

inal king, and that the great lords were possessed of almost all his demesnes; that Charlemagne being apprehensive lest this young prince should forfeit their affection, if he attempted himself to resume what he had inconsiderately granted, appointed commissaries to restore things to their former situation.

The bishops, writing *p* to Louis, brother of Charles the Bald, used these words: "Take care of your lands, that you may not be obliged to travel continually by the houses of the clergy, and to tire their bondmen with carriages. Manage your affairs," continue they, "in such a manner, that you may have enough to live upon, and to receive embassies." It is evident that the king's revenues in those days consisted of their demesnes.^g

14.—Of what they called *Census*

After the barbarians had quitted their own country, they were desirous of reducing their usages into writing; but as they found difficulty in writing German words with Roman letters, they published these laws in Latin.

In the confusion and rapidity of the conquest, most things changed their nature; in order, however, to express them, they were obliged to make use of such old Latin words as were most analogous to the new usages. Thus, whatever was likely to revive the idea of the ancient census of the Romans they called by the name of *census tributum*; ^r and when things had no relation at all to the Roman census, they expressed, as well as they could, the German words by Roman letters; thus they formed the word *fredum*, on which I shall have occasion to descant in the following chapters.

The words *census* and *tributum* having been employed in an arbitrary manner this has thrown some obscurity on the signification in which these words were used under our princes of the first and second race. And modern authors ^s who have

^p See the Capitulary of the year 858, art. 14.

^q They levied also some duties on rivers, where there happened to be a bridge or a passage.

^r The census was so generical a word, that they made use of it to express the tolls of rivers, when there was a bridge or ferry to pass. See the third Capitu-

lary, in the year 803, edition of Baluzius, p. 395, art. 1; and the 5th in the year 819, p. 616. They gave likewise this name to the carriages furnished by the freemen to the king, or to his commissaries, as appears by the Capitulary of Charles the Bald in the year 865, art. 8.

^s The Abbé du Bos, and his followers

adopted particular systems, having found these words in the writings of those days, imagined that what was then called census, was exactly the census of the Romans; and thence they inferred this consequence, that our kings of the first two races had put themselves in the place of the Roman emperors, and made no change in their administration.^t Besides, as particular duties raised under the second race were by change and by certain restrictions converted into others,^u they inferred thence that these duties were the census of the Romans; and as, since the modern regulations, they found that the crown demesnes were absolutely unalienable, they pretended that those duties which represented the Roman census, and did not form a part of the demesnes, were mere usurpation. I omit the other consequences.

To apply the idea of the present time to distant ages is the most fruitful source of error. To those people who want to modernize all the ancient ages, I shall say what the Egyptian priests said to Solon, "O Athenians, you are mere children!"^v

15.—That what they called *Census* was raised only on the Bondmen and not on the Freemen

The king, the clergy, and the lords raised regular taxes, each on the bondmen of their respective demesnes. I prove it with respect to the king, by the Capitulary *de Villis*; with regard to the clergy, by the codes of the laws of the barbarians ^w and in relation to the lords, by the regulations which Charlemagne made concerning this subject.^x

These taxes were called *census*; they were economical and not fiscal claims, entirely private dues and not public taxes.

I affirm, that what they called *census* at that time was a tax raised upon the bondmen. This I prove by a formulary of Marculfus containing a permission from the king to enter into holy orders, provided the persons be free-born,^y and not enrolled in the register of the *census*. I prove it also by a commis-

^t See the weakness of the arguments produced by the Abbé du Bos, in the "Establishment of the French Monarchy," tom. iii. book VI. chap. xiv.; especially in the inference he draws from a passage of Gregory of Tours, concerning a dispute between his church and King Charibert.

^u For instance, by enfranchisements. ^v "Apud Platonem, in Timæo, vel de natura."—Ed.

^w Law of the Alemans, chap. xxii.; and the law of the Bavarians, tit. i. chap. xiv., where the regulations are to be found which the clergy made concerning their order.

^x Book 5th of the Capitularies, chap. ccciii.

^y "Si ille de capite suo bene ingenuus sit, et in Puletico publico census non est."—Lib. I. formul. 19.

sion from Charlemagne to a count *z* whom he had sent into Saxony, which contains the enfranchisement of the Saxons for having embraced Christianity, and is properly a charter of freedom.^a This prince restores them to their former civil liberty,^b and exempts them from paying the census. It was, therefore, the same thing to be a bondman as to pay the census, to be free as not to pay it.

