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Sir Francis Palgrave, K.H.

In Ten Volumes

Volume Six

THE RISE AND PROGRESS OF THE
ENGLISH COMMONWEALTH

ANGLO-SAXON PERIOD

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SIR R. H. THOMAS PARGRAVE, F.R.S.

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OF SIR FRANCIS PALGRAVE, K.H.

edited by his son

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FRONTISPIECE

PORTRAIT OF SIR FRANCIS PALGRAVE, FROM A MEDALLION
BY THOMAS WOOLNER, R.A., 1861.

NOTE

The Rise and Progress of the English Commonwealth, now republished as volumes VI and VII of this series, is regarded by many historians as Sir Francis Palgrave's greatest written work. It contains the fullest and most definite expression of his views on the history of the early institutions of our country and was a contribution to their study of very considerable value.

The two volumes were completely ready for publication at the time of Sir Inglis Palgrave's death with the exception of the indexes, but they had to be set aside until volumes III and IV, which were in a less advanced state, could be finished.

Sir Inglis Palgrave had wished cordially to thank Dr Joseph Hall for his advice and assistance in the general preparation of the volumes, for revising the translations of the long passages from the Latin Chronicles quoted by the author, for checking the many references to chroniclers and historians and ancient legal codes, and for writing the notes to Part II (volume VII) and many of those to Part I (volume VI). I am glad to have this opportunity of expressing his thanks also to Dr Frederick Bradshaw, Reader in Modern History, Armstrong College, Newcastle-upon-Tyne, for his notes to Part I, to Mr Emery Walker for his excellent reproduction of Thomas Woolner's medallion-portrait of the author which forms the frontispiece to volume VI, and especially to Miss E. A. Skelton for her indefatigable work in preparing the volumes for the press in accordance with Sir Inglis Palgrave's instructions. With these acknowledgments I should much like to associate myself.

GEOFFREY PALGRAVE BARKER.

THE ATHENAEUM,

LONDON,

August, 1921.

ERRATA

Page 391, line 33, *for* p. 215 *read* p. 115
,, 516, ,, 11 (margin), *for* above *read* below

THE
RISE AND PROGRESS
OF THE
ENGLISH COMMONWEALTH.

ANGLO-SAXON PERIOD.

CONTAINING

THE ANGLO-SAXON POLICY, AND THE INSTITUTIONS
ARISING OUT OF LAWS AND USAGES WHICH
PREVAILED BEFORE THE CONQUEST.

BY

FRANCIS PALGRAVE, F.R.S. & F.S.A.

PART I.

“By *Commonwealth* I must be understood all along to mean, not a Democracy, or any form of Government, but *any independent community*, which the Latins signified by the word *Civitas*, to which the word which best answers in our language is *Commonwealth*, and most properly expresses such a Society of Men, which Community or City in English does not, for there may be subordinate Communities in a Government; and City amongst us has quite a different notion from Commonwealth: and, therefore, to avoid ambiguity, I crave leave to use the word *Commonwealth* in that sense in which I find it used by King James the First, and I take it to be its genuine signification; which, if any body dislike, I consent with him to change it for a better.”--LOCKE, *on Government*.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.

MDCCCXXXII.

TO

HENRY, MARQUESS OF LANSDOWNE,
EARL OF KERRY,
LORD PRESIDENT OF THE COUNCIL,
&c. &c. &c.

THIS WORK

IS INSCRIBED,

AS A TESTIMONY OF THE SINCERE RESPECT AND ESTEEM

OF

THE AUTHOR.

PREFACE.

So many works of deserved and established reputation, treating upon the antiquities of the Constitution, are already before the public, that some apology seems needed for adding another to their number. I must therefore excuse myself by the observation, that an attempt is here made, however imperfectly, to supply a chasm in our historical literature.

Political events generally occupy the first station in the pages of the Historian; political institutions, the second; judicial policy and jurisprudence, the third and last. But the character of the People mainly depends upon their Laws. And it is utterly impossible to obtain a correct view of the general administration of the State, unless we fully understand the spirit of the institutions which pervade the community, and regulate the daily actings and doings of mankind.

For this purpose, I have traced the Constitution upwards, and analysed the component elements of the Commonwealth. The ranks and conditions of society amongst the Anglo-Saxons, and their legal Institutions, are examined before discussing the political government of the Realm. When the Anglo-Saxon Institutions, subsisting through subsequent eras, have received that development which connects them with our existing English Common Law, I have pursued their history. But I have in no case adhered to a strict chronological arrangement of the matter. Whatever advantages chronological order may possess, it frequently tends to produce, either the most wearisome repetitions, or the most repulsive obscurity. I have endeavoured, therefore, to group the different subjects in such a manner as may best tell the story of the Constitution. In some cases, the reasons for the classification thus adopted may not at first be apparent: but considerable attention has been given to the *ground-plot* of the work; and, at the conclusion, the Reader will find that he has been conducted by the shortest as well as by the easiest path.

The researches of two of the most learned men of the present day have thrown a new light upon the origin of the laws and government prevailing in modern Europe. Savigny¹ clearly demonstrates the existence of Roman communities far in the middle ages: and Allen², with profound erudition, has shown how much of our monarchical theory is derived, not from the ancient Germans, but from the government of the Empire. When, however, I convinced myself that the States composing Western Christendom were to be considered as carrying on the succession of the Imperial authority of Rome, I had not the advantage of being guided by either of these Writers. I was not acquainted with the existence of the "*Geschichte des römischen Rechts im Mittelalter*," and the "*Inquiry into the Rise and Progress of the Royal Prerogative*" had not appeared: nor, till its appearance, was I aware of the views which its Author entertained; whilst he, on his part, was equally ignorant of mine. Our investigations were pursued independently of each other: and I had also made great progress in the composition of the work before I had read Dubos³, who, in his "*Histoire Critique de l'établissement de la Monarchie Française dans les Gaules*," has supported similar positions with considerable acuteness and talent. The sarcastic remarks of Montesquieu⁴ led me to suppose, in common, I believe, with most of Montesquieu's readers, that the Abbé Dubos was entirely undeserving of confidence: and I did not take the trouble to consult him, until, being compelled to do so in order to verify a particular passage, I discovered how unjustly he had been depreciated by his brilliant, but superficial antagonist.

On many important points, I differ entirely from the other writers who have adopted the same main ideas. Where I could, I have availed myself of their information: but when we disagree, I have seldom thought it necessary to enter into any controversy, either for the purpose of impugning those opinions which I do not hold, or of advocating my own theories.

The second part, or Appendix of Proofs and Illustrations, includes a selection of original documents and authorities, by which the accuracy of the positions in the body of the work may be tried. Furnished with the evidence, the Reader may judge for himself, and admit or refuse the inferences drawn by the Author.

Should I be enabled to complete my task, should life and opportunity be afforded to me, another Volume will continue

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Continue

NOTE.

It was intended that a version of the Anglo-Saxon Laws should have been included in the Proofs and Illustrations, and the references in the first half of the volume were made according to such version. But as the public will shortly be enabled to peruse these specimens of ancient legislation in the very excellent translation of Mr. Price, I have omitted them, with the exception of the portion of the Laws of Ethelbert included in the Commentary upon the Laws of the Conqueror. The following table will enable the reader to adjust the references to the texts in Wilkins, &c.:—

Athelstane I. . .	The "Gerædnes"	p. 54 to 61.
Athelstane II. . .	The Laws made at Exeter	62 to 63.
Athelstane III. . .	The Laws relating to the Hundred	(Brompton, p. 847.)
Athelstane IV. . .	The Laws made at "Thundredesfeld"	(Brompton, p. 848.)
Athelstane V. . .	The Address of the Witan of Kent	(<i>Proofs</i> , p. 170.)
Edmund I. . .	The Laws made at London	p. 72 to 73.
Edmund II. . .	The additional Laws	73 to 75.
Edmund III. . .	The Laws made at "Culentune"	(Brompton, p. 859.)
Edgar I. . .	The Ecclesiastical Chapters	p. 76 to 77.
Edgar II. . .	The "Weorldeund Gerædnes," or Secular Laws,	p. 77 to 79.
Edgar III. . .	The supplementary Laws	p. 79 to 82.
	N.B.—In Wilkins, the paragraphs are not numbered.	
Ethelred I. . .	The Laws made at Woodstock	p. 102 to 104.
Ethelred II. . .	The Laws made at "Waneting"	117 to 118.
	N.B.—In Wilkins, the paragraphs are not numbered.	
Canute I. . .	The Ecclesiastical Laws	p. 126 to 133.
Canute II. . .	The Secular Laws	133 to 147.

THE
RISE AND PROGRESS
OF THE
ENGLISH COMMONWEALTH.

CHAPTER I.

Legal Constitution of England—Its relation to the History and Character of the Political Constitution—Anglo-Saxon Ranks and Orders of Society—Their Nature, Origin, and Privileges.

ENGLAND is distinguished from the surrounding nations, not **Part I.** only by the conformation of the Legislature, but also by the **Ch. I.** institutions either directly or indirectly connected with the dispensation of justice, and which are invested with characteristics as singular and important as the attributes belonging to the Parliament of the realm; equally singular, since, in the present age, we cannot find a parallel to them, unless the resemblance be sought in those countries where they have been planted by Englishmen, or professedly borrowed from England; equally important, because they are the sources of the peculiarities, of the merits, and, perhaps, of the defects belonging to the political constitution.

Trial by jury, courts of equity, proceeding in a course entirely different from that adopted in courts of law, the franchises of municipal corporations, the jurisdiction possessed by the justices of the peace, the compulsory provision for the maintenance of the poor, are all essential elements of English policy, and which cannot be excluded from our consideration, if we wish to obtain a full and impartial view of the organization of our government.

In attempting to describe the rise and progress of the English Commonwealth, I shall, therefore, in connexion with the political history of the Legislature, endeavour to deduce the origin of our ancient tribunals, and to delineate the outlines of English jurisprudence.

**Peculiarities
of the legal
Constitution
of England.**

Part I.

Ch. I.

If the inquiries which I have undertaken had been more familiar to the distinguished writers who have treated upon English history, I should not have ventured to attempt a task presenting great difficulties. But my predecessors have left a chasm in constitutional literature, which the present work, however imperfect, is intended to supply. Political events generally occupy the first station in the pages of the historian; political institutions, the second; judicial policy and laws, the third and last. The archives of an obsolete jurisprudence offer but few inducements to the diligence of the student, and fewer attractions to the imagination of the reader. Unadorned by the pride and pomp of war, ungraced by the brilliancy of royalty, deprived of the fascination and dramatic interest belonging to enterprise and adventure, the repulsive records of the law have been generally treated with neglect, or rejected as cumbersome accessories to history.

Yet it is unnecessary to insist upon the utility of the elucidations which the pages of the chronicler derive from the mouldering roll and the mildewed charter; nor need I repeat the maxim so often repeated, that the value of any form of government depends upon the protection which, through the law, it affords to the individual. All this will be readily conceded; but with respect to this country, it must be added, that the ancient modes of administering the laws have produced the political Constitution. That political Constitution, so much extolled and so highly prized, is comparatively an invention of recent date, a creation of yesterday. Parliament, in its present form, and with the functions now severally vested in King, Lords, and Commons, is entirely founded upon the legal Constitution by which it was preceded; and the authorities exercised by the aristocratical and popular branches of the legislature, have arisen from the ancient distribution of the powers of remedial and coercive justice.

Indeed the history of the law affords the most satisfactory clue to the political history of England. When we peruse the annals of the Teutonic nations—the epithet, Teutonic, being used in its widest sense—the first impression which we receive results from the identity of the ancient laws and modes of government which prevailed amongst them. Like their various languages, which are in truth but dialects of one mother-tongue, so their laws are but modifications of one primeval code. In all their wanderings from their parent home, the Teutons bore with them that law which was their birthright and their privilege; and

Political
Constitution
of England
derived from
the legal
Constitution.

even now we can mark the era when the same principles and doctrines were recognized at Upsala¹ and at Toledo, in Lombardy and in England. But descending the stream of time, the tokens of relationship diminish, and at length disappear. Amongst the cognate races on the continent of Europe, political freedom was effaced by the improvement of society; England alone has witnessed the concurrent development of liberty and of civilization. From whatever causes it may have originated, a beneficial impulse was given by the Anglo-Saxon and Anglo-Norman governments to the courts of justice which, though emanating from the Crown, were interposed between the Sovereign and his subjects, in such a manner as to tend towards a limited Monarchy. And if this tendency had not continued and increased, the share of authority possessed by the people or their representatives would have been as feebly established here, as in other countries, which, starting from the same point, proceeded in a less fortunate career. Deprived of the security afforded by institutions which became the strongholds of liberty, and the stations of defence from which the patriot could not be dislodged, the Parliament of England, like the Cortes of Spain, or the States General of France, would long since have declined into inefficiency and extinction.

Nor are the lessons to be obtained by a study of our ancient jurisprudence destitute of a practical application. It is true that they can rarely be pleaded in the court, or quoted by the Advocate, but they may furnish arguments equally against the groundless fear of innovation, and against the wildness of theory. There are some amongst us who consider the present system as the result of the "wisdom of ages," admitting of no amendment, requiring no amelioration, alloyed by no imperfection, weakened by no decay. Such are the sentiments of those reasoners, who have adopted the belief that it is the imperative duty of good and loyal subjects to become the uncompromising defenders of all existing institutions, in every part and detail. On the contrary, the opponents of these institutions represent the English law as the inheritance of a barbarous people, in which a rude and unreasoning spirit of freedom struggles, and most ineffectually, against the prejudices derived from ancient times; whilst any approach to real "liberality" receives an insuperable check from the political corruptions and vices of the present day. When we weigh the relative worth of the arguments to be adduced by the two conflicting parties, it must be admitted that the first may be assailed by arguments which they cannot readily refute, and

Part I.
Ch. I.

Laws of England, how considered by different parties and partizans.

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embarrassed by facts which they cannot satisfactorily deny. Contemplated abstractedly, and severed from the frame of which they form a part, there are very many of our institutions which appear weak, incomplete, and encumbered with useless perplexity; more, which, when construed according to the strict letter of the law, are liable to perversion and abuse. Commendations are indiscriminately lavished upon our system of jurisprudence which it does not deserve. It abounds with blemishes which no impartial observer can fail to discern. Statutes, some older than the gloomy Gothic hall¹ in which they are expounded, others hastily enacted, calculated to meet only the exigency which gave them birth, and yet stubbornly retained, though productive of mischief or absurdity: precedents created without any attention to broad and general principles; and followed rigidly and religiously for centuries after the original cause of the decision is forgotten:—these are the chief materials of our jurisprudence; and in which we search in vain for order, contrivance and consistency.

Hence, the “wisdom of our ancestors” has become a by-word and a reproach amongst those, who, either covertly or openly, demand a complete renovation of our policy; or, to use the new and expressive phrase of these our times, a Radical Reform. Yet, how irremediable are the mischiefs which may be inflicted by too hasty a removal of evil! Nations are but aggregates of individuals, and no alteration can conduce to the comfort of the people at large, if unacceptable to the greater number of those classes which are the natural depositaries of national strength and energy. Education and example, habit and interest, the lessons of early youth, the avocations of riper age, all contribute to connect existing institutions with the most praiseworthy feelings, the most excusable prepossessions, and the most unyielding prejudices of our nature. Even prejudices result from misapplied experience, and must be respected, if we really wish to produce a grateful and lasting benefit: for any “reform” which, as far as human obligations are concerned, is not effected by means of compromise, will only lead to oppression and tyranny. Amongst the causes which have contributed to render the English law a source of partial good, one of the most efficient has been the caution of our legislators. Generally speaking, they have been actuated by a sincere, though perhaps not an enlightened, love of justice; and occasionally the very narrowness of their views has stood in the stead of better motives.

Though the modern policy of England may, at first sight, **Part I.** appear to differ most widely from the ancient laws, still the **Ch. I.** alterations have been chiefly effected by custom and transmission. Legislation has advanced in one continued path, treading in short and measured steps, and usage has effected more than legislation. By far the greatest portions of the written or statute laws of England, consist of the declaration, the re-assertion, the repetition, or the re-enactment of some older law or laws, either customary or written, with additions or modifications. The new building has been raised on the old groundwork: the institutions of one age have always been modelled and formed from those of the preceding, and their lineal descent has never been interrupted or disturbed.

By these means, the Country, notwithstanding its various revolutions, has been exempted from any violent shocks or changes, and from their consequent afflictions. The Legislature, unless when yielding to the dire temptation of political animosity, has not frequently been guilty of positive wrong. Chequered with many dark and dreary scenes of sin and sorrow, the political history of England is, on the whole, less depressing than that of any other state or dominion which has hitherto existed. In no other community can we discern, at the end of each successive cycle, so incontrovertible an advance in the science of political government. Intervals occur, fraught with turbulence and unhappiness; grievances may have been too loudly urged; grace too long withheld: but no liberty once acquired by the people has ever been lost; and each season of misfortune which has passed away, has been followed by a longer period of tranquillity. And that such praises are justly due to the English Constitution, the most ample testimony is afforded by the events which are now taking place in the political world. In the fairest and in the most intelligent countries of Europe, the attainment of a form of government assimilated to the English Constitution, is either earnestly desired, or has been successfully carried into effect. The most splendid consequence of victory is the power of compelling a subject nation to adopt the laws and customs of the Conqueror: but how much prouder are the unstained triumphs which England has thus gained, by the voluntary submission of her enemies, her rivals, and her friends!

Merits of
the political
Constitution.

When considering our civil and criminal codes, let us estimate them with impartiality. The seat of justice is filled by Judges whose integrity, as it is above all suspicion, is above all praise;

Part I.
Ch. I.

Defects of
the legal
Constitution.

and the wisdom and humanity of the magistrate may alleviate the improvidence and harshness of the legislator. Yet the improvement of our laws has not by any means kept pace with the general amelioration of the political Constitution. Are we to congratulate ourselves by asserting, that the criminal laws of England are more equitable and less oppressive than those adopted in other parts of Europe? Such a eulogium will afford but slender reason for triumph, when we recollect that the proofs extorted by the rack are scarcely expunged from the protocols of the continental tribunals. But in order to appreciate the main defects of our laws, we will quote the opinions of a writer whose name commands unqualified respect. "The definition of civil liberty," it is observed by Paley, "imports, that the laws of a free people "impose no restraints upon the private will of the subject, which "do not conduce in a greater degree to the public happiness; by "which it is intimated, first, that restraint is in itself an evil; "secondly, that this evil ought to be counterbalanced by some "public advantage; thirdly, that the proof of this advantage lies "upon the legislature; fourthly, that a law being found to "produce no sensible good effects, is a sufficient reason for "repealing it, as adverse and injurious to the rights of a free "citizen, and without demanding specific evidence of bad effects. "This maxim might be remembered with advantage in a revision "of many laws in this country, especially of the Game Laws, of "the Poor Laws, so far as they lay restrictions upon the poor "themselves, of the laws against Papists and Dissenters; and "amongst a people enamoured to excess, and jealous of their "liberty, it seems a matter of surprise, that this principle has "been so imperfectly attended to."^a

An enlightened Statesman¹ has commenced the re-enactment of the Criminal Law, upon a plan which, if pursued, will condense its bulk and remove many complexities and anomalies. Yet, whatever defects may have existed in the time of Paley, they have not been substantially diminished by the efforts of the Legislature. We have still to expect a revision, grounded upon the maxims and principles which he urged with so much energy and truth; and future generations will view the effects of the delay in the spreading circuit of the workhouse, and the towering fabric of the jail: for these will be the most lasting monuments of the nineteenth century, and of a people whose laws have shaped

^a Moral and Political Philosophy, bk. vi. c. 5.

