

indeed, if the children of the sister were considered in her brother's house as his own children, it was natural for these to regard their aunt as their mother.

The sister of the mother was preferred to the father's sister; this is explained by other texts of the Salic law. When a woman became a widow,^o she fell under the guardianship of her husband's relatives; the law preferred to this guardianship the relatives by the females before those by the males. Indeed, a woman who entered into a family joining herself with those of her own sex, became more united to her relatives by the female than by the male. Moreover, when a man killed another, and had not wherewithal to pay the pecuniary penalty, the law permitted him to deliver up his substance and his relatives were to supply the deficiency.^p After the father, mother, and brother, the sister of the mother was to pay, as if this tie had something in it most tender: now the degree of kindred which imposes the burdens ought also to confer the advantages.

The Salic law enjoins that after the father's sister, the succession should be held by the nearest relative male; but if this relative was beyond the fifth degree, he should not inherit. Thus a female of the fifth degree might inherit to the prejudice of a male of the sixth; and this may be seen in the law of the Ripuarian Franks (a faithful interpreter of the Salic law), under the title of allodial lands, where it closely adheres to the Salic law on the same subject.^q

If the father left issue, the Salic law would have the daughters excluded from the inheritance of the Salic land, and determined that it should belong to the male children.

It would be easy for me to prove that the Salic law did not absolutely exclude the daughters from the possession of the Salic land, but only in the case where they were debarred by their brothers. 1. This appears from the letter of the Salic law; which, after having said that the women shall possess none of the Salic land, but only the males, interprets and restrains itself by adding, "that is, the son shall succeed to the inheritance of the father."

2. The text of the Salic law is cleared up by the law of the

at Leovigild's ill treatment of Ingunda, his niece, which Childebert, her brother, took up arms to revenge.
^o Salic law, tit. 47.

^p Ibid. tit. 61, sec. 1.

^q "Et deinceps usque ad quintum genuculum qui proximus fuerit in hereditatem succedat."—Tit. 56, sec. 3.

Ripuarian Franks, which has also a title on allodial lands very conformable to that of the Salic law.^r

3. The laws of these barbarous nations who all sprang from Germany interpret each other, more particularly as they all have nearly the same spirit. The Saxon law enjoined the father and mother to leave their inheritance to their son, and not to their daughter; but if there were none but daughters, they were to have the whole inheritance.^s

4. We have two ancient formularies^t that state the case in which, according to the Salic law, the daughters were excluded by the males; that is, when they stood in competition with their brother.

5. Another formulary^u proves that the daughter succeeded, to the prejudice of the grandson; she was, therefore, excluded only by the son.

6. If daughters had been generally debarred by the Salic law from the inheritance of land, it would be impossible to explain the histories, formularies, and charters which are continually mentioning the lands and possessions of the females under the first race.

People have been wrong in asserting that the Salic lands were fiefs.^v 1. This head is distinguished by the title of allodial lands. 2. Fiefs at first were not hereditary. 3. If the Salic lands had been fiefs, how could Marculfus treat that custom as impious which excluded the women from inheriting, when the males themselves did not succeed to fiefs? 4. The charters which have been cited to prove that the Salic lands were fiefs only show that they were freeholds. 5. Fiefs were not established till after the conquest, and the Salic customs existed long before the Franks left Germany. 6. It was not the Salic law that formed the establishment of fiefs, by setting bounds to the succession of females; but it was the establishment of fiefs that prescribed limits to the succession of females, and to the regulations of the Salic law.

After what has been said, one would not imagine that the perpetual succession of males to the crown of France should have

^r Tit. 56.

^s Ibid. 7, sec. 1: "Pater aut mater defuncti, filio non filiae hereditatem relinquant"; sec. 4: "qui defunctus, non filios, sed filias reliquerit, ad eas omnis hereditas pertineat."

