Book XXX. Theory of the Feudal Laws among the Franks in the Relation They Bear to the Establishment of the Monarchy

1. Of Feudal Laws. I should think my work imperfect were I to pass over in silence an event which never again, perhaps, will happen; were I not to speak of those laws which suddenly appeared over all Europe without being connected with any of the former institutions; of those laws which have done infinite good and infinite mischief; which have suffered rights to remain when the demesne has been ceded; which by vesting several with different kinds of seignory over the same things or persons have diminished the weight of the whole seignory; which have established different limits in empires of too great extent; which have been productive of rule with a bias to anarchy, and of anarchy with a tendency to order and harmony.

This would require a particular work to itself; but considering the nature of the present undertaking, the reader will here meet rather with a general survey than with a complete treatise of those laws.

The feudal laws form a very beautiful prospect. A venerable old oak raises its lofty head to the skies, the eye sees from afar its spreading leaves; upon drawing nearer, it perceives the trunk but does not discern the root; the ground must be dug up to discover it.[1]

2. Of the Source of Feudal Laws. The conquerors of the Roman empire came from Germany. Though few ancient authors have described their manners, yet we have two of very great weight. Cæsar making war against the Germans describes the manners of that nation;[2] and upon these he regulated some of his enterprises.[3] A few pages of Cæsar upon this subject are equal to whole volumes.

Tacitus has written an entire work on the manners of the Germans. This work is short, but it comes from the pen of Tacitus, who was always concise, because he saw everything at one glance.

These two authors agree so perfectly with the codes still extant of the laws of the Barbarians, that reading Cæsar and Tacitus we imagine we are perusing these codes, and perusing these codes we fancy we are reading Cæsar and Tacitus.

But if in this research into the feudal laws I should find myself entangled and lost in a dark labyrinth, I fancy I have the clue in my hand, and that I shall be able to find my way through.

3. The Origin of Vassalage. Cæsar says[4] that, "The Germans neglected agriculture; that the greatest part of them lived upon milk, cheese and flesh; that no one had lands or boundaries of his own; that the princes and magistrates of each nation allotted what portion of land they pleased to individuals, and obliged them the year following to remove to some other part." Tacitus says[5] that, "Each prince had a multitude of men, who were attached to his service, and followed him wherever he went." This author gives them a name in his language in accordance with their state, which is that of companions.[6] They had a strong emulation to obtain the prince's esteem; and the princes had the same emulation to distinguish themselves in the bravery and number of their companions. "Their dignity and power," continues Tacitus, "consist in being constantly surrounded by a multitude of young and chosen people; this they reckon their ornament in peace, this their defence and support in war. Their name becomes famous at home, and among neighbouring nations, when they excel all others in the number and courage of their companions: they receive presents and embassies from all parts. Reputation frequently decides the fate of war. In battle it is infamy in the prince to be surpassed in courage; it is infamy in the companions not to follow the brave example of their prince; it is an eternal disgrace to survive him. To defend him is their most sacred engagement. If a city be at peace, the princes go to those who are at war; and it is thus they retain a great number of friends. To these they give the war horse and the terrible javelin. Their pay consists in coarse but plentiful repasts. The prince supports his liberality merely by war and

plunder. You might more easily persuade them to attack an enemy and to expose themselves to the dangers of war, than to cultivate the land, or to attend to the cares of husbandry; they refuse to acquire by sweat what they can purchase with blood."

Thus, among the Germans, there were vassals, but no fiefs; they had no fiefs, because the princes had no lands to give; or rather their fiefs consisted in horses trained for war, in arms, and feasting. There were vassals, because there were trusty men who being bound by their word engaged to follow the prince to the field, and did very nearly the same service as was afterwards performed for the fiefs.

4. The same Subject continued. Cæsar says[7] that "when any of the princes declared to the assembly that he intended to set out upon an expedition and asked them to follow him, those who approved the leader and the enterprise stood up and offered their assistance. Upon which they were commended by the multitude. But, if they did not fulfil their engagements, they lost the public esteem, and were looked upon as deserters and traitors."

What Cæsar says in this place, and what we have extracted in the preceding chapter from Tacitus, are the substance of the history of our princes of the first race.

We must not therefore be surprised that our kings should have new armies to raise upon every expedition, new troops to encourage, new people to engage; that to acquire much they were obliged to incur great expenses; that they should be constant gainers by the division of lands and spoils, and yet give these lands and spoils incessantly away: that their demesne should continually increase and diminish; that a father upon settling a kingdom on one of his children[8] should always give him a treasure with it: that the king's treasure should be considered as necessary to the monarchy; and that one king could not give part of it to foreigners, even in portion with his daughter, without the consent of

the other kings.[9] The monarchy moved by springs, which they were continually obliged to wind up.

5. Of the Conquests of the Franks. It is not true that the Franks upon entering Gaul took possession of the whole country to turn it into fiefs. Some have been of this opinion because they saw the greatest part of the country towards the end of the second race converted into fiefs, rear-fiefs, or other dependencies; but such a disposition was owing to particular causes which we shall explain hereafter.

The consequence which sundry writers would infer thence, that the barbarians made a general regulation for establishing in all parts the state of villainage is as false as the principle from which it is derived. If at a time when the fiefs were precarious, all the lands of the kingdom had been fiefs, or dependencies of fiefs; and all the men in the kingdom vassals or bondmen subordinate to vassals; as the person that has property is ever possessed of power, the king, who would have continually disposed of the fiefs, that is, of the only property then existing; would have had a power as arbitrary as that of the Sultan is in Turkey; which is contradictory to all history.

6. Of the Goths, Burgundians, and Franks. Gaul was invaded by German nations. The Visigoths took possession of the province of Narbonne, and of almost all the south; the Burgundians settled in the east; and the Franks subdued very nearly all the rest.

No doubt but these Barbarians retained in their respective conquests the manners, inclinations, and usages of their own country; for no nation can change in an instant their manner of thinking and acting. These people in Germany neglected agriculture. It seems by Cæsar and Tacitus that they applied themselves greatly to a pastoral life; hence the regulations of the codes of Barbarian laws almost all relate to their flocks. Roricon, who wrote a history among the Franks, was a shepherd.

7. Different Ways of dividing the Land. After the Goths and Burgundians had, under various pretences, penetrated into the heart of the empire, the Romans, in order to put a stop to their devastations, were obliged to provide for their subsistence. At first they allowed them corn,[10] but afterwards chose to give them lands. The emperors, or the Roman magistrates, in their name, made particular conventions with them concerning the division of lands,[11] as we find in the chronicles and in the codes of the Visigoths[12] and Burgundians.[13]

The Franks did not follow the same plan. In the Salic and Ripuarian laws, we find not the least vestige of any such division of lands; they had conquered the country, and so took what they pleased, making no regulations but among themselves.

Let us, therefore, distinguish between the conduct of the Burgundians and Visigoths in Gaul, of those same Visigoths in Spain, of the auxiliary troops under Augustulus and Odoacer in ltaly,[14] and that of the Franks in Gaul, as also of the Vandals in Africa.[15] The former entered into conventions with the ancient inhabitants, and in consequence thereof made a division of lands between them; the latter did no such thing.

8. The same Subject continued. What has induced some to think that the Roman lands were entirely usurped by the Barbarians is their finding in the laws of the Visigoths and the Burgundians that these two nations had two-thirds of the lands; but this they took only in certain quarters or districts assigned them.

Gundebald says, in the law of the Burgundians, that his people at their establishment had two-thirds of the lands allowed them;[16] and the second supplement to this law notices that only a moiety would be allowed to those who should hereafter come to live in that country.[17] Therefore, all the lands had not been divided in the beginning between the Romans and the Burgundians.

In those two regulations we meet with the same expressions in the text, consequently they explain one another; and as the latter cannot mean a universal division of lands, neither can this signification be given to the former.

The Franks acted with the same moderation as the Burgundians; they did not strip the Romans wherever they extended their conquests. What would they have done with so much land? They took what suited them, and left the remainder.

9. A just Application of the Law of the Burgundians, and of that of the Visigoths, in relation to the Division of Lands. It is to be considered that those divisions of land were not made with a tyrannical spirit; but with a view of relieving the reciprocal wants of two nations that were to inhabit the same country.

The law of the Burgundians ordains that a Burgundian shall be received in an hospitable manner by a Roman. This is agreeable to the manners of the Germans, who, according to Tacitus,[18] were the most hospitable people in the world.

By the law of the Burgundians, it is ordained that the Burgundians shall have two-thirds of the lands, and one-third of the bondmen. In this it considered the genius of two nations, and conformed to the manner in which they procured their subsistence. As the Burgundians kept herds and flocks, they wanted a great deal of land and few bondmen, and the Romans, from their application to agriculture, had need of less land, and of a greater number of bondmen. The woods were equally divided, because their wants in this respect were the same.

We find in the code of the Burgundians[19] that each Barbarian was placed near a Roman. The division therefore was not general; but the Romans who gave the division were equal in number to the Burgundians who received it. The Roman was injured least. The Burgundians as a martial

people, fond of hunting and of a pastoral life, did not refuse to accept of the fallow grounds; while the Romans kept such lands as were properest for culture: the Burgundian's flock fattened the Roman's field.

10. Of Servitudes. The law of the Burgundians notices[20] that when those people settled in Gaul, they were allowed two-thirds of the land, and one-third of the bondmen. The state of villainage was therefore established in that part of Gaul before it was invaded by the Burgundians.[21]

The law of the Burgundians, in points relating to the two nations, makes a formal distinction in both, between the nobles, the freeborn and the bondmen.[22] Servitude was not therefore a thing peculiar to the Romans; nor liberty and nobility to the Barbarians.

This very same law says,[23] that if a Burgundian freedman had not given a certain sum to his master, nor received a third share of a Roman, he was always supposed to belong to his master's family. The Roman proprietor was therefore free, since he did not belong to another person's family; he was free, because his third portion was a mark of liberty.

We need only open the Salic and Ripuarian laws to be satisfied that the Romans were no more in a state of servitude among the Franks than among the other conquerors of Gaul.

The Count de Boulainvilliers is mistaken in the capital point of his system: he has not proved that the Franks made a general regulation which reduced the Romans into a kind of servitude.

As this author's work is penned without art, and as he speaks with the simplicity, frankness, and candour of that ancient nobility whence he descends, every one is capable of judging of the good things he says,

and of the errors into which he has fallen. I shall not, therefore, undertake to criticise him; I shall only observe that he had more wit than enlightenment, more enlightenment than learning; though his learning was not contemptible, for he was well acquainted with the most valuable part of our history and laws.

