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THE EARLY JURIDICAL HISTORY OF FRANCE.

[Continued from p. 140.]

It is certain that a supreme jurisdiction over all persons, and all causes, was exercised by the Assemblies of the Champ de Mars, but the precise extent of that jurisdiction, which was originally vested in the subordinate Courts of the Crown, or of the feudal Lords or Seigneurs, cannot now be determined.(1) It appears, however, from the learned researches of a modern writer (Montesquieu), to have been a fundamental principle of the French Monarchy, that every person who held a military command in chief, was, of right, entitled to a civil jurisdiction over all whom he led to war.(2) Justice, therefore, was distributed by every feudal Seigneur to his vassals, within the limits of his Fief, whether he was a layman or an ecclesiastic, for he led them in person against the enemy, if he was a layman, and by his substitute (*advocatus*) if he happened to be an ecclesiastic,(3) and, upon the same principle, the *Liberi* or tenants of allodial estates who were led to war by the Dukes and Counts were subject to their jurisdiction (4). The rule of decision, however, in every court was the general Law of the state, and the King, being the acknowledged head of the Government, in all matters, civil and military, all proceedings were in his name.(5)

The Dukes, the Counts and the Seigneurs, in their respective jurisdictions, originally decided causes in person,(6) but they, afterwards, entrusted this part of their duty to others. The officer who was appointed for the purpose by a Seigneur, was sometimes called a *Seneschal*,(7)

(1) Robertson's Charles V. 1st, p. 304.

(2) Montesquieu, lib. 30, cap. 18. Répert. 8 vo. vol. 25, p. 6. Loyseau des Seigneuries, cap. 1, Sect. 72 & 73.

(3) Montesquieu, liber 30, cap. 17, vol. 2, p. 377.

(4) Montesquieu, lib. 30, cap. Répert. vol. 6, p. 8, 8 vo. edit.

(5) Montesquieu, lib. 39, cap. 17.

(6) Dictionnaire de Jurisprudence, vol. 3, p. 18, col. 1.

(7) The title of *Seneschal* imported "an officer of the household." Viscounts were said to be "quasi comitum vicem gerentes;" *Prevosts* "quasi praepositi iurisdictionis;" *Viguier*s "quasi vicarii comitum;" and *Chastelans* "quasi castrorum custodes." Loyseau de l'abus de Justice des Villages, p. 6, quod vide.

but most commonly a *Bailiff* which, in the language of those days, imported a guardian or protector of Justice, (1) and those who were named by the Dukes and Counts, were called *Viscounts*, *Prevosts*, *Viguier*s and *Chastelans*.(2) But in all their Jurisdictions, an usage, which derived its origin from the forests of Germany, was continued. Neither the Dukes, the Counts nor the *Seigneurs*, nor any of their officers decided alone. They assembled in their courts a kind of assize composed of their vassals, to the number of twelve,(3) who were, principally, the officers of their respective courts, and by those persons (who as vassals were the equals of the parties whose causes were there tried and thence called *Peers*) the judgment was pronounced according to the opinion of the majority, unless there was an equal division of voices, when, in criminal cases, it was given for the accused, and in cases of inheritance, in favor of the defendant, subject always to an appeal to arms, and an ultimate decision by judicial combat.(4)

The feudal system is well calculated for defence, but not for the support of order. In theory it is founded in subordination, but in practice it has been found universally to have diminished the power of the sovereign, while it increased that of the greater vassals. This was particularly the case in France, where the seigneurs, at a very early period of the monarchy began to usurp the rights which had till then been deemed the distinctions of Royalty, and with such advantage, in consequence of the weakness of the Kings of the second race, and the anarchy into which the Kingdom was thrown by the depredations of the Hungarians and Normans(5) during the ninth and tenth centuries, that the very dependants of the Crown, the Dukes, the Counts, and even the inferior officers of the State, were induced, by their example, to adopt the same conduct; they combined together, and about the period at which Hugh Capet, the first of the third race, took possession of the Throne, were completely successful. They made hereditary, in their

(1) Encyc. Method. verbo "bailiff," vol. 1, p. 710. Dict. de Droit, verbo "bailiff." Loyseau de l'abus de Justice des Villages, p. 6, and Loyseau des Offices, p. 4, & p. 349.

(2) Loyseau de l'Abus de Justice des Villages, p. 6.

(3) Montesquieu, book 30, cap. 18, vol. 2, pp. 381 & 382.

(4) Montesquieu, book 28, cap. 23—27.

(5) Fleury, p. 47.