^t In Marculfus, lib. II. form. 12, and in the Appendix to Marculfus, form. 49.
^u Lindembroch's collection, form. 55.
^v Ducange, Pithou, etc.

taken its rise from the Salic law. And yet this is a point indubitably certain. I prove it from the several codes of the barbarous nations. The Salic law,^w and the law of the Burgundians,^x debarred the daughters from the right of succeeding to the land in conjunction with their brothers; neither did they succeed to the crown. The law of the Visigoths,^y on the contrary, permitted the daughters to inherit the land with the brothers:^z and the women were capable of inheriting the crown.^a Amongst these people the regulations of the civil law had an effect on the political.

This was not the only case in which the political law of the Franks gave way to the civil. By the Salic law, all the brothers succeeded equally to the land, and this was also decreed by a law of the Burgundians. Thus, in the kingdom of the Franks, and in that of the Burgundians, all the brothers succeeded to the crown, if we except a few murders and usurpations which took place amongst the Burgundians.

23.—Of the regal Ornaments among the Franks

A people who do not cultivate the land have no idea of luxury. We may see, in Tacitus, the admirable simplicity of the German nations: they had no artificial elegances of dress; their ornaments were derived from nature. If the family of their chief was to be distinguished by any sign, it was no other than that which nature bestowed. The kings of the Franks, of the Burgundians, and the Visigoths wore their long hair for a diadem.

24.—Of the Marriages of the Kings of the Franks

I have already mentioned that with people who do not cultivate the earth, marriages are less fixed than with others, and that they generally take many wives. "Of all the barbarous nations the Germans were almost the only people who were sat-

^w Tit. 62.

^x Tit. 1, sec. 3; tit. 14, sec. 1; and tit. 51.

^y Lib. IV. tit. 2, sec. 1.

^z Among the Ostrogoths, the crown twice devolved to the males by means of females; the first time to Athalaricus, through Amalasantha, and the second to Theodat, through Amalafreda. Not but that the females of that nation

might have held the crown in their own right; for Amalasantha reigned after the death of Athalaricus; nay, even after the election of Theodat, and in conjunction with that prince. See Amalasantha's and Theodat's letters, in "Cassiodorus," lib. X.

^a The German nations, says Tacitus, had common customs, as well as those which were peculiar to each.

ified with one wife,^b if we except," says Tacitus, "some persons who, not from a dissoluteness of manners, but because of their nobility, had many."^c

This explains the reason why the kings of the first race had so great a number of wives. These marriages were less a proof of incontinence than a consequence of dignity: and it would have wounded them in a tender point to have deprived them of such a prerogative.^d This also explains the reason why the example of the kings was not followed by the subjects.

25.—Childeric

"The laws of matrimony amongst the Germans," says Tacitus, "are strictly observed. Vice is not there a subject of ridicule. To corrupt or be corrupted is not called fashion, or the custom of the age: ^e there are few examples in this populous nation of the violation of conjugal faith."^f

This was the reason of the expulsion of Childeric: he shocked their rigid virtue, which conquest had not had time to corrupt.

26.—Of the Time when the Kings of the Franks became of age

Barbarians who do not cultivate the earth have strictly speaking, no jurisdiction, and are, as we have already remembered, rather governed by the law of nations than by civil institutions. They are, therefore, always armed. Thus Tacitus tells us "that the Germans undertook no affairs either of a public or private nature unarmed."^g They gave their vote by the sound of their arms.^h As soon as they could carry them, they were presented to the assembly; ⁱ they put a javelin into their hands; ^j and from that moment they were out of their minority: they had been a part of the family, now they became a part of the republic.^k

^b "Prope soli Barbarorum singulis uxoribus contenti sunt."—"De Moribus Germanorum."

^c "Exceptis admodum paucis qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur."—Ibid.

^d See Fredegarius's "Chronicle of the Year 628."

^e "Severa matrimonia—nemo illic vitia ridet, nec corrumpere et corrumpi sæculum vocatur."—"De Moribus Germanorum."

^f "Paucissima in tam numerosâ gente adulteria."—Ibid.

^g "Nihil neque publicæ neque private rei nisi armati agunt."—Ibid.

^h "Si displicuit sententia, fremitu aspernantur; sin placuit, frameas concutunt."—Ibid.