The Count de Boulainvilliers and the Abbé du Bos have formed two different systems, one of which seems to be a conspiracy against the commons, and the other against the nobility. When the sun gave leave to Phæton to drive his chariot, he said to him, "If you ascend too high, you will burn the heavenly mansions; if you descend too low, you will reduce the earth to ashes; do not drive to the right, you will meet there with the constellation of the Serpent; avoid going too much to the left, you will there fall in with that of the Altar: keep in the middle."[24]

11. The same Subject continued. What first gave rise to the notion of a general regulation made at the time of the conquest was our meeting with an immense number of forms of servitude in France, towards the beginning of the third race; and as the continual progression of these forms of servitude was not perceived, people imagined in an age of obscurity a general law which was never framed.

Towards the commencement of the first race we meet with an infinite number of freemen, both among the Franks and the Romans; but the number of bondmen increased to that degree, that at the beginning of the third race all the husbandmen and almost all the inhabitants of towns had become bondmen:[25] and whereas, at the first period, there was very nearly the same administration in the cities as among the Romans, namely, a corporation, a senate, and courts of judicature; at the other we hardly meet with anything but a lord and his bondmen.

When the Franks, Burgundians, and Goths made their several invasions, they seized upon gold, silver, movables, clothes, men, women, boys, and

whatever the army could carry; the whole was brought to one place, and divided among the army.[26] History shows that after the first settlement, that is, after the first devastation, they entered into an agreement with the inhabitants, and left them all their political and civil rights. This was the law of nations in those days; they plundered everything in time of war, and granted everything in time of peace. Were it not so, how should we find both in the Salic and Burgundian laws such a number of regulations absolutely contrary to a general servitude of the people?

But though the conquest was not immediately productive of servitude, it arose nevertheless from the same law of nations which subsisted after the conquest.[27] Opposition, revolts and the taking of towns were followed by the slavery of the inhabitants. And, not to mention the wars which the conquering nations made against one another, as there was this peculiarity among the Franks, that the different partitions of the monarchy gave rise continually to civil wars between brothers or nephews, in which this law of nations was constantly practised, servitudes, of course, became more general in France than in other countries: and this is, I believe, one of the causes of the difference between our French laws and those of Italy and Spain, in respect to the right of seigniories.

The conquest was soon over, and the law of nations then in force was productive of some servile dependences. The custom of the same law of nations, which obtained for many ages, gave a prodigious extent to those servitudes.

Theodoric[28] imagining that the people of Auvergne were not faithful to him, thus addressed the Franks of his division: "Follow me, and I will carry you into a country where you shall have gold, silver, captives, clothes, and flocks in abundance; and you shall remove all the people into your own country."

After the conclusion of the peace between Gontram and Chilperic, the troops employed in the siege of Bourges, having had orders to return, carried such a considerable booty away with them that they hardly left either men or cattle in the country.[29]

Theodoric, King of Italy, whose spirit and policy it was ever to distinguish himself from the other barbarian kings, upon sending an army into Gaul, wrote thus to the general:[30] "It is my will that the Roman laws be followed, and that you restore the fugitive slaves to their right owners. The defender of liberty ought not to encourage servants to desert their masters. Let other kings delight in the plunder and devastation of the towns which they have subdued; we are desirous to conquer in such a manner that our subjects shall lament their having fallen too late under our government." It is evident that his intention was to cast odium on the kings of the Franks and the Burgundians, and that he alluded in the above passage to their particular law of nations. Yet this law of nations continued in force under the second race. King Pepin's army, having penetrated into Aquitaine, returned to France loaded with an immense booty, and with a number of bondmen, as we are informed by the annals of Metz.[31]

Here might I quote numberless authorities;[32] and as the public compassion was raised at the sight of those miseries, as several holy prelates, beholding the captives in chains, employed the treasure belonging to the church, and sold even the sacred utensils, to ransom as many as they could; and as several holy monks exerted themselves on that occasion, it is in the Lives of the Saints that we meet with the best explanations on the subject.[33] And, although it may be objected to the authors of those lives that they have been sometimes a little too credulous in respect to things which God has certainly performed, if they were in the order of his providence; yet we draw considerable light thence with regard to the manners and usages of those times.

When we cast an eye upon the monuments of our history and laws, the

whole seems to be an immense expanse, a boundless ocean;[34] all those frigid, dry, insipid, and hard writings must be read and devoured in the same manner as Saturn is fabled to have devoured the stones.

A vast quantity of land which had been in the hands of freemen[35] was changed into mortmain. When the country was stripped of its free inhabitants, those who had a great multitude of bondmen either took large territories by force, or had them yielded by agreement, and built villages, as may be seen in different charters. On the other hand, the freemen who cultivated the arts found themselves reduced to exercise those arts in a state of servitude; thus the servitudes restored to the arts and to agriculture whatever they had lost.

It was a customary thing with the proprietors of lands, to give them to the churches, in order to hold them themselves by a quit-rent, thinking to partake by their servitude of the sanctity of the churches.

12. That the Lands belonging to the Division of the Barbarians paid no Taxes. A people remarkable for their simplicity and poverty, a free and martial people, who lived without any other industry than that of tending their flocks, and who had nothing but rush cottages to attach them to their lands,[36] such a people, I say, must have followed their chiefs for the sake of booty, and not to pay or to raise taxes. The art of tax-gathering was invented later, and when men began to enjoy the blessings of other arts.

The temporary tax of a pitcher of wine for every acre,[37] which was one of the exactions of Chilperic and Fredegonda, related only to the Romans. And indeed it was not the Franks that tore the rolls of those taxes, but the clergy, who in those days were all Romans.[38] The burden of this tax lay chiefly on the inhabitants of the towns;[39] now these were almost all inhabited by Romans.

Gregory of Tours relates[40] that a certain judge was obliged, after the

death of Chilperic, to take refuge in a church, for having under the reign of that prince ordered taxes to be levied on several Franks who in the reign of Childebert were ingenui, or free-born: Multos de Francis, qui tempore Childeberti regis ingenui fuerant, publico tributo subegit. Therefore the Franks who were not bondmen paid no taxes.

There is not a grammarian but would turn pale to see how the Abbé du Bos has interpreted this passage.[41] He observes that in those days the freedmen were also called ingenui. Upon this supposition he renders the Latin word ingenui, by the words "freed from taxes"; a phrase which we indeed may use in French, as we say "freed from cares," "freed from punishments"; but in the Latin tongue such expressions as ingenui a tributis, libertini a tributis, manumissi tributorum, would be quite monstrous.

Parthenius, says Gregory of Tours,[42] had like to have been put to death by the Franks for subjecting them to taxes. The Abbé du Bos finding himself hard pressed by this passage[43] very coolly assumes the thing in question; it was, says he, a surcharge.

We find in the law of the Visigoths[44] that when a Barbarian had seized upon the estate of a Roman, the judge obliged him to sell it, to the end that this estate might continue to be tributary; consequently the Barbarians paid no land taxes.[45]

The Abbé du Bos,[46] who would fain have the Visigoths subjected to taxes,[47] quits the literal and spiritual sense of the law, and pretends, upon no other indeed than an imaginary foundation, that between the establishment of the Goths and this law, there had been an augmentation of taxes which related only to the Romans. But none but Father Harduin are allowed thus to exercise an arbitrary power over facts.

This learned author[48] has rummaged Justinian's Code[49] in search of

laws to prove that, among the Romans, the military benefices were subject to taxes. Whence he would infer that the same held good with regard to fiefs or benefices among the Franks. But the opinion that our fiefs derive their origin from that Institution of the Romans is at present exploded; it obtained only at a time when the Roman history, not ours, was well understood, and our ancient records lay buried in obscurity and dust.

But the Abbé is in the wrong to quote Cassiodorus, and to make use of what was transacting in Italy, and in the part of Gaul subject to Theodoric, in order to acquaint us with the practice established among the Franks; these are things which must not be confounded. I propose to show, some time or other, in a certain work, that the plan of the monarchy of the Ostrogoths was entirely different from that of any other government founded in those days by the other Barbarian nations; and that so far from our being entitled to affirm that a practice obtained among the Franks because it was established among the Ostrogoths, we have on the contrary just reason to think that a custom of the Ostrogoths was not in force among the Franks.

The hardest task for persons of extensive erudition is to seek their proofs in such passages as bear upon the subject, and to find, if we may be allowed to express ourselves in astronomical terms, the position of the sun.

The same author makes a wrong use of the capitularies, as well as of the historians and laws of the barbarous nations. When he wants the Franks to pay taxes, he applies to freemen what can be understood only of bondmen;[50] when he speaks of their military service, he applies to bondmen what can never relate but to freemen.[51]

13. Of Taxes paid by the Romans and Gauls in the Monarchy of the Franks. I might here examine whether, after the Gauls and Romans were conquered, they continued to pay the taxes to which they were subject under the

emperors. But, for the sake of brevity, I shall be satisfied with observing that, if they paid them in the beginning, they were soon after exempted, and that those taxes were changed into a military service. For, I confess, I can hardly conceive how the Franks should have been at first such great friends, and afterwards such sudden and violent enemies, to taxes.

A capitulary[52] of Louis the Debonnaire explains extremely well the situation of the freemen in the monarchy of the Franks. Some troops of Goths or Iberians, flying from the oppression of the Moors, were received into Louis' dominions. The agreement made with them was that, like other freemen, they should follow their count to the army; and that upon a march they should mount guard and patrol under the command also of their count; and that they should furnish horses and carriages for baggage to the king's commissaries,[53] and to the ambassadors in their way to or from court; and that they should not be compelled to pay any further impost, but should be treated as the other freemen.

It cannot be said that these were new usages introduced at the commencement of the second race. This must be referred at least to the middle or to the end of the first. A capitulary of the year 864 [54] says in express terms that it was the ancient custom for freemen to perform military service, and to furnish likewise the horses and carriages above-mentioned; duties particular to themselves, and from which those who possessed the fiefs were exempt, as I shall prove hereafter.

This is not all; there was a regulation which hardly permitted the imposing of taxes on those freemen.[55] He who had four manors was obliged to march against the enemy:[56] he who had but three was joined with a freeman that had only one; the latter bore the fourth part of the other's charges, and stayed at home. In like manner, they joined two freemen who had each two manors; he who went to the army had half his charges borne by him who stayed at home.

Again, we have an infinite number of charters, in which the privileges of fiefs are granted to lands or districts possessed by freemen, and of which I shall make further mention hereafter.[57] These lands are exempted from all the duties or services which were required of them by the counts, and by the rest of the king's officers; and as all these services are particularly enumerated without making any mention of taxes, it is manifest that no taxes were imposed upon them.

It was very natural that the Roman system of taxation should of itself fall out of use in the monarchy of the Franks; it was a most complicated device, far above the conception, and wide from the plan of those simple people. Were the Tartars to overrun Europe, we should find it very difficult to make them comprehend what is meant by our financiers.

The anonymous author of the life of Louis the Debonnaire,[58] speaking of the counts and other officers of the nation of the Franks, whom Charlemagne established in Aquitania, says, that he entrusted them with the care of defending the frontiers, as also with the military power and the direction of the demesnes belonging to the crown. This shows the state of the royal revenues under the second race. The prince had kept his demesnes in his own hands, and employed his bondmen in improving them. But the indictions, the capitations and other imposts raised at the time of the emperors on the persons or goods of freemen had been changed into an obligation of defending the frontiers and marching against the enemy.