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HOLY BIBLE

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Part I.
Ch. I.

nearest collateral heir, either by the choice of the nation, or the force of arms. But the royal authority, though it might be lost by the individual, could not depart from the sovereign line, to which it belonged. No subject could aspire to the rank which was vested inalienably in the royal families, and in them alone.

Anglo-Saxon
Kings
descended
from Odin.

The Anglo-Saxon Chieftains, like the Kings of the North, the "Ynglingas" and "Skioldingers" of Sweden and Denmark, and the "Jarls" of Norway, were all descended from the deified Monarch of the Ases, from Odin or Woden, whose name, under various inflections, is known from the shores of the Polar Sea to the extremest verge of the Caucasian continent¹. It may be admitted that their proud genealogies had no foundation in truth. The researches of the learned, who have attempted to fix the era, and to trace the wanderings of the "King of Men," have failed to dispel the darkness of early mythology. The Scandinavian Edda², as it is now modelled, assumed its poetical and legendary form after the ancestors of the Anglo-Saxons had migrated from their brethren. In Germany, the vestiges of the ancient belief are too scanty to furnish even the basis of a consistent system; yet, notwithstanding this obscurity, we can distinctly discover from the pedigrees of the Anglo-Saxon Leaders, that they and their Scandinavian kinsmen belonged to a mighty dynasty, uniting the royal and sacerdotal functions, and the members of whose different septs or branches were the primeval Priests and Sovereigns of the Teutonic tribes. Saxnote³, whom the Salic Franks⁴ unwillingly forsook, at the behest of Carloman⁵, together with Woden, his sire, "and all the fiends their consorts," was the immediate progenitor of the Kings of Essex. Wecta⁶, Wægdæg, Wihtlæg, and their brethren, were the roots assigned to other dynasties, who all join in claiming the children of Odin as their respective ancestors^a. The remote consanguinity of the Anglo-Saxon royal families was strengthened by their conjugal alliances. It does not appear that an Anglo-Saxon King was ever legally united otherwise than to a daughter of Odin, the few marriages with foreign princesses are hardly to be considered as exceptions; and there are grounds for assuming, that, according

^a MS. Cott. Tiberius B v. Sax. Chron. ed. Ingram, pp. 15, 18, 19, 23, 24, 28. Alfred's Bede, ed. Wheloc, p. 6. Flor. Wigorn. p. 688. Nennius, SS. Rerum Anglicarum, vol. i. p. 116. [Nennius, Writers on English History.] Textus Roffensis, pp. 59, 60, 61. Ynglinga Saga. Abrenuntiatio Diaboli; Capitulare secundum apud Liptinas, A.D. 743. [Renunciation of the Devil; Second Ordinance given at Lestines.]

to the strict principles of their constitutional law, an ignoble mother ought to have incapacitated her offspring from succeeding to the throne. Part I.
Ch. I.

Another great class or Caste was composed of the Nobility, who, in the Latin laws of the continental nations, are called "Nobiles," or "Ingenui." Amongst the Anglo-Saxons, persons of this rank bore the title of "Eorls," or "Eorlcund" men¹, or "Thane-born."^a Aristocracy was the pervading principle of the Anglo-Saxon government; and though mere nobility, that is to say, nobility unaccompanied by landed property, did not confer authority, still the main privileges of the Patrician were the results of blood and parentage, and were not even suspended by the immunities of the clergy. In the shades of the Cloister, and beneath the roof of the Cathedral, the vain distinctions of the world were still recognized; nor was it fitting, as Egbert² declares, that the orders or vows of holy church should deprive the Bishop, the Monk, the Priest, or the Deacon, of the dignity and honour which the layman derived from "birth" and "nobility."^b

Eorls,
Twelfhynde
mer, or
Nobles.

The third class or Caste, composing the remainder of the people—for the Theowas or Serfs were not included in the Commonwealth—consisted of the "low-born," or ignoble "Ceorls," placed in a state of perpetual dependence upon the Nobility, and liable to many legal restrictions and disabilities, arising out of their relation towards their lords and masters. Yet these vassals were free, according to the ideas which the Anglo-Saxons attached to the word freedom, differing greatly indeed from modern notions: for servitude and liberty are words of ambiguous import; they are denoting tokens, which change their worth in every country and every age. Ceorls,
Twihynde
men, or
Villeins.

This division of the nation existed from the dawn of Anglo-Saxon history, and continued without any material interruption or variation until its close. In the first and last monuments of Anglo-Saxon jurisprudence, it is recognized, without hesitation, that every freeman was either noble or ignoble. The two orders of the Eorls and Ceorls, which are always named in marked antithesis to each other, were also respectively known as "Twelfhynde" men and "Twihynde" men, appellations synonymous in use with "Eorls" and "Ceorls," but derived from the maxims and principles of the Anglo-Saxon law, and which were the

^a Devonian Compact, § 5. Customs, I.

^b Dialogus Egberti, Concilia, vol. i. p. 84.

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Part I.
Ch. I.

Unequal
rights of
the Eorl
and Ceorl.

consequences of the great superiority assigned by the constitution to the Aristocracy. Thus the Eorl and the Ceorl were not considered as possessing the same degree of credibility when their opinion was vouched in a court of justice. To render this observation intelligible, we must advert to the forms of Anglo-Saxon law. Circumstantial evidence was never received: a witness, swearing that he was neither "bidden nor bought," could only be allowed to declare that which he had "seen with his eyes and heard with his ears."^a A witness could not be called to prove a fact unless he asserted it in positive terms. If such direct testimony could not be obtained, the plaintiff supported his claim by oath, and the defendant or culprit was allowed, under certain restrictions, to clear himself by compurgation^{b1}. He swore that he was not liable to the demand preferred against him, or that he was innocent of the accusation laid to his charge; and if this exculpatory oath was confirmed by the oaths of a certain specified number of other persons, or compurgators, who, on their part, swore that they believed in the truth of the oath of their principal, then he was declared not guilty by the law. But the right of appearing as a compurgator, and in that capacity testifying to character, for such is the right, if its real import be kept in view, was apportioned according to the rank of the Noble and of the Villein, the declaration of six Ceorls, or Twihynde men, being only equal to the assertion of one single Twelfhynde man.

Compurgatory oath of one Eorl equal to the oaths of six Ceorls.

A further consequence of the unequal estimation of the Eorl and the Ceorl is to be discovered in the unequal amount of the "weres," the legal fines or compensations paid as the price of blood, or as the atonement for personal affronts or injuries. If a Ceorl killed an Eorl, the relations of the individual who had been slain might wreak their vengeance upon six Ceorls belonging to the clan or kindred of the offender. When amends were made in money or property, the "wergild" paid for the life of an Eorl was six times the amount of the "wergild" paid for the head of the Villein. Every minor offence was expiated in the same manner. Anomalies occur in the legal arithmetic of the Anglo-Saxons, which in its particulars is complicated, and sometimes obscure, and the damages do not always increase by regular intervals: but whenever a measure of compensation is given in money, or money's worth, the principle is consistent, notwithstanding any variation in the details; and the Eorl and the

The value of the life of one Eorl equal to the value of the lives of six Ceorls.

^a Customs, II.

^b Ethelbert, §§ 13, 14, 74.

Ceorl are invariably placed at the opposite extremities of the scale^a.

Part I.
Ch. I.

But the full enjoyment of the privileges of the Eorl could not be imparted by birth alone. Nobility, with all its pre-eminence and worship, required the addition of property; and the line of ancestry, although it raised the noble above the rank of the villeinage, did not place him on a level with those individuals of the same class, who, qualified by the land which they held in full and absolute ownership and dominion, were entitled to command. And here again we may notice the conformity between the Anglo-Saxon and continental laws, the Frank losing the privileges of the *haute noblesse* if he had not land to enable him to support the dignity. According to the policy of the Anglo-Saxons, and which we collect from the entire course and tenour of their laws, rather than from any particular document, the Commonwealth was composed of "Hlafords" and of "Men," or, to borrow the feudal phraseology, of Lords and Vassals: whoever was not included in one class belonged to the other; whoever could not bestow protection was compelled to render fealty. The whole scheme of the Anglo-Saxon law is founded upon the presumption that every freeman, not being a "Hlaford," was attached to a Superior, to whom he was bound by fealty, and from whom he could claim a legal protection or warranty, when accused of any transgression or crime. If, therefore, the "Eorlcund" individual did not possess the real property which, either from its tenure or its extent, was such as to constitute a Lordship, he was then ranked in the very numerous class, whose members in Wessex and its dependent states, were originally known by the name of "Sithcund" men^{b1}; an appellation which we may paraphrase by the heraldic expression of "gentle by birth and blood." This term of Sithcund man, however, was only in use in the earlier periods. After the reign of Alfred it is lost; and the most comprehensive and significant denomination given to this class is that of "Sixhynde" men², indicating their position between the highest and lowest law-worthy classes of society. Other designations were derived from their services and tenures. Radechnights³, and Lesser Thanes, seem to be included in this rank, and to which, in many instances, the general name of Soke-men⁴ was applied. But, however designated, the Sithcund man or Sixhynde man appears, in every instance, in the same relative

Inferior
Nobility or
Gentry,
Sithcund
men or
Sixhynde
men.

^a Customs, III.

^b Wihtræd,⁵ §§ 7, 8. Ina, §§ 50, 51, 54.

Part I.
Ch. I.

Commenda-
tion, or
the right
of selecting
a military
leader.

position in the community: classed amongst the nobility whenever the Eorl and the Ceorl are placed in direct opposition to each other; always considered below the territorial aristocracy, and yet distinguished from the villeinage by the important right of selecting his Hlaford at his will and pleasure. By common right the "Sixhynde" man was not to be annexed to the glebe. To use the expressions employed by the compilers of Domesday, he could "go with his land wheresoever he chose"; or, leaving his land, he might "commend himself" to any Hlaford who would accept of his fealty. The term "Commendation," so often employed in the great Anglo-Norman record, is found in the same sense in the Capitularies. It appears to have been originally the privilege possessed by the Freeman, of selecting his "Ealdorman," his "Senior," his Lord and leader, when he followed the banner which he himself had chosen. No portion of the Anglo-Saxon constitution is so difficult to understand as their feudality. But that "commendation," according to their laws, was accompanied by military service, is to be inferred from the circumstance of the duty being divided. A Sokeman might be commended to two or more lords, each entitled to their proportion of his commendation^a. But how could a naked fidelity be severed into moieties or fractions? The obligation must have been followed by some definite duty and advantage, susceptible of an exact apportionment. Certainly the predial labours of the Villein were not exacted from the Sokeman; and when a Sokeman was commended to two Lords, the supposition that each Lord could command the sword of the dependent during twenty days, or half the usual period of military service, will alone give an intelligible meaning to the law. Compassing or imagining the death of the Lord was punished as treason. Life and property were liable to forfeiture for this inexpressible crime. No provocation could justify the Vassal in raising his hand against his legal protector, and the authority of the Lord indemnified him against the consequences of his participation in feud and private warfare^b. The right possessed by the Vassal of transferring his homage was controlled by the law. The testimony of the Ealdorman was necessary, if he departed from the Shire in search of a new protector. Neither could the Lord, on his part, discharge himself from his liability by repudiating the Vassal, whilst any charge

^a Domesday, vol. ii. pp. 182 b., 187 b., 188 b., 309, 321, &c

^b Alfred, Preamble, and §§ 4, 38. Canute, II. § 39.

or accusation was pending against him. And though these mutual relations may have first originated out of a military organization, they ultimately became the pledges of domestic tranquillity, and the groundwork of municipal justice^a.

We have observed that the third division of society, and including all subjects who were not comprehended in the higher or lower Nobility, constituted the class or Caste of Ceorls or Twihynde men. These were known by other names, which usage had rendered synonymous, though of different etymologies. "Bonde,"¹ or "Bunda," a denomination frequently applied to the Ceorl, is derived from a verb which implies both to inhabit, and to cultivate or till. The Anglo-Saxons received it according to the former sense, the term being usually rendered by *Manens*² in their Latin charters. Sometimes it is emphatically employed in the sense of *Paterfamilias*, and hence the very different meanings now applied to the words husband or "Hus-bonde," and husbandman. "Gebur,"³ the Teutonic "Bauer," or "Boor," is only another inflection of the root from whence Bonde is derived. In the Latin record of Domesday, the generic name of Ceorl is generally rendered by "Villanus." The holders of smaller tenements are distinguished as "Cotarii,"⁴ in Anglo-Saxon "Cotsætan," and as "Bordarii,"⁵ a term for which we cannot give the exact Anglo-Saxon equivalent, and probably borrowed from Normandy. But neither the difference of the appellations of the Villeins, nor the extent of their holdings, appears to have been accompanied by any essential difference in their station. The Ceorl or Villein, however named, may be defined as a tenant ascribed to the glebe; one who, performing predial or agricultural services, was unable to depart from the land which he held, and who, either by law, or by long-established custom equivalent to law, had acquired a definite and recognized estate in the soil. So long as the Villein performed his services, he was not to be removed from his land, nor was a higher rent or a greater proportion of labour to be exacted from him than what was due and

Part I.
Ch. I.
Ceorls, or
Twihynde
men,
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names
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known.
Bondes,
Gebures, &c.

^a Alfred, § 33. Edward the Elder, § 10. Athelstane, I. § 22; II. § 1. Canute, II. § 125. Charta Divisionis Regni Francorum, A.D. 806, § 10. [The Charter of the division of the Kingdom of the Franks⁶.] Præceptum Lud. Pii pro Hispanis, A.D. 815, § 6. [The Precept of Louis le Débonnaire for the Spanish.] Præceptum Karoli Calvi pro Hispanis, A.D. 844, § 10. [The Precept of Charles le Chauve &c.]

Part I.
Ch. I.

Services of
a Ceorl
could be
transferred
by bequest,
gift or sale.

of right accustomed^a. Yet with this certain right of occupation, defeasible only by neglect of the condition upon which the land was held, the freehold, or absolute dominion of the soil, was always considered to be in the Lord. The Ceorl was not "land-egend"¹; he did not own the land; and his usufructuary interest afforded none of the qualifications resulting from real property. Similar to the Anglo-Saxon Ceorls in every respect, were the Villeins, who, under the name of "Liti," "Lathen," "Litones," or "Lassi,"² are noticed in the laws of the continental Teutonic nations, as a class, placed beneath the Nobility and above the Serfs, much restricted in their rights, subjected to the sovereignty of their masters, and yet defended by the law against the arbitrary authority of their Lords. A Ceorl thus circumstanced—a free-man—could, according to the legal language of the Anglo-Saxons, be given and bequeathed, bought and sold. These expressions, which sound so harsh, and seem so inconsistent with any degree of personal liberty, bore, however, a meaning differing essentially from that which we should now assign to them. In no instance can we find the Ceorl separated from his land. He was always a Villein appurtenant; and, notwithstanding the language which was employed, it must be understood that the gift, the bequest or the sale, was in effect the disposition of the land and of the Ceorl, and of the services which the Ceorl performed for the land, all of which passed by virtue of the will or the charter, a transaction widely differing from the transfer of a slave, whose person is the subject of the purchase. The assertion, therefore, not infrequently made, that a great proportion of the population of England was in a state of absolute servitude, cannot be warranted. And the most convincing proof that the rights of the Lord over the Ceorl and his goods and chattels, however burdensome, were limited and certain, is found in the fact that the Ceorl, even when in actual vassalage, could purchase his own freedom and the freedom of his wife and offspring: he therefore had the means of acquiring wealth, and the power of retaining it.

It has been supposed that changes took place in the situation of the Ceorls during the long period between the first settlement of the Anglo-Saxons and the Conquest, and that the Ceorl was gradually sliding into a state of slavery. Conjectures may be made, and not unreasonably, that, beneath a Danish Lord, the

^a Laws of William the Conqueror, XXIX. Part II., *Proofs and Illustrations*, p. 139.

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Ch. I.

household. This relationship could be created as well "within "Burgh" as without, by an act of mere permissive hospitality. One night's shelter might be afforded by the Householder without incurring any responsibility. On the second, the stranger became a "Guest," and if he continued a third night beneath the roof, the master of the family was bound to consider the inmate as being his "Agenhine,"¹ and to answer for him accordingly^a.

Theowas
or Serfs.

The "Theowas," the "Servi" of Domesday, were entirely destitute of political rights, and excluded in all respects from the political commonwealth. They were not reckoned amongst the people. The Theow was entirely the property of his Master, body as well as labour. Like the Negro slave, he was a part of the live stock of the land, ranking in use and value with the beasts of the plough: and it is to be apprehended, that the civil institutions of the Anglo-Saxons afforded but slight protection even for his existence. To a certain extent, the Church interposed; but the commutable penance of seven years' fasting imposed upon the Lady, if the female slave, when guiltless of any offence, expired beneath the scourge, was only a weak and nominal assertion of the rights of humanity^b. It is not likely, however, that, in practice, the Saxon emulated the domestic tyranny of the Roman. Tacitus notices the mildness with which the slaves of the Germans were treated, and the cruelty even of the Tartar towards his enemy ceases when that enemy becomes his thrall: the guilt of slavery is always increased by the greedy avarice of civilization. In the earlier periods, there are many traces of domestic slaves. Domesday, of course, only enumerates the Servi belonging to the demesnes, and in such a manner as rather to lead to the supposition that they were attached to the soil, and had acquired an estate in the tenements which they occupied. This, however, is conjectural; and as the Theowas had ceased to exist, as a distinct class, and had become blended with the territorial villeinage before the commencement of our legal records, we have no evidence to guide us in our inquiry.

Origin of
the above-
mentioned
ranks and
orders.

The manner in which these various ranks were first established, is a subject of curious speculation. Religious institutions, the rights of the sword, the sentences of the law, and legal compacts,

^a Lothar and Eadric, § 19. LL. Edwardi Confessoris, § 27.

