

Stammerer is to ask of the assembly of the nation a sufficient allowance to defray the expenses of his household.

23.—*The same Subject continued*

The clergy had reason to repent the protection they had granted to the children of Louis the Debonnaire. This prince, as I have already observed, had never given any of the church lands by precepts to the laity; * but it was not long before Lotharius in Italy, and Pepin in Aquitaine, quitted Charlemagne's plan, and resumed that of Charles Martel. The clergy had recourse to the Emperor against his children, but they themselves had weakened the authority to which they appealed. In Aquitaine some condescension was shown, but none in Italy.

The civil wars with which the life of Louis the Debonnaire had been embroiled were the seed of those which followed his death. The three brothers, Lotharius, Louis, and Charles endeavored each to bring over the nobility to their party and to make them their tools. To such as were willing therefore to follow them they granted church lands by precepts; so that to gain the nobility, they sacrificed the clergy.

We find in the Capitularies † that those princes were obliged to yield to the importunity of demands, and that what they would not often have freely granted was extorted from them: we find that the clergy thought themselves more oppressed by the nobility than by the kings. It appears that Charles the Bald, ‡ became the greatest enemy of the patrimony of the clergy, whether he was most incensed against them for having degraded his father on their account, or whether he was the most timorous. Be that as it may, we meet with continual quarrels in the Capitularies, § between the clergy who demanded their estates and the no-

* See what the bishops say in the Synod of the year 845, "apud Teudonis villam," art. 4.

† See the Synod in the year 845, "apud Teudonis villam," arts. 3 and 4, which gives a very exact description of things; as also, that of the same year, held at the palaces of Vernes, art. 12, and the Synod of Beauvais, also in the same year, arts. 3, 4, and 6, and the Capitulary in "Villa Sparnaco" in the year 846, art. 20, and the letter which the bishops assembled at Rheims wrote in 858, to Louis, King of Germany, art. 8.

‡ See the Capitulary in "Villa Sparnaco," in the year 846. The nobility

had set the King against the bishops, insomuch that he expelled them from the Assembly; a few of the canons enacted in council were picked out, and the prelates were told that these were the only ones which should be observed; nothing was granted them that could be refused. See arts. 20, 21, and 22. See also the letter which the bishops assembled at Rheims wrote in the year 858 to Louis, King of Germany, and the Edict of Pistes, in the year 864, art. 5.

§ See this very Capitulary in the year 846, "in Villa Sparnaco." See also the Capitulary of the assembly held "apud Marsnam" in the year 847, art. 4.

bility who refused or deferred to restore them; and the kings acting as mediators.

The situation of affairs at that time is a spectacle really deserving of pity. While Louis the Debonnaire made immense donations out of his demesnes to the clergy, his children distributed the church lands among the laity. The same prince with one hand founded new abbeys and despoiled old ones. The clergy had no fixed state; one moment they were plundered, another they received satisfaction; but the crown was continually losing.

Toward the close of the reign of Charles the Bald, and from that time forward, there was an end of the disputes of the clergy and laity, concerning the restitution of church lands. The bishops, indeed, breathed out still a few sighs in their remonstrances to Charles the Bald, which we find in the Capitulary of the year 856, and in the letter they wrote to Louis, King of Germany, in the year 858: † but they proposed things, and challenged promises, so often eluded, that we plainly see they had no longer any hopes of obtaining their desire.

All that could be expected then was to repair in general the injuries done both to church and state. ‡ The kings engaged not to deprive the nobility of their freemen, and not to give away any more church lands by precepts, § so that the interests of the clergy and nobility seemed then to be united.

The dreadful depredations of the Normans, as I have already observed, contributed greatly to put an end to those quarrels.

The authority of our kings diminishing every day, both for the reasons already given and those which I shall mention hereafter, they imagined they had no better resource left, than to resign themselves into the hands of the clergy. But the ecclesiastics had weakened the power of the kings, and these had diminished the influence of the ecclesiastics.

In vain did Charles the Bald and his successors call in the

wherein the clergy reduced themselves to demand only the restitution of what they had been possessed of under Louis the Debonnaire. See also the Capitulary of the year 851, "apud Marsnam," arts. 6 and 7, which confirms the nobility and clergy in their several possessions; and that "apud Bonoilum," in the year 856, which is a remonstrance of the bishops to the King, because the evils, after so many laws, had not been redressed; and, in fine, the letter which

the bishops assembled at Rheims wrote in the year 858, to Louis, King of Germany, art. 8.

† Art. 8.

‡ See the Capitulary of the year 852, arts. 6 and 7.

