Committee Report

CONSENT CALENDAR

February 26, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred

HB 527,

AN ACT relative to allodial title and violations of the oath of office. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Timothy Horrigan

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Judiciary**
Bill Number:	**HB 527**
Title:	**relative to allodial title and violations of the oath of office.**
Date:	**February 26, 2019**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

Allodial title is a concept which does not exist under English common law or under New Hampshire common law. "Allodium" means that the landowner is the ultimate authority over a piece of land. Throughout New Hampshire's history, however, the state has always had the authority to levy property taxes and to regulate land use. Finally, the proposed procedures for punishing officials who violate allodial title rights are unconstitutional and lack due process.

Vote 18-2.

Rep. Timothy Horrigan
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 527, relative to allodial title and violations of the oath of office. **INEXPEDIENT TO LEGISLATE.**

Rep. Timothy Horrigan for Judiciary. Allodial title is a concept which does not exist under English common law or under New Hampshire common law. "Allodium" means that the landowner is the ultimate authority over a piece of land. Throughout New Hampshire's history, however, the state has always had the authority to levy property taxes and to regulate land use. Finally, the proposed procedures for punishing officials who violate allodial title rights are unconstitutional and lack due process. **Vote 18-2.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Judiciary

BILL NUMBER: HB 527

TITLE: Relative to allodial title & violations of the oath of office.

DATE: 2-26-15 **CONSENT CALENDAR:** YES ☑ NO ☐

☐ **OUGHT TO PASS**

☐ **OUGHT TO PASS W/ AMENDMENT**

☒ **INEXPEDIENT TO LEGISLATE**

☐ **INTERIM STUDY** (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

Allodial title is a concept which does not exist under English common law, or under New Hampshire ~~American~~ common law. "Allodium" means that the landowner is the ultimate authority over a piece of land. Throughout New Hampshire's history, however, the state has always had the authority to levy property taxes and to regulate land use. Finally, the proposed procedures for punishing officials who violate allodial title rights are unconstitutional and lack due process.

COMMITTEE VOTE: 18-2

OK MKS

RESPECTFULLY SUBMITTED,

Rep. Timothy Horrigan
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rev. 02/01/07 - Yellow

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 527

BILL TITLE: relative to allodial title and violations of the oath of office.

DATE: February 26, 2019

LOB ROOM: 208

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Horrigan Seconded by Rep. Hopper Vote: 18-2

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 527

BILL TITLE: relative to allodial title and violations of the oath of office.

DATE: 2-226-2019

LOB ROOM: 208

MOTION: (Please check one box)

☐ OTP ☒ ITL ☐ Retain (1st year) ☐ Interim Study (2nd year) ☐ Adoption of Amendment # ________ *(if offered)*

Moved by Rep. Horrigan Seconded by Rep. Hopper Vote: 18-2

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Interim Study (2nd year) ☐ Adoption of Amendment # ________ *(if offered)*

Moved by Rep. ________ Seconded by Rep. ________ Vote: ________

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Interim Study (2nd year) ☐ Adoption of Amendment # ________ *(if offered)*

Moved by Rep. ________ Seconded by Rep. ________ Vote: ________

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Interim Study (2nd year) ☐ Adoption of Amendment # ________ *(if offered)*

Moved by Rep. ________ Seconded by Rep. ________ Vote: ________

CONSENT CALENDAR: ✓ **YES** ____ **NO**

Minority Report? ____ Yes ✓ No If yes, author, Rep: ________ Motion ________

Respectfully submitted: Kurt Wuelper
Rep Kurt Wuelper, Clerk

OFFICE OF THE HOUSE CLERK

1/14/2019 3:22:32 PM
Roll Call Committee Registers Report

2019 SESSION

Judiciary

Bill #: HB529 Motion: ITL AM #: Exec Session Date: 2-26-2019

Members	YEAS	Nays	NV
Smith, Marjorie K. Chairman	18		
Keans, Sandra B. Vice Chairman	1		
Berch, Paul S.	2		
Horrigan, Timothy O.	3		
~~Woodbury, David~~ PEARSON	4		
~~Altschiller, Debra~~ SCHULTZ	5		
DiLorenzo, Charlotte I.	6		
Burroughs, Anita D.	7		
Chase, Wendy	8		
Kenney, Cam E.	9		
Langley, Diane M.	10		
Stevens, Deb	11		
Hopper, Gary S.	12		
Sylvia, Michael J.	13		
Wuelper, Kurt F. Clerk	14		
Gordon, Edward M.	15		
Ianvrin, Jason A.		1	
~~Griffin, Barbara J.~~ FIELDS	16		
McLean, Mark		2	
Alexander, Joe H.	17		
TOTAL VOTE:	18	2	