By a kind of letters-patent of the same prince in favor of the Spaniards,^c who had been received into the monarchy, the counts are forbidden to demand any census of them, or to deprive them of their lands. That strangers upon their coming to France were treated as bondmen is a thing well known; and Charlemagne being desirous they should be considered as freemen, since he would have them be proprietors of their lands, forbade the demanding any census of them.

A Capitulary of Charles the Bald,^d given in favor of those very Spaniards, orders them to be treated like the other Franks, and forbids the requiring any census of them; consequently this census was not paid by freemen.

The thirtieth article of the Edict of Pistes reforms the abuse by which several of the husbandmen belonging to the king or to the church sold the lands dependent on their manors to ecclesiastics or to people of their condition, reserving only a small cottage to themselves; by which means they avoided paying the census; and it ordains that things should be restored to their primitive situation: the census was, therefore, a tax peculiar to bondmen.

Thence also it follows, that there was no general census in the monarchy; and this is clear from a great number of passages. For what could be the meaning of this capitulary,^e "We ordain that the royal census should be levied in all places, where formerly it was lawfully levied"?^f What could be the meaning of that in which Charlemagne *g* orders his commis-

^z In the year 789, edition of the Capitularies by Baluzius, vol. i. p. 250.
^a "Et ut ista ingenuitatis pagina firma stabilisque consistat."—Ibid.
^b "Pristinaeque libertati donatos, et omni nobis debito censu solutos."—Ibid.
^c "Præceptum pro Hispanis," in the year 812, edition of Baluzius, tom. i. p. 500.
^d In the year 844, edition of Baluzius, tom. ii. arts. 1 and 2, p. 27.

^e Third Capitulary of the year 805, arts. 20 and 23, inserted in the Collection of Angezise, book III. art. xv. This is agreeable to that of Charles the Bald, in the year 854, "apud Attinacum," art. 6.
^f "Undecunque legitime exigebatur."—Ibid.
^g In the year 812, arts. 10 and 11, edition of Baluzius, tom. i. p. 398.

saries in the provinces to make an exact inquiry into all the census that belonged in former times to the king's demesne?^h And of that *i* in which he disposes of the census paid by those *j* of whom they are demanded? What can that other capitulary mean *k* in which we read, "If any person has acquired a tributary land *l* on which we were accustomed to levy the census"? And that other, in fine,^m in which Charles the Bald *n* makes mention of feudal lands whose census had from time immemorial belonged to the king?

Observe that there are some passages which seem at first sight to be contrary to what I have said, and yet confirm it. We have already seen that the freemen in the monarchy were obliged only to furnish particular carriages; the capitulary just now cited gives to this the name of census,^o and opposes it to the census paid by the bondmen.

Besides, the Edict of Pistes *p* notices those freemen who are obliged to pay the royal census for their head and for their cottages,^q and who had sold themselves during the famine. The king orders them to be ransomed. This is because those who were manumitted by the king's letters *r* did not, generally speaking, acquire a full and perfect liberty,^s but they paid *censum in capite*; and these are the people here meant.

We must, therefore, waive the idea of a general and universal census, derived from that of the Romans, from which the rights of the lords are also supposed to have been derived by usurpation. What was called *census* in the French monarchy, independently of the abuse made of that word, was a particular tax imposed on the bondmen by their masters.

I beg the reader to excuse the trouble I must give him with such a number of citations. I should be more concise did I

^h "Undecunque antiquitus ad partem regis venire solebant."—Capitulary of the year 812, arts. 10 and 11.
ⁱ In the year 813, art. 6, edition of Baluzius, tom. i. p. 508.
^j "De illis unde censa exigunt."—Capitulary of the year 813, art. 6.
^k Book IV. of the Capitularies, art. 37, and inserted in the law of the Lombards.
^l "Si quis terram tributariam, unde census ad partem nostram exire solebat, susceperit."—Book IV., of the Capitularies, art. 37.
^m In the year 805, art. 8.
ⁿ "Unde census ad partem regis exivit antiquitus."—Capitulary of the year 805, art. 8.