^b Pœnitentiale Ecgberti. Canones editi sub Edgardo Rege; Concilia, vol. i. pp. 129-232. [Egbert's Penitential. The Canons established under King Edgar.]

seem all to have concurred in creating this system of subordination and inequality, a system which was fully established in the earliest periods of the authentic history of barbarian Europe. When Cæsar invaded Gaul, he found the nation divided into three classes; the Druids, the Knights, and the People^a. The Priesthood, or Clergy, were exempted from all secular services. Expounders and administrators of the law, the living oracles of public instruction and public justice, no tax or tribute was required from them; they did not share in the burdens of the State, nor did they co-operate in its defence, otherwise than by their influence and hieratical power. War was the constant employment of the Nobility: they were always engaged in attack or defence, or employed in deeds of high emprise. The Chivalry of Gaul followed no profession, save that of arms; and the dignity and consequence of a Nobleman depended upon the number of his followers, his Vassals or "Ambacti,"¹ a name which is found again in the "Ambiht menn" of the Anglo-Saxons^b. Such a train of Vassals was the token of his magnificence and power; they were bound to him by the strongest ties of fealty and honour; and a Vassal who deserted his Lord was execrated as one who had committed the greatest of crimes. In the opinion of the Roman, the Plebs, or Third Estate of the Gaulish people, might be considered as condemned to servitude. Excluded from all participation in the government, never daring to act for themselves, never consulted in the national assemblies, oppressed by the most grievous exactions, and a prey to the violence and rapacity of the mighty, they were happy to obtain a precarious repose, by living under the dominion of the Nobles, who exercised the same rights over them which a master possessed over a slave. The protection of the law could only be purchased by the sacrifice of individual liberty.

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Ch. I.

State of society in Gaul before the Roman conquest.
"Druides" or Clergy.

"Equites" or Nobility.

"Plebs" or Third Estate.

Cæsar, in these passages, seems to speak in general terms of the whole of Gaul. Whether Celtic or Belgic, the whole country is equally within the purview of his observations, and the fact of the voluntary surrender of liberty in exchange for protection or for subsistence, is so fully confirmed by the Teutonic laws, as to afford the most convincing proof of his substantial accuracy. From the laws of the Frisians² we learn that the "liber homo," when urged by want, could voluntarily throw off his liberty, and

^a De Bello Gallico, lib. vi. c. 13, 14; lib. vii. c. 38.

^b Lye, s.v. *Embehtmen* or *Ambihtmen*.

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Ch. I.

descend into the villeinage; and not alone could he become the Vassal of a noble or of another freeman, but even of a "Litus."^a The capitularies testify the manner in which the poor and needy were harassed and vexed by the Bishop, the Abbot, the Earl, the Judge, and the Centenary¹, until they surrendered their allodial property as the price of tranquillity^b. These vexations appear to have continued uninterruptedly, the pretence changing with the occasion. At a much later period there are evidences afforded in Germany, of freemen placing themselves beneath the "mundiburd"² or safeguard of a powerful Baron, who promised to be a good and gracious Lord, but who gave a false and evil return, by exacting the toils of the Serf from those who had confided in his authority^c. We may continue the chain of evidence, by quoting the laws of Henry I., which intimate, that a freeman might pass into the state of "servitude," an expression used in this passage as equivalent to villeinage; the transaction being accompanied by the significant ceremony of receiving a bill-hook and a goad from the hand of the master^d. A singular repetition of this law is found in a distant clime. In Castile, an analogous custom had been transmitted from the Visigoths. If the proud "Hijo dalgo"³ fell into poverty, and was unable to maintain himself in a manner befitting his nobility, he came before the council of the township, and declared to the townsmen his wish and intention of becoming such as they were: and then he brought a goad, over which he passed three times, saying, "Dexo nobredat e torno Villano"; and he became a Villein forthwith, and all the sons and the daughters whom he begat whilst in a state of villeinage, followed the condition which their father had assumed^e.

^a LL. Frisionum, tit. xi.

^b Capitulare de Causis Regni Italiae, A.D. 793, § 13. [Capitular concerning the Lawsuits in the Kingdom of Italy.] Capitulare Quartum, A.D. 803, § 17. [Fourth Capitular.] Capitulare Tertium, A.D. 811, §§ 2 & 3. [Third Capitular.]

^c Eichhorn, Ueber den Ursprung der Städtischen Verfassung, &c. Zeitschrift für Geschichtliche Rechtswissenschaft, vol. i. p. 214. [Eichhorn, On the Origin of Municipal Governments, &c. Journal for the Historical Study of Jurisprudence.]

^d LL. Henrici I. § 78. [Laws of Henry I.]

^e Fuero Viejo de Castiella, lib. i. tit. 5. [Ancient Law of Castile.]

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Part I.
Ch. I.

they needed. Their means gradually decreasing, peace became irksome to them; and at this juncture, whether by accident or design, a young Saxon Chief, who landed from his vessels loaded with gold, and adorned with the golden collar and armlets, which were the insignia of nobility, exchanged his riches with a Thuringian for as much of the dust of the earth as filled his bosom. The Thuringian was loudly applauded by his countrymen for this triumph over the dulness of their enemies; and from the Saxons, the Saxon met with equal scorn. "Follow me!" he exclaimed, and strewing the dust over a large extent of territory, he bade his countrymen pitch their tents there and occupy the soil. The Thuringians loudly remonstrated against this breach of the treaty, but the Saxons replied, that they were only occupying the earth which they had bought. Many wars followed, and at length a treaty having been proposed, the Thuringian chiefs assembled without fear of guile; but the Saxons, who had concealed their broad blades—their *Seaxes*—beneath their garments, suddenly turned upon the unsuspecting Thuringians and slew them all^a. A long and romantic narration follows, in which the chief personage is the hero Iring¹, or Irmin, who obtained, like Woden, the name of a deity. The details of his exploits cannot be here related; but the result, as given in the "Saxon Mirror,"² in which the substance of the tale is given without its poetical anachronisms and wild adornments, was, that the Thuringian Chiefs having been entirely rooted out, the Saxons spared the husbandmen, to whom they re-granted their lands, upon such terms and conditions as secured their dependence upon the conquerors. What is here stated as a legend, is confirmed when we arrive at the era of more authentic history. It is a tradition, interspersed with fable, but events entirely similar are recorded in the history of the Lithuanian³ and Slavo-Wendic⁴ nations, who, under their German Lords, were deprived of their lands, and degraded to the most grievous vassalage, in which their descendants continue to this day.

Origin of
the Anglo-
Saxon
Ceorls.

If early conquest be supposed to have reduced the ancestors of the Anglo-Saxon "Ceorls" to their dependent station, it may be asked whether this event took place on the Continent, and whilst the "three tribes of Germany" were yet in their native

^a Witichind apud Leibnitz, SS. Rerum Brunswicensium, vol. i. pp. 73, 74. [Witichind edited by Leibnitz, in Writers of the History of Brunswick.] Sachsenspiegel, bk. iii. art. 26.

seats; or whether they were the descendants of the original inhabitants of Britain. In favour of the first opinion, it might be urged, that, in consequence of the incessant wars waged by these tribes amongst themselves, the Teuton was frequently subjugated by his kinsman, and compelled to yield to the control of a Teutonic master. When the Franks subdued the Burgundians, the vanquished nation retained possession of their lands as the acknowledged vassals of the sons of Clovis^a. And the earlier conquest of the Alemanni was accompanied by a complete acquisition of the dominion of the soil, which passed from the ancient owners and became vested in the Frankish King and nobility. A Ceorl bore no marks of British origin, he spoke the same language as the Eorl, he was considered as an Englishman: whilst, on the contrary, the "Wealh," the Briton, was distinguished from the Anglo-Saxon, and deemed an alien and a stranger.

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But if, when we support this theory, we assume at the same time that none of the Ceorls or husbandmen were of British race, we must suppose that the ancient British inhabitants of Lloegria¹ were entirely extirpated² by the Anglo-Saxon strangers. It is difficult, however, to believe that the keels of the Angles, Jutes, and Saxons, could contain the original population of the Anglo-Saxon kingdoms as they arose successively in Britain. Cerdic and Cynric, Hengist and Horsa, and Bieda and Mægla, if this were the case, effected only the conquest of idle and unprofitable wastes. Neither Kent nor Sussex could have been tilled and sown by their scanty train of followers. The argument against the British origin of the Ceorls, which is deduced from the absence of any vestiges of a distinction of languages between the Lords and the Vassals, is strong; yet it is weakened by the presumption that a dialect closely allied to the Anglo-Saxon was spoken in Britain long before the arrival of the last invaders. The basis of the Anglo-Saxon is Belgic; and without attempting to define the territories occupied by the Belgians of Britain in the days of Cæsar, and who are, perhaps, the "refuge-taking tribe "of the people of Galedin"³ recorded in the Triads^b, it must be admitted, that, so far as the boundaries of these tribes extended.

Presump-
tions in
favour
of the
British
origin of
of the
Ceorls.

^a Procopius, de Bello Gothico, lib. i. c. 13. [Procopius, Concerning the Gothic War.] Eichhorn, Deutsche Staats- und Rechtsgeschichte, vol. i. p. 86. [Eichhorn, History of Government and Law in Germany.]

^b Ancient Welsh Laws, p. 375.

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Ch. I.

Large
proportion
of Belgic
roots found
in the
Cymric or
Welsh
language.

the Belgic tongue was spoken. The singular and philosophic structure of the Cymric fully shews that it is a primitive tongue; yet at least one-third of its vocabulary consists of roots which it possesses in common with the Belgic. In which language they are original, if, indeed, any language can be said to be original, matters not: the conformity attests either the affinity, the contiguity or the admixture of the respective nations. Should this assertion be disputed, should it be maintained that the whole original population of Britain spoke a Celtic tongue, yet it cannot be allowed, that the entire disappearance of the language is a proof of the annihilation of the people by whom it was spoken. It may be true, that almost every name in the pages of Anglo-Saxon history, distinguished either in church or state, exhibits its Teutonic origin; and that the geography of England was universally marked with foreign appellations, "a strange alteration, which has persuaded historians, and even philosophers, that the provincials of Britain were totally exterminated, and that the vacant land was again peopled by the perpetual influx and rapid increase of the Saxon colonists."^a It is somewhat difficult to understand whether Gibbon assents to this plausible position; and perhaps he observed the historical fallacy which it involves. Language may frequently be a test of the genealogy of nations, but it is neither a universal nor an infallible test. Let it be admitted that the Gael and Cymry of the present day have resisted the encroachments of the language of the stranger, and adhered to the speech of their ancestors; yet in other instances, as in Gaul, the Celtic has been completely obliterated. Were we to reason solely upon the language of France, we must believe, that, in the fifth century, every Rustic was a Roman colonist; and yet we know that the Gaulish nations were unmixed and unbroken, and that their adoption of the language and manners of their masters was the consequence of intercourse and imitation. Even the names assigned to the great features of nature do not possess the eternity ascribed to them by the zealous etymologist, who often assumes that the mountain and its denominations are equally unchangeable. The first process is to name these objects in either dialect, and then the denominations derived from a harsh and obsolete tongue gradually give way to those of more familiar sound. With respect to the "Wealh,"¹ recognized as a distinct race by the Saxon laws, there is no difficulty

^a Decline and Fall, vol. vi. c. 38.

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Ch. I.

“Theowas”
in the
situation
of convicts.

almost unnecessary to mention that this was also the British law, since the custom of enslaving the criminal or the insolvent seems to have been the policy of every nation in the ancient world, and still prevails to the fullest extent in various parts of Asia. A Theow was therefore no other than a convict: and the assertion that the majority of the Theowas were reduced to that situation by their crimes rests upon indisputable evidence. Slavery, therefore, was a legal punishment; and we find an apology for the ancient law by adverting to its leading principles.

English or
Anglo-
Saxon
“law of
promotion.”

It is possible, that, as we have stated, the differences of rank were originally the result of the distinction of races; but the disabilities of birth were not indelible; and though we can, without any impropriety, consider these ranks as Castes, yet the barriers which separated them were not insuperable. Amongst the fragments of the Anglo-Saxon customary laws, there is one entitled “The Old English Law of Promotion”; for its language is of past times, of by-gone days. In this law it is said, that, if a merchant crossed the sea three times at his own risk, he obtained the rank and pre-eminence of a Thane; yet the dignity so obtained must have been personal, and confined to the individual by whom it was acquired. Land was the only species of wealth which conferred hereditary nobility upon the plebeian. A helm and a hauberk and a gold-hilted sword might grace the person of a Ceorl, but if he had no land he was a Ceorl for evermore. Five hides of freehold land appear to have been the qualification which placed the Ceorl in the rank of the Thane. If this property continued in the family for three generations; if it was held by the Ceorl, his son, and his son’s son, then the offspring of the last became admitted into the rank of Sithcund men, and were considered as gentlemen, of gentle blood and kindred, and entitled to the privileges of gentility. Following our text, we have called this the “Old English law”; yet, so far as the Triads of Dyvnwal Moelmud¹, and the laws of Howel the Good, are authority, it was equally common to the Britons, amongst whom the issue of a vassal became freed from subjection in the fourth generation, if, during three descents, the ancestors had held by grant from the King or Lord the quantity of land which in the version is denominated five acres^a; but the last expression seems to require correction, for the ancient acre of the Britons of the West was one and the same measure with the ancient hide of the Anglo-Saxons,

Perhaps of
British
origin.

^a Ancient Welsh Laws, pp. 34, 186. Wotton, LL. Wallicæ, p. 154.

or an hundred modern acres; a fact which evinces a further conformity between the British and English laws.

At first sight, such a system of government as prevailed amongst the Anglo-Saxons, appears to be so totally dissimilar to our manners and customs, that we feel great difficulty in understanding its theory, still more in reconciling its maxims to humanity and justice. In this, however, as in many other portions of their policy, the discrepancy arises more from manner and form than from the essential principles of the law. Divested of their archaic garb, and placed in modern attire; translated out of their uncouth vocabulary, and read into modern language, we shall find that the points of approximation are more numerous than could have been anticipated. Are we offended at the subjection of race beneath race; do we revolt at the transmission of debasement from the fathers to the children, even to the latest generation? We need only cross the Atlantic, and in the flourishing settlements founded by the power of England, in the Colonies belonging to this free country, and in the Republics of North America, we may view the same spectacle, repeated under an aspect equally stern and forbidding, and unaccompanied by any of those institutions which ultimately broke the chains of Anglo-Saxon servitude and thralldom. The inequality of the rights of the different classes may be stigmatized as an arbitrary violation of the equity of the law; and it may be said that justice was meted out in proportion to rank and property, and not in conformity to the nature of the crime. But, before we prefer the accusation, let us pause, and substitute the word "damages" for the word "were," and we shall find that we have not entirely abandoned the reasoning of the Anglo-Saxon law, although we have narrowed its application. If a father, for instance, is under the humiliating necessity of bringing an action against the seducer of his daughter, will not the advocate of the defendant loudly expatiate on the condition of the injured female? Should she be in the humbler walks of life, will not the circumstance of her poverty be carefully proved, in order to effect a corresponding reduction in the price of her honour and her happiness? We need not say that the same valuation is rigidly applied in the case of the adulterer; therefore, when Alfred enacts that "the seduction of the wife of a Twelfhynde man or an Eorl" "is to be compensated by payment of one hundred and twenty" "shillings; of the wife of a Sixhynde man, by payment of an" "hundred shillings; and of the wife of a Ceorl, by payment of

Part I.
Ch. I.

Portions of Anglo-Saxon policy, to be paralleled in modern times.

Disabilities of coloured population in the colonies, &c.

The Anglo-Saxon "were" equivalent to the modern "damages."

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Ch. I.

“ forty shillings,”^a he does nothing more whatever than fix and declare the amount of the verdict, instead of leaving the assessment of damages, as we do, to the direction of the Judge, and the discretion of the jury.

Beneficial
results of
the laws
allowing the
acquisition
of aristo-
cratical
rights.

In another point of view, we may discover a more grateful resemblance. The English law, no less than that national feeling, which is stronger than any law, fully recognizes the most decided inequality between the different ranks and orders of men. No nation was perhaps ever pervaded more thoroughly by the spirit of aristocracy, in which the lowest classes of society participate as fully as their superiors. Had our constitution, however, admitted of no other aristocracy but the aristocracy of birth, England would have experienced the calamities of those states in which all authority is monopolized by one caste or class, whilst the rest are utterly excluded from political importance and honour. Even in the earliest periods, the English laws tended to unite the various political ranks of the community into one body, not by humiliating the Noble, and placing him on a level with the Plebeian, not by depriving any one rank of its inherent hereditary and vested rights: but by acknowledging the doctrine, that these rights might be acquired by desert and industry, when denied by birth and parentage; and thus increasing the energy of the State without endangering its stability. However variably this principle may have been acted upon, it was at least always recognized in England. This is true equality; for it is the only equality which is conformable to human nature, and acceptable to mankind. Where it exists, as in England, it imparts contentment to each individual, and vigour to the Commonwealth. Where it is denied, no matter under what pretence of policy or expediency or creed, the vexation of the people becomes a never-failing source of weakness and rebellion. Dangers arise which no caution or wisdom can avert, and the tempest-tossed vessel of the State will find no haven of security, no refuge from the storm.

Tu, nisi ventis
Debes ludibrium, cave.

^a Alfred, § 10.

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Part I. resistance^a. I shall not at present examine the effects of the
Ch. II. Roman power on the Barbarians of Europe; but it may be
 Effects of conquest often counteracted by affinity. remarked, that the influence of conquest was often counteracted and neutralized by the affinity of the conquering and the conquered nations. The waves which flowed in the same channel usually proceeded from the same source. Thus, in England, the original Belgic population of Lloegria, and their despoilers, and those who subdued the vanquished victors, were all brethren: Britons and Anglo-Saxons, Danes and Normans, were all relations; however hostile, they were all kinsmen, shedding kindred blood: and, even when the races were not so nearly connected, the pervading resemblances of the laws of the earlier ages contributed to lighten the yoke of conquest, and to disguise the innovations which were really effected by the transfer of sovereignty.

British laws.

Triads of Dyvnwal Moelmud, or Molmutian laws.

So long as the Druids were the sole depositaries of British jurisprudence, the law was oral and traditionary. Their doctrines were recorded in verse: and the faint echoes of the Bardic strains can yet be discovered in the Triads of Dyvnwal Moelmud, who, “before the crown and sceptre of London were wrested by the Saxons, reigned over the island.” According to the historical Triads, Moelmud was the son of Dyvnwarth ab Prydain, whilst the British Chronicle represents him as the son of Clydno¹, a prince of the Cornish Britons, by the daughter of the King of Lloegria. And after the paternity, or male line of the Kingdom was destroyed, he “obtained it by the distaff, because he was “grandson to the King. And he was a very honourable and wise “man, and framed excellent laws in this island.”^b The Triads constitute the Molmutian laws, as they are termed by the monkish chroniclers; and some of the Cymric antiquaries assume that these venerable monuments of British policy are now extant in the identical form which they assumed in the fourth century before the Christian era: but the supposition rests entirely upon conjectures, and these not very tenable. Yet the “Triads of the “Community,” as they are entitled, do in many instances relate to a mode of government entirely incompatible with the sovereignty established in the historical age of Cambria; and the same good fortune which protected the lays of the Bards of Strath

^a Robertson, *View of the State of Europe*², p. 2.

^b *Law Triads of the ancient Britons*, translated by the Rev. Peter Roberts. *Transactions of the Cymmrodorion*, vol. i. p. 97, &c. *Ancient Welsh Laws*, translated by William Probert, p. 8, &c.