ⁱ "Sed arma sumere non ante cuiquam moris, quam civitas suffecturum probaverit."

^j "Tum in ipso concilio vel principum aliquis, vel pater, vel propinquus, scuto, frameaque juvenem ornant."

^k "Hæc apud illos toga, hic primus juventæ honos; ante hoc, domus pars videntur, mox reipublicæ."

"The eagles," said the King of the Ostrogoths,^l "cease to feed their young ones as soon as their wings and talons are formed; the latter have no need of assistance when they are able themselves to seize their prey: it would be a disgrace if the young people in our armies were thought to be of an age unfit for managing their estates or regulating the conduct of their lives. It is virtue that constitutes full age among the Goths."

Childebert II was fifteen years old when Gontram, his uncle, declared that he was of age, and capable of governing by himself.^m We find in the Ripuarian laws that the age of fifteen, the ability of bearing arms and majority, went together. It is there said ⁿ "that if a Ripuarian dies, or is killed, and leaves a son behind him, that son can neither prosecute, nor be prosecuted, till he has completely attained the age of fifteen; and then he may either answer for himself or choose a champion." It was necessary that his mind should be sufficiently formed to be able to defend himself in court; and that his body should have all the strength that was proper for his defence in single combat. Amongst the Burgundians,^o who also made use of this combat in their judiciary proceedings, they were of age at fifteen.

Agathias tells us that the arms of the Franks were light: they might, therefore, be of age at fifteen. In succeeding times the arms they made use of were heavy, and they were already greatly so in the time of Charlemagne, as appears by our capitularies and romances. Those who had fiefs,^p and were consequently obliged to do military service, were not then of age till they were twenty-one years old.^q

27.—*The same Subject continued*

We have seen that the Germans did not appear in their assemblies before they were of age; they were a part of the family, but not of the republic. This was the reason that the children of Clodomir, King of Orleans, and conqueror of Burgundy, were not proclaimed kings, because they were of too

^lTheodoric in "Cassiod." lib. I. ep. 38.
^mHe was scarcely five years old, says "Gregory of Tours," lib. V. cap. i., when he succeeded to his father, in the year 575. Gontram declared him of age in the year 585; he was, therefore, at that time no more than fifteen.

ⁿTit. 81.
^oTit. 87.
^pThere was no change in the time with regard to the common people.
^qSt. Louis was not of age till twenty-one; this was altered by an edict of Charles V in the year 1374.

tender an age to be present at the assembly. They were not yet kings, but they had a right to the regal dignity as soon as they were able to bear arms; and in the meantime, Clotilda, their grandmother, governed the state.^r But their uncles, Clotaire and Childebert, assassinated them, and divided their kingdom. This was the cause that in the following ages princes in their minority were proclaimed kings immediately after the death of their fathers. Thus Duke Gondovald saved Childebert II from the cruelty of Chilperic, and caused him to be proclaimed king when he was only five years old.^s

But even in this change they followed the original spirit of the nation; for the public acts did not pass in the name of the young monarch. So that the Franks had a double administration: the one which concerned the person of the infant king, and the other which regarded the kingdom; and in the fiefs there was a difference between the guardianship and the civil administration.

28.—*Of Adoption among the Germans*

As the Germans became of age by the wielding of arms, so they were adopted by the same sign. This Gontram, willing to declare his nephew Childebert of age and to adopt him for his son, made use of these words: "I have put this javelin into thy hands as a token that I have given thee all my kingdom."^t Then, turning towards the assembly, he added, "You see that my son Childebert is grown a man; obey him." Theodoric, King of the Ostrogoths, intending to adopt the King of the Heruli, wrote to him thus: "It is a noble custom of ours to be adopted by arms; for men of courage alone deserve to be our children. Such is the efficacy of this act, that whoever is the object of it had rather die than submit to anything ignominious. Therefore, in compliance with the national usage, and because you are a man of courage, we adopt you for our son by these bucklers, these swords, these horses, which we send you as a present."