^o "Censibus vel paraveredis quos Franci homines ad regiam potestatem exsoivere debent."
^p In the year 864, art. 34, edition of Baluzius, p. 192.
^q "De illis francis hominibus qui censum regium de suo capite et de suis recellis debeant."—Ibid.
^r The 28th article of the same edict explains this extremely well; it even makes a distinction between a Roman freedman and a Frank freedman: and we likewise see there that the census was not general; it deserves to be read.
^s As appears by the Capitulary of Charlemagne in the year 813, which we have already quoted.

not meet with the Abbé du Bos's book on the establishment of the French monarchy in Gaul, continually in my way. Nothing is a greater obstacle to our progress in knowledge, than a bad performance of a celebrated author; because, before we instruct we must begin with undeceiving.

16.—Of the feudal Lords or Vassals

I have noticed those volunteers among the Germans, who have followed their princes in their several expeditions. The same usage continued after the conquest. Tacitus mentions them by the name of companions; ^t the Salic law by that of men who have vowed fealty to the king; ^u the formularies of Marculfus ^v by that of the king's "antrussions," ^w the earliest French historians by that of "leudes," ^x faithful and loyal; and those of later date by that of vassals and lords. ^y

In the Salic and Ripuarian laws we meet with an infinite number of regulations in regard to the Franks, and only with a few for the antrussions. The regulations concerning the antrussions are different from those which were made for the other Franks; they are full of what relates to the settling of the property of the Franks but mention not a word concerning that of the antrussions. This is because the property of the latter was regulated rather by the political than by the civil law, and was the share that fell to an army, and not the patrimony of a family.

The goods reserved for the feudal lords were called fiscal goods, benefices, honors, and fiefs, by different authors, and in different times. ^z

There is no doubt but the fiefs at first were at will. ^a We find in Gregory of Tours, ^b that Sunegisilus and Gallomanus were deprived of all they held of the exchequer, and no more was left them than their real property. When Gontram raised his nephew Childebert to the throne, he had a private conference with him, in which he named the persons who ought to

^t "Comites."
^u "Qui sunt in truste regis," tit. 44, art. 4.
^v Book I. formulary 18.
^w From the word "trew," which signifies "faithful" among the Germans.
^x "Leudes," "fideles."
^y "Vassalli," "seniores."
^z "Fiscalia." See the 14th formulary of Marculfus, book I. It is men-

tioned in the "Life of St. Maur," "dedit fiscum unum"; and in the "Annals of Metz" in the year 747, "dedit illi comitatus et fiscos plurimos." The goods designed for the support of the royal family were called regalia.
^a See the 1st book, tit. 1, of the fiefs; and Cujas on that book.
^b Book IX. chap. xxxviii.

be honored with, and those who ought to be deprived of, the fiefs. ^c In a formulary of Marculfus, ^d the king gives in exchange, not only the benefices held by his exchequer, but likewise those which had been held by another. The law of the Lombards opposes the benefices to property. ^e In this, our historians, the formularies, the codes of the different barbarous nations, and all the monuments of those days are unanimous. In fine, the writers of the book of fiefs inform us, ^f that at first the lords could take them back when they pleased, that afterwards they granted them for the space of a year, ^g and that at length they gave them for life.

17.—Of the military Service of Freemen

Two sorts of people were bound to military service; the great and lesser vassals, who were obliged in consequence of their fiefs; and the freemen, whether Franks, Romans, or Gauls, who served under the count and were commanded by him and his officers.

The name of freemen was given to those, who on the one hand had no benefits or fiefs, and on the other were not subject to the base services of villanage; the lands they possessed were what they called allodial estates.

The counts assembled the freemen, ^h and led them against the enemy; they had officers under them who were called vicars; ⁱ and as all the freemen were divided into hundreds, which constituted what they called a borough, the counts had also officers under them, who were denominated *centenarii*, and led the freemen of the borough, or their hundreds, to the field. ^j

This division into hundreds is posterior to the establishment of the Franks in Gaul. It was made by Clotharius and Childebert, with a view of obliging each district to answer for the rob-

^c Quos honoraret muneribus, quos ab honore depelleret.—Ibid. lib. VII.

^d "Vel reliquis quibuscumque beneficiis, quodcumque ille, vel fiscus noster, in ipsis locis tenuisse noscitur."—Lib. I. formul. 30.

^e Liv. III. tit. 8, sec. 3.

^f "Antiquissimo enim tempore sic erat in Dominorum potestate connexum, ut quando vellet possent auferre rem in feudum a se datam; postea vero conventum est ut per annum tantum firmitatem haberent, deinde statutum est ut usque ad vitam fidelis produceretur."—"Feudorum," lib. I. tit. 1.