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 527

BILL TITLE: **relative to allodial title and violations of the oath of office.**

DATE: **January 21, 2019**

LOB ROOM: **208** **Time Public Hearing Called to Order:** **2:34 pm**

Time Adjourned: **2:45 pm**

Committee Members: **Reps. M. Smith, Keans, Wuelper, Berch, Horrigan, Woodbury, Altschiller, DiLorenzo, Burroughs, Chase, Kenney, Langley, Stevens, Hopper, Sylvia, Gordon, Janvrin, B. Griffin, McLean and Alexander Jr.**

Bill Sponsors:
Rep. Marple

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Marple, prime sponsor, introduced the bill to the committee.

- Allodial property (without taxes) began after the Revolutionary War.
- The only way you can get allodial title today is to buy property with silver
- People do not own anything today because it is equitable interest is exchanged via notesIn addition, allodial title is lost when deed is recorded in Registry of Deeds.

Rep. McLean: Q. Are there any allodial titles in New Hampshire today? **Ans.** No, but there are in other states. **Q.** Can corporation get an allodial title? **Ans.** No. Corporation is a create of the State.

Woodbury: Q. How much of current State of New Hampshire is subject to allodial title? **Ans.** All of it because Part II Article 90 preserves it.

Respectfully submitted,

Rep. Kurt Wuelper, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 527

BILL TITLE: **relative to allodial title and violations of the oath of office.**

DATE:

ROOM: **208** **Time Public Hearing Called to Order:** 2:34

Time Adjourned: 2:45

(please circle if present)

Committee Members: **Reps. M. Smith, Keans, Wuelper, Berch, Horrigan, Woodbury, Altschiller, DiLorenzo, Burroughs, Chase, Kenney, Langley, Stevens, Hopper, Sylvia, Gordon, Janvrin, B. Griffin, McLean and Alexander Jr.**

Bill Sponsors:
Rep. Marple

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Marple* - introduced the Bill - Allodial property (without taxes) began after the Revolutionary War. The only way you can get allodial title today is to buy property with Silver. People don't own anything today because it's equitable interest is exchanged via notes. In addition, allodial title is lost when deed is recorded in Registry of Deeds

Q McLean: Are there Any Allodial titles in NH today?

A: No, but there are in other states

Q - Can Corporation get Allodial title

A No - Corporation's is a creature of the State

Q Woodbury - How much of current State of NH subject to allodial title

A. All of it because Part II Article 90 preserves it.

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 527 Date Jan. 24, 2019

Committee Judiciary

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Kate Hergan			NH Association of Counties		X

Testimony

HB527 clerk

serve anything to his heirs in the terms required by the feudal rule, an implied reconveyance, construed by that rule, would make Cross a tenant for life of the acre as well as the easement. If the deed conveyed the flowage to Wilson, it also conveyed the acre. An imaginary reconveyance is no more necessary for one than for the other. The competent evidence has no more tendency to show a life estate in the easement and a fee in the acre than to show a fee in the easement and a life estate in the acre. Estates of different durations in the reserved property can only be established by inserting in the contract a technical distinction between a reservation and an exception, which the written evidence distinctly rejects, and assuming that the parties relied upon their meaning being disclosed by some form of a feudal rule of which there is no reason to suppose they had any knowledge.