^rIt appears from "Gregory of Tours," lib. III., that she chose two natives of Burgundy, which had been conquered by Clodomir, to raise them to the see of Tours, which also belonged to Clodomir.

^s"Gregory of Tours," lib. V. cap. i.: "vix lustris ætatis uno jam peracto qui die Dominicæ Natalis regnare cœpit."
^tSee "Gregory of Tours," lib. VII. cap. xxiii.
^uIn "Cassiod." lib. IV. ep. 2.

29.—*Of the sanguinary Temper of the Kings of the Franks*

Clovis was not the only prince amongst the Franks who had invaded Gaul. Many of his relatives had penetrated into this country with particular tribes; but as he had met with much greater success, and could grant considerable settlements to such as followed him, the Franks flocked to him from all parts, so that the other chiefs found themselves too weak to resist him. He formed a design of exterminating his whole house, and he succeeded.^v He feared, says Gregory of Tours,^w lest the Franks should choose another chief. His children and successors followed this practice to the utmost of their power. Thus the brother, the uncle, the nephew, and, what is still worse, the father or the son, were perpetually conspiring against their whole family. The law continually divided the monarchy; while fear, ambition, and cruelty wanted to reunite it.

30.—*Of the national Assemblies of the Franks*

It has been remarked above that nations who do not cultivate the land enjoy great liberty.

This was the case of the Germans. Tacitus says that they gave their kings, or chiefs, a very moderate degree of power; ^x and Cæsar adds further that in times of peace they had no common magistrates; but their princes administered justice in each village.^y Thus, as Gregory of Tours^z sufficiently proves, the Franks in Germany had no king.

"The princes," says Tacitus, "deliberate on matters of no great concern; while affairs of importance are submitted to the whole nation, but in such a manner that these very affairs which are under the cognizance of the people are at the same time laid before the princes."^a This custom was observed by them after their conquests, as may be seen in all their records.^b

Tacitus says that capital crimes might be carried before the

^v "Gregory of Tours," lib. II.

^w Ibid.

^x "Nec Regibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincire, neque verberare," etc.—"De Moribus Germanorum."

^y "In pace nullus est communis magistratus, sed principes regionum atque pagorum inter suos jus dicunt."

—"De Bello Gall." lib. VI.

^z Lib. II.

^a "De minoribus principes consultant, de majoribus omnes; ita tamen ut ea quorum penes plebem arbitrium est, apud principes pertractentur."—"De Moribus Germanorum."

^b "Lex consensu Populi fit et constitutione Regis."—"Capitularies of Charles the Bald," anno 864, art. 6.

assembly.^c It was the same after the conquest, when the great vassals were tried before that body.

31.—*Of the Authority of the Clergy under the first Race*

The priests of barbarous nations are commonly invested with power, because they have both that authority which is due to them from their religious character, and that influence which amongst such a people is the offspring of superstition. Thus we see in Tacitus that priests were held in great veneration by the Germans, and that they presided in the assemblies of the people.^d They alone were permitted ^e to chastise, to bind, to smite; which they did, not by order of the prince, or as his ministers of justice, but as by an inspiration of that Deity ever supposed to be present with those who made war.

We ought not, therefore, to be astonished when, from the very beginning of the first race, we meet with bishops the dispensers of justice; ^f when we see them appear in the assemblies of the nation; when they have such a prodigious influence on the minds of sovereigns; and when they acquire so large a share of property.^g

^c "Licet apud Concilium accusare et discrimen capitis intendere."—"De Moribus Germanorum."

^d "Silentium per sacerdotes, quibus et coercendi jus est, imperatur."—Ibid.

^e "Nec Regibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincire, neque verberare, nisi sacerdotibus est permissum, non quasi in pœnam, nec Ducis jussu, sed

velut Deo imperante, quem adesse bel-latoribus credunt."—Ibid.

^f See the "Constitutions of Clotaire" in the year 560, art. 6.

^g The last ten chapters of this book, reunited in Books XXVIII., XXX., and XXXI., form a complete treatise upon the origin and early ages of the French monarchy, and they should be thus read to be understood.—Ed.