^g It was a kind of precarious tenure which the lord consented or refused to renew every year; as Cujas has observed.

^h See the Capitulary of Charlemagne in the year 812, arts. 3 and 4, edition of Baluzius, tom. i. p. 491; and the Edict of Pistes in the year 864, art. 26, tom. ii. p. 186.

ⁱ "Et habebat unusquisque comes Vicarios et Centenarios secum."—Book II. of the Capitularies, art. 28.

^j They were called "compagenses."

beries committed in their division; this we find in the decrees of those princes.^k A regulation of this kind is to this very day observed in England.

As the counts led the freemen against the enemy, the feudal lords commanded also their vassals or rear-vassals; and the bishops, abbots, or their advocates^l likewise commanded theirs.^m

The bishops were greatly embarrassed and inconsistent with themselves;ⁿ they requested Charlemagne not to oblige them any longer to military service; and when he granted their request, they complained that he had deprived them of the public esteem; so that this prince was obliged to justify his intentions upon this head. Be that as it may, when they were exempted from marching against the enemy I do not find that their vassals were led by the counts; on the contrary, we see that the kings or the bishops chose one of their feudatories to conduct them.^o

In a Capitulary of Louis the Debonnaire,^p this prince distinguishes three sorts of vassals, those belonging to the king, those to the bishops, and those to the counts. The vassals of a feudal lord were not led against the enemy by the count, except some employment in the king's household hindered the lord himself from commanding them.^q

But who is it that led the feudal lords into the field? No doubt the king himself, who was always at the head of his faithful vassals. Hence we constantly find in the Capitularies a distinction made between the king's vassals and those of the bishops.^r Such brave and magnanimous princes as our kings did not take the field to put themselves at the head of an ecclesiastic militia; these were not the men they chose to conquer or to die with.

^k Published in the year 595, art. 1. See the Capitularies, edition of Baluzius, p. 20. These regulations were undoubtedly made by agreement.

^l "Advocati."

^m Capitulary of Charlemagne in the year 812, arts. 1 and 5, edition of Baluzius, tom. i. p. 490.

ⁿ See the Capitulary of the year 803, published at Worms, edition of Baluzius, pp. 408 and 410.

^o Capitulary of Worms in the year 803, edition of Baluzius, page 409; and the Council in the year 845, under Charles the Bald, "in verno palatio," edition of Baluzius, tom. ii. p. 17, art. 8.

^p The 5th Capitulary of the year 819, art. 27, edition of Baluzius, p. 618.

^q "De vassis dominicis qui adhuc intra casam serviunt et tamen beneficia habere noscuntur, statutum est ut quicumque ex eis cum domino imperatore domi remanserint, vassallos suos casatos secum non retineant; sed cum comite, cujus pagenses sunt, ire permittant."—Second Capitulary in the year 812, art. 7, edition of Baluzius, tom. i. p. 494.

^r First Capitular of the year 812, art. 5, "de hominibus nostris, et episcoporum et abbatum qui vel beneficia vel talia propria habent," etc., edition of Baluzius, tom. i. p. 490.

But these lords likewise carried their vassals and rear-vassals with them, as we can prove by the Capitulary in which Charlemagne ordains that every freeman who has four manors, either in his own property or as a benefice from somebody else, should march against the enemy or follow his lord.^s It is evident, that Charlemagne means, that the person who had a manor of his own should march under the count and he who held a benefice of a lord should set out along with him.

And yet the Abbé du Bos pretends,^t that when mention is made in the Capitularies of tenants who depended on a particular lord, no others are meant than bondmen; and he grounds his opinion on the law of the Visigoths and the practice of that nation. It is much better to rely on the Capitularies themselves; that which I have just quoted says expressly the contrary. The treaty between Charles the Bald and his brothers notices also those freemen who might choose to follow either a lord or the king; and this regulation is conformable to a great many others.

We may, therefore, conclude, that there were three sorts of military services; that of the king's vassals, who had other vassals under them; that of the bishops or of the other clergy and their vassals, and, in fine, that of the count, who commanded the freemen.

Not but the vassals might be also subject to the count; as those who have a particular command are subordinate to him who is invested with a more general authority.