Clyde¹, may have equally preserved the maxims which declare **Part I.**
 “the rights and duties of the Cymry, such as they were before **Ch. II.**
 “they lost their privileges through the oppression, fraud, and
 “treachery of the Saxons.” The code ascribed to Howel the
 Good, and from which he acquired the honoured title of the
 third and last beneficent sovereign of Britain, differs widely from
 the Molmutian Triads, at the same time that its sources are
 obviously analogous in character. “Hoel improved the laws of
 “the Isle of Britain, as the changes and circumstances which
 “occurred amongst the Cambrians demanded, lest what was good
 “might be effaced”^a; the methodical order prevailing in this
 code shews that it was framed with considerable care, and the
 customs which it comprehends bear the impress of great antiquity.
 In some instances, it is true that there are slight interpolations of
 the laws, or alterations of the law enacted by Blethyn, the son
 of Cynvyn, and it also exhibits some words and terms which seem
 characteristic of a period later than that which is assigned as the
 era of its composition. Thus the mention of the “Chyngellawr,”
 in which, under the uncouth disguise of the Cymric orthography,
 we may discover the “Chancellor,” might induce us to place the
 compilation of the text in a period subsequent to the Conquest,
 when that dignity first became of note and consequence in
 England. Yet it is possible that this title, applied to a judge
 and fiscal officer, may have been borrowed from a Roman source.
 A scribe, or notary, is thus designated in the laws of the barbarian
 Franks of the Rhine^b: and the style of the imperial palace may
 have been affected by a British Prince, in the same manner
 that the Tufa, the imperial standard, was copied by Edwin of
 Northumbria^c; even if a few incidental terms are unquestionably
 proved to be of recent date, the adaptation of an ancient copy to
 the usages of a subsequent era may account for the more modern
 expressions which have suggested a doubt respecting its sub-
 stantial antiquity. It is more important to remark, that the
 character of the British legislation is enhanced by comparison with
 the laws which were put in practice amongst the other nations
 of the Middle Ages. The indignant pride of the Britons, who
 despised their implacable enemies the Anglo-Saxons, as a race of
 rude barbarians, whose touch was impurity^d, will not be considered

Laws of
 Hoel Dda,
 or Howel
 the Good,
 940, 948.

Partially
 amended
 by Blethyn,
 1062-1072.

^a Triads of the Isle of Britain, Ancient Welsh Laws, 398.

^b Lex Ripuariorum, tit. 59, § 4. [Law of the Ripuarian Franks.]

^c Hist. Eccl., lib. ii. c. 16.

^d Hist. Eccl., lib. ii. c. 20.

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Ch. II.

as any decisive test of superior civilization. But the Triads and the laws of Hoel Dda excel the Anglo-Saxon and other Teutonic customals in the same manner that the elegies of Llywarch Hên and the odes of Taliesin soar above the ballads of the Edda. Law had become a science amongst the Britons, and its volumes exhibit the jurisprudence of a rude nation shaped and modelled by thinking men, and which had derived both stability and equity from the labours of its expounders.

Whatever may have been the proportion of British population amalgamated with their conquerors, the loss of their independence and nationality was accompanied by the entire destruction of those institutions which had vivified the ancient doctrines of their laws, and by the loss of the literature whence they derived their sententious and subtle learning. If any important portions of the British jurisprudence retained a direct authority amongst the Anglo-Saxons, we must seek for them principally in the tenures of their lands, in the territorial organization of the country, and perhaps in the constitution of the tribunals which were founded upon that division. Other transmissions from the laws of the original inhabitants may be surmised, though they cannot be traced with certainty; opposed as the native and the stranger were to each other, the main lines and landmarks of their jurisprudence were identical. They agreed in their usages respecting crimes and punishments; they agreed in allowing the homicide to redeem his guilt by making compensation to the relatives of the slain; they agreed in the use of trial by ordeal¹, and by compurgation: and these being the chief features of the law and of its administration, the question, whether such analogous customs be of British or Saxon origin, is little more than a mere verbal dispute, very difficult to decide, and perfectly useless when decided.

Similarity
of the
main
character-
istics of the
British
and Anglo-
Saxon laws.

Bede's
account
of the
tribes who
invaded
Britain.

Bede has, in some measure, enabled after-times to identify the "three tribes" of Germany, who invaded the isle of Britain. "From the Jutes sprang the Men of Kent and the Wihtware², "the tribe which now dwelleth in the Isle of Wight, and the "other tribe in the country of the West Saxons, opposite to the "Isle of Wight, whom men still call by the name of the kindred "of the Jutes. From the Saxons, that is to say, from the land "now called the Country of the Old Saxons, descended the East "Saxons, the South Saxons, and the West Saxons. From the "Angles, that is to say, from the country called Anglia, and "which from that time until now is said to have remained

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Part I. French, divided them still more effectually from their ancient
Ch. II. kinsmen.

Old Saxons.

After a war of two-and-thirty years, the "Old Saxons," another branch of the original Belgic nation, yielded to the sword of Charlemagne. They were treated with the greatest severity: and when the companions of the heroic Witichind¹ were delivered into the power of the conqueror, his cool and deliberate vengeance was scarcely satiated by the sacrifice of the four thousand five hundred victims who were decapitated on the banks of the Weser. But the merciless slaughter of the Saxon warriors was less destructive to the independence of the nation than the decrees which were promulgated from the Halls of Aix-la-Chapelle. Charlemagne secured his authority by the forcible expulsion of one-third part of the Saxon people, who were dispersed in various realms, whilst their territory was divided amongst Frankish rulers, Bishops, Counts, and Vassals²; and the popular assemblies, in which the powers of government had been exercised, were almost wholly suppressed^b. By these means, the institutions of the Old Saxons must have been shattered and denationalized, and they were gradually assimilated in their general character to the usages of the other nations of the empire; much was also altered by the adoption of the civil law, as taught by the later jurists; yet, notwithstanding these causes, the common law of the Old Saxons may still derive a useful commentary from the customs and usages of England^c.

Frisians.

A large proportion of the Anglo-Saxons belonged to the Frisian branch, of which various tribes still remain, planted along the coast of the North Sea, forming, as it were, a series of connecting stations with the principal settlement of this nation, which, about the eighth century, embraced the tract between the Scheld and the Weser, extending itself, therefore, from Flanders to Bremen. None of the Teutonic tribes have preserved their ancient customs with greater purity. Friesland was tributary to Charlemagne. But his empire included within it many

^a Annales Einhardi, A.D. 792. Annales Laureshamienses Minores, A.D. 794-804.

^b Annales Laureshamienses, A.D. 799. Capitulatio de Partibus Saxoniae, A.D. 791, § 34.

^c See Dreyer, *De Usu Genuino Juris Anglo-Saxonici in explicando Jure Cimbrico et Saxonico*. [Dreyer, On the proper use of Anglo-Saxon Law in explaining the law of the Cimbrians and Saxons.]

degrees of subjection, from a mere acknowledgment of his power to the most complete vassalage: and notwithstanding his dominion, the inhabitants, protected in their dreary moors and wilds by the fens and floods which surrounded them, appear to have maintained successfully every important privilege of independence. The Frisians are not specifically mentioned by Bede in his preliminary enumeration: but in a subsequent passage, when relating the mission of Egbert amongst the Pagans of Germany, he speaks of them as the first amongst the nations from whom the Anglo-Saxons deduced their origin^a; and though the authority of a Byzantine historian is less satisfactory, still it may be observed that Procopius¹ notices the Frisians as one of the principal nations by whom Britain was then inhabited^b. Under this general designation we are also probably to understand the Jutes and Angles, who seem to be other Belgic tribes, known by these geographical denominations. By the Frisians Hengist is deemed to be a Frisian King; and the legend of Rowena, or, as they term her, Ronix, is incorporated in their history^c. A better proof of affinity is to be found in the resemblance of the Frisic and Anglo-Saxon languages; which in many instances amounts to an absolute identity. But the most conclusive argument of the unity of the nations is deduced from the judgments dictated by Wulemar², and incorporated in their respective laws, of the Frisians and Angles, shewing thereby, that they obeyed the dictates of a common legislator^d.

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Frisians in Britain.

Jutes and Angles.

Wulemar, the common legislator of the continental Angles and Frisians.

These, then, were the ancestors of the tribes whom our historians usually designate as Anglo-Saxons. When they first settled in England, their law, like that of the Britons, was entirely oral and traditionary. It was a common law, existing as the common law of England still exists, in customs, whether local or national, recorded in the memory of the judges, and published by the practice of the tribunal. Before the introduction of Christianity, the northern nations annexed the functions of the Judge to the sacerdotal office: and some of the traditions of the law can be curiously elucidated by the fables of ancient superstition and

^a Hist. Eccl., lib. v. c. 9.
^b Procopius, de Bello Gothico, lib. v. c. 20.
^c Winsemius, Chroniick van Vrieslandt, p. 43.
^d LL. Frisionum [The Laws of the Frisians], Additio Sapientum [The addition by the Wise Men], tit. i. ii. iii. et viii. Lex Angliorum et Werinorum, tit. v. § 13 [The Law of the Anglii and the Werini].

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Ch. II.Remains of
the ancient
poetry of
the law.

mythology. It cannot be ascertained that any of the Teutonic nations reduced their customs into writing, until the influence of increasing civilization rendered it expedient to depart from their primeval usages; but an aid to the recollection was often afforded, as amongst the Britons, by poetry, or by the condensation of the maxim or principle in proverbial or antithetical sentences, like the Cymric triads. The marked alliteration of the Anglo-Saxon laws is to be referred to this cause, and in the Frisic laws several passages are evidently written in verse. From hence also may originate those quaint and pithy rhymes in which the doctrines of the law of the old time are not infrequently recorded. Thus, the Kentishman asserted the liberty of his gavelkind tenure by the rude distich of "*The vader to the boughe—and the son to the ploughe.*" He redeemed his lands from the Lord by repeating, as it was said in the language of his ancestors, "*Nighon sithe yeld—and nighon sithe geld—and vif pund for the were—ere he become healdere.*"^{a1} The forest verse, "*Dog draw—stable stand—back berend—and bloody hand,*"^{b2} justified the verderer in his summary execution of the offender. And in King Athelstane's grant to the *gōo* men of Beverley, and inscribed beneath his effigy in the minster, "*Als fre—mak I the—as heart may think—or eigh may see,*"^c we have, perhaps, the ancient form of enfranchisement or manumission.

It would afford a curious parallel to the modern circumstances of England, if the Anglo-Saxon laws could be divided into *Æ* or *Æwa*, customs or common law; *Asetnysse*, statutes; and *Domas*, adjudged cases or precedents^d. But these terms, whatever distinction may have been originally intended, are employed indiscriminately, and the first specimens of Anglo-Saxon legislation are the "Dooms,"³ which Ethelbert, King of Kent, "established with the consent of his Witan in the days of St. Augustine." Bede, who commemorates and praises this proceeding, adds that it was effected after the example of the Romans^e. Alaric in the *Breviarium*⁴, and Theodoric in the *Edict*⁵, availed themselves of the elaborate jurisprudence of the Imperial law; but the successor

Laws of
Ethelbert,
King of
Kent,
561, 616.

^a Les Usages de Kent. Statutes of the Realm, vol. i. pp. 223, 225.

^b Inst. 4. p. 294.

^c See the Petition of the Commons on behalf of the Archbishop of York, in which the Charter is recited, Rot. Par. vol. iv. p. 85.

^d I owe the suggestion of this division to Mr. Allen.

^e Hist. Eccl., lib. ii. c. 5.

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of Ethelbert. The language has evidently been modernized and corrupted by successive transcriptions. Some passages are quite unintelligible, and the boldest critic would hardly venture upon conjectural emendations, for which he can obtain no collateral aid. Neither is there any proof whatever of the integrity of the text. It cannot be asserted, with any degree of confidence, that we have the whole of the law. Destitute of any statutory clause or enactment, it is from the title or rubric alone that we learn the name of the legislator.

Laws of
Hlothhære
and Eadric,
675, 685
and of
Wihtræd,
Kings of
Kent, 699.

After the interval of more than a century, Lothar or Hlothhære¹, and Eadric, Kings of Kent, made additions to the laws which "their ancestors had established before them," and which principally relate to the singular system of pledges and warranty intended for the purpose of preventing theft and larceny, an institution holding a conspicuous place in the Anglo-Saxon policy. Wihtræd's laws, which were enacted at Berghamstede² in the ninth year of his reign, are chiefly ecclesiastical, affixing temporal punishments to spiritual offences. The laws of Hlothhære and Eadric, and of Wihtræd, though more intelligible than the laws of Ethelbert, still offer many difficulties, and the corruptions are equally irremediable, since they also can only be read in the recent manuscript of Ernulphus. No vestiges can be found of any other text. And as the ancient Latin version of the Anglo-Saxon laws, made about the time of Henry I., does not include the laws of the several Kentish kings, it is probable that they were concealed in the Cathedral archives, and entirely unknown to the translator.

Laws of Ina,
circa 700.

Ina, who reigned over a mixed population of Britons and Saxons, promulgated a more extensive code or statute than those which proceeded from the decrees of the Kentish Kings. It was composed by the advice of his father, Cenred, and of the Bishops of London and Winchester; and in which the "Earldormen" and oldest "Witan" of his people also concurred. The enactments included in this capitulary, which, by their subsequent republications, became the basis of the laws, not only of Wessex, but of all England, are more intelligible than the earlier laws of Kent, from which, however, they are partially derived.

Alfred has been considered as the greatest legislator of the English nation. By the traditions of after-times, he was represented as the "wisest man that was in Englelonde"; and to him is ascribed an entire digest of the English law, a collection of the local customs blended into one uniform system in the

“Doom-book,” compiled, as we are told, for the use of the court-baron, hundred, and county-court, the court-leet¹ and sheriff’s tourn²; tribunals which he is said to have established for the trial of all causes civil and criminal, in the very district where the complaint arose^a.

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The authentic code of the legislator does not support these assertions. Instead of a digest of local customs, we find a capitulary, not differing in spirit from those of his predecessors, except in one characteristic peculiarity. Alfred endeavoured to strengthen his temporal jurisprudence by an appeal to the doctrines of revelation: his code is introduced by the Decalogue, and by a summary of the Mosaic precepts, relating more peculiarly to civil government, this abridgment being terminated by quoting the sanction which the law received in the Gospel^b. The canons of the Apostolical Council of Jerusalem³ are inserted, nearly in the words of the original. And Alfred concludes his scriptural introduction by appealing to that commandment which, as he observes, would render every human Doom-book unnecessary, if it were kept according to the will of Him, by whom it was imparted to mankind^c. In the Preface to the chapters of enactments, the legislator himself informs us that these are rather to be considered as revisions of the laws of his predecessors than as new laws. Alfred first collected all the laws which his predecessors had recognized; some pleased him, others not: the latter he rejected, by the advice of his Witan; and, with the same advice, he enacted others in their stead. And all the righteous laws which had been enacted by Ina, or by Offa, King of the Mercians, or Ethelbert, King of Kent, who first received baptism, he retained and confirmed. The laws of Offa have not been preserved in their original form, and we cannot distinguish them in the capitulary of the King of Wessex. But the laws of Ina are annexed to the statute of Alfred; and, perhaps, we only possess them in his edition. There was no incorporate union of the Saxon kingdoms, no assembly possessing a binding and controlling power of legislation over all the kingdoms of England: and it is therefore probable that there were two promulgations of Alfred’s laws, one statute for the West Saxons, and to which the laws of Ina were appended, and another for Mercia, since lost, and to which

Laws of
Alfred,
872, 901.

Laws of
Offa.

^a Blackstone, Commentaries, p. 412.

^b Exodus xxi. xxii. xxiii. Matt. v. 17.

^c Acts xv. 23–29. Matt. v. 12.

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the laws of Offa were in like manner annexed. The laws of Alfred abound in valuable regulations of criminal jurisprudence, but they are entirely silent with respect to those institutions, which, according to later historians, are to be ascribed to his sound policy and wisdom.

Laws of
Edward the
Elder, 901,
924, and his
successors.

The laws of Edward the Elder, as now extant, are comprehended in a small compass. Of this king, we have a writ, promulgating certain regulations, principally relating to "cheapening," and the laws of the market: another consists of enactments made at Exeter, for the kingdom of Wessex. To these follow the laws¹ of Athelstane, Edgar, Edmund, and Ethelred, of which the most material portions are repeated in the comprehensive Statutes which Canute, King of all England, of the Danes, and of the Northmen, enacted at Winchester, by the advice of his Witan. This monarch has been celebrated for his justice and equity²: and when the Crown was restored to the line of Cerdic, the confirmation of the laws of the intruder was exacted from the lawful sovereign. On the accession of Edward the Confessor, the Anglo-Saxon monarch was required by the clergy and nobility of the nation to engage that the laws of the Danish King should be inviolably observed, and the promise, which he confirmed by his coronation oath, was the condition and price of his restoration to the throne of his ancestors^b. Hence the older body of laws acquired the name of the laws of the Confessor, not because he enacted them, but because they received a new and efficient sanction from his authority.

Laws of
Canute,
1017, 1033.

Edward the
Confessor
confirms the
laws of
Canute.

About the time of the Conquest^c, England was severed into

^a *Historia Ramesiensis*, p. 437.

^b Knighton, p. 2338. MS. Cott. Titus A xxvii.

^c One of the oldest accounts of the threefold division of England is given by Simeon of Durham in his introduction to the *History of St. Cuthbert*; and it will be convenient to place this description under the eye of the reader.—*Anglia habet triginta duo Sciras extra Cumberland et Cornwalas. In Cornwalas sunt septem parvæ Sciræ. Scotland, Bretland² et Wict excipiuntur. Sunt hæ triginta duo Sciræ divisæ per tres leges, Westsexenalaga, Denelaga, Merchenelaga.—Westsexenalaga habet novem Scyras; Suthsexia, Suthrei, Kent, Berocscire, Wiltescire, Sudhamtescire, Somersetescire, Dorsetescire, Devenascire.—Denelaga habet quindecim Sciras; Eboraciscira, Snotingahamscira, Deorbiscira, Leorcestrescira, Lincolnescira, Norhamtunscira, Hunte-dunescira, Grantebrigescira, Northfolc, Sudfolc, Eastsaxe, Bedefordscira,*

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Settlement
of the five
Danish
Burghs,
877,
and of East
Anglia,
879, 880.

