

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, grateful 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* (1).

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 of 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 (2).

(1) Montesquieu, Book 28, cap. 42, vol. 2d. p. 319 & 320.

(2) Fleury's Hist. du Droit François, p. 85. Ferrière's gd. Com. vol. 1st. p. 5, sec. 2, art. 1.