§ Charles the Bald, in the Synod of Soissons, says, that he "had promised the bishops not to issue any more precepts relating to church lands." Capitulary of the year 853, art. 11, Baluzius's edition, tom. ii. p. 56.

Church to support the state, and to prevent its ruin; in vain did they make use of the respect which the commonalty had for that body,^e to maintain that which they should also have for their prince; ^f in vain did they endeavor to give an authority to their laws by that of the canons; in vain did they join the ecclesiastic with the civil punishments; ^g in vain to counterbalance the authority of the count did they give to each bishop the title of their commissary in the several provinces: ^h it was impossible to repair the mischief they had done; and a terrible misfortune which I shall presently mention proved the ruin of the monarchy.

24.—*That the Freemen were rendered capable of holding Fiefs*

I said that the freemen were led against the enemy by their count, and the vassals by their lord. This was the reason that the several orders of the state balanced each other, and though the king's vassals had other vassals under them, yet they might be overawed by the count who was at the head of all the freemen of the monarchy.

The freemen were not allowed at first to do homage for a fief; but in process of time this was permitted: ⁱ and I find that this change was made during the period that elapsed from the reign of Gontram to that of Charlemagne. This I prove by the comparison which may be made between the Treaty of Andely,^j by Gontram, Childebert, and Queen Brunehaut, and the partition made by Charlemagne among his children, as well as a like partition by Louis the Debonnaire.^k These three acts contain nearly the same regulations with regard to the vassals; and as they determine the very same points, under almost the same circumstances, the spirit as well as the letter of those three treaties in this respect are very much alike.

^e See the Capitulary of Charles the Bald, "apud Saponarias," in the year 859, art. 3: "Venilon, whom I made Archbishop of Sens, has consecrated me; and I ought not to be expelled the kingdom by anybody," "saltem sine audientia et iudicio episcoporum, quorum ministerio in regem sum consecratus, et qui throni Dei sunt dicti, in quibus Deus sedet, et per quos sua decernit iudicia, quorum paternis correctionibus et castigatoriis iudiciis me subdere fui paratus et in presenti sum subditus."

^f See the Capitulary of Charles the Bald, "de Carisiaco," in the year 857, Baluzius's edition, tom. ii. p. 88, secs. 1, 2, 3, 4, and 7.

^g See the Synod of Pistes in the year 862, art. 4, and the Capitulary of Louis II, "apud vernis palatium," in the year 883, arts. 4 and 5.

^h Capitulary of the year 876, under Charles the Bald, "in Synodo Pontigonensi," Baluzius's edition, art. 12.

ⁱ See what has been said already, Book XXX., last chapter towards the end.

^j In the year 587, in Gregory of Tours, book ix.

^k See the following chapter, where I shall speak more diffusely of those partitions; and the notes in which they are quoted.

But as to what concerns the freemen there is a vital difference. The Treaty of Andely does not say that they might do homage for a fief; whereas we find in the divisions of Charlemagne and Louis the Debonnaire, express clauses to empower them to do homage. This shows that a new usage had been introduced after the treaty of Andely, whereby the freemen had become capable of this great privilege.

This must have happened when Charles Martel, after distributing the church lands to his soldiers, partly in fief, and partly as *allodia*, made a kind of revolution in the feudal laws. It is very probable that the nobility who were seized already of fiefs found a greater advantage in receiving the new grants as *allodia*; and that the freemen thought themselves happy in accepting them as fiefs.

THE PRINCIPAL CAUSE OF THE HUMILIATION OF THE
SECOND RACE

25.—*Changes in the Allodia*

Charlemagne in the partition^l mentioned in the preceding chapter ordained, that after his death the vassals belonging to each king should be permitted to receive benefices in their own sovereign's dominion, and not in those of another; ^m whereas they may keep their allodial estates in any of their dominions.ⁿ But he adds,^o that every freeman might, after the death of his lord, do homage in any of the three kingdoms he pleased, as well as he that never had been subject to a lord. We find the same regulations in the partition which Louis the Debonnaire made among his children in the year 817.

But though the freemen had done homage for a fief, yet the count's militia was not thereby weakened: the freeman was still obliged to contribute for his *allodium*, and to get people ready for the service belonging to it, at the proportion of one man to four manors; or else to procure a man that should do the duty of the fief in his stead. And when some abuses had been intro-

^l In the year 806, between Charles, Pepin, and Louis, it is quoted by Goldast, and by Baluzius, tom. ii. p. 439.

^m Art. IX. p. 443, which is agreeable to the Treaty of Andely, in Gregory of Tours, book IX.

ⁿ Art. 10, and there is no mention made of this in the Treaty of Andely.