5. "The intention of the testator fails on account of a feudal rule of law, which, in my humble judgment, ought to have been abolished long ago. I mean the rule of law requiring that, in order to support a contingent remainder, there must be an estate of freehold in existence at the time the contingent remainder becomes vested. *** This is an arbitrary feudal rule,-one of the legacies of the Middle Ages which has come down to our times. *** It is quite true that the testator probably never heard of this rule of law, but I think his conveyancer did who drew the will, for it is a will drawn by a lawyer, and the conveyancer made a mistake." Jessel, M. R., in Cunliffe v. Brancker, 3 Ch. Div. 393, 399, 401. Aside from obsolete difficulties of procedure, the only reason of the rule requiring a contingent remainder to be supported by a freehold is said to be that, if the freehold were in abeyance, the feudal lord would be at a loss to know upon whom to call for feudal service. 4 Kent, Comm. 237; Taylor v. Horde, 1 Burrows, 60, 107. "The introduction of the feudal law into England by William the Conqueror had much infringed the liberties, however imperfect, enjoyed by the Angle-Saxons in their ancient government, and had reduced the whole people to a state of vassalage under the king or barons, and even the greater part of them to a state of real slavery. *** The feudal law is the chief foundation both of the political government and of the jurisprudence established by the Normans in England." 1 Hume, Hist. Eng. p. 423, c. 11, App. 441, 444-446. "The military tenure of land had been originally created as a means of national defense, but in the course of ages whatever was useful in the institution had disappeared, and nothing was left but ceremonies and grievances." 1 Macaulay, Hist. Eng. c. 2; 4 Bl. Comm. 438. "The rules concerning real property, and, to a considerable extent, those concerning personal status and relations, were feudal in their origin and nature." 1 Pom. Eq. Jur. § 18. "The feudal system in its day made serfs of masses of men. *** It was inimical to peaceful pursuits. Out of its logic sprang the most baneful doctrine that has blighted the English law,-the doctrine of tenure. To gratify ancestral pride and maintain family splendor, the feudal aristocrary tied up landed property in the iron fetters of tenure. *** The feudal system is the principal source of the land laws of Great Britain, which still press with such weight upon the agricultural and industrial classes. *** Having done its work feudalism is happily gone. *** Largely, the curse of the common law came from the feudal system, and from the obstinacy with which the doctrines of feudalism were adhered to when the system *** had ceased to exist. *** Our real property *410 law is still poisoned by the feudal taint." Dill. Laws Eng. & Am. 169, 170, 302-304, 355, 356, 385.

"If a man purchases lands to himself forever, or to him and to his assigns forever, he takes but an estate for life. Though the intent of the parties be ever so clearly expressed in the deed, a fee cannot pass without the word 'heirs.' The rule was founded originally on principles of feudal policy, which no longer exist, and it has now become entirely technical. A feudal grant was, stricti juris, made in consideration of the personal abilities of the feudatory, and his competency to render military service; and it was consequently confined to the life of the donee, unless there was an express provision that it

TWO NH. CASES ALREADY 4 pgs $1

should go to his heirs." 4 Kent, Comm. 6. "Common sense would have dictated that an absolute estate should pass by a conveyance without any limitation. *** Maxims of law which grow out of the feudal system are, in general, inapplicable in this country." Smith (N. H.) 452, 523. It must be considered settled that such inconvenient and unjust rules as are based solely on feudal reasons, and are not adapted to the land system of this state, are not in force here. "Unless the lord bound himself that the fief should go to the heir of his vassal, the heir had no rights in it on the death of his ancestor. *** The rule was nothing more or less than the practice of the feudal sovereign, securing and perpetuating his grasp upon all the land and the services of all the landholders in his realm. Its origin, purpose, and history show it to be in no way adapted to our institutions, system of government, or condition of society. As a feudal rule of construction, it was a recognition of the fact that the vassal held his lord's land upon the condition of rendering in his own person certain services to his lord. The vassal, thus holding the land by reason of the personal trust and confidence reposed in him by his lord, could not assign, nor could his heirs inherit, his obligation of personal service on the land held on such a condition. The feudal rule is inapplicable to a conveyance of New Hampshire land not held by any such tenure. When the fetters which feudalism had fastened upon the tenure of lands in England fell off, every reason on which this rule had rested fell with them. *** An act of parliament cannot alter by reason of time, but the common law may, since 'cessante ratione cessat lex.' *** They who brought the general body of the common law with them to this region might well have omitted to bring the feudal rule, not because it was fabricated in a barbaric age, but because it was designed and fitted to perpetuate a barbaric condition; *** not because, as a part of the military system of Europe, it was less necessary in feudal times than other compulsory methods of filling armies and navies in other times, but because the general feudal relation of lord and vassal not being an incident of New Hampshire civilization, and the particular debt of personal service due from the vassal to the lord (which the heirs of the vassal might be incompetent to perform) not being a universal consideration of the conveyance of New Hampshire real estate, the feudal rule (requiring the word 'heirs' as evidence of the lord's intention to assume the risk of his vassal's heirs being incapable of the stipulated service) was inapplicable to the situation and circumstances of the emigrants, and implied a servitude inconsistent with the principles of personal freedom and equality which pervaded their social and political plan, hostile to the general object of their emigration, and particularly subversive of that absolute ownership of the soil which they specially sought in the New World. *** The rule, which would defeat the obvious intention and destroy the plainly expressed contract of the parties, *** is not adapted to our institutions, or the conditions of things in this state. *** It never became part of the law of the state." Cole v. Lake Co., 54 N. H. 242, 285, 286, 290.