Derby, became a Danish state in the following year; and the division of East Anglia amongst the army of Guthrum completed the colonization of "Danelage."^a Within the limits of these acquisitions, and which, so far as East Anglia and its dependencies extended, were settled and confirmed by the treaty between Alfred and Guthrum, the conquest of the Anglo-Saxons by the Danes appears to have been as complete as that which was effected at a subsequent period by William of Normandy. We have not a Domesday by which we can evidence the transfer of the dominion of the soil to a new race of Lords and rulers; but the fact, which is told by the chroniclers in the clearest, though the most succinct phrases, is fully demonstrated by the consequences which resulted from the Danish Conquest. The old Anglo-Saxon names of places gave place to Danish appellations. 'Northweorthig' became "Deoraby,"^b or Derby: "Streoneshalch," is the present Whitby. The vessels of Grimsby, if they enter a Danish port¹, can even now claim the exemptions derived from the Danish founder or restorer; and the topography² as well as the language of the North and East of England will afford the most convincing proof of the preponderance of the Danish settlers. It is not probable that this condensed and conquering population should have entirely abandoned their ancient laws. But as the Heathens of the ninth century proceeded from the very shores which formerly sent forth the Jutes and Angles, whose descendants had now yielded to the savage prowess of this second Colony, it is equally probable that the introduction of the Danish customs did not materially alter the anterior principles of jurisprudence, except so far as the latter were modified by Christianity; and after the Danes had submitted to the imperial supremacy of the Anglo-Saxon crown, they still continued to preserve the power of legislation. Yet the influence of the more civilized community was not unfelt, and the laws which Edgar recommended to the Danes, perhaps without immediate effect, were adopted after his decease, when both "Danes and Angles," in the midland and eastern parts of the island, were gradually uniting into one people. Beyond the Trent the process was more tardy; and it was not until the close of the reign of the Confessor that the laws of Canute were promulgated by the Confessor in the Earldom of

^a Sax. Chron., pp. 103, 104, 106. Asser, pp. 8, 9, 11. Ethelwerd lib. iv. c. 3.

^b Ethelwerd, lib. iv. c. 2.

Northumbria². The chief peculiarities of the Danelage are to be sought rather in forms of policy and administration, than in the doctrines of the law itself. The denominations of the popular assemblies and popular tribunals seem to have been changed; the Wapentake¹ supplanted the Hundred. In the Five Burghs we discover a magistracy of "Lahmen,"² according to the usages of the Suio-Goths³; and in the conformation of the popular Courts of East Anglia we may trace closer analogies to the Scandinavian tribunals, than in Wessex and Mercia. We are thus compelled in many instances to seek for explanations of the English law in the codes and custumals of the Northmen; and to follow back the settlers to their native home, for evidence of the rights and privileges which they transmitted to their progeny.

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A peculiar aspect is given to the English annals by the Norman Conquest. In tracing the progress of the other great nations of modern Europe, from their first establishment on the ruins of the Roman empire to their full development as States and Kingdoms, we pursue our inquiries, amidst the changes and revolutions of dynasties, with difficulty and hesitation; yet we do not meet with any catastrophe occasioning so sudden and jarring an interruption as that great event, which, considered as an historical incident, has no parallel in character. Even in Spain, where so many kingdoms were rendered aliens to Christendom, the lineal succession of the nation seems to be more unbroken than in England. We arrive at the period when the whole Gothic monarchy is sheltered in the caverns of Covadonga, yet it still survives: Pelayo⁴ and his descendants are the lawful successors of Hermeneric⁵ and Athanagild⁶; Castile and Leon are gradually repopled, by those, who, proud of the name of Goths, issue forth from the mountain fastnesses, in which they have preserved the laws which their ancestors adopted, and the language which they assumed. Not so in England, where the Norman Conquest forms a dark, determined boundary-line, where the accession of William becomes an era upon which we are accustomed to found chronologies and calculations, a term of beginning and of ending. Hence it has become extremely difficult to disconnect the train of ideas suggested by the Conquest, from the views which we take of Anglo-Saxon history, and of the growth and progress of the law; and we should be always on our guard lest we should be misled by the impressions which we unconsciously receive.

Norman
Conquest.

² Edgar, III. § 12. Sax. Chron., pp. 201, 254

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Controversies between
the Whig
and Tory
antiquaries
and
historians.

Whatever colour of right may be given to the title by which William claimed the crown; by whatever efforts he may have attempted to acquire the character of a lawful Sovereign, and not of an invader, still his triumph appeared to place the English people in the lowest stage of degradation. Even after the lapse of centuries, the Conquest could not be considered with impartiality: for, when England was contending against those Sovereigns who laboured to subvert her civil and religious liberties, the arguments founded upon the occupation of the Kingdom by the Normans were still mooted by the zealous advocates who fanned the flames of mutual hostility, and who prosecuted their discussions, not as points of abstract inquiry, or as the themes of historical research, but as subjects of vital and practical importance. Domesday was the authentic record of the entire and unqualified subjection of the English race in the eyes of the inculcators of indefeasible hereditary right, who sought to prove that all the boasted franchises of England had proceeded from the mere motion and bounty of the Sovereign, and were therefore revocable at the will and pleasure of him who had made the grants^a. In reasoning against these opinions, the earnest antagonists of prerogative and arbitrary power sought to strengthen the rights of the people by the assertion of their antiquity; they discovered the English parliament with all its powers and members in the obscure Witenagemot of the Saxon age, and endeavoured to prove that the safeguards of liberty survived, though Harold had fallen in the field^b. Investigations, which, under any circumstances, are sufficiently difficult, thus became infinitely more perplexed by the passions nourished by the controversy. At this distance of time we may perhaps pardon such aberrations. Extending our indulgence equally to the Whig and the Tory, we may be sensible of their errors, and yet respect their memories for their exertions in the good cause of constitutional literature. Prejudice was the atmosphere in which they breathed: and they were equally appalled by the fears of tyranny and of rebellion. Despotism with her hundred arms, and Anarchy with the heads of the Hydra, were the phantoms that

^a The Freeholder's Grand Inquest, by Sir Robert Filmer. Brady, History of Boroughs. Brady, History of England, &c.

^b Petyt, Ancient Rights of the Commons of England, and Jus Parliamentarium. Argumentum Anti-Normannicum, Tyrrell's Bibliotheca.

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English
said to
have
demanded
the restora-
tion of the
laws of the
Confessor.

Existing
texts of the
laws
ascribed
to the
Conqueror.

Certain re-
enactments
of the
Anglo-
Saxon laws.

were born, and such as had prevailed in the days of King Edward the Confessor. Not referring, as was afterwards supposed, to any code or statute which the Confessor had penned or granted; for, as we have already shewn, he only re-enacted the laws of Canute, but demanding the laws which had subsisted under the last legitimate king of Anglo-Saxon race, from whom the Conqueror deduced his title to the crown. To this demand William assented, and a statute or capitulary, which, according to its coeval rubric, contains "the laws which King William granted to the people of England after the Conquest, being the same which King Edward his cousin held before him," has been preserved in *Romance* and in Latin. Both texts agree so closely as to shew that the one must be a translation from the other. The Romance, or French text, which is only found entire in the history ascribed to Ingulphus¹, and which, as the Abbot relates, was copied with his own hand from the text which he procured in London, has long enjoyed the reputation of being the original^a. If so, the code would be a testimony indeed both of English liberty and English servitude; for, whilst it proves that the Conqueror respected the Saxon laws, it also seems to afford evidence of the plan which he is said to have formed for the extirpation of the English tongue; and, if genuine, it must be ranked as one of the main landmarks in the history of the French language.

That the substance of the statute is authentic may be admitted. It is in great measure a repetition of the laws of Canute; and, judging from internal evidence, the clauses not found in the laws of the Danish king, are nevertheless of Anglo-Saxon origin. But the employment of the French language in this solemn instrument is so utterly contrary to the usage and practice of the eleventh century, as at least to awaken some suspicion. At that period no law in France was ever written in the rustic and colloquial Romance language; whether the dialect can be referred to that age, must be ascertained by comparison with documents, if there be any, whose dates can be fixed by positive proof, and not by conjecture. The forms, it is true, have an archaic cast; but the idiomatic peculiarities and the orthography of the French language,

^a See Part II., *Proofs and Illustrations*, pp. 121-149, where both texts are given from the following sources: MS. Harl. 746; Holkham MS. 228; Ingulphus, SS. *Rerum Anglicarum* [Ingulph, *Writers on English History*]; and the Copy published by Selden in his *Notes upon Eadmer*.

as spoken in England during the reign of Edward I., exhibit them nearly to the same extent: and if we are to found our opinions upon the language alone, we cannot place the French text of the Conqueror's laws in any higher period than the early part of the reign of Henry III. Nor are there any external arguments which can weaken the conjecture. We are told that "William entertained the project of abolishing the English language: he ordered, that, in all schools throughout the kingdom, the youth should be instructed in the French tongue. The pleadings in the supreme court of judicature were in French, the deeds often were drawn in the same language, and the laws were composed in that idiom." This popular notion cannot be easily supported. The example of a Norman aristocracy and a Norman clergy, aided by the literary influence of the writers of the *Langue d'oïl*, and the utility of that dialect as a medium of general intercourse, ultimately rendered it almost as familiar amongst the English as their own tongue. But before the reign of Henry III. we cannot discover a deed or law drawn or composed in French. Instead of prohibiting the English language, it was employed by the Conqueror and his successors in their charters, until the reign of Henry II.; when it was superseded, not by the French, but by the Latin language, which had been gradually gaining, or rather regaining, ground; for the charters, anterior to Alfred, are invariably in Latin. All these circumstances taken together will induce a strong suspicion, that the French text, together with the introductory statement, must be numbered amongst the passages which place the chronicle of Ingulphus amongst the apocrypha of English history.

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French
Romance
text of
doubtful
antiquity.

Besides this capitulary, there are other laws promulgated by the writs and charters of the Conqueror: some in Latin, others in the Anglo-Saxon language. Any changes resulting from these acts of legislation, were not considered as affecting the main principles of the national jurisprudence; for William commanded that his subjects should have and hold the laws of Edward in all things, with such additions only as he had enacted for the benefit of the English nation.

The concluding era of Anglo-Saxon jurisprudence is formed by the code or treatise ascribed to Henry I., which, though destitute of any distinct legislative sanction, appears nevertheless as an authentic compendium of the laws which then prevailed. "The law of Edward, I restore to ye, with the emendations whereby my father amended it, by the council of his barons." These

Laws of
Henry I.

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Ancient
Latin
version of
the Anglo-
Saxon
laws;

which
version is
one of the
principal
sources of
the laws of
Henry I.

Difficulties
of under-
standing the
Anglo-
Saxon laws.

Defects of
the versions
of Wilkins
and
Lambarde.

Anglo-
Saxon
Statutes,
principally
declarations
or con-
firmations
of the
existing
law ;

and con-
sequently
the law
itself may
be much
more
ancient
than the
Statute in
which it
first appears.

are the words of Henry in his charter of liberties. And when we recollect that the transcript of the laws is deposited in the Exchequer, it will not appear improbable but that the work may have been compiled for the use of the Norman Justiciars who sat in the King's tribunal. It is a circumstance also worthy of remark, that a Latin translation of the genuine Anglo-Saxon laws is now extant, which was executed soon after the Conquest, and not by an Englishman, but by a Norman clerk. The translation, which is very close, is also in many instances very inaccurate, and the errors are of such a nature as could scarcely have been committed by an Englishman in an age when the Anglo-Saxon was yet a living tongue. This version appears to have been one of the chief sources of the laws of Henry I. But, in addition to the extracts from the Anglo-Saxon laws, we also find many notices of prevailing customs, and many observations and rules of practice resulting from the individual experience of the writer, with some few glosses from the continental laws.

The explanation of these monuments of ancient jurisprudence is attended with considerable difficulties. Confused and elliptical in their style, the text itself is suspicious and incorrect. A literal translation is seldom practicable, and most frequently the sense can only be obtained by a paraphrase. The utmost respect is due to the memory of those learned men by whom the Anglo-Saxon laws were first given to the world; and the praise which is justly due to their labours is not diminished by acknowledging the occasional infelicity of their interpretations. The Latin language is ill adapted to render the Anglo-Saxon idioms: and the version departs still more widely from the original, when the translator attempts to attain an air of elegance, by rejecting the technical terms and phrases of the Anglo-Saxon law, and substituting others borrowed from a foreign jurisprudence; but these defects are more easily pointed out than avoided. Being regulations adapted to existing institutions, the Anglo-Saxon statutes are concise and technical, alluding to the law which was then living and in vigour, rather than defining it. The same clauses and chapters are often repeated word for word in the statutes of subsequent Kings, shewing that enactments which bear the appearance of novelty are merely declaratory. Consequently the appearance of a law, seemingly for the first time, is by no means to be considered as a proof that the matter which it contains is new; nor can we trace the progress of the Anglo-Saxon institutions with any degree of certainty, by following the dates of the

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Continue

Part I.
Ch. II.

known by ancient names after their real nature sustains a total transformation; or, changing their style and title, and yet continuing to hold the same place in the Commonwealth, they elude us in obscurity. No labour or sagacity can entirely unravel these enigmas; we can only proceed by the comparison of probabilities; an approximation to the truth is all that can be effected or desired: and the fitness of the hypothesis framed by a modern inquirer (for no scheme of the Anglo-Saxon policy can be anything but an hypothesis), must be judged, not only from its application to the particular page or chapter, but from its conformity to the entire system. The right exposition of the Anglo-Saxon laws may become an object of interest, not merely to the antiquary or the historian, but to the practical lawyer. Many questions of great importance in our present form of government can only be decided by reference to laws or usages which have prevailed since the time "whereof the memory of man runneth not to the contrary"; and the constitution of Parliament itself may depend upon the exposition of the most obsolete passages in the laws of a Canute or an Edgar. The truth of any conjectural interpretation of the Anglo-Saxon laws may be put to an easy and certain test by inquiring how far it was consistent with the frame of the Anglo-Saxon Commonwealth. When any historical theory does not agree with the general structure and practice of the Constitution, we may safely pronounce it to be unfounded. We may detect the error in the same manner that Linnæus baffled the ingenuity of his students, who produced to him a shrub composed of the twigs and leaves and flowers of different plants, so nicely adapted together, that the eye failed to discern their junction: but the factitious origin of the compound was immediately discovered by the mind, which perceived that the parts thus deceptively combined could never have been co-existent in living nature.

Practical applications of the Anglo-Saxon Law: Elective Franchise in Boroughs. Rights of Corporations to fines and penalties, &c.

No historical theory entitled to credit, if contradictory to the general structure of the Constitution.

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CHAPTER III.

Formation of the Teutonic States—Settlements of Families—Septs—Tribes—Tenure of Land—Townships—Hundreds—Shires—Federative Governments of the Galatians, Greeks, and Etruscans—General Placita of the Franks—Supreme legal and legislative Courts of the Scandinavians—States of Guernsey, &c.—Tynwald of Man—Stannary Parliament—Ancient Modes of exercising the Powers of Election—Connexion between the Teutonic Forms of Government and the Teutonic or Scandinavian Mythology.

THE principles connecting the component parts of the Anglo-Saxon Commonwealth differed essentially from the grounds of modern policy and of modern public law. We consider that the powers of government result from the right which the Sovereign possesses over the land in which the people dwell: the allegiance of the subject arises from the spot of his domicile, or the accident of his birth-place; and the modern law of nations teaches us that the State is constituted by the arbitrary or geographical boundaries which determine its extent and limit its jurisdiction. This is the principle of the modern Commonwealth; but the scheme of government adopted by ancient nations was essentially patriarchal. Kings were the leaders of the people, not the lords of the soil; and their authority was exerted in the first instance over the persons of their subjects, not over the territories which composed their dominion. Such a form of society may yet be viewed in full vigour amongst the Scythian tribes. It may be instanced in the Tartar, who, like the Bedouin of the desert, stands aloof from civilization, and in this the last age of the world, still preserves the primitive impress given to human society. Encamped in Europe, or in Asia, the sway of the Khan remains unaltered: his power does not depend upon the sovereignty of the tract which produces the herbage grazed by the flocks and herds of his followers; nor does the influence which he exercises sustain any diminution, though the glebe itself may belong to

Part I.
Ch. III.

Ancient and modern Governments constituted upon different principles.

Ancient jurisdictions, personal and not territorial.

Nomadic Tribes, their municipal government resulting from the internal relations of

Part I.
Ch. III.

the people,
unaffected
by the
rights of
the power
claiming the
sovereignty
of the soil.

Kien-Long¹ or to Catherine². The social bonds which unite the individuals of the Calmuck horde into a body politic, are equally strong, whether their tents be pitched on the banks of the Volga, or beneath the shadow of the wall of China. Possessing a moral identity, which cannot be delineated by the pen, or plotted out on the map, the Tartar State does not depend upon latitude or longitude; the nation is not circumscribed within a definite frontier. It is not the extent of the encampment which has given rise to the reciprocal obligations of the Sovereign and the Nomad; wherever the Tartar wanders, he obeys the banner of his Chieftain, and acknowledges no other fealty; whenever he hears the voice of a brother, he finds his country. Let us now imagine an army of Tartar hordes, independent of each other, yet allied under the command of one leader, a Gengis³, or a Tamerlane⁴, to whom they are all equally subjected, and who, having overspread a fertile country, are tempted to abandon their pristine customs, and to settle in the realm which they have won. In such a case, the territory is shared amongst them by occupancy: the course of the river, or the ridge of the mountain, will naturally separate one tribe from the next troop of invaders; and the boundaries of the provinces are produced by the expansion of the people upon the land, each tribe retaining the district upon which it has planted itself. Subsisting political demarcations may assist in the admeasurement of the allotments of the victors; yet the jurisdictions of this state do not spring from the political divisions of the soil; they are founded on the previous sovereignty of the hordes established in the several divisions. The degree of self-government vested in each distinct jurisdiction is not derived from the grant or concession of the common Chieftain, but retained by the members after they have become an aggregate whole.

Teutonic
States,
assemblages
of Septs,
Clans,
Tribes,

In this manner the first establishment of the Teutonic States was effected. They were assemblages of septs, clans, and tribes; they were confederated hosts and armies, led on by Princes, Magistrates, and Chieftains; each of whom was originally independent, and each of whom lost a portion of his pristine independence, in proportion as he and his compeers became united under the supremacy of a Sovereign, who was superinduced upon the State, first as a military commander, and afterwards as a King. Yet, notwithstanding this political connexion, each member of the State continued to retain a considerable portion of the rights of Sovereignty. Every ancient Teutonic monarchy must be considered as a federation: it is not a unit, of which the smaller

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Part I.
Ch. III.Lords of
townships.Townships,
sometimes
held by a
small
community,
having the
rights of
seignory.Direct
dominion of
the Lord
over his
"inland," or
demesne.
Superiority
over the
Feuds,
Præstaria,
or Benefices,
granted by
Landboc, or
Charter.Other
portions
of the
township
held by
folkright,
or custom.