^o In Baluzius, tom. i. p. 174. "Licentiam habeat unusquisque liber homo qui seniorum non habuerit, cuicumque ex his tribus fratribus voluerit, se commendandi," art. 9. See also the division made by the same Emperor, in the year 837, art. 6, Baluzius's edition, p. 686.

duced upon this head they were redressed, as appears by the constitutions of Charlemagne,^p and by that of Pepin, King of Italy, which explain each other.^q

The remark made by historians that the battle of Fontenay was the ruin of the monarchy is very true; but I beg leave to cast an eye on the unhappy consequences of that day.

Some time after the battle, the three brothers, Lotharius, Louis, and Charles made a treaty,^r wherein I find some clauses which must have altered the whole political system of the French government.

In the declaration ^s which Charles made to the people of the part of the treaty relating to them, he says that every freeman might choose whom he pleased for his lord,^t whether the king or any of the nobility. Before this treaty the freeman might do homage for a fief; but his *allodium* still continued under the immediate power of the King, that is, under the count's jurisdiction; and he depended on the lord to whom he vowed fealty, only on account of the fief which he had obtained. After that treaty every freeman had a right to subject his *allodium* to the King, or to any other lord, as he thought proper. The question is not in regard to those who put themselves under the protection of another for a fief, but to such as changed their allodial into a feudal land, and withdrew themselves, as it were, from the civil jurisdiction to enter under the power of the King, or of the lord whom they thought proper to choose.

Thus it was, that those who formerly were only under the King's power, as freemen under the count, became insensibly vassals one of another, since every freeman might choose whom he pleased for his lord, the King or any of the nobility.

2. If a man changed an estate which he possessed in perpetuity into a fief, this new fief could no longer be only for life. Hence we see, a short time after, a general law for giving the fiefs to the children of the present possessor: ^u it was made by Charles the Bald, one of the three contracting princes.

^p In the year 811, Baluzius's edition, tom. i. p. 486, arts. 7 and 8, and that of the year 812, *ibid.* p. 490, art. 1. "Ut omnis liber homo qui quatuor mansos vestitos de proprio suo, sive de alicujus beneficio, habet, ipse se præparet, et ipse in hostem pergat sive cum seniore suo," etc. See also the Capitulary of the year 807, Baluzius's edition, tom. i. p. 458.

^q In the year 793, inserted in the law

of the Lombards, book III. tit. 9, chap. ix.

^r In the year 847, quoted by Aubert le Mire, and Baluzius, tom. ii. page 42. "Conventus apud Marsnam."

^s "Adnunciatio."
^t "Ut unusquisque liber homo in nostro regno seniore quem voluerit in nobis et in nostris fidelibus accipiat," art. 2, of the Declaration of Charles.

^u Capitulary of the year 877, tit. 53.

What has been said concerning the liberty every freeman had in the monarchy, after the treaty of the three brothers, of choosing whom he pleased for his lord, the King or any of the nobility, is confirmed by the acts subsequent to that time.

In the reign of Charlemagne,^v when the vassal had received a present of a lord, were it worth only a sou, he could not afterwards quit him. But under Charles the Bald, the vassals might follow what was agreeable to their interests or their inclination with entire safety;^w and so strongly does this prince explain himself on the subject that seems rather to encourage them in the enjoyment of this liberty than to restrain it. In Charlemagne's time, benefices were rather personal than real; afterwards they became rather real than personal.

26.—Changes in the Fiefs

The same changes happened in the fiefs as in the *allodia*. We find by the Capitulary of Compiègne,^x under King Pepin, that those who had received a benefice from the King gave a part of this benefice to different bondmen; but these parts were not distinct from the whole. The King revoked them when he revoked the whole; and at the death of the King's vassal the rear-vassal lost also his rear-fief: and a new beneficiary succeeded, who likewise established new rear-vassals. Thus it was the person and not the rear-fief that depended on the fief; on the one hand, the rear-vassal returned to the King because he was not tied forever to the vassal; and the rear-fief returned also to the King, because it was the fief itself and not a dependence of it.

Such was the rear-vassalage, while the fiefs were during pleasure; and such was it also while they were for life. This was altered when the fiefs descended to the next heirs, and the rear-fiefs the same. That which was held before immediately of the King was held now mediately; and the regal power was thrown

arts. 9 and 10, "apud Carisiacum," "similiter et de nostris vassallis faciendum est," etc. This capitulary relates to another of the same year, and of the same place, art. 3.

^v Capitulary of Aix-la-Chapelle, in the year 813, art. 16, "quod nullus seniore suum dimittat post quam ab eo acceperit valente solidum unum"; and the Capitulary of Pepin, in the year 783, art. 5.

