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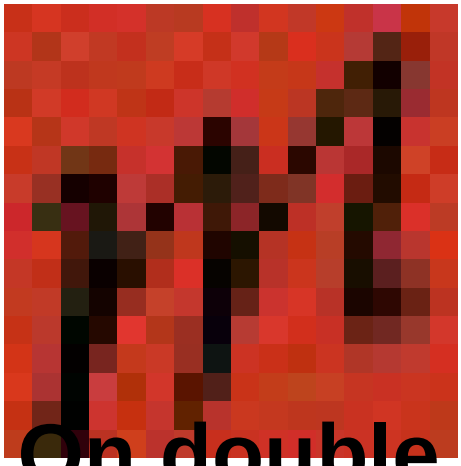

XXX.18 On double service

- The Spirit of Law - Book XXX. Theory of feudal laws among the Franks, in the relation they have to the establishment of the monarchy -

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It was a founding principle of the monarchy that those who were under the someone's military authority were also under his civil jurisdiction ; thus does the capitulary of Louis the Debonaire in the year 815 put side by side the count's military might and his civil jurisdiction over free men [1] ; thus were the placite [2] of the count who led free men to war called [3] the placites of free men, whence no doubt this maxim : that it was only in the placites of the count, and not those of his officers, that questions of freedom could be judged ; thus the count did not lead the vassals [4] of bishops or abbés into war, because they were not under his civil jurisdiction ; thus he did not lead to war the sub-vassals of the leudes ; thus does the glossary [5] of English laws tell us [6] that those whom the Saxons called *coples* were by the Normans named *comtes*, companions, because they shared judicial fines with the king ; thus do we see in all times that the obligation of every vassal [7] towards his lord was to bear arms and to judge his peers in his court. [8]

One of the reasons that thus attached this right of justice to the right to lead into war was that the man who led into war at the same time made people pay the duties of the treasury, which consisted in some services of conveyance owed by the free men, and in general in certain judicial profits which I shall take up now.

The lords had the right to dispense justice in their fief by the same principle that gave counts the right to dispense it in their county ; and to be clear, the counties, in the variations that have occurred at different times, always followed the variations that had occurred in the fiefs : in both cases they were governed by the same plan and the same ideas. In a word, the counts in their counties were leudes, and the leudes in their seigniories were counts.

We have not had it right in regarding the counts as officers of justice and the dukes as military officers. Both were equally military and civil officers [9] : the whole difference was that the duke had several counts under him, although there were counts who had no duke over them, as we learn from Fredegar. [10]

It will perhaps be thought that the government of the Franks was then very harsh, since same officers had at the same time both military and civil authority, and even fiscal authority, over the subjects, something I have in the previous books called one of the distinctive marks of despotism.

But it must not be thought that the counts judged alone [11] and dispensed justice the way pashas do in Turkey : they assembled, to judge disputes, a kind of day-courts or assizes [12] to which the notables were convoked.

In order to have a clear understanding of what concerns judgments in the formulas, the laws of the barbarians, and the capitularies, I will say that the functions of the count, of the *grafio*, and of the centenarius were the same ; that the judges, the *rathimburghers* and the *échevins* were, under different names, the same persons. They were adjuncts of the count, and ordinarily he had seven of them ; and since he needed no fewer than twelve persons to judge, [13] he filled out the number with notables. [14]

But whoever had the jurisdiction - the king, the count, the grafio, the centenarius, the lords, or the ecclesiastics - they never judged alone ; and this practice which originated in the forests of Germania was still in existence when the fiefs assumed a new form.

As for the fiscal power, it was such that the count could hardly abuse it : the rights of the prince with respect to free men were so simple that they consisted, as I have said, only in certain conveyances [15] required on certain public occasions ; and with respect to judiciary rights, there were laws [16] that prevented misappropriations.

[1] Art. 1-2 and council in Verno Palatio in the year 845, art. 8, Baluze ed., vol. II, p. 17.

[2] *Plaids* or *assises*.

[3] Capitularies, book IV in *Ansegisi capitularum*, art. 57, and capitulary V of Louis the Debonaire, year 819, art. 14, Baluze ed., vol. I, p. 615.

[4] See p. 352, note (d) and p. 354, note (a).

[5] Which we find in Compendium of Guillaume Lambard, *de priscis Anglorum legibus*.

[6] Under the word *satrapia.*

[7] *Assises de Jérusalem*, ch. ccxxi-ccxxii, explain this well.

[8] Church *avoués* (*advocati*) were equally at the head of their pleas court and their militia.

[9] See formule 8 of Marculfus, book I, which contains the letters granted to a duke, patrician, or count, giving them civil jurisdiction and fiscal administration.

[10] *Chronique*, ch. lxxviii on the year 636.

[11] See Gregory of Tours, book V *ad annum 580*.

[12] *Mallum*.

[13] On all this see the capitularies of Louis the Debonaire appended to the Salic law, art. 2, and the formula of judgments given by Du Cange at the word *Boni homines*.

[14] *Per bonos homines* ; sometimes there were only notables. See appendix to Formula of Marculfus, ch. li.

[15] And some tolls on rivers which I have mentioned.

[16] See law of the Ripuairians, tit. 89, and *Leges Langobardoroum*, book II, tit. 52, §9.