We even find that the count and the king's commissaries might oblige them to pay the fine when they had not fulfilled the engagements of their fief. In like manner, if the king's vassals committed any outrage^u they were subject to the correction of the count, unless they choose to submit rather to that of the king.

18.—Of the double Service

It was a fundamental principle of the monarchy that whoever was subject to the military power of another person was subject also to his civil jurisdiction. Thus the Capitulary of

^s In the year 812, chap. 1, edition of Baluzius, p. 490. "ut omnis homo liber quatuor mansos vestitos de proprio suo, sive de alicujus beneficio habet, ipse se præparet, et ipse in hostem pergat, sive cum seniore suo."

^t Tom. iii. book VI. chap. iv. p. 299. "Establishment of the French Monarchy."

^u Capitulary of the year 882, art. 11, "apud vernis palatium," edition of Baluzius, tom. ii. p. 289.

19.—Of Compositions among the barbarous Nations

Since it is impossible to gain any insight into our political law unless we are thoroughly acquainted with the laws and manners of the German nations, I shall, therefore, pause here awhile, in order to inquire into those manners and laws.

It appears by Tacitus, that the Germans knew only two capital crimes; they hanged traitors, and drowned cowards; these were the only public crimes among that people. When a man had injured another, the relatives of the person injured took share in the quarrel, and the offence was cancelled by a satisfaction.^j This satisfaction was made to the person offended, when capable of receiving it; or to the relatives if they had been injured in common, or if by the decease of the party aggrieved or injured the satisfaction had devolved to them.

In the manner mentioned by Tacitus, these satisfactions were made by the mutual agreement of the parties; hence in the codes of the barbarous nations these satisfactions are called compositions.

The law of the Frisians ^k is the only one I find that has left the people in that situation in which every family at variance was in some measure in the state of nature, and in which being unrestrained either by a political or civil law they might give freedom to their revenge till they had obtained satisfaction. Even this law was moderated; a regulation was made ^l that the person whose life was sought after should be unmolested in his own house, as also in going and coming from church and the court where causes were tried.

The compilers of the Salic law ^m cite an ancient usage of the Franks, by which a person who had dug a corpse out of the ground, in order to strip it, should be banished from society till the relatives had consented to his being readmitted. And as before that time strict orders were issued to everyone, even to the offender's own wife, not to give him a morsel of bread, or to receive him under their roofs, such a person was in re-

^j "Suscipere tam inimicitias, seu patris, seu propinqui, quam amicitias, necesse est: nec implacabiles durant; luitur enim etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem universa domus."—Tacitus, "de Moribus Germanorum."

^k See this law in the 2d title on murders; and Vulemar's addition on robberies.

^l "Additio sapientum," tit. i. sec. 1.

^m Salic law, tit. 57, sec. 5, tit. 17, sec. 2.

spect to others, and others in respect to him, in a state of savagery till an end was put to this state by a composition.

This excepted, we find that the sages of the different barbarous nations thought of determining by themselves what would have been too long and too dangerous to expect from the mutual agreement of the parties. They took care to fix the value of the composition which the party wronged or injured was to receive. All those barbarian laws are in this respect most admirably exact; the several cases are minutely distinguished,ⁿ the circumstances are weighed, the law substitutes itself in the place of the person injured and insists upon the same satisfaction as he himself would have demanded in cold blood.

By the establishing of those laws, the German nations quitted that state of nature in which they seemed to have lived in Tacitus's time.

Rotharis declares, in the law of the Lombards,^o that he had increased the compositions allowed by ancient custom for wounds, to the end that the wounded person being fully satisfied, all enmities should cease. And, indeed, as the Lombards, from a very poor people had grown rich by the conquest of Italy, the ancient compositions had become frivolous, and reconcilements prevented. I do not question but this was the motive which obliged the other chiefs of the conquering nations to make the different codes of laws now extant.

The principal composition was that which the murderer paid to the relatives of the deceased. The difference of conditions produced a difference in the compositions.^p Thus in the law of the Angli, there was a composition of six hundred sous for the murder of an adeling, two hundred for that of a freeman, and thirty for killing a bondman. The largeness, therefore, of the composition for the life of a man was one of his chief privileges; for besides the distinction it made of his person, it likewise established a greater security in his favor among rude and boisterous nations.

This we are made sensible of by the law of the Bavarians: ^q it gives the names of the Bavarian families who received a

ⁿ The Salic laws are admirable in this respect, see especially the titles 3, 4, 5, 6, and 7, which related to the stealing of cattle.