In the same history,[59] we find that Louis the Debonnaire, having been to wait upon his father in Germany, this prince asked him, why he, who was a crowned head, came to be so poor: to which Louis made answer that he was only a nominal king, and that the great lords were possessed of almost all his demesnes; that Charlemagne, being apprehensive lest this young prince should forfeit their affection, if he attempted himself to resume what he had inconsiderately granted, appointed commissaries to restore things to their former situation.

The bishops, writing[60] to Louis, brother of Charles the Bald, used these words: "Take care of your lands, that you may not be obliged to travel continually by the houses of the clergy, and to tire their bondmen with carriages. Manage your affairs," continue they, "in such a manner that you may have enough to live upon, and to receive embassies." It is evident that the king's revenues in those days consisted of their demesnes.[61]

14. Of what they called Census. After the Barbarians had quitted their own country, they were desirous of reducing their usages into writing; but as they found difficulty in writing German words with Roman letters, they published these laws in Latin.

In the confusion and rapidity of the conquest, most things changed their nature; in order, however, to express them, they were obliged to make use of such old Latin words as were most analogous to the new usages. Thus, whatever was likely to revive the idea of the ancient census of the Romans they called by the name of census tributum,[62] and when things had no relation at all to the Roman census, they expressed, as well as they could, the German words by Roman letters; thus they formed the word fredum, on which I shall have occasion to descant in the following chapters.

The words census and tributum having been employed in an arbitrary manner, this has thrown some obscurity on the signification in which these words were used under our princes of the first and second race. And modern authors[63] who have adopted particular systems, having found these words in the writings of those days, imagined that what was then called census was exactly the census of the Romans; and thence they inferred this consequence, that our kings of the first two races had put themselves in the place of the Roman emperors, and made no change in their administration.[64] Besides, as particular duties raised under the second race were by change and by certain restrictions converted into others,[65] they inferred thence that these duties were the census of

the Romans; and as, since the modern regulations, they found that the crown demesnes were absolutely unalienable, they pretended that those duties which represented the Roman census, and did not form a part of the demesnes, were mere usurpation. I omit the other consequences.

To apply the ideas of the present time to distant ages is the most fruitful source of error. To those people who want to modernize all the ancient ages, I shall say what the Egyptian priests said to Solon, "O Athenians, you are mere children!"[66]

15. That what they called Census was raised only on the Bondmen and not on the Freemen. The king, the clergy, and the lords raised regular taxes, each on the bondmen of their respective demesnes. I prove it with respect to the king, by the capitulary de Villis; with regard to the clergy, by the codes of the laws of the Barbarians[67] and in relation to the lords, by the regulations which Charlemagne made concerning this subject.[68]

These taxes were called census; they were economical and not fiscal claims, entirely private dues and not public taxes.

I affirm that what they called census at that time was a tax raised upon the bondmen. This I prove by a formulary of Marculfus containing a permission from the king to enter into holy orders, provided the persons be freeborn,[69] and not enrolled in the register of the census. I prove it also by a commission from Charlemagne to a count[70] whom he had sent into Saxony, which contains the enfranchisement of the Saxons for having embraced Christianity, and is properly a charter of freedom.[71] This prince restores them to their former civil liberty,[72] and exempts them from paying the census, It was, therefore, the same thing to be a bondman as to pay the census, to be free as not to pay it.

By a kind of letters patent of the same prince in favour of the Spaniards,[73] who had been received into the monarchy, the counts are

forbidden to demand any census of them, or to deprive them of their lands. That strangers upon their coming to France were treated as bondmen is a thing well known; and Charlemagne being desirous they should be considered as freemen, since he would have them be proprietors of their lands, forbad the demanding any census of them.

A capitulary of Charles the Bald,[74] given in favour of those very Spaniards, orders them to be treated like the other Franks, and forbids the requiring any census of them; consequently this census was not paid by freemen.

The thirtieth article of the edict of Pistes reforms the abuse by which several of the husbandmen belonging to the king or to the church sold the lands dependent on their manors to ecclesiastics or to people of their condition, reserving only a small cottage to themselves; by which means they avoided paying the census; and it ordains that things should be restored to their primitive situation: the census was, therefore, a tax peculiar to bondmen.

Thence also it follows that there was no general census in the monarchy; and this is clear from a great number of passages. For what could be the meaning of this capitulary?[75] "We ordain that the royal census should be levied in all places where formerly it was lawfully levied."[76] What could be the meaning of that in which Charlemagne[77] orders his commissaries in the provinces to make an exact inquiry into all the census that belonged in former times to the king's demesne?[78] And of that[79] in which he disposes of the census paid by those[80] of whom they are demanded? What can that other capitulary mean[81] in which we read, "If any person has acquired a tributary land[82] on which we were accustomed to levy the census?" And that other, in fine,[83] in which Charles the Bald[84] makes mention of feudal lands whose census had from time immemorial belonged to the king.

Observe .that there are some passages which seem at first sight to be

contrary to what I have said, and yet confirm it. We have already seen that the freemen in the monarchy were obliged only to furnish particular carriages; the capitulary just now cited gives to this the name of census, and opposes it to the census paid by the bondmen.

Besides, the edict of Pistes[85] notices those freemen who are obliged to pay the royal census for their head and for their cottages,[86] and who had sold themselves during the famine. The king orders them to be ransomed. This is because those who were manumitted by the king's letters[87] did not, generally speaking, acquire a full and perfect liberty.[88] but they paid censum in capite; and these are the people here meant.

We must, therefore, waive the idea of a general and universal census, derived from that of the Romans, from which the rights of the lords are also supposed to have been derived by usurpation. What was called census in the French monarchy, independently of the abuse made of that word, was a particular tax imposed on the bondmen by their masters.

I beg the reader to excuse the trouble I must give him with such a number of citations. I should be more concise did I not meet with the Abbé du Bos' book on the establishment of the French monarchy in Gaul, continually in my way. Nothing is a greater obstacle to our progress in knowledge than a bad performance of a celebrated author; because, before we instruct, we must begin with undeceiving.

16. Of the feudal Lords or Vassals. I have noticed those volunteers among the Germans, who have followed their princes in their several expeditions. The same usage continued after the conquest. Tacitus mentions them by the name of companions;[89] the Salic law by that of men who have vowed fealty to the king;[90] the formularies of Marculfus[91] by that of the king's Antrustios;[92] the earliest French historians by that of Leudes,[93] faithful and loyal; and those of later date by that of vassals and lords.[94]

In the Salic and Ripuarian laws we meet with an infinite number of regulations in regard to the Franks, and only with a few for the Antrustios. The regulations concerning the Antrustios are different from those which were made for the other Franks; they are full of what relates to the settling of the property of the Franks, but mention not a word concerning that of the Antrustios. This is because the property of the latter was regulated rather by the political than by the civil law, and was the share that fell to an army, and not the patrimony of a family.

The goods reserved for the feudal lords were called fiscal goods, benefices, honours, and fiefs, by different authors, and in different times.[95]

There is no doubt but the fiefs at first were at will.[96] We find in Gregory of Tours[97] that Sunegisilus and Gallomanus were deprived of all they held of the exchequer, and no more was left them than their real property. When Gontram raised his nephew Childebert to the throne, he had a private conference with him, in which he named the persons who ought to be honoured with, and those who ought to be deprived of, the fiefs.[98] In a formulary of Marculfus,[99] the king gives in exchange, not only the benefices held by his exchequer, but likewise those which had been held by another. The law of the Lombards opposes the benefices to property.[100] In this, our historians, the formularies, the codes of the different barbarous nations and all the monuments of those days are unanimous. In fine, the writers of the book of fiefs inform us[101] that at first the lords could take them back when they pleased, that afterwards they granted them for the space of a year,[102] and that at length they gave them for life.

17. Of the military Service of Freemen. Two sorts of people were bound to military service; the great and lesser vassals, who were obliged in consequence of their fief; and the freemen, whether Franks, Romans, or Gauls, who served under the count and were commanded by him and his

officers.

The name of freemen was given to those, who on the one hand had no benefits or fiefs, and on the other were not subject to the base services of villainage; the lands they possessed were what they called allodial estates.

The counts assembled the freemen,[103] and led them against the enemy; they had officers under them who were called vicars;[104] and as all the freemen were divided into hundreds, which constituted what they called a borough, the counts had also officers under them, who were denominated centenarii, and led the freemen of the borough, or their hundreds, to the field.[105]

This division into hundreds is posterior to the establishment of the Franks in Gaul. It was made by Clotharius and Childebert, with a view of obliging each district to answer for the robberies committed in their division; this we find in the decrees of those princes.[106] A regulation of this kind is to this very day observed in England.

As the counts led the freemen against the enemy, the feudal lords commanded also their vassals or rear-vassals; and the bishops, abbots, or their advocates[107] likewise commanded theirs.[108]

The bishops were greatly embarrassed and inconsistent with themselves;[109] they requested Charlemagne not to oblige them any longer to military service; and when he granted their request, they complained that he had deprived them of the public esteem; so that this prince was obliged to justify his intentions upon this head. Be that as it may, when they were exempted from marching against the enemy, I do not find that their vassals were led by the counts; on the contrary, we see that the kings or the bishops chose one of their feudatories to conduct them.[110]

In a Capitulary of Louis the Debonnaire,[111] this prince distinguishes three sorts of vassals, those belonging to the king, those to the bishops, and those to the counts. The vassals of a feudal lord were not led against the enemy by the count, except some employment in the king's household hindered the lord himself from commanding them.[112]

But who is it that led the feudal lords into the field? No doubt the king himself, who was» always at the head of his faithful vassals. Hence we constantly find in the capitularies a distinction made between the king's vassals and those of the bishops,[113] Such brave and magnanimous princes as our kings did not take the field to put themselves at the head of an ecclesiastic militia; these were not the men they chose to conquer or to die with.

But these lords likewise carried their vassals and rear-vassals with them, as we can prove by the capitulary in which Charlemagne ordains that every freeman who has four manors, either in his own property or as a benefice from somebody else, should march against the enemy or follow his lord.[114] It is evident that Charlemagne means that the person who had a manor of his own should march under the count and he who held a benefice of a lord should set out along with him.

And yet the Abbé du Bos pretends[115] that, when mention is made in the capitularies of tenants who depended on a particular lord, no others are meant than bondmen; and he grounds his opinion on the law of the Visigoths and the practice of that nation. It is much better to rely on the capitularies themselves; that which I have just quoted says expressly the contrary. The treaty between Charles the Bald and his brothers notices also those freemen who might choose to follow either a lord or the king; and this regulation is conformable to a great many others.

We may, therefore, conclude that there were three sorts of military services; that of the king's vassals, who had other vassals under them;

that of the bishops or of the other clergy and their vassals, and, in fine, that of the count, who commanded the freemen.

