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XXX.21 On the territorial justice of the churches

- 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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The churches acquired very considerable properties. We see that the kings gave them large treasuries, which is to say large fiefs, and we first find the administration of justice established in the domains of these churches. What could have been the origin of such an extraordinary privilege ? It was in the nature of the thing given : Church property had that privilege because it was not taken away. One gave a treasury to the Church, and left to it the prerogatives it would have had if it had been given to a leude ; it was also subject to the service which the state would have derived from it had it been granted to a layman, as we have already seen.

Thus the churches had the right to make people pay compositions in their territory, and to demand the *fredum* from them ; and as these rights necessarily entailed the right of preventing royal officers from entering the territory to demand these *freda* and exercise all acts of justice, the right which the ecclesiastics had of dispensing justice in their territory was called *immunity*, in the style of the formulas, [1] charters, and capitularies.

The law of the Ripuarians [2] prohibits the men freed [3] by the churches from holding the assembly [4] where justice is dispensed elsewhere than in the church where they were freed. The churches therefore had jurisdictions, even over free men, and were holding their *plaids* from the earliest times of the monarchy.

I find in the *Lives of the Saints* that Clovis gave to a holy personage authority over a territory of six leagues of land, and that he wanted him to be free from any jurisdiction whatever. [5] I believe this to be false, but it is a very old falsehood ; the essence of the life and the lies relate to the practices and laws of the time, and it is those practices [6] and those laws that I am searching for here.

Chlothar II commands the bishops and grandees who own lands in distant countries to choose on the site itself who should dispense justice or receive the emoluments. [7]

The same prince determines the jurisdiction between the church judges and his officers. [8] Charlemagne's capitulary of the year 802 prescribes to bishops and abbés the qualities that their officers of justice must possess. Another [9] by the same prince forbids royal officers to exercise any jurisdiction over those who farm ecclesiastical lands, unless they have assumed this condition fraudulently and in order to evade public charges. [10] Another assigns to churches criminal and civil justice over all those who live in their territory. [11] Finally, the capitulary of Charles the Bald distinguishes between the jurisdictions of the king, the lords, and the churches [12] ; and I shall say no more about it. [13]

[1] See 3rd and 4th formulæ of Marculfus, book I.

[2] *Ne aliubi nisi ad ecclesiam, ubi relaxati sunt, mallum teneant*, tit. 58, §1. See also §19, Lindenbrog ed.

[3] *Tabulariis*.

[4] *Mallum*.

[5] *Vita S. Germeri episcopi Tolosani, apud Bollandianos, 16. maii*.

[6] See also *Life of St. Melanius* and that of *St. Deicole*.

[7] In Council of Paris, year 615. *Episcopi vel potentes, qui in aliis possident regionibus, iudices vel missos siscussores de aliis provinciis non*

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instituant, nisi de loco, qui justitiam percipiant and aliis reddant, art. 19. See also art. 12.

[8] *Ibid.*, art. 5.

[9] In *Leges Langobardorum*, book II, tit. 44, ch. ii, Lindenbrog ed.

[10] *Servi Aldiones, Libellarii antiqui, vel alii noviter facti (ibid.)*.

[11] Capitulary of the year 806 ; it is appended to the law of the Bavarians, art. 7. See also art. 3, Lindembrock ed., p. 444. *Imprimis omnium jubendum est ut habeant ecclesiae earum justitias, and in vita illorum qui habitant in ipsis ecclesiis and post, tam in pecuniis quam and in substantiis earum*.

[12] Of the year 857, in *Synodo apud Carisiacum*, art. 4, Baluze ed., p. 96.

[13] See letter of the bishops assembled in Reims of the year 858, art. 7, in the capitularies, Baluze ed., p. 108. *Sicut illae res and facultates in quibus vivunt clerici, ita and illae sub consecratione immunitatis sunt de quibus debent militare vassalli, etc.*