the Union has been transferred into allodial proprietorship, or freehold estate held in absolute individual right, and free from feudal tenure or obligation.

The usual tenure of the colonial grants, after Raleigh's first one, was free and common socage.

The common law of England as to passing title by deed for lands so held, and the provisions of the statute of frauds, were early invoked in some of the colonies, and voluntary alienations of title, after purchase from proprietary or proprietaries or from the Crown, were safely and legally guarded. There was in colonial times, in most of the colonies, safe tenure for lands. Overlapping or twice-issued grants, or grants several times over for the same lands to different proprietaries, frequently caused clash as to attornment for rents, but the individual titles usually were respected and protected.

Socage tenure denoted lands held by a fixed and determined service; not military, nor in the power of the lord paramount (or charter grantee), to whom rents might be due, to vary at his pleasure. The

* Peter Force.

change in England, in relation to lands (3 Kent, 510, 511) from knight-service to tenure by socage, was obtained only after a long and bitter struggle, and was of vast social importance.

Most of the feudal incidents of tenure (which in the colonies were of mere form) were abolished in many of the States after the Revolution, and by the United States in the immortal ordinance of 1787, the most progressive and republican act ever performed by a nation in relation to the estates of her people. It made the individual absolutely independent of the State, and the entire owner of his or her home.

Becoming the guardian of the public domain, the Congress of the Confederation, by its system of holdings in the "ordinance," made the tenure of the land safe, and, by the order of disposition afterward adopted, made from the public domain thousands of free and happy homes.

After the Revolution in 1776 the lord paramount of all socage lands became the people of the State or States, and the quit-rents which were due for the King in colonial grants, and whom the people succeeded by the Revolution of 1776, were acted upon by legislatures and generally commuted; or where proprietary rights were purchased by the State, the State in selling, as in the case of unappropriated vacant crown lands lying within States, gave patents to purchasers at their land offices in fee.

All lands granted or patented before the Revolution, within the colonies, were held by socage tenure. After this came the allodial legislation by States and the National Government. (3 Kent, 512; note A.)

A patent, grant, or deed in fee, in the sense now used in this country, is an estate of inheritance in law belonging to the owner and transferable to his heirs. It may be continued forever. (4 Kent, 406.)

Fee-simple is a pure inheritance, clear of conditions or qualifications, with certain restrictions in law as to heirs. It is an estate of perpetuity, and carries with it and confers an unlimited power of alienation. No person is capable of having a greater estate or interest in land. (4 Kent, 406.)

In the first charter to Sir Walter Raleigh for colonization in America, granted by Elizabeth March 25, 1584, the right to him, his heirs or assigns, to dispose of lands in fee simple, according to the laws of England, was granted. Tenure by knight-service was a rule then in force in England. It was abolished by statute of 12 Charles II., after the restoration in England, and the tenure of land was for the most part thereafter turned into free and common socage, and everything oppressive in that tenure was abolished. This statute essentially ended the feudal system in England, although there are remaining some unimportant features in name in all socage tenures. (3 Kent, 509.) Homage was exacted in some of the colonial grants from the grantees to the Crown. It was defined by Littleton as "the most honorable and the most humble service of reverence that a frank tenant could make to his lord." (4 Kent, 511.)

All lands held by socage tenures would seem, in theory, to have been chargeable with the oath of fealty. And every tenant, whether in fee, for life, or for years, was by the English law obliged to render it when required, as being the indispensable service due to the lord of whom he held. (4 Kent, 511, 512.) Fealty was an oath of fidelity to the lord. It was the foundation and essence of the feudal association.

Littleton says: "When a freeholder doth fealty to his lord, he shall lay his right hand upon a book, and shall say, 'Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall bear for the lands which I claim to hold of you, and that I shall lawfully do to you the customs and services which I ought to do by the terms assigned. So help me God and his saints.'"

"The oath of fealty was the parent of the oath of allegiance, now exacted of subjects and officials by sovereigns," and of officials (and can be of citizens) in republics. (3 Kent, 511).

The highest title to land in the United States is a Government grant, a patent either from the National Government or a State.

A Government grant for land has been, and is held to be, "a contract executed." (Fletcher *v.* Peck, 6 Cranch, 87.)

In the United States we have adopted a fundamental principle of the English law, derived from the maxims of the feudal tenure, that "the king [State] is the original proprietor or lord paramount of all the land in the kingdom, and the true and only source of title." It is a settled doctrine with us that all valid individual title to land within the United States is derived from grants from or under the authority of the governments of England, Sweden, Holland, France, Spain, Russia, Mexico, the chartered and crown colonies, or the Government of the United States and the several States of the Union. (3 Kent, 5; note A.) In all treaties defining boundaries, cessions, or purchases made by or to the United States by foreign nations or by States in the Union, or in anywise relating to the territory now within the United States, individual rights, grants, and land holdings are provided for, guarded, and confirmed either in the treaties or cessions, or by subsequent legislation by Congress.

Indian titles to lands within the limits of the United States are considered mere occupancy titles, the Government claiming the right to purchase (the fee being considered inchoate, but in the United States) by treaty; these treaties being confirmatory acts as to the fee. The lands are then added to the public domain for sale and disposition. (3 Kent.)

THE VITAL CHANGES IN LAND TENURES MADE BY THE ORDINANCE.

The second section of the ordinance of 1787 was vitally progressive.