Not but the vassals might be also subject to the count; as those who have a particular command are subordinate to him who is invested with a more general authority.

We even find that the count and the king's commissaries might oblige them to pay the fine when they had not fulfilled the engagements of their fief. In like manner, if the king's vassals committed any outrage[116] they were subject to the correction of the count, unless they choose to submit rather to that of the king.

18. Of the double Service. It was a fundamental principle of the monarchy that whosoever was subject to the military power of another person was subject also to his civil jurisdiction. Thus the Capitulary of Louis the Debonnaire,[117] in the year 815, makes the military power of the count and his civil jurisdiction over the freemen keep always an equal pace. Thus the placita[118] of the count who carried the freemen against the enemy were called the placita of the freemen;[119] whence undoubtedly came this maxim, that the questions relating to liberty could be decided only in the count's placita, and not in those of his officers. Thus the count never led the vassals[120] belonging to the bishops, or to the abbots, against the enemy, because they were not subject to his civil jurisdiction. Thus he never commanded the rear-vassals belonging to the king's vassals. Thus the glossary of the English laws informs us[121] that those to whom the Saxons gave the name of Coples[122] were by the Normans called counts, or companions, because they shared the justiciary fines with the king. Thus we see that at all times the duty of a vassal towards his lord[123] was to bear arms[124] and to try his peers in his court.

One of the reasons which produced this connection between the judiciary right and that of leading the forces against the enemy was because the

person who led them exacted at the same time the payment of the fiscal duties, which consisted in some carriage services due by the freemen, and in general, in certain judiciary profits, of which we shall treat hereafter.

The lords had the right of administering justice in their fief, by the same principle as the counts had it in their counties. And, indeed, the counties in the several variations that happened at different times always followed the variations of the fiefs; both were governed by the same plan, and by the same principles. In a word, the counts in their counties were lords, and the lords in their seigniories were counts.

It has been a mistake to consider the counts as civil officers, and the dukes as military commanders. Both were equally civil and military officers:[125] the whole difference consisted in the duke's having several counts under him, though there were counts who had no duke over them, as we learn from Fredegarius.[126]

It will be imagined, perhaps, that the government of the Franks must have been very severe at that time, since the same officers were invested with a military and civil power, nay, even with a fiscal authority, over the subjects; which in the preceding books I have observed to be distinguishing marks of despotism.

But we must not believe that the counts pronounced judgment by themselves, and administered justice in the same manner as the bashaws in Turkey; in order to judge affairs, they assembled a kind of assizes, where the principal men appeared.

To the end we may thoroughly understand what relates to the judicial proceedings in the formulas, in the laws of the Barbarians and in the capitularies, it is proper to observe that the functions of the count, of the Grafio or fiscal judge and the Centenarius were the same; that the judges, the Rathimburghers, and the aldermen were the same persons

under different names. These were the count's assistants, and were generally seven in number; and as he was obliged to have twelve persons to judge,[127] he filled up the number with the principal men.[128]

But whoever had the jurisdiction, the king, the count, the Grafio, the Centenarius, the lords, or the clergy, they never tried causes alone; and this usage, which derived its origin from the forests of Germany, was still continued even after the fiefs had assumed a new form.

With regard to the fiscal power, its nature was such that the count could hardly abuse it. The rights of the prince in respect to the freemen were so simple that they consisted only, as we have already observed, in certain carriages which were demanded of them on some public occasions.[129] And as for the judiciary rights, there were laws which prevented misdemeanors.[130]

19. Of Compositions among the barbarous Nations. Since it is impossible to gain any insight into our political law unless we are thoroughly acquainted with the laws and manners of the German nations, I shall, therefore, pause here awhile, in order to inquire into those manners and laws.

It appears by Tacitus that the Germans knew only two capital crimes; they hanged traitors, and drowned cowards; these were the only public crimes among that people. When a man had injured another, the relatives of the person injured took share in the quarrel, and the offence was cancelled by a satisfaction.[131] This satisfaction was made to the person offended, when capable of receiving it; or to the relatives if they had been injured in common, or if by the decease of the party aggrieved or injured the satisfaction had devolved to them.

In the manner mentioned by Tacitus, these satisfactions were made by the mutual agreement of the parties; hence in the codes of the barbarous nations these satisfactions are called compositions.

The law of the Frisians[132] is the only one I find that has left the people in that situation in which every family at variance was in some measure in the state of nature, and in which, being unrestrained either by a political or civil law, they might give freedom to their revenge till they had obtained satisfaction. Even this law was moderated; a regulation was made[133] that the person whose life was sought after should be unmolested in his own house, as also in going and coming from church and the court where causes were tried. The compilers of the Salic law[134] cite an ancient usage of the Franks, by which a person who had dug a corpse out of the ground, in order to strip it, should be banished from society till the relatives had consented to his being re-admitted. And as before that time strict orders were issued to every one, even to the offender's own wife, not to give him a morsel of bread, or to receive him under their roofs, such a person was in respect to others, and others in respect to him, in a state of savagery till an end was put to this state by a composition.

This excepted, we find that the sages of the different barbarous nations thought of determining by themselves what would have been too long and too dangerous to expect from the mutual agreement of the parties. They took care to fix the value of the composition which the party wronged or injured was to receive. All those barbarian laws are in this respect most admirably exact; the several cases are minutely distinguished,[135] the circumstances are weighed, the law substitutes itself in the place of the person injured and insists upon the same satisfaction as he himself would have demanded in cold blood.

By the establishing of those laws, the German nations quitted that state of nature in which they seemed to have lived in Tacitus' time.

Rotharis declares, in the law of the Lombards,[136] that he had increased the compositions allowed by ancient custom for wounds, to the end that, the wounded person being fully satisfied, all enmities should cease. And indeed as the Lombards, from a very poor people had grown

rich by the conquest of Italy, the ancient compositions had become frivolous, and reconcilements prevented. I do not question but this was the motive which obliged the other chiefs of the conquering nations to make the different codes of laws now extant.

The principal composition was that which the murderer paid to the relatives of the deceased. The difference of conditions produced a difference in the compositions.[137] Thus in the law of the Angli, there was a composition of six hundred sous for the murder of an adeling, two hundred for that of a freeman, and thirty for killing a bondman. The largeness therefore of the composition for the life of a man was one of his chief privileges; for besides the distinction it made of his person, it likewise established a greater security in his favour among rude and boisterous nations.

This we are made sensible of by the law of the Bavarians:[138] it gives the names of the Bavarian families who received a double composition, because they were the first after the Agilolfings.[139] The Agilolfings were of the ducal race, and it was customary with this nation to choose a duke out of that family; these had a quadruple composition. The composition for a duke exceeded by a third that which had been established for the Agilolfings. "Because he is a duke," says the law, "a greater honour is paid to him than to his relatives."

All these compositions were valued in money. But as those people, especially when they lived in Germany, had very little specie, they might pay it in cattle, corn, movables, arms, dogs, hawks, lands, &c.[140] The law itself frequently determined the value of those things; which explains how it was possible for them to have such a number of pecuniary punishments with so very little money.[141]

These laws were therefore employed in exactly determining the difference of wrongs, injuries and crimes; to the end that every one might know how far he had been injured or offended, the reparation he was to receive,

and especially that he was to receive no more.

In this light it is easy to conceive that a person who had taken revenge after having received satisfaction was guilty of a heinous crime. This contained a public as well as a private offence; it was a contempt of the law of itself; a crime which the legislators never failed to punish.[142]

There was another crime which above all others was considered as dangerous, when those people lost something of their spirit of independence, and when the kings endeavoured to establish a better civil administration; this was the refusing to give or to receive satisfaction.[143] We find in the different codes of the laws of the Barbarians that the legislators were peremptory on this article.[144] In effect, a person who refused to receive satisfaction wanted to preserve his right of prosecution; he who refused to give it left the right of prosecution to the person injured; and this is what the sages had reformed in the institutions of the Germans, whereby people were incited but not compelled to compositions.

I have just now made mention of a text of the Salic law, in which the legislator left the party offended at liberty to receive or to refuse satisfaction; it is the law by which a person who had stripped a dead body was expelled from society till the relatives upon receiving satisfaction petitioned for his being re-admitted.[145] It was owing to the respect they had for sacred things that the compilers of the Salic laws did not meddle with the ancient usage.

It would have been absolutely unjust to grant a composition to the relatives of a robber killed in the act, or to the relatives of a woman who had been repudiated for the crime of adultery. The law of the Bavarians allowed no compositions in the like cases, but punished the relatives who sought revenge.[146]

It is no rare thing to meet with compositions for involuntary actions in the codes of the laws of the Barbarians. The law of the Lombards is generally very prudent; it ordained[147] that in those cases the compositions should be according to the person's generosity; and that the relatives should no longer be permitted to pursue their revenge.

Clotharius II made a very wise decree; he forbad the person robbed to receive any clandestine composition, and without an order from the judge.[148] We shall presently see the motive of this law.

20. Of what was afterwards called the Jurisdiction of the Lords. Besides the composition which they were obliged to pay to the relatives for murders or injuries, they were also under a necessity of paying a certain duty which the codes of the barbarian laws called fredum.[149] I intend to treat of it at large; and in order to give an idea of it, I begin with defining it as a recompense for the protection granted against the right of vengeance. Even to this day, fred in the Swedish language signifies peace.

The administration of justice among those rude and unpolished nations was nothing more than granting to the person who had committed an offence a protection against the vengeance of the party offended, and obliging the latter to accept of the satisfaction due to him: insomuch that among the Germans, contrary to the practice of all other nations, justice was administered in order to protect the criminal against the party injured.

The codes of the Barbarian laws have given us the cases in which the freda might be demanded. When the relatives could not prosecute, they allowed of no fredum; and indeed, when there was no prosecution there could be no composition for a protection against it. Thus, in the law of the Lombards,[150] if a person happened to kill a freeman by accident, he paid the value of the man killed, without the fredum; because, as he had killed him involuntarily, it was not the case in which the relatives

were allowed the right of prosecution. Thus in the law of the Ripuarians,[151] when a person was killed with a piece of wood, or with any instrument made by man, the instrument or the wood were deemed culpable, and the relatives seized upon them for their own use, but were not allowed to demand the fredum.

In like manner, when a beast happened to kill a man, the same law established a composition without the fredum, because the relatives of the deceased were not offended.[152]

In fine, it was ordained by the Salic law,[153] that a child who had committed a fault before the age of twelve should pay the composition without the fredum: as he was not yet able to bear arms, he could not be in the case in which the party injured, or his relatives, had a right to demand satisfaction.

It was the criminal that paid the fredum for the peace and security of which he had been deprived by his crime, and which he might recover by protection. But a child did not lose this security; he was not a man, and consequently could not be expelled from human society.

This fredum was a local right in favour of the person who was judge of the district.[154] Yet the law of the Ripuarians[155] forbade him to demand it himself: it ordained that the party who had gained the cause should receive it and carry it to the exchequer, to the end that there might be a lasting peace, says the law among the Ripuarians.