^o Book I. tit. 7, sec. 15.

^p See the law of the Angli, tit. i. secs. 1, 2, and 4; *ibid.* tit. v. sec. 6; the law of the Bavarians, tit. i. chaps. 8 and 9, and the law of the Frisians, tit. xv.

^q Tit. 2, chap. xx.

double composition, because they were the first after the Agilolfings.^r The Agilolfings were of the ducal race, and it was customary with this nation to choose a duke out of that family; these had a quadruple composition. The composition for a duke exceeded by a third that which had been established for the Agilolfings. "Because he is a duke," says the law, "a greater honor is paid to him than to his relatives."

All these compositions were valued in money. But as those people, especially when they lived in Germany, had very little specie, they might pay it in cattle, corn, movables, arms, dogs, hawks, lands, etc.^s The law itself frequently determined the value of those things; which explains how it was possible for them to have such a number of pecuniary punishments with so very little money.^t

These laws were, therefore, employed in exactly determining the difference of wrongs, injuries, and crimes; to the end that everyone might know how far he had been injured or offended, the reparation he was to receive, and especially that he was to receive no more.

In this light it is easy to conceive, that a person who had taken revenge after having received satisfaction was guilty of a heinous crime. This contained a public as well as a private offence; it was a contempt of the law of itself; a crime which the legislators never failed to punish.^u

There was another crime which above all others was considered as dangerous, when those people lost something of their spirit of independence, and when the kings endeavored to establish a better civil administration; this was, the refusing to give or to receive satisfaction.^v We find in the different codes of the laws of the barbarians that the legislators were peremptory on this article.^w In effect, a person who refused to

^r Hozidra, Ozza, Sagana, Habalingua, Anniena.—Ibid.

^s Thus the law of Ina valued life by a certain sum of money, or by a certain portion of land.—"Leges Inæ regis, titulo de villico regio de priscis Anglorum legibus," Cambridge, 1644.

^t See the law of the Saxons, which makes this same regulation for several people, chap. xviii. See also the law of the Ripuarians, tit. 36, sec. 11, the law of the Bavarians, tit. i. secs. 10 and 11. "Si aurum non habet, donet aliam pecuniam, mancipia, terram," etc.

^u See the law of the Lombards, book I. tit. 25, sec. 21; *ibid.* book I. tit. 9,

secs. 8 and 34; *ibid.* sec. 38, and the Capitulary of Charlemagne in the year 802, chap. xxxii., containing an instruction given to those whom he sent into the provinces.

^v See in Gregory of Tours, book VII. chap. xlvii., the detail of a process, wherein a party loses half the composition that had been adjudged to him, for having done justice to himself, instead of receiving satisfaction, whatever injury he might have afterwards received.

^w See the law of the Saxons, chap. iii. sec. 4; the law of the Lombards, book I. tit. 37, secs. 1 and 2; and the

receive satisfaction wanted to preserve his right of prosecution; he who refused to give it left the right of prosecution to the person injured; and this is what the sages had reformed in the institutions of the Germans, whereby people were invited but not compelled to compositions.

I have just now made mention of a text of the Salic law, in which the legislator left the party offended at liberty to receive or to refuse satisfaction; it is the law by which a person who had stripped a dead body was expelled from society till the relatives upon receiving satisfaction petitioned for his being readmitted.^x It was owing to the respect they had for sacred things, that the compilers of the Salic laws did not meddle with the ancient usage.

It would have been absolutely unjust to grant a composition to the relatives of a robber killed in the act, or to the relatives of a woman who had been repudiated for the crime of adultery. The law of the Bavarians allowed no compositions in the like cases, but punished the relatives who sought revenge.^y

It is no rare thing to meet with compositions for involuntary actions in the codes of the laws of the barbarians. The law of the Lombards is generally very prudent; it ordained ^z that in those cases the compositions should be according to the person's generosity; and that the relatives should no longer be permitted to pursue their revenge.

Clotharius II made a very wise decree; he forbade the person robbed to receive any clandestine composition, and without an order from the judge.^a We shall presently see the motive of this law.

