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XXXI.25 A change in the fiefs

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

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No lesser changes occurred in the fiefs than in the allods. We see from the capitulary of Compiègne, made under king Pépin, that those to whom the king gave a benefice themselves gave part of that benefice to various vassals ; but these parts were not distinguished from the whole. [1] The king took them away when he took the whole, and at the death of the leude, the vassal also lost his sub-fief ; a new beneficiary would come, who also would establish new sub-vassals. Thus the sub-fief was not a dependency of the fief, it was the person who was dependent ; on the one hand, the sub-vassal returned to the king, because he was not forever attached to the vassal ; and the sub-fief likewise returned to the king, because it was the fief itself, and not a dependency of the fief.

Such was sub-vasselage when the fiefs were transferable, such it was still while the fiefs were for life. That changed when the fiefs passed on to heirs, and the sub-fiefs did as well. What was held from the king immediately now was held only mediately ; and the royal authority found itself, so to speak, a degree removed, sometimes two, and often more.

We see in the books of the fiefs that although the king's vassals could donate as fief, which is to say as sub-fief of the king, nevertheless these sub-vassals or petty vavasours could not likewise donate as fief, and so what they had donated they could always take back. [2] Besides, such a concession did not pass on to the children, as did fiefs, because it was not assumed to have been made according to the law of fiefs.

If we compare the state sub-vasselage was in at the time when the two senators from Milan were writing these books, with the state it was in at the time of king Pépin, we will find that sub-fiefs retained their original nature for longer than fiefs did. [3]

But when these senators wrote, such general exceptions had been made to this rule that they had almost obliterated it. For if the man who had received a fief from the petty vavasor had followed him to Rome in an expedition, he would acquire all the rights of vassal [4] ; likewise, if he had given money to the petty vavasor in order to obtain the fief, the latter could not take it from him, nor prevent him from transferring it to his son, so long as he had not given him his money back ; finally, this rule was no longer followed in the Milan senate. [5]

[1] Year 757, art. 6, Baluze ed., p. 181.

[2] Book I, ch. i.

[3] At least in Italy and Germany.

[4] Book I of fiefs, ch. i.

[5] *Ibid.*