Every Anglo-Saxon Township was subjected, in demesne, to a Superior; to the Sovereign, whether King or Ealdorman, who succeeded to the very extensive possessions of the British Princes; or to a Lord, a "Hlaford," or "Landrica."^{a1} In some few instances the Township belonged to small corporations, if such a term may be used, whose members held the township as a joint property^b. If it could be proved that all inheritances were partible amongst the male heirs, according to the custom of gavelkind, a joint-tenancy of this description would receive an easy explanation; but our ignorance of the laws of succession will prevent our assigning it with certainty to this cause. The right of the Lord over the Township was accompanied by the Sovereignty of the land. I apply the term of Sovereignty, rather than that of ownership, because the superiority of the township was unquestionably vested in him, although his right of possession does not seem to have extended beyond the demesne or "inland" which he enjoyed in severalty, and which he cultivated as his own. Another portion of the Township consisted of the Feuds which he or his predecessors had granted, by "Landboc" or Charter, to the Sokemen. Such a Benefice², "Præstarium,"³ or Feud⁴, which in Anglo-Saxon was denominated a "Læn,"⁵ was usually created for one, two, or three lives, to be nominated by the grantee, after which it reverted to the Lord^c; and during the existence of those derivative estates, the Lord, according to the language of the later law, had only the services and the reversion. Some Benefices, however, were granted in perpetuity. Analogous,

Gothis antiquis *byr*, a *bo*, habitare. Composita nonnulla hujus significatus remanent; ut *byfogde*, præfectus civitatis, *hylag*, jus civitatis, *Ihre*. [In ancient Gothic *byr*, from *bo*, to dwell. There remain certain compound words with this meaning, as *byfogde*, the prefect of a city, *hylag*, the law of a city.]

^a Constitutions of Northumbria, § 59. Edgar, III. §§ 9 and 11.

^b Domesday, vol. i. 23 b, 27 b, 47, 53, 54, &c.

^c For the proper application of the term "Læn," see the record concerning the Six Sollens of land at Wuldham, Part II., *Proofs and Illustrations*, pp. 283 et seq. *Læn*, proprie, concessio, vel quod alteri datur. Specialiori vero sensu notat Feudum. Qui ejusmodi feudum tenebant, *Lænsman*, et *Lændirman* appellabantur, *Ihre*. [*Læn*, properly a grant, that which is given to another. But in a more special sense it signifies a fee—fief. Those who held a fee of this kind were called *Lænsman* and *Lændirman*.]

in many respects, to the Benefices, were the lands which were held by the tenants, whether Sokemen or Bondes, by folkright¹, or customary tenure; but these do not appear to have been generally subject to devise or alienation. Lastly, every Township contained those extensive common fields, or common leasowes, which the law assumed to belong to every town^a, and of which the usufruct was shared between the Lord and the men of the community.

Part I.
Ch. III.

Common Land a constituent portion of every Anglo-Saxon township.

As it appears probable that the Anglo-Saxons were not influenced by the previous organization of the Country, and that the privileges of the Township were of complex origin, it becomes necessary to consider the territorial divisions which, according to the Welsh laws, prevailed amongst the ancient Britons. I shall not presume to investigate details which have baffled the researches of the Celtic antiquary; but without attempting to define the extent of the "Tyddin,"² the "Rhainder," or the "Gavel," it can be ascertained that the primary settlement of a British Sept, or perhaps a family, was the "Tref," or Hamlet. A Commot³ contained fifty, a Cantred one hundred of these settlements, which, for the purposes of judicature, were also arranged into "Maenawls,"^b or Townships, respectively containing four Trefs: so that, as the Commot included twelve Maenawls, or forty-eight Trefs, there were two Trefs not united in a Maenawl; one of which was appropriated as the King's arable land, whilst the other was his dairy pasture. Four entire Maenawls, belonging to the King, were held by the "Taeawgion," or Villeinage. The Villeins, as we have before observed, were liable to many onerous services: they entertained the King's guests, his huntsmen, and his henchman; they tended the pasture, and reared the King's horses and hounds; they supplied the provisions required for his rude hospitality; and, in addition to these exactions, and to the predial labour which they performed, they contributed to the defence of the state by furnishing beasts of burden for the army; and one hatchet-man was summoned from each Tref, who assisted in forming the huts or tabernacles for the troops when they were in the field. A fifth Maenawl was assigned for the support or

The Tref or Hamlet, the primary settlement amongst the Brit^ons.

The Commot, containing fifty Trefs, and the Cantred, containing one hundred Trefs.

Twelve Maenawls or Townships in each Commot, of which, six belonged to the King, or his Officers.

^a Edgar, III. § 7.

^b *Maenan* (from *maen*, a stone), a district bounded by stone meres; otherwise called *Maenawr* and *Maenawl*. The similarity between *Maenawr* and *Manor* appears to be accidental (Owen Pughe's Welsh Dictionary).

Part I.
Ch. III.

The
"Maer," a
Magistrate
exercising
municipal
authority
over the
Villeins.

Maer, an
ancient
Celtic title,
Maor,
a Baron;
Maormor.

Six
Maenawls
in each
Commot
held by
free tenants.

Proportions
of Common
Land in
each Tref.

maintenance of the King's Chancellor or Judge; and a sixth, in like manner, to the King's "Maer," an officer who had great authority over the villeins. Suits, both civil and criminal, arising between them, whether for lands or blood-fines, were decided by the Maer, and he enforced the performance of their services. In these duties we recognize the fiscal minister of the King; but the Maer was to be of gentle birth and kindred: he had the privilege of receiving to his own use a proportion of the heriots and fines due from the men of the Maenawl; and he and his wife also were entitled to the "Amobreu," or Mercheta, the price of virginity, payable on the marriage of the daughters of the vassalage. Privileges of this description are, perhaps, vestiges of greater dignity; for the ancient Celtic title of Maer indicated state and honour. Amongst the Scots, a Maor was anciently the same as a Baron; Maormor, denoted a great Lord; and the Chieftains of Albania were thus denominated, until they assumed the Scandinavian name and character of Earls^a.

Six Townships were thus vested in the King, or his officers; and the remaining six were held by the "Mab Uchaelwr," the free tenants, or gentry. The "Maenawl Rydd," or free Township, was not exempted from the rent of provisions rendered to the King, but a commutation in money might be accepted in its stead; and the free Lordships appear to have been entirely freed from the oppressive duties of hospitation. The "Trefs," which were, like their owners, distinguished into bond and free, had each respectively a different internal arrangement. A bond Tref contained three "Rhainders," of which, one was the common portion of the Villeins: whilst in the free Trefs, which were divided into four Rhainders, three were cultivated; and the fourth, which completed the "gavel," was the common pasture. The Triads also indicate that a portion of land, the "Cyvar Gobaith," was set apart in every hamlet for the purpose of assisting in its cultivation, the produce of this plot being applied in the purchase of implements of husbandry for the use of the community^b. In the very obscure collections of laws and customs from which these particulars are collected, it is not always possible to distinguish between theory and practice; between the injunctions of the legislator, and the traditions of the bard. Whether

^a See Chalmers, Caledonia, vol. i. p. 449, and the authorities there quoted.

^b Ancient Welsh Laws, pp. 188, 189. LL. Wallicæ, pp. 157, 158, 164, 168.

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Continue

Part I.
Ch. III.

jurisprudence of such a community, we have only very brief and transient notices; yet, in all the regulations respecting social rights, it can be discerned that the Cambrian derived his title to his individual possessions, to the privileges of the nation, and to the protection of the law, only in his capacity of a member of the tribe to which he belonged.

The patriarchal government commemorated in the Triads, had not entirely fallen into desuetude when the laws of Howel were compiled, though few of the offices of the leaders of the tribes were now actually performed. Recollected as the shadow of venerable antiquity, the testimony of the Pencenedyl was occasionally required in aid of the testimony of lineage; yet the general government of the country was assimilated to the state and march of the greater portion of feudal Europe. How the change was effected it is useless to inquire; the brief annals of Cambria give no information: but it must have been produced by causes which did not operate so strongly upon the Celts of Ireland and of Caledonia, who, long afterwards, were yet in a state of society, where power results only from the personal relations existing between the Chieftain and the people.

Appropriation of land, originally vested in nations, and not in individuals.

However familiar the appropriation of land may appear, the history of mankind affords sufficient proof of the slow development of individual possession, and the difficulty of arriving at the principles upon which such an exclusive claim is founded. The first and most obvious right accrues to the people, or nation, as is the case with the aborigines of North America. The same doctrine is established under another guise, in the fictions of the law, which teach that all land is held of the Crown. And amidst the variations of property and tenure, it can be discerned, that the direct dominion of the land is always an emanation, if this expression can be employed, of Sovereign power, and bestowed by the supreme authority. Thus, in ancient Germany, no one man was enabled to acquire any permanent property in any distinct portion or parcel of the soil; the absolute ownership being vested in the State, whilst the rights of the individual occupant were merely usufructuary. No German could claim a certain and definite allotment of land; nor could he point out the mere stones or boundaries of his property. Every year a fresh division of the territory was made by the supreme authority of those functionaries, whom Cæsar denominates, the Magistrates and Princes of the tribe, yet not an equal division: for it is expressly stated, that respect was had to rank and quality, and

Usufructuary occupation of land amongst the Germans. Annual repartition of lands made by the Magistracy or Princes of the German Tribes.

the shares were calculated accordingly. But these specific apportionments did not exhaust the wide extent of the thinly-peopled wastes which the Germans occupied: there was always a large proportion of pasturage which still continued open to the community; and as, for their sustenance they principally depended upon their cattle, and not upon the products of tillage, the favour shewn to the more powerful did not greatly abridge the rights and comforts of the inferior members of the tribe. With the year, the estate in the allotment was determined; and, if Cæsar is a faithful narrator of the sentiments of the Germans, this annual division was rigorously enforced by a martial people, anxious to preserve their prowess unimpaired, and to maintain their liberty without diminution; and who, in this arrangement, had the express intent of discouraging agriculture, and preventing the inequality arising from territorial wealth, and its consequent influence and luxuries. Yet it may be suspected that such philosophic reasoning is rather to be ascribed to the Roman writer, than to the Germanic chieftains^a.

Part I.
Ch. III.

A Celtic country was originally inhabited by one clan or kindred, governed by the Patriarchal Chieftain, the Ceanfenne or Ceancinnith. He was the Head of the lineage, and in name, as well as in station, he is to be identified with the Pencenedyl of the Cymri^b. The common possession of the soil, indicated with sufficient distinctness in the customs of the Scottish Highlands, existed to the fullest extent in the mother country of the Gael, and when their primitive policy was unaffected either by power or by law.

Celtic Clans,
governed
by the
Ceanfenne or
Ceancinnith
i.e. the
Head of
the lineage.

Each sept or lineage of the "mere Irish" held its territory according to a custom which has been miscalled gavelkind; but which, in truth, is only a variation of the usages of the Teutons, as they prevailed before the Roman conquest. No Irishman enjoyed any landed property, if property it may be termed, otherwise than by a precarious possession. Though lands were annexed to the chieftainship, yet the Chieftain could not transmit the inheritance; for his heir was the Tanaist, named by the voices of the Sept, and they did not always wait for the death of the Chieftain before they installed his successor. This custom of tanistry prevailed, though not with equal license, in Scotland,

Irish
custom of
community
of land,
miscalled
gavelkind.
Precarious
and
uncertain
possession of
land in
Ireland.

^a De Bello Gallico, lib. iv. c. 1; lib. vi. c. 22. Tacitus, Germania, 26. See also Strabo, lib. vii. Germania.

^b Home, History of the Rebellion, pp. 4, 5.

Part I.
Ch. III.

Partitions
of land,
how made
by the Head
of the
lineage.
New
division of
all the lands
of the Sept
on the
death
of any
individual
belonging
to it.

where the Charter of the King often confirmed the authority of the Patriarchal Chieftain^a. The lands of the inferior tenants, or subjects, were liable to constant mutations: each male heir was entitled to an endowment or appointment; but all the partitions were effected by the Ceanfenne. On the death of any individual holding land, he assembled the Sept, and made a new partition of all the lands amongst all the members. Every individual lost his possession, and received back a fresh estate, which was assigned to him at the discretion of the Ceanfenne. This division, however, was made as Cæsar describes the Teutonic partition, according to rank and seniority; and the son of the deceased took no share whatever, as the heir of his father: for it was only by claiming in the capacity of a member of the tribe, that he acquired his title to the new allotment^b.

“Tir
Cyfrith,” or
numbered
land,

divided
amongst the
British
Villeins

by the
Maer and
the
Chancellor.

“Tir
Gweltyawg,”
or hereditary
land.

Whilst this community of possession prevailed amongst the entire Sept in Ireland, the Cymri had gradually restrained the usage to the occupants of the villein townships or “Tawgdrefs,” which were the endowment of the King. Notwithstanding the seignory of the King, enjoyment of the “Tir Cyfrith,” or numbered land, was entirely vested in the community of the Villeins. No portion could revert to the King in demesne, no tenement could be alienated by the occupant, no son succeeded, as such, to the land of his father, but when any one Villein died, the whole Tref was divided in equal shares amongst all the inhabitants, without preference or distinction, excepting only a right, obscurely indicated, that the youngest son should be placed in the homestead of his father; and this division, or apportionment, was made by the Maer and the Chancellor, who performed the office which devolved upon the Ceanfenne of Ireland. But the custom which created this perpetual coparceny of villein land was modified in favour of the Cambrian nobles, and a different tenure prevailed with respect to the “Tir Gweltyawg,” the free, or hereditary land,

^a See Chalmers, Caledonia, bk. iii. c. 10, and the Charters quoted from Robertson's Index.

^b Le Irish Custome de Gavel-kind. Hil. 3. Jac. 1. Le Case de Tanistry. Hil. 5. Jac. 1. Sir John Davys's Reports, pp. 29 and 49. Ware's Antiquities, p. 72. O'Reilly seems to consider that the Ceancinnith and the Ceanfenne are the same, and I have followed his authority; because, though Sir John Davys distinguishes the Chief from the “Ceanfinny,” yet he gives the title of “Caput Cognationis” [The Head of the Clan] to the latter.

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Part I.
Ch. III.

Mischievous
results of
the system
of commun-
ity of lands
amongst the
Gael.

Wildness
and disunion
of the
Welsh when
conquered
by Edw. I.

The
Teutons
modify the
custom,
so as to
render it less
injurious.

the Celt dwelling in wattled hovels and turf-built sheelings, which could be raised in the course of a night, and abandoned without regret or sacrifice, when the partition of the district compelled every inhabitant to accept a new domicile^a. Such was the state of Ireland. The fruit of the Irish gavelkind was the entire desolation of the country. When the English entered the fertile fields of Ulster, they found an idle desert; and the general subjugation of the Celtic tribes, who, though gifted, and in no ordinary degree, with strength, courage, and intelligence, have yielded to every stranger, may probably be traced to their stubborn adherence to this system, which annihilated all inducements to industry, destroyed the sources of individual opulence, and exposed the nation at large to all the evils of sloth and disunion. A greater degree of permanence was given to property by the Cymri; and after contemplating the fated Island of Erin, we rest with comparative pleasure in the valleys of the British Snowdon. Yet the Cambro-Britons did not advance: and when Edward acquired the Principality of Wales, his new subjects lived nearly as their ancestors had done in the days of Roderick¹ or of Howel. In a letter, addressed by the Archbishop of Canterbury to the King, he describes the Welsh as dispersed over the country, without towns or fixed habitations, no one living near the other; idle and savage, and of "no profit in the world"^b: and though the feeling of antipathy that dictated these terms of vituperation, may lead us to suppose that the Prelate exaggerated the vices of those who were so recently the implacable enemies of his Sovereign, still the history of the Principality is a sufficient indication of the wildness and disunion which had hitherto prevailed.

Whilst the Celts retained so many portions of their ancient patriarchal and nomadic policy, the Teutons adopted a different course. Their nationality was less obstinate and unyielding; and, without entirely abandoning the policy of their forefathers, they soon mitigated the rudeness of their customary law, in such a manner as to be consistent with their own welfare, and with the improvement of society. In the provinces of Spain or Gaul, which had been civilized by the Roman Power, or within the sacred boundaries of Italy, the Goth, the Frank, and the Lombard

^a Strabo, lib. vii. Germania.

^b Letter from Archbishop Peckham to Edward I. A.D. 1284; Registrum Peckham in Lambeth Library. See Part II., *Proofs and Illustrations*, p. 275.

and the Burgundian possessed themselves of the villas and farms of the Patrician, and held them as he had done, reaping the harvest of the Senator, and drinking the produce of his vineyard. All the rights of the conquered were transferred to the conqueror; the Warrior inherited both the opulence and the land of the owner whom he had expelled; and though he was too proud to submit his person to the Roman law, still he could not introduce the usages of Germany without destroying the very form of society subsisting in the countries which he had subdued. Yet many approximations took place; the whole system of the military and other tenures of the Teutonic nations, from the period when they become known to us as the States of the Middle Ages, must be considered as the result of the intermixture of their own laws and customs with the jurisprudence of Rome; and the first chapters of the history of feudality, must be sought in the decrees of the Senate and the rescripts of the Cæsars.

Part I.
Ch. III.

Feudal and other tenures of the Middle Ages, the result of the admixture of Roman jurisprudence and Teutonic customs.

In those countries, as in Scandinavia, where the Goths were less blended with other races, we can distinguish the stages by which the common land of the tribe could be converted into the vested and transmissible Allodium of the individual; but land held in common, and as a common stock belonging to the community, continued to be annexed to every settlement, notwithstanding the introduction of a more exclusive tenure. In England, at the present day, this custom exists in the common lands of the Manor, and in the still more extensive tracts belonging to the ancient Towns and Burghs; all of which are the joint property of the Lord and the tenants, the Lord, whether an individual or a corporation, having the dominion and the usufruct, and the tenants the usufruct alone. A more singular adaptation of the Teutonic system is found in a community which has existed amongst the Frisians from the remotest antiquity. The district known by the name of the Theel Land contains about two thousand "Day-maths," a measure which was anciently known in this country, being still retained in the County Palatine of Chester^a. This land is divided into portions called "Theels,"¹ which belong in common to the inhabitants, or "Theelboors."

Partial subsistence of the Teutonic customs, e.g. in the common lands of modern English Manors and Boroughs:

another modification exhibited in the Theel Land of East Friesland.

^a Demath, s. a day-math, or a day's mowing for one man; generally used for a statute acre, but erroneously so; for it is properly one-half of a Cheshire acre, which is to the statute acre in the proportion of 64 to 30½, consequently the Demath bears that of 32 to 30½ to the statute acre, Cheshire Glossary, by Roger Wilbraham, Esq.

Part I.
Ch. III.

Every Boor has a right to the ownership of one "Erb Theel"; but over which he has no power of alienation. On his death without issue, the Erb Theel reverts to the community. Should he leave one son, such son inherits. If more than one, then the Erb Theel descends to the youngest son: whilst each of the others receives an allotment of an entire Theel from the common lands; but held on the same condition, of reverting to the community in case of failure of lineal issue. Daughters succeed if there are no sons, but they obtain only a defeasible estate; the land reverting, as in case of death, when the heiress marries a Theelboor: since, if she continued possessed of the Theel, her marriage would subvert the rules of equality, which forbid the holding of more than one Theel by each individual. All the unappropriated Theels, which are treated as common land, are farmed on the account of the community, amongst whom the proceeds and profits are annually divided^a; and notwithstanding the facilities thus given to marriage and subsistence, the Theelboors, in defiance of the "theory of population," have never been able to increase their numbers so as to exhaust the stock of common land. The system of the Theel lands appears to have resulted from an attempt to give such permanence to property as was consistent with agriculture, without departing entirely from the ancient Teutonic principle. And some arrangement of an analogous description may be found in every Teutonic population, where the practice of agriculture, and the progress of civilization, rendered it necessary to allow the acquisition of a permanent interest in the soil.