The greatness of the fredum was proportioned to the degree of protection: thus the fredum for the king's protection was greater than what was granted for the protection of the count, or of the other judges.[156]

Here I see the origin of the jurisdiction of the lords. The fiefs comprised very large territories, as appears from a vast number of

records. I have already proved that the kings raised no taxes on the lands belonging to the division of the Franks; much less could they reserve to themselves any duties on the fiefs. Those who obtained them had in this respect a full and perfect enjoyment, reaping every possible emolument from them. And as one of the most considerable emoluments was the justiciary profits (freda),[157] which were received according to the usage of the Franks, it followed thence that the person seized of the fief was also seized of the jurisdiction, the exercise of which consisted of the compositions made to the relatives, and of the profits accruing to the lord; it was nothing more than ordering the payment of the compositions of the law, and demanding the legal fines. We find by the formularies containing confirmation of the perpetuity of a fief in favour of a feudal lord,[158] or of the privileges of fiefs in favour of churches,[159] that the fiefs were possessed of this right. This appears also from an infinite number of charters[160] mentioning a prohibition to the king's judges or officers of entering upon the territory in order to exercise any act of judicature whatsoever, or to demand any judiciary emolument. When the king's judges could no longer make any demand in a district, they never entered it; and those to whom this district was left performed the same functions as had been exercised before by the judges.

The king's judges are forbidden also to oblige the parties to give security for their appearing before them; it belonged therefore to the person who had received the territory in fief to demand this security. They mention also that the king's commissaries shall not insist upon being accommodated with a lodging; in effect, they no longer exercised any function in those districts.

The administration therefore of justice, both in the old and new fiefs, was a right inherent in the very fief itself, a lucrative right which constituted a part of it. For this reason it had been considered at all times in this light; whence this maxim arose, that jurisdictions are patrimonial in France.

Some have thought that the jurisdictions derived their origin from the manumissions made by the kings and lords in favour of their bondmen. But the German nations, and those descended from them, are not the only people who manumitted their bondmen, and yet they are the only people that established patrimonial jurisdictions. Besides, we find by the formularies of Marculfus[161] that there were freemen dependent on these jurisdictions in the earliest times: the bondmen were therefore subject to the jurisdiction, because they were upon the territory; and they did not give rise to the fiefs for having been annexed to the fief.

Others have taken a shorter cut; the lords, say they (and this is all they say), usurped the jurisdictions. But are the nations descended from Germany the only people in the world that usurped the rights of princes? We are sufficiently informed by history that several other nations have encroached upon their sovereigns, and yet we find no other instance of what we call the jurisdiction of the lords. The origin of it is therefore to be traced in the usages and customs of the Germans.

Whoever has the curiosity to look into Loyseau[162] will be surprised at the manner in which this author supposes the lords to have proceeded in order to form and usurp their different jurisdictions. They must have been the most artful people in the world; they must have robbed and plundered, not after the manner of a military nation, but as the country justices and the attornies rob one another. Those brave warriors must be said to have formed a general system of politics throughout all the provinces of the kingdom, and in so many other countries in Europe; Loyseau makes them reason as he himself reasoned in his closet.

Once more; if the jurisdiction was not a dependence of the fief, how come we everywhere to find that the service of the fief was to attend the king or the lord, both in their courts and in the army?[163]

21. Of the Territorial Jurisdiction of the Churches. The churches acquired very considerable property. We find that our kings gave them

great seigniories, that is, great fiefs; and we find jurisdictions established at the same time in the demesnes of those churches. Whence could so extraordinary a privilege derive its origin? it must certainly have been in the nature of the grant. The church land had this privilege because it had not been taken from it. A seigniory was given to the church; and it was allowed to enjoy the same privileges as if it had been granted to a vassal, it was also subjected to the same service as it would have paid to the state if it had been given to a layman, according to what we have already observed.

The churches had therefore the right of demanding the payment of compositions in their territory, and of insisting upon the fredum; and as those rights necessarily implied that of hindering the king's officers from entering upon the territory to demand these freda and to exercise acts of judicature, the right which ecclesiastics had of administering justice in their own territory was called immunity, in the style of the formularies, of the charters, and of the capitularies.[164]

The law of the Ripuarians[165] forbids the freedom of the churches[166] to hold the assembly for administering justice in any other place than in the church where they were manumitted.[167] The churches had therefore jurisdictions even over freemen, and held their placita in the earliest times of the monarchy.

I find in the Lives of the Saints[168] that Clovis gave to a certain holy person power over a district of six leagues, and exempted it from all manner of jurisdiction. This, I believe, is a falsity, but it is a falsity of a very ancient date; both the truth and the fiction contained in that life are in relation to the customs and laws of those times, and it is these customs and laws we are investigating.[169]

Clotharius II orders the bishops or the nobility who are possessed of estates in distant parts, to choose upon the very spot those who are to administer justice, or to receive the judiciary emoluments.[170]

The same prince regulates the judiciary power between the ecclesiastic courts and his officers.[171] The Capitulary of Charlemagne in the year 802 prescribes to the bishops and abbots the qualifications necessary for their officers of justice. Another capitulary of the same prince inhibits the royal officers[172] to exercise any jurisdiction over those who are employed in cultivating church lands, except they entered into that state by fraud, and to exempt themselves from contributing to the public charges.[173] The bishops assembled at Rheims made a declaration that the vassals belonging to the respective churches are within their im-munity.[174] The Capitulary of Charlemagne in the year 806 ordains that the churches should have both criminal and civil jurisdiction over those who live upon their lands.[175] In fine, as the capitulary of Charles the Bald[176] distinguishes between the king's jurisdiction, that of the lords, and that of the church, I shall say nothing further upon this subject.

22. That the Jurisdictions were established before the End of the Second Race. It has been pretended that the vassals usurped the jurisdiction in their seigniories, during the confusion of the second race. Those who choose rather to form a general proposition than to examine it found it easier to say that the vassals did not possess than to discover how they came to possess. But the jurisdictions do not owe their origin to usurpations; they are derived from the primitive establishment, and not from its corruption.

"He who kills a freeman," says the law of the Bavarians, "shall pay a composition to his relatives if he has any; if not, he shall pay it to the duke, or to the person under whose protection he had put himself in his lifetime."[177] it is well known what it was to put oneself under the protection of another for a benefice.

"He who had been robbed of his bondman," says the law of the Alemans, "shall have recourse to the prince to whom the robber is subject; to the end that he may obtain a composition."[178]

"If a centenarius," says the decree of Childebert, "finds a robber in another hundred than his own, or in the limits of our faithful vassals, and does not drive him out, he shall be answerable for the robber, or purge himself by oath."[179] There was therefore a difference between the district of the centenarii and that of the vassals.

This decree of Childebert[180] explains the constitution of Clotharius of the same year, which being given for the same occasion and on the same matter differs only in the terms; the constitution calling in truste what by the decree is styled in terminis fidelium nostrorum. Messieurs Bignon and Ducange, who pretend that in truste signified another king's demesne, are mistaken in their conjecture.[181]

Pepin, King of Italy, in a constitution that had been made as well for the Franks as for the Lombards,[182] after imposing penalties on the counts and other royal officers for prevarications or delays in the administration of justice, ordains that if it happens that a Frank or a Lombard, possessed of a fief, is unwilling to administer justice, the judge to whose district he belongs shall suspend the exercise of his fief, and in the meantime, either the judge or his commissary shall administer justice.[183]

It appears by a Capitulary of Charlemagne,[184] that the kings did not levy the freda in all places. Another capitulary of the same prince shows the feudal laws[185] and feudal court to have been already established. Another of Louis the Debonnaire ordains that when a person possessed of a fief does not administer justice,[186] or binders it from being administered, the king's commissaries shall live in his house at discretion, till justice be administered. I shall likewise quote two capitularies of Charles the Bald; one of the year 861,[187] where we find the particular jurisdictions established, with judges and subordinate officers; and the other of the year 864,[188] where he makes a distinction between his own seigniories and those of private persons.

We have not the original grants of the fiefs, because they were established by the partition which is known to have been made among the conquerors. It cannot, therefore, be proved by original contracts that the jurisdictions were at first annexed to the fiefs: but if in the formularies of the confirmations, or of the translations of those fiefs in perpetuity, we find, as already has been observed, that the jurisdiction was there established, this judiciary right must certainly have been inherent in the fief and one of its chief privileges.

We have a far greater number of records that establish the patrimonial jurisdiction of the clergy in their districts than there are to prove that of the benefices or fiefs of the feudal lords; for which two reasons may be assigned. The first, that most of the records now extant were preserved or collected by the monks, for the use of their monasteries. The second, that the patrimony of the several churches having been formed by particular grants, and by a kind of derogation from the order established, they were obliged to have charters granted to them; whereas the concessions made to the feudal lords being consequences of the political order, they had no occasion to demand, and much less to preserve, a particular charter. Nay the kings were oftentimes satisfied with making a simple delivery with the sceptre, as appears from the Life of St. Maur.

But the third formulary of Marculfus sufficiently proves that the privileges of immunity, and consequently that of jurisdiction, were common to the clergy and the laity, since it is made for both.[189] The same may be said of the constitution of Clotharius II.[190]

23. General Idea of the Abbé du Bos' Book on the Establishment of the French Monarchy in Gaul. Before I finish this book, it will not be improper to write a few strictures on the Abbé du Bos' performance, because my notions are perpetually contrary to his; and if he has hit on the truth, I must have missed it.

This performance has imposed upon a great many because it is penned with art; because the point in question is constantly supposed; because the more it is deficient in proofs the more it abounds in probabilities; and, in fine, because an infinite number of conjectures are laid down as principles, and thence other conjectures are inferred as consequences. The reader forgets he has been doubting in order to begin to believe. And as a prodigious fund of erudition is interspersed, not in the system but around it, the mind is taken up with the appendages, and neglects the principal. Besides, such a vast multitude of researches hardly permits one to imagine that nothing has been found; the length of the way makes us think that we have arrived at our journey's end.

But when we examine the matter thoroughly, we find an immense colossus with earthen feet; and it is the earthen feet that render the colossus immense. If the Abbé du Bos' system had been well grounded, he would not have been obliged to write three tedious volumes to prove it; he would have found everything within his subject, and without wandering on every side in quest of what was extremely foreign to it; even reason itself would have undertaken to range this in the same chain with the other truths. Our history and laws would have told him, "Do not take so much trouble, we shall be your vouchers."

24. The same Subject continued. Reflection on the main Part of the System. The Abbé du Bos endeavours by all means to explode the opinion that the Franks made the conquest of Gaul. According to his system. Our kings were invited by the people, and only substituted themselves in the place and succeeded to the rights of the Roman Emperors.