In England the rule "is now softened by many exceptions. *** It does not extend to devises by will, in which, as they were introduced at the time when the feudal rigor was apace wearing out, a more liberal construction is allowed: and therefore by a devise to a man forever, or to one and his assigns forever, or to one in fee simple, the devisee hath an estate of inheritance, for the intention of the devisor is sufficiently plain from the words of perpetuity annexed, though he hath omitted the legal words of inheritance. But if the devise be to a man and his assigns, without annexing words of perpetuity, there the devisee shall take only an estate for life, for it does not appear that the devisor intended any more." 2 Bl. Comm. 108. In a note to this passage, Chitty says, of the softened form of the feudal rule applied to wills: "Lord Coke teaches us (1 Inst. 322b) that it was the maxim of the common law, and not, as has been sometimes said (Idle v. Cook, 1 P. Wms. 70, 77, 78), a principle arising out of the wording of the statutes of wills." "Although a set form of words, and the word 'heirs' particularly, are necessary in deeds to convey an inheritance, yet may they be dispensed with in last wills, at which

time it is presumed that the testator is inops consilii; hence great regard is paid to the intention of the testator." Bac. Abr. "Devises" (C). This seems to be an intimation that the intent of testators is entitled to more regard than the intent of grantors and grantees. By whomever and under whatever circumstances deeds and wills have been usually drawn in England, the different degrees of skill employed in drafting such instruments in this state do not sustain a general or special rule for finding a life estate in words of a deed which would prove a fee if the grantor had ***411** used them in his will. As understood by the entire population of the state, with trifling if any exceptions, without the aid of a statute of interpretation, "I give my farm to A. B." are words of perpetuity in a will, and "I sell my farm to A. B." are words of perpetuity in a deed. They may be qualified by other words in the same instrument. When they are used without qualification, an intent to dispose of the whole of the devisor's or grantor's interest in the farm is plainly and adequately expressed.

Under feudal usages and feudal traditions, and systems of tenure and entail in which the largest title was in effect a life estate, the construction of deeds and wills has been obstructed and deflected by a rule against an intent to grant, reserve, or devise an estate of inheritance. In the case of deeds, the rule took a more absolute form than in the case of wills. There was a difference in the amounts of wrong done by its two forms, but the operation of its softened form was purely destructive. When a testator devised to N. a described tract of land, and to "my loving wife" "all the rest of my lands, tenements, and hereditaments," the feudal hostility to estates of inheritance, surviving in a so-called rule of law, was strong enough to mutilate the will, change the devisees into tenants for life, and leave the testator intestate as to the remainders. Moor v. Denn, 2 Bos. & P. 247. There is no such rule in this state, where inheritable titles, free from every vestige of feudalism, were one of the objects for which the wilderness was occupied, were the issue determined in favor of the people in the Masonian controversy, and have prevailed since the first towns divided their lands among the settlers. Their new home was a new world in a very comprehensive sense. For many of the advantages of an original organization of society, with which they began their work, they never ceased to contend. While many old rights which they brought with them are found in English history, the decision in Cole v. Lake Co. is sufficient authority for applying to this case the common law that grows out of the institutions and circumstances of the country. Manufacturing Co. v. Robertson, 66 N. H. 1, 6, 7, 15, 17, 19, 25 Atl. 718; State v. Saunders, 66 N. H. 39, 72, 73, 25 Atl. 588. A plain provision of a deed or will should not be expunged or altered by importing a method of construction or a rule of law founded on, or developed by the spirit and influence of, an oppressive policy in regard to the tenure of land, from which our ancestors liberated themselves by migration. If such methods and rules were properly adopted in England, they are precedents for contrary methods and rules under opposite conditions. The policy of servitude, which produced the feudal rule against grants, reservations, and devises of estates of inheritance, being inapplicable to our situation and circumstances, it would be impossible to justify a judicial introduction of that rule (in either of its forms), or a survival of feudal prejudice against competent evidence of contractual or testamentary intent.

