

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 favour of the Defendant, subject always to an appeal to arms, and an ultimate decision by judicial combat, (1)

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 (2), 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 families, the lands, titles and offices, which, before, they had enjoyed for life only. They usurped the sovereignty of the soil, with civil and military authority over the inhabitants. They granted lands to their immediate tenants, who granted them over to others by subinfeudation, and, although they professed to hold their Fiefs from the Crown, they were, in fact, independent. Strong in power, they exercised, in their several territories, every Royal prerogative.—They coined money—fixed the standard of weights and measures—granted safeguards—entertained a military force—imposed taxes—and administered justice in their own names, and in Courts of their own creation, which decided ultimately in all cases, civil and criminal, not according to the written Laws of the Kingdom, but according to the unwritten customs and usages of the District over which they respectively claimed and exercised jurisdiction (3),

(1) Montesquieu, Book 28, cap. 23, 24, 25,
26 & 27

(2) Fleury, p. 45.

(3) Fleury, p. 51 & 52.—Hargrave's Notes
on Coke's Littleton, p. 366, u.