This pretension cannot be applied to the time when Clovis, upon his entering Gaul, took and plundered the towns; neither is it applicable to the period when he defeated Syagrius, the Roman commander, and conquered the country which he held; it can, therefore, be referred only to the period when Clovis, already master of a great part of Gaul by open force, was called by the choice and affection of the people to the

sovereignty over the rest. And it is not enough that Clovis was received, he must have been called; the Abbé du Bos must prove that the people chose rather to live under Clovis than under the domination of the Romans or under their own laws. Now the Romans belonging to that part of Gaul not yet invaded by the Barbarians were, according to this author, of two sorts: the first were of the Armorican confederacy, who had driven away the emperor's officers in order to defend themselves against the Barbarians, and to be governed by their own laws; the second were subject to the Roman officers. Now, does the Abbé produce any convincing proofs that the Romans, who were still subject to the empire, called in Clovis? Not one. Does he prove that the republic of the Armoricans invited Clovis; or even concluded any treaty with him? Not at all. So far from being able to tell us the fate of this republic, he cannot even so much as prove its existence; and notwithstanding he pretends to trace it from the time of Honorius to the conquest of Clovis, notwithstanding he relates with most admirable exactness all the events of those times; still this republic remains invisible in ancient authors. For there is a wide difference between proving by a passage of Zozimus[191] that under the Emperor Honorius, the country of Armorica[192] and the other provinces of Gaul revolted and formed a kind of republic, and showing us that notwithstanding the different pacifications of Gaul, the Armoricans formed always a particular republic, which continued till the conquest of Clovis; and yet this is what he should have demonstrated by strong and substantial proofs, in order to establish his system. For when we behold a conqueror entering a country, and subduing a great part of it by force and open violence, and soon after find the whole country subdued, without any mention in history of the manner of its being effected, we have sufficient reason to believe that the affair ended as it began.

When we find he has mistaken this point, it is easy to perceive that his whole system falls to the ground; and as often as he infers a consequence from these principles that Gaul was not conquered by the Franks, but that the Franks were invited by the Romans, we may safely

deny it.

This author proves his principle by the Roman dignities with which Clovis was invested: he insists that Clovis succeeded to Childeric his father in the office of magister militiæ. But these two offices are merely of his own creation. St. Remigius' letter to Clovis, on which he grounds his opinion, is only a congratulation upon his accession to the crown.[193] When the intent of a writing is so well known, why should we give it another turn?

Clovis, towards the end of the reign, was made consul by the Emperor Anastasius: but what right could he receive from an authority that lasted only one year? it is very probable, says our author, that in the same diploma the Emperor Anastasius made Clovis proconsul. And, I say, it is very probable he did not. With regard to a fact for which there is no foundation, the authority of him who denies is equal to that of him who affirms. But I have also a reason for denying it. Gregory of Tours, who mentions the consulate, says never a word concerning the proconsulate. And even this proconsulate could have lasted only about six months. Clovis died a year and a half after he was created consul; and we cannot pretend to make the pro-consulate an hereditary office. In fine, when the consulate, and, if you will, the proconsulate, were conferred upon him, he was already master of the monarchy, and all his rights were established.

The second proof alleged by the Abbé du Bos is the renunciation made by the Emperor Justinian, in favour of the children and grandchildren of Clovis, of all the rights of the empire over Gaul. I could say a great deal concerning this renunciation. We may judge of the regard shown to it by the kings of the Franks, from the manner in which they performed the conditions of it. Besides, the kings of the Franks were masters and peaceable sovereigns of Gaul; Justinian had not one foot of ground in that country; the western empire had been destroyed a long time before, and the eastern empire had no right to Gaul, but as representing the

emperor of the west. These were rights upon rights; the monarchy of the Franks was already founded; the regulation of their establishment was made; the reciprocal rights of the persons and of the different nations who lived in the monarchy were admitted, the laws of each nation were given and even reduced to writing. What, therefore, could that foreign renunciation avail to a government already established?

What can the Abbé mean by making such a parade of the declamations of all those bishops, who, amidst the confusion and total subversion of the state, endeavour to flatter the conqueror? What else is implied by flattering but the weakness of him who is obliged to flatter? What do rhetoric and poetry prove but the use of those very arts? Is it possible to help being surprised at Gregory of Tours, who, after mentioning the assassinations committed by Clovis, says that God laid his enemies every day at his feet, because he walked in his ways? Who doubts but the clergy were glad of Clovis's conversion, and that they even reaped great advantages from it? But who doubts at the same time that the people experienced all the miseries of conquest and that the Roman government submitted to that of the Franks? The Franks were neither willing nor able to make a total change; and few conquerors were ever seized with so great a degree of madness. But to render all the Abbé du Bos' consequences true, they must not only have made no change among the Romans, but they must even have changed themselves.

I could undertake to prove, by following this author's method, that the Greeks never conquered Persia. I should set out with mentioning the treaties which some of their cities concluded with the Persians; I should mention the Greeks who were in Persian pay, as the Franks were in the pay of the Romans. And if Alexander entered the Persian territories, besieged, took, and destroyed the city of Tyre, it was only a particular affair like that of Syagrius. But, behold the Jewish pontiff goes forth to meet him. Listen to the oracle of Jupiter Ammon. Recollect how he had been predicted at Gordium. See what a number of towns crowd, as it were, to submit to him; and how all the satraps and grandees come to pay him

obeisance. He put on the Persian dress; this is Clovis' consular robe. Does not Darius offer him one half of his kingdom? Is not Darius assassinated like a tyrant? Do not the mother and wife of Darius weep at the death of Alexander? Were Quintius Curtius, Arrian, or Plutarch, Alexander's contemporaries? Has not the invention of printing afforded us great light which those authors wanted?[194] Such is the history of the Establishment of the French Monarchy in Gaul.

25. Of the French Nobility. The Abbé du Bos maintains that at the commencement of our monarchy there was only one order of citizens among the Franks. This assertion, so injurious to the noble blood of our principal families, is equally affronting to the three great houses which successively governed this realm. The origin of their grandeur would not, therefore, have been lost in the obscurity of time. History might point out the ages when they were plebeian families; and to make Childeric, Pepin, and Hugh Capet gentlemen, we should be obliged to trace their pedigree among the Romans or Saxons, that is, among the conquered nations.

This author grounds his opinion on the Salic law.[195] By that law, he says, it plainly appears that there were not two different orders of citizens among the Franks: it allowed a composition of two hundred sous for the murder of any Frank whatsoever;[196] but among the Romans it distinguished the king's guest, for whose death it gave a composition of three hundred sous, from the Roman proprietor to whom it granted a hundred, and from the Roman tributary to whom it gave only a composition of forty-five. And as the difference of the compositions formed the principal distinction, he concludes that there was but one order of citizens among the Franks, and three among the Romans.

It is astonishing that his very mistake did not set him right. And, indeed, it would have been very extraordinary that the Roman nobility who lived under the domination of the Franks should have had a larger composition, and been persons of much greater importance than the most

illustrious among the Franks, and their greatest generals. What probability is there that the conquering nation should have so little respect for themselves, and so great a regard for the conquered people? Besides, our author quotes the laws of other barbarous nations which prove that they had different orders of citizens. Now it would be a matter of astonishment that this general rule should have failed only among the Franks. Hence he ought to have concluded either that he did not rightly understand or that he misapplied the passages of the Salic law, which is actually the case.

Upon opening this law, we find that the composition for the death of an Antrustio.[197] that is, of the king's vassal, was six hundred sous; and that for the death of a Roman, who was the king's guest, was only three hundred.[198] We find there likewise that the composition[199] for the death of an ordinary Frank was two hundred sous;[200] and for the death of an ordinary Roman, was only one hundred.[201] For the death of a Roman tributary,[202] who was a kind of bondman or freedman, they paid a composition of forty-five sous: but I shall take no notice of this, any more than of the composition for the murder of a Frank bondman or of a Frank freedman, because this third order of persons is out of the question.

What does our author do? He is quite silent with respect to the first order of persons among the Franks, that is the article relating to the Antrustios; and afterwards upon comparing the ordinary Frank, for whose death they paid a composition of two hundred sous, with those whom he distinguishes under three orders among the Romans, and for whose death they paid different compositions, he finds that there was only one order of citizens among the Franks, and that there were three among the Romans.

As the Abbé is of opinion that there was only one order of citizens among the Franks, it would have been lucky for him that there had been only one order also among the Burgundians, because their kingdom

constituted one of the principal branches of our monarchy. But in their codes we find three sorts of compositions, one for the Burgundians or Roman nobility, the other for the Burgundians or Romans of a middling condition, and the third for those of a lower rank in both nations.[203] He has not quoted this law.

It is very extraordinary to see in what manner he evades those passages which press him hard on all sides.[204] If you speak to him of the grandees, lords, and the nobility, these, he says, are mere distinctions of respect, and not of order; they are things of courtesy, and not legal privileges; or else, he says, those people belonged to the king's council; nay, they possibly might be Romans: but still there was only one order of citizens among the Franks. On the other hand, if you speak to him of some Franks of an inferior rank,[205] he says they are bondmen; and thus he interprets the decree of Childebert. But I must stop here a little, to inquire farther into this decree. Our author has rendered it famous by availing himself of it in order to prove two things: the one that all the compositions we meet with in the laws of the Barbarians were only civil fines added to corporal punishments, which entirely subverts all the ancient records;[206] the other, that all freemen were judged directly and immediately by the king.[207] which is contradicted by an infinite number of passages and authorities informing us of the judiciary order of those times.[208]

This decree, which was made in an assembly of the nation,[209] says that, if the judge finds a notorious robber, he must command him to be tied, in order to be carried before the king, si Francus fuerit; but if he is a weaker person (debilior persona), he shall be hanged on the spot. According to the Abbé du Bos, Francus is a freeman, debilior persona is a bondman. I shall defer entering for a moment into the signification of the word Francus, and begin with examining what can be understood by these words, a weaker person, In all languages whatsoever, every comparison necessarily supposes three terms, the greatest, the less degree, and the least. If none were here meant but freemen and

bondmen, they would have said a bondman, and not a man of less power. Therefore debilior persona does not signify a bondman, but a person of a superior condition to a bondman. Upon this supposition, Francus cannot mean a freeman, but a powerful man; and this word is taken here in that acceptation, because among the Franks there were always men who had greater power than others in the state, and it was more difficult for the judge or count to chastise them. This construction agrees very well with many capitularies[210] where we find the cases in which the criminals were to be carried before the king, and those in which it was otherwise.