It ordained and enacted "that the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal part among them; and where there shall be no children or descendants, then in equal part to the next of kin in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow of the intestate her third part of the real estate for life and one-third part of the personal estate; and this law, relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in said territory may be devised or bequeathed by wills in writ-

ing, signed and sealed by him or her in whom the estate may be (being of full age) and attested by three witnesses; and real estate may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person being of full age in whom the estate may be, and attested by two witnesses, provided such will be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrate's courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincent's, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them relative to the descent and conveyance of property."

"This statute struck the key-note of our liberal system of land law, not only in the States formed out of the public domain, but also in the older States. The doctrine of tenure is entirely exploded; it has no existence. Though the word may be used for the sake of convenience, the last vestige of feudal import has been torn from it. The individual title derived from the Government involves the entire transfer of the ownership of the soil. It is purely allodial, with all the incidents pertaining to that title, as substantial as in the infancy of Teutonic civilization. Following in the wake of this fundamental reform in our State land laws are several others which constitute appropriate corollaries. The statute of uses was never adopted in the public-land States, and hence the complex distinction between uses and trust has never embarrassed our jurisprudence. We have, however, adopted one of the methods of conveyance to which that statute gave rise, to wit, the method of bargain and sale. Feoffments, fines, and recoveries are entirely dispensed with, as also livery of seisin and its consequences. A conveyance is completed by the execution and delivery of the deed; entailments and perpetuities are barred by the statute, which renders void all limitations beyond persons in being and their immediate issue, and which provides that an estate tail shall become a fee-simple in the heirs of the first grantee. All joint interests in land are reduced to tenancies in common. Joint tenancies never had an existence, and coparceners are now on a footing of tenants in common. Real actions, with their multitudinous technicalities, never had an existence in our western jurisprudence, though some of the fictions of this form of action were and are still tolerated in some localities, *e. g.*, the allowance of fictitious parties to a suit. Ejectment is now the universal remedy, being the only action for the recovery of lands. Action by ejectment is limited to twenty-one years, but refractory tenants may be more speedily dispossessed by the action for forcible entry and detainer. A dispossessed claimant may, at the option of the ejector, either pay for the land, or receive pay for the improvements. For waste the party is liable in simple damages, and no more. A tenant in dower forfeits the place wasted. In the older States we see evidences of the reflex benefits of the land legislation of our public-land States.

"The Pennsylvania supreme court (5 Rawle, 112) holds that 'our property is allodial, and escheat takes place, not upon principles of tenure, but by force of our statutes to avoid the uncertainty and confusion inseparable from the recognition of a title founded in priority of occupancy.' Chancellor Kent says that tenure to some extent pervades real property in the United States. The title is essentially allo-

dial, yet designated by the feudal terms fee-simple and free and common socage. These technicalities mar the municipal jurisprudence of several States, though no vestige of feudal tenure remains, and ownership, free and independent, is the real character of individual title to the soil. By the statute of February 20, 1787, New York abolished all military tenures, transferring them into free and common socage and making all State grants entirely allodial.

"The revised statutes going into effect in 1830 abolished the last shadow of feudal tenure, and made allodial proprietorship the sole title to private land, and this property liable to forfeiture only by escheat.

"In other States these tenures have either been formally changed into allodial, or if they retain the technicalities of feudalism, the latter receive an allodial signification. An estate in fee-simple means one of inheritance, having lost its beneficiary or usufructuary character.

"It will be seen from the facts recited that the liberal principles embodied in our public-land policy have reconstructed to a great extent the legal basis of our social order by liberalizing the ideas of land ownership.

"The General Government set this glorious example, and the justice and expediency of its policy in this respect are now universally admitted."*

This great American Charter contains the basic propositions, as to land tenures of the laws of the United States and of most of the States of the Nation, and became and is the foundation of the same statutes in all the public-land States and Territories. Under its care and provisions the Central and Western States and Territories of the Union, and the States in the territory south of the river Ohio, have grown from weak and straggling settlements to mighty Commonwealths and organizations containing more than 25,000,000 of people. The "ordinance" began with a wilderness. Its principles, embraced in existing laws, now govern in area and population the domain of an empire.

POLITICAL HISTORY AND ABSORPTION OF THE TERRITORY NORTHWEST OF THE RIVER OHIO.

Arthur St. Clair was appointed governor by the Congress February 1, 1788, and Winthrop Sargent secretary. August 7th, 1789, Congress, in view of the new method of appointment of officers as provided in the Constitution, passed an amendatory act to the Ordinance of 1787 providing for the nomination of officers for the Territory by the President, and their appointment by and with the advice and consent of the Senate. August 8, 1789, President Washington sent to the Senate the names of Arthur St. Clair for governor, Winthrop Sargent for secretary, and Samuel Holden Parsons, John Cleves Symmes, and William Barton for judges.

The first were re-appointments. They were all confirmed. President Washington, in this message, designated the country as "The Western Territory." The supreme court was established at Cincinnati (now Ohio, named by St. Clair in honor of the Society of the Cincinnati, he having been president of the branch society in Pennsylvania). St. Clair remained governor until November 22, 1802. Winthrop Sargent afterwards, in 1798, went to Mississippi as governor of that Territory. William Henry Harrison became secretary in 1797,

* Joseph S. Wilson, late Commissioner General Land Office.