^w See the Capitulary de Carisiaco, in the year 856, arts. 10 and 13, Baluzius's

edition, tom. ii. p. 83, in which the King, together with the lords spiritual and temporal, agreed to this: "Et si aliquis de vobis talis est cui suus senioratus non placet, et illi simulat ut ad alium seniore melius quam ad illum acaptare possit, veniat ad illum, et ipse tranquillo et pacifico animo donet illi comiteatum . . . et quod Deus illi cupierit et ad alium seniore acaptare potuerit, pacifice habeat."

^x In the year 757, art. 6, Baluzius's edition, p. 181.

back, as it were, one degree, sometimes two; and oftentimes more.

We find in the books of fiefs,^y that though the king's vassals might give away in fief, that is, in rear-fief, to the king, yet these rear-vassals, or petty vavassors could not give also in fief; so that whatever they had given, they might always resume. Besides, a grant of that kind did not descend to the children like the fiefs, because it was not supposed to have been made according to the feudal laws.

If we compare the situation in which the rear-vassalage was at the time when the two Milanese Senators wrote those books, with what it was under King Pepin, we shall find that the rear-fiefs preserved their primitive nature longer than the fiefs.^z

But when those Senators wrote, such general exceptions had been made to this rule as had almost abolished it. For if a person who had received a fief of a rear-vassal happened to follow him upon an expedition to Rome, he was entitled to all the privileges of a vassal.^a In like manner, if he had given money to the rear-vassal to obtain the fief, the latter could not take it from him, nor hinder him from transmitting it to his son, till he returned him his money: in fine, this rule was no longer observed by the Senate of Milan.^b

27.—*Another change which happened in the Fiefs*

In Charlemagne's time they were obliged,^c under great penalties, to repair to the general meeting in case of any war whatsoever; they admitted of no excuses, and if the count exempted anyone he was liable himself to be punished. But the treaty of the three brothers^d made a restriction upon this head which rescued the nobility, as it were, out of the King's hands, they were no longer obliged to serve him in time of war; except when the war was defensive.^e In others, they were at liberty to follow their lord, or to mind their own business. This treaty relates to another,^f concluded five years before between the two brothers,

^y Book I. chap. i.

^z At least in Italy and Germany.

^a Book I. of fiefs, chap. i.

^b Ibid.

^c Capitulary of the year 802, art. 7, Baluzius's edition, p. 365.

^d "Apud Marsnam," in the year 847, Baluzius's edition, p. 42.

^e "Volumus ut cujuscumque nostrum

homo in cujuscumque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus, pergat, nisi talis regni invasio quam Lantuveri dicunt, quod absit, acciderit, ut omnis populus illius regni ad eam repellendam communiter pergat," art. 5, *ibid.* p. 44.

^f "Apud Argentoratam," in Baluzius, *Capitularies*, tom. ii. p. 39.

Charles the Bald and Louis, King of Germany, by which these princes release their vassals from serving them in war, in case they should attempt hostilities against each other; an agreement which the two princes confirmed by oath, and at the same time made their armies swear to it.

The death of a hundred thousand French, at the battle of Fontenay, made the remains of the nobility imagine that by the private quarrels of their kings about their respective shares, their whole body would be exterminated, and that the ambition and jealousy of those princes would end in the destruction of all the best families of the kingdom. A law was therefore passed, that the nobility should not be obliged to serve their princes in war unless it was to defend the state against a foreign invasion. This law obtained for several ages.^g

28.—*Changes which happened in the great Offices, and in the Fiefs*

The many changes introduced into the fiefs in particular cases seemed to spread so widely as to be productive of general corruption. I noticed that in the beginning several fiefs had been alienated in perpetuity; but those were particular cases, and the fiefs in general preserved their nature; so that if the crown lost some fiefs it substituted others in their stead. I observed, likewise, that the crown had never alienated the great offices in perpetuity.^h

But Charles the Bald made a general regulation, which equally affected the great offices and the fiefs. He ordained, in his Capitularies, that the counties should be given to the children of the count, and that this regulation should also take place in respect to the fiefs.ⁱ

We shall see presently that this regulation received a wider extension, insomuch that the great offices and fiefs went even to distant relatives. Thence it followed that most of the lords who before this time had held immediately of the Crown held now

^g See the law of Guy, King of the Romans, among those which were added to the Salic law, and to that of the Lombards, tit. 6, sec. 2, in Echard.