It is mentioned in the Life of Louis the Debonnaire,[211] written by Tegan, that the bishops were the principal cause of the humiliation of that emperor, especially those who had been bondmen and such as were born among the Barbarians. Tegan thus addresses Hebo, whom this prince had drawn from the state of servitude, and made Archbishop of Rheims: "What recompense did the Emperor receive from you for so many benefits? He made you a freeman, but did not ennoble you, because he could not give you nobility after having given you your liberty."[212]

This passage, which proves so strongly the two orders of citizens, does not at all confound the Abbé du Bos. He answers thus:[213] "The meaning of this passage is not that Louis the Debonnaire was incapable of introducing Hebo into the order of the nobility. Hebo, as Archbishop of Rheims, must have been of the first order, superior to that of the nobility." I leave the reader to judge whether this be not the meaning of that passage; I leave him to judge whether there be any question here concerning a precedence of the clergy over the nobility. "This passage proves only," continues the same writer,[214] "that the free-born subjects were qualified as noblemen; in the common acceptation, noblemen and men who are free-born have for this long time signified the same thing." What! because some of our burghers have lately assumed the quality of noblemen, shall a passage of the Life of Louis the Debonnaire be applied to this sort of people? "And perhaps," continues he

still,[215] "Hebo had not been a bondman among the Franks, but among the Saxons, or some other German nation, where the people were divided into several orders." Then, because of the Abbé du Bos' "perhaps," there must have been no nobility among the nation of the Franks. But he never applied a "perhaps" so badly. We have seen that Tegan distinguishes the bishops,[216] who had opposed Louis the Debonnaire, some of whom had been bondmen, and others of a barbarous nation. Hebo belonged to the former and not to the latter. Besides, I do not see how a bondman, such as Hebo, can be said to have been a Saxon or a German; a bondman has no family, and consequently no nation. Louis the Debonnaire manumitted Hebo; and as bondmen after their manumission embraced the law of their master, Hebo had become a Frank, and not a Saxon or German.

I have been hitherto acting offensively; it is now time to defend myself. It will be objected to me that indeed the body of the Antrustios formed a distinct order in the state from that of the freemen; but as the fiefs were at first precarious, and afterwards for life, this could not form a nobleness of descent, since the privileges were not annexed to an hereditary fief. This is the objection which induced M. de Valois to think that there was only one order of citizens among the Franks; an opinion which the Abbé du Bos has borrowed of him, and which he has absolutely spoiled with so many bad arguments. Be that as it may, it is not the Abbé du Bos that could make this objection. For after having given three orders of Roman nobility, and the quality of the king's guest for the first, he could not pretend to say that this title was a greater mark of a noble descent than that of Antrustio. But I must give a direct answer. The Antrustios or trusty men were not such because they were possessed of a fief, but that they had a fief given them because they were Antrustios or trusty men. The reader may please to recollect what has been said in the beginning of this book. They had not at that time, as they had afterwards, the same fief: but if they had not that, they had another, because the fiefs were given at their birth, and because they were often granted in the assemblies of the nation, and, in fine, because as it was the interest of the nobility to receive them it

was likewise the king's interest to grant them. These families were distinguished by their dignity of trusty men, and by the privilege of being qualified to swear allegiance for a fief. In the following book[217] I shall demonstrate how, from the circumstances of the time, there were freemen who were permitted to enjoy this great privilege, and consequently to enter into the order of nobility. This was not the case at the time of Gontram, and his nephew Childebert; but so it was at the time of Charlemagne. But though in that prince's reign the freemen were not incapable of possessing fiefs, yet it appears, by the above-cited passage of Tegan, that the emancipated serfs were absolutely excluded. Will the Abbé du Bos, who carries us to Turkey to give us an idea of the ancient French nobility;[218] will he, I say, pretend that they ever complained among the Turks of the elevation of people of low birth to the honours and dignities of the state, as they complained under Louis the Debonnaire and Charles the Bald? There was no complaint of that kind under Charlemagne, because this prince always distinguished the ancient from the new families; which Louis the Debonnaire, and Charles the Bald did not.

The public should not forget the obligation it owes to the Abbé du Bos for several excellent performances. It is by these works, and not by his history of the Establishment of the French Monarchy, we ought to judge of his merit. He committed very great mistakes, because he had more in view the Count of Boulainvilliers' work than his own subject.

From all these strictures I shall draw only one reflection: if so great a man was mistaken, how cautiously ought I to tread?

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1. Quantum vertice ad oras Æthereas, tantum radice ad Tartara tendit -- Virgil, Georg., ii. 292; Æneid, iv. 446.

2. Book iv.

3. For instance, his retreat from Germany. -- Ibid.

4. De Bello Gall., vi. 21; Tacitus, De Moribus Germanorum, 31.

5. De Moribus Germanorum, 13.

6. Comites.

7. De Bello Gall., vi. 22.

8. See the Life of Dagobert.

9. See Gregory of Tours, vi, on the marriage of the daughter of Chilperic. Childebert sends ambassadors to tell him that he should not give the cities of his father's kingdom to his daughter, nor his treasures, nor his bondmen, nor horses, nor horsemen, nor teams of oxen, &c.

10. The Romans obliged themselves to this by treaties. See Zozimus, v, upon the distribution of corn demanded by Alaric. -- ED.

11. Marius' Chronicle in the year 456.

12. Book x, tit. 1, §§ 8, 9, & 16.

13. Chapter 54, §§ 1, 2. This division was still subsisting in the time of Louis the Debonnaire, as appears by his Capitulary of the year 829, which has been inserted in the law of the Burgundians, tit. 79, § 1.

14. See Procopius, War of the Goths.

15. See Procopius, War of the Vandals.

16. Law of the Burgundians, tit. 54, § 1.

17. Art. 11.

18. De Moribus Germanorum, 21.

19. And in that of the Visigoths.

20. Tit. 54.

21. This is confirmed by the whole title of the code de Agricolis et Censitis, et Colonis.

22. Tit. 26, §§ 1, a.

23. Tit. 57.

24. Ovid, Met. ii. 134.

25. While Gaul was under the dominion of the Romans they formed particular bodies; these were generally freedmen, or the descendants of freedmen.

26. See Gregory of Tours, ii, 27. Aimoin, i. 12.

27. See the Lives of the Saints, footnote 7, below.

28. Gregory of Tours, ii.

29. Ibid., vi. 31.

30. Cassiodorus, iii. 43.

31. In the year 763.

32. See the annals of Fuld, in the year 739, Paulus Diaconus, De gestis

Longobardorum, iii. 30, iv. 1, and the Lives of the Saints in the next footnote.

33. See the lives of St. Epiphanius, St. Eptadius, St. Cæsarius, St. Fidolus, St. Porcian, St. Treverius, St. Eusichius, and of St. Leger; the miracles of St. Julian, &c.

34. Ovid, Met., i. 293.

35. Even the husbandmen themselves were not all slaves; see the Leg. 18, 23, Cod. de Agricolis, et Censitis, et Colonis, and Leg. 20 of the same title.

36. See Gregory of Tours, ii.

37. Ibid., v. 28.

38. Ibid., viii. 36.

39. Life of St. Aridius.

40. Book vii.

41. Establishment of the French Monarchy, iii. 14, p. 515. See Baluzius, ii, p. 187.

42. Book iii. 36.

43. Book iii, p. 514.

44. Book x, tit. 1, cap. xiv.

45. The Vandals paid none in Africa. -- Procopius, War of the Vandals, i, ii. Historia Miscella, xvi, p. 106. Observe that the conquerors of

Africa were a mixture of Vandals, Alans, and Franks. Historia Miscella, xiv, p. 94.

46. Establishment of the Franks in Gaul, iii. 14, p. 510.

47. He lays a stress upon another law of the Visigoths, x, tit. 1, art. 11, which proves nothing at all; it says only that he who has received of a lord a piece of land on condition of a rent or service ought to pay it.

48. Book iii, p. 511.

49. Leg. 3, xi, tit. 74.

50. Establishment of the French Monarchy, iii. 14, p. 513, where he quotes the 28th article of the edict of Pistes. See farther on.

51. Ibid. iii. 4, p. 298.

52. In the year 815, cap. i, which is agreeable to the Capitulary of Charles the Bald, in the year 844, arts. 1, 2.

53. They were not obliged to furnish any to the count. --Ibid., art. 5.

54. The counts are forbidden to deprive them of their horses, ut hostem facere, et debitos paraveredos secundum antequam consuetudinem exsolvere possint. -- Edict of Pistes, in Baluzius, p. 186.

55. Capitulary of Charlemagne, 1, in the year 812. Edict of Pistes in the year 864, art. 27.

56. Quatuor mansos. I fancy that what they called Afansus was a particular portion of land belonging to a farm where there were bondmen; witness the capitulary of the year 853, apud Sylvacum, tit. 14, against

those who drove the bondmen from their Mansus.

57. See below, chapter 20 of this book.

58. In Duchesne, ii, p. 287.

59. Ibid., p. 89.

60. See the Capitulary of the year 858, art. 14.

61. They levied also some duties on rivers, where there happened to be a bridge or a passage.

62. The census was so generical a word, that they made use of it to express the tolls of rivers, when there was a bridge or ferry to pass. See the third Capitulary, in the year 803, edition of Baluzius, p. 395, art. 1; and the 5th in the year 819, p. 616. They gave likewise this name to the carriages furnished by the freemen to the king, or to his commissaries, as appeals by the Capitulary of Charles the Bald in the year 865, art. 8.

63. The Abbé du Bos, and his followers.

64. See the weakness of the arguments produced by the Abbé du Bos, in the Establishment of the French Monarchy, iii, book VI. 14; especially in the inference he draws from a passage of Gregory of Tours, concerning a dispute between his church and King Charibert.

65. For instance, by enfranchisements.

66. Plato, Timæus. -- ED.

67. Law of the Alemans, cap. xxii; and the Law of the Bavarians, tit. 1, cap. iv., where the regulations are to be found which the clergy made

concerning their order.

68. Capitularies, v. 303.

69. Book i, form. 19.

70. In the year 789, edition of the Capitularies by Baluzius, i, p. 250.

71. Ibid.

72. Ibid.

73. Præceptum pro Hispanis, in the year 812, ed. Baluzius, i, p. 500.

74. In the year 844, ed. Baluzius, ii, arts. 1 and 2, p. 27.

75. Third Capitulary of the year 805, arts. 20 and 22, inserted in the Collection of Angezise, iii, art. 15. This is agreeable to that of Charles the Bald, in the year 854, apud Attiniacum, art. 6.

76. Ibid.

77. In the year 812, arts. 10 and 11, ed. Baluzius, i, p. 498.

78. Capitulary of the year 812, arts. 10 and 11.

79. In the year 813, art. 6, ed. Baluzius, i, p. 508.

80. Capitulary of the year 813, art. 6.

81. Book iv of the Capitularies, art. 37, and inserted in the law of the Lombards.

82. Book iv of the Capitularies, art. 37.

83. In the year 805, art. 8.

84. Capitulary of the year 805, art. 8.

85. In the year 864, art. 34, ed. Baluzius, p. 192.

86. Ibid.

87. The 28th article of the same edict explains this extremely well; it even makes a distinction between a Roman freedman and a Frank freedman: and we likewise see there that the census was not general; it deserves to be read.