"The English common law of real property *** is founded upon the doctrines of the feudal system. *** When land was conveyed to the tepant or vassal, it was called a 'feud,' 'fief,' or 'fee.' It was at first only for the life of the tenant. Under the early feudal system an estate of inheritance was unknown. Afterwards it became customary to grant a fief or feud to a tenant and his sons, and subsequently to him and his heirs. For a long time after the Conquest a vassal could not alien his hand without the consent of the lord. It was a personal confidence reposed in him, and a full power of alienation would have enabled him to let an enemy of the lord into possession of his lands. *** So obsol-

ete has the ancient doctrine of tenures become, that writers of eminence unhesitatingly pronounce the lands in this country to be absolutely allodial, i. e. free from the burdens of tenure." Tied. Real Prop. §§ 20, 21, 25. The rule of construction against an estate of inheritance, applied in one form to deeds, and in a softened form to wills, is a relic of the system in the early ages of which an estate of inheritance was unknown. In this state, where that system has not existed, and the branch of the rule applied to English deeds has not been introduced, a described tract of land conveyed or reserved by deed, and reduced to a life estate by the branch applied to English wills, would be an anomalous instance of feudal taint. The remark that the technical description of a fee contained in the word "heirs" "could not now be safely omitted, without using some other form of expression showing with legal accuracy the intention and contract of the parties" (Cole v. Lake Co., 54 N. H. 242, 290), is to be read with the accompanying statement that "the word is no more necessary to the valid conveyance of land than to the valid conveyance of a horse," and with the decisions in which it is settled that the actual intent of the parties, proved by competent evidence, is the legal meaning of a deed, and that the question of intent is a question of probability, to be determined by the ordinary and popular sense of the deed, when its language does not appear to have been used in a technical or peculiar sense. In this mode of construction, an unqualified grant or reservation of land shows with legal accuracy an intent to convey or reserve nothing less than the grantor's interest in the described land, and an unqualified grant or reservation of the right to flow a described lot is a grant or reservation of an interest not less durable than the grantor's right of flowing that lot. A common form of quitclaim grant describes the premises as "all my right, title, and interest in a certain tract of land," or "all my right, title, and interest in" a certain easement. A warranty deed of the land or easement is not less effective than *412 a quitclaim of all the grantor's right, title, and interest, and a reservation of a described right of flowage is as strong as a reservation of "all my title and interest in" such a right. The authorities show how ideas and principles inherent in a community of lords and vassals have outlived the military and social system to which they belonged, what injustice has been done by the original form of the feudal rule applied to deeds, and by a modified form of it applied to wills, and what consequences would follow the enactment of either form in this jurisdiction.

"The rule of law is inflexible. To create an estate of inheritance by deed, except by a deed to a corporation, and one or two other special exceptions, *** the land must be conveyed to the grantee 'and his heirs'; and no words of perpetuity will supply the omission of these necessary words of limitation. A grant to a man to have and to hold to him forever, or to have and to hold to him and to his assigns forever, will convey only an estate for life. And the same rule applies to words of reservation." Curtis v. Gardner, 13 Metc. (Mass.) 457, 461; Buffum v. Hutchinson, 1 Allen, 58, 60; Sedgwick v. Laflin, 10 Allen, 430. "The operation of an exception in a deed is to retain in the grantor some portion of his former estate, which by the exception is taken out of or excluded from the grant; and whatever is thus excluded remains in him as of his former right or title, because it is not granted. A reservation or implied grant vests in the grantor in the deed some new right or interest not before existing in him. *** The same rules of construction apply to a reservation or implied grant as to an express grant. In this case the words used were, 'reserving to myself the right of passing and repassing, and repairing my aqueduct logs forever through a culvert.' This gave only an estate for life. *** To create an estate of inheritance by deed to an individual, the land must be conveyed to the grantee and his heirs, and these necessary words of limitation cannot be supplied by other words of perpetuity." Ashcroft v. Railroad Co., 126 Mass. 196, 198, 199. A deed from Merrifield to Cobleigh contained the following clause: "Reserving, however, to myself the privilege of a bridle road in front of the house." "In a deed to an individual," say the court, "the word

