the limits of their respective jurisdictions—in the ordinances enacted by the Sovereign for the government of the royal domaine; in the establishment of communes and their by-laws,—and in the compilation of the Canon law, and its general application to all questions decided by ecclesiastics. But to these causes must be added the discovery of the Justinian Code, which was brought from Italy into France about the middle of the twelfth century (1), and soon affected her jurisprudence in various gradations. In some of the provinces it was entirely adopted and confirmed, and declared, by the royal authority, to be exclusively their common or municipal law. In others it was received as subsidiary to their own local customs as a rule of decision in cases for which they had not provided; but in the greater number it mingled imperceptibly with their usages, and had a powerful though less sensible influence.

To the revival of the Roman law must also be attributed the decline of the trial by Peers and by the *prodes homines*. The duties of both were originally similar, and required neither capacity nor study. They decided upon the usage and custom of the people and place to which they belonged, and a knowledge of these was all which it was necessary for them to possess. But when the Institutes and Digest of Justinian were translated and publicly taught, the proceedings in the different tribunals were materially changed. Learning among the laity was totally unknown, but the clergy having some information, and being in possession of all the offices in the different Courts, eagerly adopted the practice of the Roman law. A new form of trial was thus introduced, which was no longer an exhibition of state, graceful to the Seigneur and interesting to a warlike people, but a dry course of pleading which they neither understood nor cared to learn, and upon which the Judge was soon left to give judgment alone, for the Peers and the "*prodes homines*," being no longer capable of deciding, withdrew by degrees, and were succeeded by lawyers, who were appointed to assist the Judges with their advice, under the title of *assessors* (2).

(1) Montesquieu, Lib. 28, cap. 42; Robertson's Charles V., vol. 1, p. 316.

(2) Montesquieu, Book 28, cap. 42, Vol. 2, p. 319 and 320.

The Royal Judges, upon their re-establishment, were greatly embarrassed by the different local customs to which, in the administration of justice, they were compelled to have recourse, and upon which, by the secession of the Peers and *prodes homines*, they found themselves obliged to decide in person. It was impossible for them to have a knowledge of the usages in each particular Seigneurie, and, therefore, in all cases in which any question arose respecting the existence of a custom, or of the practice which had obtained under a particular custom, there was an absolute necessity for a recourse to parole testimony, by which means all questions of law became mere questions of fact, in which he who held the affirmative was required to prove what he asserted, by the production of ten witnesses at least (1).

In such an inquiry, which was called an *enquête per turbes*, so much depended upon the influence and industry of the suitors, and upon the experience and integrity of the witnesses, that it was at all times difficult to come to the truth, especially when evidence was adduced by both parties; in such cases equal proof was sometimes made of two customs, in direct opposition to each other, in the same place, and upon the same fact (2).

The reduction of the whole to writing was pointed out, in reference to the Roman law, as an effectual remedy for these evils, and was adopted. At first the usages of certain Bailiwicks were collected by individuals. Pierre Desfontaines (the earliest writer on the law of France) published his "*Conseil*," which contains an account of the customs of the country of Vermandois and Beaumanoir, the "*Coustumes de Beauvoisis*," during the reign of St. Louis, which began in the year 1226 (3). These works were followed by others of the same description (4), and by one of a public nature, "*Les Etablissemens de St. Louis*," which contained a large collection of the law and customs which prevailed within the Royal Domaines, and was published by the authority of that monarch (5).

The compilations of individuals could have

(1) Fleury's Hist. du Droit Francais, p. 85; Ferriere's Gd. Com., Vol. 1, p. 5, sec. 2, art. 1.

(2) Fleury's Hist. du Droit Francais, p. 85.

(3) Robertson's Charles V., vol. 1, p. 317.

(4) Montesquien, Lib. 28, ch. 45, vol. 2, p. 324.

(5) Dict. de Jurisp., vol. 3.