88. As appears by the Capitulary of Charlemagne in the year 813, which we have already quoted.

89. Comites. De Moribus Germanorum, 13.

90. Qui sunt in truste regis, tit. 44, art. 4.

91. Book i, form. 18.

92. From the word trew, which signifies faithful among the Germans.

93. Leudes, fideles.

94. Vassalli, seniores.

95. Fiscalia. See Marculfus, i. form. 14. It is mentioned in the Life of St. Maur, dedit fiscum unum: and in the annals of Metz, in the year 747, dedit illi comitatus et fiscos plurimos. The goods designed for the support of the royal family were called regalia.

96. See i, tit. 1, of the fiefs; and Cujas on that book.

97. Book ix. 38.

98. Ibid., vii.

99. Book i, form. 30.

100. Book iii, tit. 8, § 3.

101. Feudorum, i, tit. 1.

102. It was a kind of precarious tenure which the lord consented or refused to renew every year; as Cujas has observed.

103. See the Capitulary of Charlemagne in the year 812, arts. 3 and 4, ed. Baluzius, i, p. 491; and the edict of Pistes in the year 864, art. 26, ii, p. 186.

104. Book ii of the Capitularies, art. 28.

105. They were called Compagenses.

106. Published in the year 595, art. 1. See the Capitularies, ed. Baluzius, p. 20. These regulations were undoubtedly made by agreement.

107. Advocati.

108. Capitulary of Charlemagne, in the year 812, art. 1 and 5, ed. Baluzius, i, p. 490.

109. See the Capitulary of the year 803, published at Worms, ed Baluzius, pp. 408, 410.

110. Capitulary of Worms in the year 803, edition of Baluzius, p. 409; and the council in the year 845, under Charles, the Bald, in verno

palatio, edition of Baluzius, ii, p. 17, art. 8.

111. The fifth Capitulary of the year 819, art. 27, edition of Baluzius, p. 618.

112. Capitulary 11 in the year 812, art. 7, edition of Baluzius, i, p. 494.

113. Capitulary i of the year 812, art. 5, edition of Baluzius, i, p. 490.

114. In the year 812, cap. i, edition of Baluzius, p. 490.

115. Establishment of the French Monarchy, iii, book VI, cap. iv, p. 299.

116. Capitulary of the year 882, art. 11, apud vernis palatium, edition of Baluzius, ii, p. 289.

117. Art. 1, 2, and the council in verno palatio of the year 845, art. 8, edition of Baluzius, ii, p. 17.

118. Or assizes.

119. Capitularies, book iv of the Collection of Angezise, art. 57; and the fifth capitulary of Louis the Debonnaire, in the year 819, art. 14, edition of Baluzius, i, p. 615.

120. See the 8th note of the preceding chapter.

121. It is to be found in the Collection of William Larabard, De Priscis Anglorum legibus.

122. In the word Satrapia.

123. This is well explained by the assizes of Jerusalem, 221, 222.

124. The advowees of the church (advocati) were equally at the head of their placita and of their militia.

125. See Marculfus, i, form. 8, which contains the letters given to a duke, patrician, or count; and invests them with the civil jurisdiction, and the fiscal administration.

126. Chronicle, 78, in the year 636.

127. See concerning this subject the capitularies of Louis the Debonnaire added to the Salic law, art. 2, and the formula of judgments given by Du Cange in the word boni homines.

128. Per bonos homines, sometimes there were none but principal men. See the appendix to the formularies of Marculfus, 51.

129. And some tolls on rivers, of which I have spoken already.

130. See the law of the Ripuarians, tit. 89; and the law of the Lombards, ii, tit. 52, § 9.

131. Tacitus, De Moribus Germanorum, 21.

132. See this law in the 2nd title on murders; and Vulemar's addition on robberies.

133. Tit. i, § 1.

134. Salic Law, tit. 8, § 1; tit. 17, § 3.

135. The Salic laws are admirable in this respect, see especially the titles 3, 4, 5, 6, and 7, which related to the stealing of cattle.

136. Book i, tit. 7, § 15.

137. See the law of the Angli, tit. 1, §§ 1,2, and 4; ibid. tit. 5, § 6; the law of the Bavarians, tit. 1, cap. 8, 9, and the law of the Frisians, tit. 15.

138. Tit. 2, cap. xx.

139. Hozidra, Ozza, Sagana, Habalingua, Anniena. -- Ibid.

140. Thus the law of Ina valued life by a certain sum of money, or by a certain portion of land. Leges Inæ regis, titulo de villico regio de priscis Anglorum legibus. -- Cambridge, 1644.

141. See the law of the Saxons, which makes this same regulation for several people, cap. xviii. See also the law of the Ripuarians, tit. 36, § 11; the law of the Bavarians, tit. 1, §§ 10 and 11.

142. See the law of the Lombards, i, tit. 25 § 21; ibid., i, tit. 9, §§ 8, 34; ibid., § 38, and the Capitulary of Charlemagne in the year 802, cap. xxxii, containing an instruction given to those whom he sent into the provinces.

143. See in Gregory of Tours, vii. 47, the detail of a process, wherein a party loses half the composition that had been adjudged to him, for having done justice to himself, instead of receiving satisfaction, whatever injury he might have afterwards received.

144. See the law of the Saxons, cap. iii, § 4; the law of the Lombards, i, tit. 37, §§ 1 and 2; and the law of the Alemans, tit. 45, §§ 1 and 2. This last law gave leave to the party injured to right himself upon the spot, and in the first transport of passion. See also the Capitularies of Charlemagne in the year 779, cap. xxii, in the year 802, cap. xxxii, and also that of the year 805, cap. v.

145. The compilers of the law of the Ripuarians seem to have softened this. See the 85th title of those laws.

146. See the decree of Tassillon, De Popularibus legibus, art. 3, 4, 10, 16, 19; the law of the Angli, tit. vii. § 4.

147. Book i, tit. ix, § 4.

148. Pactus pro tenore pads inter Childebertum et Clotarium, anno 593, et decretio Clotarii 2 regis, circa annum 595, cap. xi.

149. When it was not determined by the law, it was generally the third of what was given for the composition, as appears in the law of the Ripuarians, cap. lxxxix, which is explained by the third Capitulary of the year 813. -- Edition of Baluzius, i, p. 512.

150. Book i, tit. 9, § 17, ed. Lindembrock.

151. Tit. 70.

152. Tit. 46. See also the law of the Lombards, i. cap. xxi, § 3, Lindembrock's edition, si caballus cum pede, &c.

153. Tit. 28, § 6.

154. As appears by the decree of Clotharius II in the year 595.

155. Tit. 89.

156. Capitulare incerti anni, 57, in Baluzius, i p. 515, and it is to be observed, that what was called fredum or faida, in the monuments of the first race, is known by the name of bannum in those of the second race, as appears from the Capitulary de partibus Saxoniæ, in the year 789.

157. See the Capitulary of Charlemagne, de villis, where he ranks these freda among the great revenues of what was called villa, or the king's demesnes.

158. See Marculfus, i, form. 3, 4, 17.

159. See Marculfus, i, form. 2, 3, 4.

160. See the Collections of those charters, especially that at the end of the 5th volume of the historians of France, published by the Benedictine monks.

161. See the 3rd, 4th, and 14th of the first book, and the charter of Charlemagne, in the year 771, in Martene, Anecdot. collect., i, ii.

162. Treatise of village jurisdictions, Loyseau.

163. See Du Cange on the word hominium.

164. See Marculfus, i, form. 3, 4.

165. Ne aliubi nisi ad ecclesiam, ubi relaxati sunt, mallum teneant, tit. 58, § i. See also § 19. Lindembrock's edition.

166. Tabulariis.

167. Mallum.

168. Vita S. Germeri, Episcopi Tolosani apud Bollandianos 16 Maii.

169. See also the life of St. Melanius, and that of St. Deicola.

170. In the council of Paris, in the year 615, art. 19. See also art. 12.

171. Ibid., art. 5.

172. In the law of the Lombards, ii, tit. 44, cap ii. Lindembrock's edition.

173. Ibid.

174. Letter in the year 858, art. 7 in the Capitularies, p. 108.

175. It is added to the law of the Bavarians, art. 7. See also art. 3. Lindembrock's edition, p. 444.

176. In the year 857, in synodo apud Carisiacum, art. 4, edition of Baluzius, p. 96.

177. Tit. 3, cap. xiii. Lindembrock's edition.

178. Tit. 85.

179. In the year 595, arts. 11 and 12, edition of the Capitularies by Baluzius, p. 19.

180. Arts. 2 and 3.

181. See Du Cange, Glossary, on the word trustis.

182. Inserted in the Law of the Lombards, ii. tit. 52, §14. It is the Capitulary of the year 793, in Baluzius, p. 544, art. 10.

183. See also the same law of the Lombards, ii, tit. 52, § 2, which relates to the Capitulary of Charlemagne of the year 779, art. 21.

184. The third of the year 812, art. 10.

185. The second of the year 813, arts. 14, 20, Baluzius' edition, p. 509.

186. Capitulare quintum anni 819 art. 23, Baluzius' edition, p. 617.

187. Edictum in Carisiaco in Baluzius, ii, p. 152.

188. Edictum Pistense, art. 18, Baluzius' edition, ii, p. 181.

189. Lib. 1.

190. I have already quoted it in the preceding chapter, Episcopi vel patentes.

191. History, vi.

192. Ibid.

193. Vol. ii, book III, 18, p. 270.

194. See the preliminary discourse of the Abbé du Bos.

195. See the Establishment of the French Monarchy, iii, book VI, 4, p. 301.

196. He cites the 44th title of this law, and the law of the Ripuarians, tit. 7 and 36.

197. Qui in truste dominicâ est, tit. 44, § 4, and this relates to the 13th formulary of Marculfus, de regis Antrustione. See also tit. 66, of the Salic law, §§ 3 and 4, and tit. 74; and the law of the Ripuarians, tit. 11, and the Capitulary of Charles the Bald, apud Carisiacum, in the year 877, cap. xx.

198. Salic law, tit. 44, § 6.

199. Tit. 44, § 4.

200. Tit. 44, § 1.

201. Tit. 44, § 15.

202. Tit. 44, § 7.

203. Arts. 1, 2, and 3, of tit. 26, of the law of the Burgundians.

204. Establishment of the French Monarchy, iii, book VI. 4, 5

205. Ibid.; iii. 5, pp. 319, 320.

206. Ibid., iii, book VI, 4, pp. 307, 308.

207. Ibid., p. 309, and in the following chapter, pp. 310,320.

208. See xxviii. 28 of this work; and xxxi. 8.

209. Capitulary, Baluzius's edition, i, p. 19.

210. See xxviii. 28 of this work; and xxxi. 8.

211. Chapters 43, 44.

212. Ibid.

213. Establishment of the French Monarchy, iii, book VI, 4, p. 316.

214. Ibid., p. 316.

215. Ibid.

216. De Gestis Ludovici Pii, 43, 44.

217. Chapter 23.

218. Establishment of the French Monarchy, iii, book VI. 4, p. 302.