the succession, or to abstain from it, or to renounce it. 2 Domat's Civil Law, by Strahan, Cushing's Ed., p. 155, sec. 4, art. 1, pp. 27, 35. Thus the common and the civil law agree.

An executor may refuse a devise of land to him in fee, and his co-executors may accept of the land, and dispose of it according to the provisions of the will. *Bonifant v. Greenfield,* 1 Croke's Eliz. 80.

There can be no doubt of the fact that a devisee may waive and renounce the estate devised to him. 1 Powell on Devises, pp. 429 and 30, and notes; *Townson v. Tickell,* 3 Barnw. and Ald. 31; 4 Kent's Com., 7th ed., p.595; 1st ed., pp. 523,4; *Bugbee v. Sargent,* 23 Maine 269; *Temple v. Nelson,* 4 Metcalf 584; Shephard's Touchstone, 452, Title, Testament. And there seems to be no difference in principle between the case of an heir and that of a devisee.

No man can have an estate forced upon him *nolens volens.*

No man can be forced to accept of a conveyance of land against his will.

Nor can a devisee be compelled to accept an estate devised to him, against his will.

The expression of the law that the inheritance is "cast upon the heir," means no more than that the law will confer it upon him, if he accepts it. The reasons for requiring the heir to succeed his ancestor, which existed under the feudal system, do not exist under our system. Our tenures are allodial, Taylor's Landlord and Tenant 6. There are no rents to be paid, no duties to be rendered, to the lord. Hence there is no reason why the heir shall be forced to take the inheritance against his will. The expression that the inheritance is ""cast upon the heir," implies no more than that, in the absence of a will, the law steps in and says that the estate shall go to the heir. It is, in substance, in that event, the will of the ancestor. In the absence of an express will, he impliedly directs that his estate shall be disposed of according to the law of the jurisdiction in which he has his domicil.

*5 The estate no more vests in the heir on the death of the ancestor, than it does in the devisee on the death of the testator. In either case it may with propriety be said that the law "casts" the estate upon him who is entitled to it. In other words, it implies that he will accept it until the contrary appears.

When the executor is also legatee, the property of the legacy is, immediately upon the death of the testator, altered and transferred to the executor, by operation of law. Plowden 543. Yet, as we have seen by the authorities before cited, he may renounce the legacy.

Thus, upon principle, it seems to be clear that the heir may renounce or waive the inheritance, if he desire not to accept it.

3. In what way or manner may the inheritance be waived or renounced?

It may be done by matter of record, or by deed, or, it would seem, by parol, or by any unequivocal act expressing the intention of the person renouncing. See authorities before cited.

The heir, or executor, when he renounces the succession, may do it by acts which signify his intention so to do; for example, by giving notice to collectors and legatees, and to the person who has the right to the succession in his place. 2 Domat's Civil Law 155, sec. 4, art. 2, 2736.

And *Holroyd,* J., in *Townson v. Tickell,* before cited, says, "I cannot think that it is necessary for the party to go through with the form of declining in a court of record, nor that he should be at the expense and trouble of executing a deed, to show that he did not assent to the devise." And see especially the opinions of the judges, pronounced in *Townson v. Tickell.* A deed is not necessary in order to renounce a devise. *Ward v. Ward,* 15 Pick. 525. In the case last cited, an opinion of Justice *Holroyd,* in