20.—Of what was afterwards called the Jurisdiction of the Lords

Besides the composition which they were obliged to pay to the relatives for murders or injuries, they were also under a necessity of paying a certain duty which the codes of the bar-

law of the Alemans, tit. 45, secs. 1 and 2. This last law gave leave to the party injured to right himself upon the spot, and in the first transport of passion. See also the Capitularies of Charlemagne in the year 779, chap. xxii., in the year 802, chap. xxxii., and also that of the year 805, chap. v.

^x The compilers of the law of the

Ripuarians seem to have softened this. See the 85th title of those laws.

^y See the decree of Tassillon, "de popularibus legibus," arts. 3, 4, 10, 16, 19; the law of the Angli, tit. vii. sec. 4.

^z Book I. tit. ix. sec. 4.

^a "Pactus pro tenore pacis inter Childebertum et Clotarium, anno 593, et decretio Clotarii 2 regis, circa annum 595," chap. xi.

barian laws called *fredum*.^b I intend to treat of it at large; and in order to give an idea of it, I begin with defining it as a recompense for the protection granted against the right of vengeance. Even to this day, *fred* in the Swedish language signifies peace.

The administration of justice among those rude and unpolished nations was nothing more than granting to the person who had committed an offence, a protection against the vengeance of the party offended, and obliging the latter to accept of the satisfaction due to him: insomuch that among the Germans, contrary to the practice of all other nations, justice was administered in order to protect the criminal against the party injured.

The codes of the barbarian laws have given us the cases in which the *freda* might be demanded. When the relatives could not prosecute, they allowed of no *fredum*; and, indeed, when there was no prosecution there could be no composition for a protection against it. Thus, in the law of the Lombards,^c if a person happened to kill a freeman by accident, he paid the value of the man killed, without the *fredum*; because, as he had killed him involuntarily, it was not the case in which the relatives were allowed the right of prosecution. Thus in the law of the Ripuarians,^d when a person was killed with a piece of wood, or with any instrument made by man, the instrument or the wood were deemed culpable, and the relatives seized upon them for their own use, but were not allowed to demand the *fredum*.

In like manner, when a beast happened to kill a man, the same law established a composition without the *fredum*, because the relatives of the deceased were not offended.^e

In fine, it was ordained by the Salic law,^f that a child who had committed a fault before the age of twelve should pay the composition without the *fredum*: as he was not yet able to bear arms he could not be in the case in which the party injured, or his relatives, had a right to demand satisfaction.

^b When it was not determined by the law it was generally the third of what was given for the composition, as appears in the law of the Ripuarians, chap. lxxxix., which is explained by the third Capitulary of the year 813.—Edition of Baluzius, tom. i. p. 512.

^c Book I. tit. 9, sec. 17, edition of Lindembrock.

^d Tit. 70.

^e Tit. 46. See also the law of the Lombards, book I. chap. xxi. sec. 3. Lindembrock's edition, "si caballus cum pede," etc.

^f Tit. 28, sec. 6.

It was the criminal that paid the *fredum* for the peace and security of which he had been deprived by his crime, and which he might recover by protection. But a child did not lose this security, he was not a man; and consequently could not be expelled from human society.

This *fredum* was a local right in favor of the person who was judge of the district.^g Yet the law of the Ripuarians^h forbade him to demand it himself: it ordained that the party who had gained the cause should receive it and carry it to the exchequer, to the end that there might be a lasting peace, says the law among the Ripuarians.

The greatness of the *fredum* was proportioned to the degree of protection: thus the *fredum* for the king's protection was greater than what was granted for the protection of the count, or of the other judges.ⁱ

Here I see the origin of the jurisdiction of the lords. The fiefs comprised very large territories, as appears from a vast number of records. I have already proved that the kings raised no taxes on the lands belonging to the division of the Franks; much less could they reserve to themselves any duties on the fiefs. Those who obtained them had in this respect a full and perfect enjoyment, reaping every possible emolument from them. And as one of the most considerable emoluments was the justiciary profits (*freda*),^j which were received according to the usage of the Franks, it followed thence that the person seized of the fief was also seized of the jurisdiction, the exercise of which consisted of the compositions made to the relatives, and of the profits accruing to the lord; it was nothing more than ordering the payment of the compositions of the law, and demanding the legal fines. We find by the formularies containing confirmation of the perpetuity of a fief in favor of a feudal lord,^k or of the privileges of fiefs in favor of churches,^l that the fiefs were possessed of this right. This appears also

^g As appears by the decree of Clotharius II in the year 595, "fredus tamen iudici in cuius pago est reservetur."