^h Some authors pretend that the County of Toulouse had been given away by Charles Martel, and passed by inheritance down to Raymond, the last count; but, if this be true, it was owing

to some circumstances which might have been an inducement to choose the Counts of Toulouse from among the children of the last possessor.

ⁱ See his Capitulary of the year 877, tit. 53, arts. 9 and 10, "apud Carisiacum." This capitulary bears relation to another of the same year and place, art. 3.

mediately. Those counts who formerly administered justice in the King's *placita*, and who led the freemen against the enemy, found themselves situated between the King and his freemen; and the King's power was removed further off another degree.

Again, it appears from the Capitularies,^j that the counts had benefices annexed to their counties, and vassals under them. When the counties became hereditary, the count's vassals were no longer the immediate vassals of the king; and the benefices annexed to the counties were no longer the king's benefices; the counts grew powerful because the vassals whom they had already under them enabled them to procure others.

In order to be convinced how much the monarchy was thereby weakened towards the end of the second race we have only to cast an eye on what happened at the beginning of the third, when the multiplicity of rear-fiefs flung the great vassals into despair.

It was a custom of the kingdom ^k that when the elder brothers had given shares to their younger brothers the latter paid homage to the elder; so that those shares were held of the lord paramount only as a rear-fief. Philip Augustus, the Duke of Burgundy, the Counts of Nevers, Boulogne, St. Paul, Dampierre, and other lords declared ^l that henceforward, whether the fiefs were divided by succession or otherwise, the whole should be always of the same lord, without any intermediation. This ordinance was not generally followed; for, as I have elsewhere observed, it was impossible to make general ordinances at that time; but many of our customs were regulated by them.

29.—*Of the Nature of the Fiefs after the Reign of Charles the Bald*

We have observed that Charles the Bald ordained that when the possessor of a great office or of a fief left a son at his death, the office or fief should devolve to him. It would be a difficult matter to trace the progress of the abuses which thence resulted, and of the extension given to that law in each country. I find

^j The third Capitulary of the year 812, art. 7, and that of the year 815, art. 6, on the Spaniards. The collection of the Capitularies, book 5, art. 223, and the Capitulary of the year 869, art. 2, and that of the year 877, art. 13, Baluzius's edition.

^k As appears from Otho of Frisingen, "of the actions of Frederic," book II, chap. xxix.

^l See the ordinance of Philip Augustus in the year 1209, in the new collection.

in the books of fiefs,^m that towards the beginning of the reign of the Emperor Conrad II the fiefs situated in his dominions did not descend to the grandchildren: they descended only to one of the last possessor's children, who had been chosen by the lord: thus the fiefs were given by a kind of election, which the lord made among the children.

In the seventeenth chapter of this book we have explained in what manner the crown was in some respects elective, and in others hereditary under the second race. It was hereditary, because the kings were always taken from that family, and because the children succeeded; it was elective, by reason that the people chose from among the children. As things proceed step by step, and one political law has constantly some relation to another political law, the same spirit was followed in the succession of fiefs, as had been observed in the succession to the crown.ⁿ Thus the fiefs were transmitted to the children by the right of succession, as well as of election; and each fief became both elective and hereditary, like the crown.

This right of election ^p in the person of the lord was not subsisting at the time of the authors ^q of the book of fiefs, that is, in the reign of the Emperor Frederick I.

30.—*The same Subject continued*

It is mentioned in the books of fiefs, that when the Emperor Conrad set out for Rome, the vassals in his service presented a petition to him that he would please to make a law that the fiefs which descended to the children should descend also to the grandchildren; and that he whose brother died without legitimate heirs might succeed to the fief which had belonged to their common father.^r This was granted.

In the same place it is said (and we are to remember that those writers lived at the time of the Emperor Frederick I) ^s "that the ancient jurists had always been of opinion ^t that the succes-

^m Book I. tit. 1.

ⁿ "Sic progressum est, ut ad filios deveniret in quem Dominus hoc vellet beneficium confirmare."—Ibid.

^o At least in Italy and Germany.

^p "Quod hodie ita stabilitum est, ut ad omnes æqualiter veniat."—Book I. of the fiefs, tit. 1.

^q Gerardus Niger and Aubertus de Orto.

^r "Cum vero Conradus Romam pro-

ficisceretur, petitum est a fidelibus qui in ejus erant servitio, ut, lege ab eo promulgata, hoc etiam ad nepotes ex filio producere dignaretur, et ut frater fratri sine legitimo herede defuncto in beneficio quod eorum patris fuit, succedat."—Book I. of fiefs, tit. 1.

^s Cujas has proved it extremely well.

^t "Sciendum est quod beneficium advenientes ex latere, ultra fratres patruales non progreditur successione a-