HB 527 clerk

JUDICIARY HB-527 Hearing: Thursday, January 24, 2:00 p.m., Room 208, LOB

This bill recognizes the allodial land rights of inhabitants of the state of New Hampshire and provides that a public servant who seeks to diminish such rights may be found in violation of his or her oath of office.
1-Statement of Intent. The general court finds that upon the end of the American Revolution, all feudal ties with the king of England ended and all lands within the Massachusetts Bay Colony were held in allodium by the sovereigns inhabiting the lands. New Hampshire lands continued to be held in allodium pursuant to Article 90, Part II of the Constitution for the state of New Hampshire.
2 Preservation of Allodial Land Rights. The general court finds that Article 90, Part II of the Constitution for the state of New Hampshire is the supreme authority in preserving the unalienable allodial land rights of all inhabitants. Whoever makes or shows an effort to diminish or extinguish the allodial land rights of the people shall be found guilty of trespass and, if a corporate government employee, in violation of his or her oath of office, subject to the unappealable penalty of RSA 92:2.
3 Effective Date. This act shall take effect 60 days after its passage.

"In the American system of law, People have substantive rights (common law rights) that existed before, and are protected by the U.S. Constitution. Substantive rights, as such, are not taxable. You may not be taxed for the words you say, for the hands on the ends of your arms, or for the property you own. "In order for the government to lay a property tax, it first must be certain that the property being taxed is not owned by the possessor. "Having title to your property is not full ownership of your property. Title only proves your right of possession. ***Currently****, to have full ownership of your property you must complete the transfer process by obtaining a land patent. Having a land patent proves your allodial ownership of the land. Allodial signifies ownership without limitation and was claimed by purchase with silver dollars and no mortgage nor requiring deed registration with the county.*
Remember, common law rights may not be taxed.
"The government-controlled schools no longer teach about land patents and substantive common law rights. Because so few know about it, the government is now free to define "title" as "evidence of right of possession". The true holder of the allodial title is the government. And like any owner, is entitled to rent the property to the tenants. To avoid revealing all this to the public, the rent is called a property tax."

— from "Allodial Freehold: History, Force & Effect of the Land Patent."
See also *Fruit From a Poisonous Tree*, Chapter Ten: Allodial Title

Allodial Title

Stare Decisis

Citizens of America are equal as fellow— citizens, and as joint tenants in the sovereignty. From the differences existing between feudal sovereignties and governments founded on compacts, it necessarily follows, that their respective prerogatives must differ. Sovereignty is the right to govern; a nation or state sovereign is the person or persons in whom that resides. In Europe, the sovereignty is generally ascribed to the prince; here it rest with the people; there the sovereign actually administers the government; here never in a single instance; our governors are the agents of the people, and at most stand in the same relation to their sovereign, in which the regents of Europe stand to their sovereigns. Their princes have personal powers, dignities, and preeminence; our rules have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens. (Emphasis added). d. at 470-71. The Americans had a choice as to how they wanted their new government and country to be formed. Having broken away from the English sovereignty and establishing themselves as their own sovereigns, they had their choice of types of taxation, freedom of religion, and most importantly ownership of land. The American founding fathers chose allodial ownership of land for the system of ownership on this country. In the opinion of Judge Kent, the question of tenure as an incident to the ownership of lands *has become wholly immaterial in this country, where every vestige of tenure has been annihilated.[4] See supra Washburn, Section 118, p.59. At the present day there is little, if any, trace of the feudal tenures remaining in the American law of property. Lands in this country are now held to be absolutely

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allodial. See Supra Tiedeman, Section 25, p. 22. Upon the completion of the Revolutionary War, lands in the thirteen colonies were held under a different form of land ownership. As stated in re Waltz et. al. Barlow v Security Trust & Savings Bank, 240 p. 19 (1925), quoting Matthews v Ward, 10 Gill & J. (Md.) 443 (1839), *"after the American Revolution, lands in this state (Maryland) became allodial, subject to no tenure, nor to any services incident there to."* The tenure, as you will recall, was the feudal tenure and the, services or taxes required to be paid to retain possession of the land under the feudal system. This new type of ownership was acquired in all thirteen states. Wallace v Harmstead, 44 Pa. 492 (1863). The American people, before developing a properly functioning stable government, developed a stable system of land ownership, whereby the people owned their land absolutely and in a manner similar to the king in Common-Law England. As has been stated earlier, the original and true meaning of the word 'fee" and therefore fee simple absolute is the same as fief or feud, this being in contradistinction to the term "allodium" which means or is defined as man's own land, which he possesses merely in his own right, without Owing any rent or service to any superior. Wendell v Crandall, 1 N.Y. 491 (1848). Stated another way, the fee simple estate of early England was never considered as absolute, as were lands in allodiun, but were subject to some superior on condition of rendering him services, and in which such superior had the ultimate ownership of the land. In re Waltz, at page 20, quoting 1 Cooley's Blackstone, (4th ed.) p. 512. This type of fee simple is a Common-Law term and sometimes corresponds to what in civil law is a perfect title. 'United States v Sunset Cemetery Co., 132 F. 2d 163 (1943). It is unquestioned that the king held an allodial title which was different than the Common-Law fee simple absolute. This type of superior title was bestowed upon the newly