^h lit. 85.

ⁱ "Capitulare incerti anni," chap. lvii., in Baluzius, tom. i. p. 515, and it is to be observed, that what was called "fredum" or "faida," in the monuments of the first race, is known by the name of "bannum" in those of

the second race, as appears from the Capitulary "de partibus Saxonie," in the year 789.

^j See the Capitulary of Charlemagne, "de villis," where he ranks these *freda* among the great revenues of what was called "villæ," or the king's demesnes.

^k See the 3d, 8th, and 17th formulas, book I. of Marculfus.

^l See the 2d, 3d, and 4th formulas of Marculfus, book I.

from an infinite number of charters ^m mentioning a prohibition to the king's judges or officers of entering upon the territory in order to exercise any act of judicature whatsoever, or to demand any judiciary emolument. When the king's judges could no longer make any demand in a district they never entered it; and those to whom this district was left performed the same functions as had been exercised before by the judges.

The king's judges are forbidden also to oblige the parties to give security for their appearing before them; it belonged, therefore, to the person who had received the territory in fief to demand this security. They mention also that the king's commissaries shall not insist upon being accommodated with a lodging; in effect, they no longer exercised any function in those districts.

The administration, therefore, of justice, both in the old and new fiefs, was a right inherent in the very fief itself, a lucrative right which constituted a part of it. For this reason it had been considered at all times in this light; whence this maxim arose, that jurisdictions are patrimonial in France.

Some have thought that the jurisdictions derived their origin from the manumissions made by the kings and lords, in favor of their bondmen. But the German nations, and those descended from them, are not the only people who manumitted their bondmen, and yet they are the only people that established patrimonial jurisdictions. Besides, we find by the formularies of Marculfus ⁿ that there were freemen dependent on these jurisdictions in the earliest times: the bondmen were, therefore, subject to the jurisdiction, because they were upon the territory; and they did not give rise to the fiefs for having been annexed to the fief.

Others have taken a shorter cut; the lords, say they, and this is all they say, usurped the jurisdictions. But are the nations descended from Germany the only people in the world that usurped the rights of princes? We are sufficiently informed by history that several other nations have encroached upon their

^m See the collections of those charters, especially that at the end of the 5th volume of the "Historians of France," published by the Benedictine monks.

ⁿ See the 3d, 4th, and 14th of the first book, and the Charter of Charle-

magne, in the year 771, in Martene, tom. i. Anecd. collect. 11, "præcipientes jubemus ut ullus iudex publicus . . . homines ipsius ecclesie et monasterii ipsius Morbacensis tam ingenuos quam et servos, et qui super eorum terras manere," etc.

sovereigns, and yet we find no other instance of what we call the jurisdiction of the lords. The origin of it is, therefore, to be traced in the usages and customs of the Germans.

Whoever has the curiosity to look into Loyseau ^o will be surprised at the manner in which this author supposes the lords to have proceeded, in order to form and usurp their different jurisdictions. They must have been the most artful people in the world; they must have robbed and plundered, not after the manner of a military nation, but as the country justices and the attorneys rob one another. Those brave warriors must be said to have formed a general system of politics throughout all the provinces of the kingdom, and in so many other countries in Europe; Loyseau makes them reason as he himself reasoned in his closet.

Once more; if the jurisdiction was not a dependence of the fief, how come we everywhere to find, that the service of the fief was to attend the king or the lord, both in their courts and in the army? ^p

21.—Of the Territorial Jurisdiction of the Churches

The churches acquired very considerable property. We find that our kings gave them great seigniories, that is, great fiefs; and we find jurisdictions established at the same time in the demesnes of those churches. Whence could so extraordinary a privilege derive its origin? It must certainly have been in the nature of the grant. The church land had this privilege because it had not been taken from it. A seignior was given to the Church; and it was allowed to enjoy the same privileges as if it had been granted to a vassal. It was also subjected to the same service as it would have paid to the state if it had been given to a layman, according to what we have already observed.

The churches had, therefore, the right of demanding the payment of compositions in their territory, and of insisting upon the *fredum*; and as those rights necessarily implied that of hindering the king's officers from entering upon the territory to demand these *freda* and to exercise acts of judicature, the right which ecclesiastics had of administering justice in their

^o "Treatise of Village Jurisdictions," Loyseau.

^p See Mons. Ducange on the word "hominium."