In the western parts of England, and on the borders of Mercia, the ancient boundaries of the British Lordships and Townlands seem to have been less disturbed than in the other parts of the island, where they constantly sustained great alterations. That many of these districts were larger than the Manors of the Anglo-Norman period, can be ascertained, by comparing Domesday with the inquisitions^b upon which it was founded, a comparison which will shew that it was the policy of the Conqueror to sever those districts when he granted them out to his followers. The encroachments of conflicting jurisdictions have tended to confuse

Anglo-Saxon Townships split and divided by the Conqueror.

^a Wiarda, in his Preface to the Asegabuch, pp. 11, 12.

^b Inquisitio de terris quas laici tenuerunt in Grantebrieggescira; MS. Cott. Tiberius A vi. [Inquest of the lands which the laity held in Cambridgeshire.]

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Part I.
Ch. III.

Until the recent devastation of Sutherland¹, the Clans settled all questions relating to the pasturage of their glens, by a jury composed of the most ancient inhabitants, and constituting a Court of the same nature². In all the districts of Germany which have retained any vestige of their early jurisprudence, we find the Bauern-Gericht invested with powers similar to the English Manorial Courts. And fortified by these concurrent examples, it is difficult to believe that the English Sokemen and Twihyndenmen could have gained their rights under their Norman conquerors.

Bauern-Gericht in Germany.

Jurisdiction of the Anglo-Saxon Townships.

Sac and Soc.

The Saxon charters supply a complete enumeration of the privileges attached to the Lordship, which are set forth after the description and boundaries of the territory, in the manner yet practised in modern deeds, and some of the franchises so described are not entirely unknown to the modern English law. "Sac and Soc,"² the terms which occur most prominently in this uncouth nomenclature, generally denoted the privilege of trying actions arising within the Township. One Township might be within the Soke or jurisdiction of another; and North of Humber, this species of subordination existed to a very considerable extent. In the South, it was of less frequent occurrence, though by no means uncommon; and if we may borrow an elucidation from a later period, such a Township appears to have resembled an Honour. The rights of "Soke" were extremely varied and divided. In some Townships, we find the concurrent rights of the King and the Lord, and the Earl and the Hundred; and whilst the soil of the Township was vested in one individual, the jurisdiction over the tenants might belong, either wholly or partially, to another Lord.

Infangthief and Outfangthief.

Toll and Team.

Grith-bryce, Bloodwite, Leirwite, &c.

The Gerefa, Tun-gerefa, or Reeve, corresponding to the Maer. (See above, p. 54.)

"Infangthief" and "Outfangthief" entitled the Lord to execute the summary justice which was administered when the thief was apprehended in possession of his spoil. "Toll" and "Team" related to the franchises of the market. And the right of receiving the fines, which originally belonged to the Sovereign, or to the Hundred, and were payable for breach of the peace, bloodshed, and other transgressions, may be reckoned amongst the immunities of the Township, though not strictly connected with jurisdiction. An officer, entitled the "Gerefa,"³ "Tun-gerefa," or Reeve, and corresponding to the Cymric Maer, was the efficient ruler of the Ceorls or villeinage. Like all names of office and dignity, the term Gerefa was employed with much

¹ Loch, Account of the Improvements in Sutherland.

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latitude; and it appears to have been applied, in the first instance, **Part I.**
 to a much more elevated functionary, to the Count, the Companion **Ch. III.**
 of the King^a: but there are so many examples of the same title,
 Alderman, for instance, possessing the most unequal significations,
 that this circumstance will not, in itself, discredit the assumed
 etymology. No Township was without a Gerefa, who was
 allowed, in the Folkmoots, or judicial assemblies, to speak and
 act on the behalf of the Twelfhynde man, who was the Lord of the
 township, and to give such testimony as would have been given
 by the Lord himself; and the right of being so represented was
 one of the peculiar privileges of the aristocracy^b. He appears to
 have been the fiscal officer of the Lord; he received the Seignorial
 tolls and dues, and superintended the performance of the agricul-
 tural labours of the villeinage. Yet, although the Gerefa was
 thus the Provost and minister by whom the rights of the Lord
 were enforced in the Township, he seems to have been usually
 nominated or elected by the tenantry, who chose him by the
 presentment of the Leet Jury; at least, such was the general
 custom after the Conquest, a custom which was recognized as
 a part of the traditionary common law, and to which we may
 assign the same antiquity as to the other portions of the
 system.

Gerefa
 usually
 chosen by the
 villeinage.

The inhabitants of a Township were bound to maintain peace

^a *Gerefa*, Comes, Socius, Præpositus, Præfectus—hinc vox recentior,
Greve, *Graf* (*Graphio*), *Reeve*, cum compositis.... Tandem vero,
 quocumque demum sensu occurrit hæc vox *Gerefa*, nihil aliud sonat
 quàm *Gefera*, Comes, cujus locum per metathesin occupat, Lye.
 [*Gerefa*, Companion, Comrade, Provost, Prefect; hence the more
 recent words *Greve*, *Graf* (*Graphio*), *Reeve*, with their compounds....
 But, really, in whatever sense this word *Gerefa* appears, it means
 nothing else but *Gefera*, a Companion, the place of which it occupies
 by metathesis.] Itaque sive *Gefera* dicas, sive per anagramma
Gerefa, semper Comitem dicis, socium atque sodalem. Tales autem
 erant primi illi atque vetustissimi Comites, nempe socii et sodales
 principum, non domi tantum, sed etiam in expeditionibus et
 profectionibus bellicis, Wachter, Gloss. [And so, whether you say
Gefera, or by anagram *Gerefa*, you always say, Companion, comrade
 or fellow. For such indeed were those first and most ancient Counts,
 namely, the companions and fellows of the leaders, not only at home,
 but also in expeditions and warlike journeys.]

^b Ethelred, § 1. Canute, II. §§ 20, 27.

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Ch. III.

Township
represented
in the
Hundred and
Shire Courts
by Four
Men and
the Reeve.

and good order amongst themselves; they had the keeping of their own police. If a crime was committed, the men of the Township were required to raise the hue and cry, and to follow and apprehend the offender; and, unless discharged from their general obligations by the special associations of the tithings, of which we shall treat hereafter, they were bound to enforce his appearance to the law. In the judicial assemblies of the Hundred and the Shire, the Township was represented by the Gerefa, and by four good and lawful men, who were required to perform the duty of accompanying him to the Folkmoot¹. In the Anglo-Saxon period, the Priest also seems to have attended with the Townsmen^a; but after the Conquest, the Clergy withdrew from the Courts of purely secular authority. The presence of the Reeve and Townsmen was indispensable; and the necessity of obtaining their testimony, in almost every case of criminal jurisdiction, and which could not be determined without such proof, rendered them an essential portion of the assembly.

Rights of
the Towns-
men or In-
habitants of
a Villa
amongst the
Salic Franks.
Any one
Inhabitant
might
prohibit the
entry of a
stranger.

But the
liberty of the
Township
might be
gained by
twelve
months'
residence.

The Gravio
or Tunginus,
the chief
municipal
officer of
the Villa,
nearly like
the Mayor of
a Borough
Town.

The earliest notices respecting the Teutonic Townships are to be collected from the laws of the Salic Franks. A "Villa"² was entirely the property of the inhabitants, and no stranger could settle within its boundaries, unless with the consent of the whole incorporation. Any one individual Townsman could forbid the entrance of the new colonist upon the common fields of the Sept. If, after three warnings had been given and thirty nights had elapsed, the intruder continued contumacious, he was summoned to the "Mallum"³ or court; and in default of appearance, the "Gravio"⁴ proceeded to the spot, and by force expelled the occupant from the purpresture which he had made. But it is important to remark, that the freedom of the community might be legally acquired by an uncontradicted residence; for if the stranger remained in the Township, without challenge, during twelve months, he was from thenceforth allowed to dwell in peace and security, like the other members of the community. The functionary, who in this passage is named the Gravio, and elsewhere called the Tunginus⁵, may be compared to the Anglo-Saxon Tungerefa; though at the same time his authority was greater, and more analogous to that possessed by the Mayor or Præpositus of a Borough Town. He is described as the chief executive officer and judge of his district; he called the Courts and summoned the witnesses: his presence afforded a sanction to legal acts; and

^a LL. Henrici I., § 7.

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Part I. the main and leading characteristics of these communities.
Ch. III. Amongst other grounds for supporting this theory, the nomination

Modern examples of subject or subordinate communities retaining a share of municipal authority.

Complexities of jurisdiction, originally arising from the intermixture of personal and local authority.

Instanced in the case of a modern soldier, subjected both to municipal and martial law.

of the Gerefa from the villeinage is not the least important. Interest, no less than policy, would suggest the expediency of permitting the members of the vassal community to be governed by a subordinate Ruler selected from their own nation, who was bound to answer on their behalf to the Lord. Analogous modes of government have always subsisted. In the present age, they are generally rendered more apparent by difference of colour or discrepancy of creed. The Cacique¹ of a Mexican village is almost the counterpart of the Gerefa; and, without multiplying similar instances, it is sufficient to allude to the manner in which the Greeks, under the Turkish yoke, are governed by their Primates² and Papas³, the latter having considerable temporal authority, of their own choice and election. And perhaps the constant appearance of the Four Men of the Township, answering on all occasions for the rest of the community, may lead to the supposition that they were originally the representatives of the four Trefs, of which the British Maenawl was composed.

The great complexities of that species of jurisdiction known by the name of "Sac and Soc," and the strange divisions and appointments of authority between different Superiors, either individuals or communities, are susceptible of explanation, if we can be brought to think that they resulted, in the first instance, from the intermixture of personal and local authority, of municipal and military law, just as an army is governed at the present day. Offences which are cognizable by the municipal law are punished by the Magistrate of the City in which the Soldier is quartered. A breach of discipline is tried by the Court-martial, without any reference whatever to the domicile of the culprit. The Officer himself may be compelled to put himself upon the country, at the assizes of the Shire, for a trespass or misdemeanor; at the same time that he is equally amenable to the censure of the Commander-in-chief, residing in a distant part of the Kingdom. Assume that the temporary residence of the Soldier is bestowed upon him as a Fief or Dotation; allow these concurrent, and, in some cases, conflicting authorities, to become real, instead of personal, so that, in the language of the conveyancer, they may "run with the land," instead of being annexed to the station of the occupant; and so exact a parallel will be formed to the ancient institutions, that we can hardly be wrong in attributing them to the operation of analogous causes, acting in an age when law was

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only custom, and when custom rapidly acquired the force of law.

Part I.
Ch. III.

Tacitus describes the popular assembly in which the powers of government were exercised before the Teutonic tribes were confederated into Kingdoms. The court was held at every full moon, and at every new moon; and in the legal reckoning of the Teutons, they counted by nights, and not by days, because it seemed to them that the darkness was the mother of the dawn. In addition to those stated assemblies, they held others, convened by special summons, if required on any sudden emergency. Yet the suitors seldom attended before the third or *essoin* day. All came armed to the Council; the German warrior deliberated girt with his sword; and when a resolution had been adopted, the clash and clangor of the weapons borne by the multitude testified their approbation of the acts of the Legislature. The Priests kept order; and after the Chieftain had pronounced his opinion, the other members of the nobility spoke according to their rank and reputation. Affairs of smaller importance were decided by the Nobility alone. In matters of greater moment, all were to be consulted; an ambiguous phrase, in which the historian has been thought to designate a democratic community. But we must not be seduced by the language of liberty; we lose the real sense of the historian, if we interpret his expressions so as to suppose, that the power of the multitude, the commons, was co-ordinate with the authority of the nobility. And if we admit that the power was vested in the Heads of families, we shall probably have given the utmost extension to the right of suffrage. But the power of the plebs was, at all events, confined within narrow limits. No question was brought before the people, until it had been previously discussed and adopted by a select Council, composed only of the nobility; and the influence of the vassals, who surrounded each Chieftain, can have left but little freedom of opinion in the crowd composing the assembly. Criminals were judged in these courts; and here also were elected the Judges, who, if we rightly understand an obscure and perhaps corrupted text, administered justice in the hamlets of the tribe, accompanied by a train of an hundred companions, or "*Comites*."^{a1} Such is the substance of the statement given by the Roman historian, which must be considered only as a general outline of the institutions of the barbarians, derived from report and hearsay, and

Judicial and
Legislative
Assemblies
of the Ger-
man tribes.

Authority of
the Teutonic
Priesthood
and Nobility.

All questions
discussed
and adopted
by the
select
Council of
Nobility
before they
were pro-
pounded to
the People.

^a *Germania*, c. 11, 12.

Part I.
Ch. III.

adorned by imagination and eloquence. The laws and usages which prevailed amongst the Germans, could not be known to Tacitus in detail; and without departing from the truth, the "Germany" of Tacitus has been described as a species of political romance, in which the description of the manners and institutions of the free barbarian of the Rhine is to be translated into an implied satire upon the degenerate Roman. Vivid and forcible delineations of the general policy of the Germans were required of the author; but we must not expect to find that minute elucidation of the form and practice of the Teutonic Commonwealth which would enable us to apply every passage and every paragraph of his treatise to the customs of later times. Still, after making allowance for the plan of the historian, his descriptions bear a remarkable character of fidelity. As far as they can be interpreted, they are true; and the main features are recognized in all the popular assemblies of the Teutonic race.

The earliest laws of Germany exhibit the open country as composed of Districts, administered as independent jurisdictions beneath the supremacy of the Frankish Sovereigns, and retaining a considerable portion of self-government and liberty. Such a tract was then termed either the "Gau" or "Centena": the first, or Teutonic denomination, was exclusively in use in Westphalia and "Old Saxony"; the latter latinized term principally obtained amongst the Franks and the Alemanni, and the other tribes inhabiting the southern parts of Germany.

The best informed of the German antiquaries agree in considering that the "Gauding,"¹ the Court or Assembly of this district, is equivalent to the "Concilium," so emphatically described by Tacitus^a; and their grounds for this opinion are sufficiently conclusive. Less satisfactory is their supposition that all the free or noble inhabitants exercised the power of judicature. General terms and vague expressions may appear to give a colour to this hypothesis: nor can it be doubted but that all the free residents were bound to appear at the stated meetings of the tribunal; but the supposition, that all the suitors possessed, on all occasions, an equal and concurrent authority, involves the assumption that a sudden and total change in the Germanic popular constitutions took place during the ninth century; from that period the ancient records of Teutonic legislation speak a clear language, and the capitularies recognize

^a Eichhorn, *Deutsche Staats- und Rechtsgeschichte*, vol. i. pp. 46, 229.

The Gau or Centena, the settlement of a German tribe or population.

The Gauding, or Court of the Gau, represents the ancient Concilium.

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**Part I.
Ch. III.**

judgment unless in the presence of the Comes or Graphio, and of the Centgrave, the Magistrates of the community.

According to the forms of administration adopted at Rome and at Constantinople, the "Comites" filled the chief offices of the Imperial Palace, and represented the sacred person of the purpled Cæsar, as the resident Governors of the distant provinces of the Empire. Girt with the sword of war, the Comes also exercised the functions of civil judicature; and the Frankish Kings, who continued the forms of the Roman administration, gave the same title, and assigned nearly the same office to the Teutonic Graf or Graphio, in whom the chief executive authority of the Centena was vested. The Roman population of Gaul was perhaps ruled by Counts of Roman birth. In Germany, the office of the Graphiones, or Duces, as they were sometimes called, was constitutionally appropriated to the ruling families^a, not excluding, however, a power of selection by the Sovereign: and Charlemagne obtained a double title to the obedience of his subjects, by bestowing a delegated authority upon their ancient aristocracy.

Deriving his authority from the nomination of the Community, like the Scabini or Echevins, the Centenarius, who in the German language is also called the Centgrave, acted in subordination to the Graphio, though in some respects he possessed a concurrent authority. In his ministerial capacity, the Centgrave summoned the Mallum, which, amongst the Alemanni, was held every week or fortnight, according to the extent of the district. But the Assembly thus convened by the Centenarius was the tribunal of the Count, who was therein enjoined to do justice upon those who transgressed the law; and in which he proclaimed the summons for the military services to be performed by the lieges. Whilst judgment belonged to the Count, the police was entrusted to the Centenarius; the territory was under his command; he was the guardian of the peace, and the chief officer by whom the tranquillity of the Centena was preserved^b. Suits could also be judged by the Centenarius, and the original extent of his authority is to be estimated by the restrictions which were imposed upon it.

^a Lex Bajuvariorum, tit. ii, § 20. [Law of the Bavarians.]

^b Decretum Childeberti, A.D. 595, §§ 9, 11. [Decree of Childebert.]
Decretum Clotharii, A.D. 595, § 1. [Decree of Clothaire.] Capitula excerpta ex lege Longobardorum, A.D. 801, § 30. [Ordinances extracted from the law of the Lombards.]

Magistrates of the Gau or Centena, the hereditary Graf, Graphio, or Comes (see above, p. 65, note a) nominated from the ruling families,

and the Centgrave, elected by the people.

Authority of the Centgrave as Conservator of the Peace, &c.

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Thus, Charlemagne does not allow the Centenarius to make any decree concerning freehold land, nor affecting the serfs ascribed to the glebe^a: still less was he permitted to hold "pleas of the Crown." No man was to be adjudged to death, or to the loss of his liberty, in the court of the Centenarius; such a sentence being especially reserved to the Count, or to the Missus, each of whom, in his degree, was invested with the judicial functions of the Sovereign, and acted by his authority. The object of these regulations can be easily conjectured. They mark the attempts which were successfully made to lessen the authority of the ancient jurisdictions which resulted from the people, and to substitute the royal Courts in their stead. Further inroads were made by the palatine privileges of the prelates and the feudal nobility; and about the eleventh century, the courts of the Centenæ became extinct, and the Echevins of the rural districts disappear; but in the walled towns, their authority continued not only unimpaired, but invested with immunities which ultimately expanded into the aristocratical republics of the free cities of the Empire.

Part I.
Ch. III.
Power of the Centenarius restricted by Charlemagne.

Echevins lose their authority in the rural districts; but preserve their power in the walled towns, of which they become the Magistracy.

Most of the materials from which we collect the history of the Germanic Centena, and the functions of the Echevins, are taken either from the laws of Charlemagne, or from documents subsequent to his reign. As a legislator, he may have reformed the usages of his subjects; as a monarch, he perhaps modified them so as to confirm his authority; and it may, therefore, be objected, that the capitularies of the ninth century can be scarcely admitted as satisfactory evidence of more remote usage. And if they stood alone amongst the monuments of Teutonic legislation, it might be difficult to maintain that the delegation of the powers of judicature to the Echevins, did not arise from the wisdom or the jealousy of the Frankish Emperor, who withdrew these functions from the people. But here our investigations receive a singular assistance from the laws of the Gothic nations, amongst whom no such influence can be suspected, and whose codes exhibit those instances of conformity, which establish the antiquity of the legal constitution of Germany and of England.