established American people by the founding fathers. The people were sovereigns by choice, and through this new type of land ownership, the people were sovereign freeholders or kings over their own land, beholden to no lord or superior. As stated in Stanton v Sullivan, 7 A. 696 (1839), such an estate is an absolute estate in perpetuity and the largest possible estate a man can have, being, in fact allodial in its nature. This type of fee simple, as thus developed, has definite characteristics:

(1) it is a present estate in land that is of indefinite duration;

(2) it is freely alienable;

(3) it carries with it the right of possession; and most **importantly;**

(4) the holder may make use of any portion of the freehold without being beholden to any person. 1 G. Thompson, Commentaries on the Modern Law of Real Property, Section 1856, p. 412 (1st ed. 1924).

This fee simple estate means an absolute estate in lands wholly unqualmed by any reservation, reversion, condition or limitation, or possibility of any such thing present or future, precedent or subsequent. Id; Wichelman v Messner, 83 N.W. 2d 800, 806 (1957). It is the most extensive estate and interest one may possess in real property. Where, an estate subject to an option is not in fee. See supra 1 Thompson, Section 1856, p.

413. In the case, Bradford v Martin, 201 N.W. 574 (1925), the Iowa Supreme Court went into a lengthy discussion on what the terms fee simple and allodium means in American property law.

The Court stated:

The word "absolutely' in law has a varied meaning, but when unqualifiedly used with reference to titles or interest in land, its meaning is fairly well settled. Originally the two titles most discussed were 'fee simple' and 'allodium' (which meant absolute). See Bouvier's Law Dictionary. (Rawle Ed.) 134; Wallace v Harmstead, 44 Pa. 492; McCartee v Orphan's Asylum, 9 Cow. (N.Y.) 437, 18 Am. Dec. 516. Prior to Blackstone's time the allodial title was ordinarily called an 'absolute title' and was superior to a 'fee simple title,' the latter being encumbered with feudal clogs which were laid upon the first feudatory when it was granted.

Allodial title is defined as one that is free. [Stewart v. Chicago Title Ins. Co., 151 Ill. App. 3d 888 (Ill. App. Ct. 1987)]

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5 of 5

Bill as Introduced

HB 527 - AS INTRODUCED

2019 SESSION

19-0294
05/10

HOUSE BILL ***527***

AN ACT relative to allodial title and violations of the oath of office.

SPONSORS: Rep. Marple, Merr. 24

COMMITTEE: Judiciary

ANALYSIS

This bill recognizes the allodial land rights of inhabitants of the state of New Hampshire and provides that a public servant who seeks to diminish such rights may be found in violation of his or her oath of office.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 527 - AS INTRODUCED

19-0294
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to allodial title and violations of the oath of office.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Intent. The general court finds that upon the end of the American Revolution, all feudal ties with the king of England ended and all lands within the Massachusetts Bay Colony were held in allodium by the sovereigns inhabiting the lands. Some New Hampshire lands continued to be held in allodium pursuant to Article 90, Part II of the Constitution for the state of New Hampshire.

2 Preservation of Allodial Land Rights. The general court finds that Article 90, Part II of the Constitution for the state of New Hampshire is the supreme authority in preserving the unalienable allodial land rights of all inhabitants. Whoever makes or shows an effort to diminish or extinguish the allodial land rights of the people shall be found guilty of trespass and, if a corporate government employee, in violation of his or her oath of office, subject to the unappealable penalty of RSA 92:2.

3 Effective Date. This act shall take effect 60 days after its passage.