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XXXI.24 The principal cause of the weakening of the second dynasty. Change in the allods

- The Spirit of Law - Book XXXI. Theory of feudal laws among the Franks, in their relation to the transformations in their monarchy -

Date de mise en ligne : samedi 8 septembre 2018

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Charlemagne, in the division I mentioned in the preceding chapter, [1] determined that after his death the men of each king would receive benefices in the realm of their king, and not in the realm of another, [2] whereas they would keep their allods in whatever realm they be. But he adds that any free man could, after the death of his lord, petition for a fief in the three realms to whomever he wished, just as someone who had never had a lord. [3] We find the same provisions in the division [4] made by Louis the Debonaire to his children in 817.

But although free men petitioned for a fief, the count's militia was not weakened by it : the free man still had to contribute for his allod, and prepare men who did service for it, in the ratio of one man for four manors, or else he must prepare a man to serve the fief for him ; and some abuses having crept in on that head, they were corrected, as appears from the constitutions of Charlemagne [5] and of Pépin king of Italy, [6] which are mutually explanatory.

What the historians have said about the battle of Fontenay, that it caused the ruin of the monarchy, is very true ; but allow me to take a look at the baleful consequences of that day.

Some time after that battle, the three brothers Lothaire, Louis, and Charles made a treaty [7] in which I find clauses that must have changed the whole political state for the French.

In the declaration which Charles made to the people about the part of this treaty that related to him, [8] he says that any free man could choose as lord whomever he wished, the king or any of the other lords. [9] Before this treaty the free man could petition for a fief, but his allod still remained under the immediate authority of the king, which is to say under the jurisdiction of the count ; and he was a dependent of the lord whom he had petitioned only by dint of the fief he had obtained from him. Since this treaty, any free man could subject his allod to the king, or to another lord, as he wished. It does not deal with those who were petitioning for a fief, but with those who were changing their allod into a fief, and thus were, so to speak, leaving civil jurisdiction to enter into the authority of the king or the lord whom they wished to choose.

Thus, those who formerly were purely under the authority of the king, as free men under the count, little by little became vassals of each other, since each free man could choose as lord whomever he wished, whether the king or the other lords.

2nd. With a man changing into a fief an estate he possessed in perpetuity, these new fiefs could no longer be for life. Thus do we see a moment later a general law giving the fiefs to the children of the possessor [10] : it is by Charles the Bald, one of the contracting princes.

What I have said about the liberty possessed by all the men of the monarchy since the treaty of the three brothers to choose as lord whomever they wished, whether the king or the other lords, is confirmed by the acts enacted since that time.

In the time of Charlemagne, when a vassal had received something from a lord, were it worth but a sou, he could no longer leave him. [11] But under Charles the Bald, vassals were able to follow with impunity their interests or their whim [12] ; and that prince expresses himself so forcefully on this subject that he seems rather to invite them to take advantage of this freedom than to restrain it. In the time of Charlemagne, benefices were more personal than real ; subsequently they became more real than personal.

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[1] Of the year 806, between Charles, Pépin and Louis ; it is recorded by Goldaste and by the Baluze ed., vol. I, p. 439.

[2] Art. 9, p. 443, which is consistent with the treaty of Andely, in Gregory of Tours, book IX.

[3] Art. 10, and this is not mentioned in the treaty of Andely.

[4] In Baluze ed., vol. I, p. 174. *Licentiam habeat unusquisque liber homo qui seniore 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, Baluze ed., p. 686.

[5] Year 811, Baluze ed., vol. I, p. 486, art. 7-8, 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 capit. of the year 807, Baluze ed., vol. I, p. 458.

[6] Of the year 793, appended to the *Leges Langobardorum*, book III, tit. 9, ch. ix.

[7] In the year 847, reported by Aubert, le Mire, and Baluze ed., vol. II, p. 42, *conventus apud Marsnam*.

[8] *Adnuntiatio*.

[9] *Ut unusquisque liber homo in nostro regno seniore quem voluerit, in nobis et in nostris fidelibus accipiat* (art. 2 of the declaration of Charles).

[10] Capitulary of the year 877, tit. 53, art. 9-10, *apud Carisiacum : similiter et de nostris vassallis faciendum est*, etc. ; this capitulary relates to another of the same year and place, art. 3.

[11] Capitulary of Aix-la-Chapelle, year 813, art. 16. *Quod nullus seniore suum dimittat, postquam ab eo acceperit valente solidum unum* ; and the capitulary of Pépin, year 783, art. 5.

[12] See the capitulary of Carisiaco, year 856, art. 10-13, Baluze ed., vol. II, p. 83, in which the king and the ecclesiastical lords and laymen agreed to this : *Et si aliquis de vobis sit cui suus senioratus non placet, et illi simulat ad alium seniore melius quam ad illum acaptare possit, veniat ad illum, et ipse tranquille et pacifico animo donat illi comneatum..... et quod Deus illi cupierit ad alium seniore acaptare potuerit, pacifice habeat*.