Antiquity of the Constitution of the Germanic Centena, as above described, proved by its conformity to

the Scandinavian Hard or Hærred.

In Scandinavia, the "Hard," or "Hærred,"^{b1} corresponds with

^a Caroli Magni Capitulare primum, A.D. 810, § 2. [The first Capitular of Charlemagne.] Capitulare tertium, A.D. 812, § 4.

^b . . . Illustris Peringskioldius vertit *Hordas* seu districtus, alludens haud dubie ad vocabulum illud *Hord*, quo Tartarici nominis gentes

Part I.
Ch. III.

the Germanic Centena. Some of the Northern lexicographers consider this term as equivalent to the English Hundred, and in Gothland, the district was certainly known as the "Hundari." But Hærræd seems more properly to denote association, without any reference to number, and to signify a Host or Tribe^a. It is scarcely necessary to observe, that the tract upon which the Horde was established had originally belonged to the people in common; but at the period when the Northern laws were established, the unmixed property or dominion of the soil was no longer vested in the State; such property being then confined to that portion of the district which continued to retain the character of "Almenning," or common land. This domain, of which a considerable portion was forest, marsh and moor, embraced a wide extent of country, and all the products which it could yield were taken at the will and pleasure of the Bondes. The woods and the waters, elsewhere the domain of the Sovereign or the Lord, afforded sustenance and sport to the Community. The Germans, before they became known to the Romans, had emerged from their nomadic policy, by allowing the individual to become an annual occupant. The Northmen advanced, at least after the introduction of Christianity, by a more rapid progress; for their laws allowed the Bonde to appropriate a portion of common land in severalty, and to gain a permanent property by cultivation. First, he was to mark out the House-toft¹, or Homestead. Fixed and certain rules are given in the laws for placing the Mere-stones, and setting out the four ways, which defined the boundaries; and, in proportion to the size of this inclosure, the husbandman was allowed to acquire a corresponding quantity of arable and meadow land. "The Toft is

Almenning,
or common
land of the
Hærræd.

Appropriation
of com-
mon land.

coetus suos appellare ex itinerum scriptoribus notum est. Et quis scit, annon una eademque vox sit, a linguæ suæ incuriosis negligentius tantum pronuntiata? Ihre. [The illustrious Peringskiöld translates Hærad by *Hordas* or districts, doubtless alluding to that word *Hord*, by which, according to writers of travels, the nations of the Tartar race are known to call their assemblies. And who knows, whether they are not one and the same word, only pronounced too carelessly by those who take no interest in their own language?] May there not also be some affinity between *Khan* and *Cean* (from whence *Ceanfenne* and *Ceancinnith*, p. 57), both designating a Head, Chieftain, or Leader?

^a It appears to be equivalent to *Herd*; Goth. *Hairda*; A.S. *Heord*; Dan. *Hiord*; Belg. *Herd*. (See Junius.)

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Ch. III.

the ancient Cathedral of Llandaff repeat the language of the Exarchate and of Lombardy. In those parts of the Island which were occupied by the Romans, no doubt can be entertained but that their laws of immovable property were fully established. When the fields around Camulodunum, or Deva, were allotted to the Soldiers of the Legions, the same course was followed which had guided the Agrimensor¹ in the assignment of the colonies of Transalpine Gaul or Africa. And it is, therefore, not altogether improbable that the principle of a several and separate possession of land was first imparted to the Britons from the jurisprudence of the Empire.

Land re-claimed from the Almenning becomes a "By," i.e. a Manor or Settlement. (See above, p. 51.)

Appropriated land subject to the jurisdiction of the Hærræd. Forfeited by the tenant if allowed to lie waste.

Fee simple or dominion of land thus appropriated, vested in the community, the Bonde having only the usufruct until it became Odal-land; i.e. allodial or inheritable.

Reclaimed from the waste, the land appropriated from the common domain of the Hærræd, became a Settlement or Manor, and was thenceforth held by the Bonde, who, by his labour, had acquired a right to the produce of the soil. But, as yet, he was only a tenant; an acknowledgment was rendered for the land, of which he had only the usufruct; the fee was still vested in the Community: and although no longer open to the other inhabitants, it continued under the jurisdiction of the Hærræd, a jurisdiction which, however, was not exercised by the body at large, but by the Næmda², a court or tribunal of Twelve men, in whom the power of the Community was vested. If the tenant was poor or idle, and suffered his holding to lie waste, then it was seized by the representatives of the Hærræd, and granted out again to a more industrious occupant, just as a forfeiture is incurred by the English copyholder, when buildings are allowed to fall into decay. The Bonde could make no alienation of his customary land, nor could it be considered as his own until it acquired the character of "Odal" or Allodial³ land, when an absolute property was obtained. Land became allodial, if one family had enjoyed it in undisturbed possession during the term of sixty years. Transmitted through three lineal ancestors, the land also became allodial upon its descending to the heir in the fourth degree^a: a custom which, however singular it may appear,

p. 178. Torfæus, *Rerum Orcad. Hist.*, p. 169. Charter of Thomas Lord Stanley, Earl of Derby and King of Man, 1555, *Monasticon*, vol. i. p. 718.

^a *Kenton*. This manor hath a custom, that if the issue of any of the tenants hold their tenements, the one after the other, three descents, they claim the inheritance of the tenement, *Risdon*, Devon., p. 116.

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has its counterpart in an English manor^a. And the gift of the King had equally the effect of investing the land included in the grant with the privileges of allodality^b.

Part I.
Ch. III.

To the Hærredzthing, or Court of the Hærred, all the Bondes owed suit and service, and in Norway the assembly appears to have been very numerous. According to the Swedish laws, it was sufficient if Six suitors appeared from every quarter^c, amongst whom were selected the Twelve men—the Næmda,—by whose verdict or judgment, for the law and the fact were not always kept distinct, all causes and trials were decided; but these appear to be a distinct body from the Hærred's Næmda, by whom all the territorial administration was exercised; highways and bridges were repaired pursuant to their ordinances, and the whole of the Almenning was subjected to their control. The mode of nominating the Twelve men who exercised the powers of territorial jurisdiction in the earlier periods, is not decisively ascertained; whether they served in turn, or whether they were chosen by an election at large, does not appear; nor do the laws state the period during which the individual continued to hold the office. The Næmda, in civil cases, was chosen for each cause, like the English Jury; but the territorial Næmda seems to be spoken of as a more permanent Court; and on every occasion, the Twelve Bondes act in the name, and discharge the powers belonging to the community.

Hærredz-
thing, or
Court of
the Hærred.

Næmda, or
Twelve men,
correspond-
ing to the
Teutonic
Echevins,
and in
whom the
powers of
judicature
were vested.

Let us now consider the English Hundred, which, though perhaps not so unmixed in its nature as the Scandinavian Hærred or the German Centena, still offers the most material features of the same organization. An Hundred hides of land, an Hundred free families, an Hundred tithings—of which more hereafter—or an Hundred freemen, have all been assumed as the basis of the calculation, from whence it derived its well-known name. The British Cantred, with its hundred Trefs, has also been assumed as the origin of the district: and it is worthy of remark, that each of the six Sheddings¹ or Hundreds of the Isle of Man, contained exactly one hundred tenant-holdings—for the fee simple of the

Anglo-Saxon
Hundred.

Opinions as
to its com-
ponent parts.

^a See Grants made to the Church of Llandaff by Cinvyn, Gurcant, Rodric, &c. published by Dugdale, from the Liber Landavensis, Monasticon, vol. iii. pp. 197–200.

^b Laws of King Magnus of Norway, Magnus Konungs Laga-bætters Gulathings-laug. Landabrigdi, c. 2. [The Law made at Gula of King Magnus, the Law-amender. Escheatage of Land.]

^c Stiernhook, p. 33.

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Ch. III.

Island belonged entirely to the Lord—within the period of legal memory. It has been urged, however, and with some plausibility, that the Centenary Council mentioned by Tacitus, may have bestowed such a denomination upon the jurisdiction in which it existed. Every one of these etymologies is, however, liable to objections: and the alterations which have taken place in the territorial boundaries since the Conquest are such as to baffle any theory founded upon the present state of the country. In East Anglia there existed a duodenary division, the Hundred being distributed into Twelve Leets or Tribes, that is to say, into Four head Leets, each containing three subordinate Leets. It may be here remarked, that, according to the Gothic arithmetic, the hundred consisted of six score, and Ten was equivalent to Twelve^a; and this mode of reckoning appears to have occasioned some numerical obscurities. North of Trent, the Hundred bore the name of Wapentake. This denomination is traditionally supposed to have arisen from the custom observed on the installation of the Ealdorman^b. Dismounting from his horse, he erected his spear in the field, and the suitors assembling around him, touched his

Division of the East Anglian Hundreds into Twelve Leets or Tribes, viz. Four head Leets or Tribes (see below, p. 82, note a) each containing three subordinate Leets.

Gothic or long hundred consists of six score.

The Wapentake, equivalent to the Hundred; said to be so called from the ceremony observed at the installation of the Ealdorman, when the suitors touched his spear or weapon.

^a *Hundrade*...usurpatur pro numero cxx. Scilicet observandum, veteres tam per decadas quam duodecadas numerasse, atque ad centenarium pervenientes, illum *lill hundrad*, vel *hundrad tircæd*; alterum vero, seu cxx, *storchundrade*, vel *Hundrad tolfæd* appellasse. Similiter *lilla tusend* mille erat, sed *stortusend* aut *tusend tolfæd*, erat MCC., Ihre. [*Hundrade* is used to denote 120. For it should be observed that the ancients reckoned both by tens and twelves, and when they reached the hundred called the former the *short* or *decimal hundred*, and the latter, or 120, *long* or *duodecimal hundred*. Likewise the *short thousand* was a thousand, but the *long* or *duodecimal thousand* was 1200.] Notetur etiam Norvegis et Islandis peculiarem numerandi rationem in usu esse per additionem vocum *tolfrædr*, *tolfræd* vel *tolfræt*, quæ decem significare faciunt duodecim... Causa istius computationis hæc est, quod apud istas gentes duplex est decas, nempe minor, cæteris nationibus communis, decem continens unitates; et major, continens duodecim, id est *tolf* unitates, Hickes, Gram. Isl., p. 43. [It is also to be noted that the Norwegians and Icelanders made use of a peculiar fashion of numbering by the addition of the words *tolfrædr*, *tolfræd* or *tolfræt*, which make ten signify twelve... The reason for this computation is that among these races the decade is twofold, the lesser, shared with other nations, containing ten units, and the greater containing twelve, that is, *tolf* units.]

^b LL. Edwardi Confessoris, § 32.

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Continue

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King; and that the second was a local Magistrate, nearly allied to the Centgrave, perhaps the same who was also called the Hundred-Gerefa, and who, in addition to the superintendence of the Hundred, was the fiscal officer of the King, and attended to the preservation of his rights and interests, at least, in the later periods of the Anglo-Saxon monarchy. The receipt of the fines and forfeitures which fell to the share of the Sovereign, was probably entrusted to this officer. Notwithstanding the claims of the King and the Lord, the Hundred was also entitled to a part, and sometimes to the whole of these amerciements; and though it is evident that the Anglo-Saxon Communities were yielding both to royal authority and seignorial power, yet even Tacitus informs us, that the "wites" were payable to the Sovereign, or to the "Civitas" or Commonwealth^a. Modern corporations, when they receive the penalties imposed upon offenders, succeed to this ancient Teutonic privilege of the Hundred, which, in a barbarous age, must frequently have perverted the course of justice, by giving the persons, through whom the law is carried into effect, a direct interest against the individual under accusation: nor can the present existence of such a right be defended on any principles of sound policy. The language employed by the Anglo-Saxon laws, and in some of the narratives of proceedings in the Folkmoot, might occasionally lead us to suppose that the jurisdiction was vested in the body of the assembly, or in the suitors at large; but whatever powers were given to the Court, they seem to have been usually exercised by a select body, which, according to a common figure of speech, assumed the name of the larger community which it represented. Twelve chief Thaners were thus chosen in every Wapentake, by whose oath the crimes committed within the district were to be made known, or, as we should say, presented^b; and who bear a resemblance to the members of the Gothic Næmda, as well as to the Frankish Echevins. And the twelve "Lahmen," six Britons and six Englishmen, appointed to administer equal justice between the British and English inhabitants of Damnonia, may be considered as the same Tribunal^c. In East Angha, pleas were decided by the "Judges" of the Hundred, Twelve, Twenty-four, or Thirty-six, who, on some occasions, were chosen by the consent of the parties, perhaps from amongst a

The Gerefa or Præpositus (afterwards the Bailiff) of the Hundred.

Fines and Forfeitures partly belonging to the Hundred.

Rights of modern Corporations to Fines, derived from the ancient right of Hundreds.

Jurisdiction vested in select bodies.

Twelve chief Thaners named in every Wapentake, to present crimes and misdemeanors. [See Part II., p. 163.]

Twelve Lahmen, six English and six Britons, named to administer justice in Damnonia or Devonshire (and perhaps Cornwall).

Judges of the Hundred in East Anglia, Twelve, Twenty-four, or Thirty-six.

^a Tacitus, *Germania*, c. 12. Edgar, II. § 7; III. § 8. Canute, II. § 23. Domesday, *Norf.*, vol. ii. p. 130.

^b Ethelred, II. § 8.

^c Devonian Compact¹, § 3.

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greater number, bound to discharge that duty by tenure^a, like those who, in the County of Chester, were called "Judicatores," and who are always distinguished from the suitors.

Part I.
Ch. III.

But, at the same time that these select bodies appear most frequently as the dispensers of the law, still all the proceedings are not according to the same form; nor is it possible to digest the few notices of the conventions of the ancient Hundred court into a regular system. England was not colonized at one period, not peopled by one race. The various local customs yet recognized by the law, after the state has been so long united, are only faint tokens of the diversities which must have subsisted when every Kingdom of the so-called Heptarchy, was in itself only an irregular combination of minor principalities; nor is it less likely that the mode of exercising the jurisdiction may have differed with the subject which called forth its authority.

Mode of administering justice not uniform in different parts of England.

The Hundred was a court of voluntary as well as of contentious jurisdiction. All transactions by which property could be acquired, or by which right could be transferred, took place in the assemblies of the people: some few cases only were excepted, where an equal degree of authentic publicity could be given by other means. Contracts for the purchase of lands were made in the Folkmoot; there the money was paid in the presence of the Hundredors, who, if required, afterwards bore testimony to the fact in the Shire; and there the Charter or Landboc was read and published. In exercising these various offices, the constitution of the Hundred court may have necessarily varied. An Assembly, convened for military purposes, or a Court composed of the Thaners or military tenants, with the intent of civil judicature, may have differed from the Criminal Tribunal; but the continued and unbroken succession of analogous customs and documentary evidence, leads the inquirer to the conclusion, that, according to the regular constitution of the Hundred, the power of jurisdiction in its highest branches, in criminal jurisprudence and in legislative proceedings, was vested in the select bodies, the depositaries of the authority of the community. In the Shires or Kingdoms of Sussex and Kent, the divisions called Hundreds were much smaller, and consequently much more numerous, than in any other part of the Anglo-Saxon territory. Sussex was composed of Rapes, but the Hundreds retained their proper jurisdiction: in Kent they were Hundreds only in name, the

Twofold jurisdiction of the Hundred, voluntary and contentious.

Grants of land made or promulgated in the Hundred Court.

Hundreds of Sussex and Kent much smaller than in other parts of England, and destitute of jurisdiction, which, in those Kingdoms, was exercised in the

^a Hist. Ramesiensis, p. 415. Hist. Eliensis, pp. 471, 478.

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invaders. Such as escaped the sword took refuge beyond the Polar Circle in the desolate realms which are now peopled by their posterity. The Ases, as they dispersed themselves, had no mastery to gain, except over nature; the Horde took an undivided possession of the tract which afterwards constituted the Hærræd; and when each Bonde raised his dwelling and appropriated his fields, the supreme authority remained unbroken in the community. But the Anglo-Saxons did not become the occupants of a desert; they entered a fully-peopled island. Subjects, if not slaves, passed under the dominion of each Warrior; and the Chieftains and their followers, in establishing their power, brought with them such portions of the general authorities of the State as were necessary for government and protection. The Township was the first colony of the Saxons in Britain, the court by which it was regulated was deduced from that of the Tribe; whilst, at the same time, it was governed by a Chieftain and engrafted upon another Community, which retained a distinct political existence. We may thus view the same species of society under three different modifications. In the primeval State, whether it be the German Centena, or the Salic Villa, the body politic owned all the soil, and possessed an undivided jurisdiction over the soil and over the people. The Hærræd retained the undivided jurisdiction, but invested the individual with a right of property in the land. Lastly, the founders of the Hundred, at the same time that they asserted the judicial supremacy of the state, imparted such a proportion both of territorial jurisdiction and territorial right, to the dependent corporations, the smaller swarms of the parent hive, that they became, in fact, what we have described them to be, the primary elements of the community.

The Anglo-Saxon Township a species of colony established by a Chieftain, with a jurisdiction derived or deduced from a larger state.

Federative Governments amongst the Greeks and Etruscans.

Amphictyonic League;

its foundation by Acrisius or Amphictyon;

Congresses for the general administration of government were formed at a very early period; and, though it would be difficult to prove any direct transmission from the polished nations of classical antiquity, the federations of the Pelasgic¹ nations offer some singular approximations both to the spirit and the form of the policy prevailing amongst the more modern Teutons. The origin of the Amphictyonic League² ascends to the Heroic age, and the historians of Greece doubted whether to attribute the institution to Acrisius, King of Argos, or to the son of Deucalion. Had the primitive laws retained their vigour, the wisdom of the Amphictyonic Council would have prevented all wars amongst the kindred nations subject to the common authority of the sacred Tribunal. Religion was the basis of the compact; but the

The
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Judges had the power of enforcing the decrees of the Council by fines, or even by military execution. Twelve States composed the original League, each of which sent an elected Judge as representative^a, who was styled the Pylagoras¹ or Amphictyon. Afterwards, an additional representative was sent by every State; but the title of Hieromnemon indicates that he was principally charged to superintend the concerns of religion. In process of time, many other confederates were incorporated in the League; but, notwithstanding the increase of members, the union was still deemed to be composed of Twelve Tribes or nations; the representatives, however numerous, of the cities included in a Tribe, possessing only a collective voice or vote, and not an individual suffrage^b.

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composed originally of Twelve States^c. Amphictyonic Council, in which each State appeared by its elected Judges and Representatives.

Continues to be composed of Twelve Tribes, notwithstanding the increase of members, the Cities included in a Tribe possessing a collective vote.

In imitation, perhaps, of the Amphictyonic Council, was formed the Pan-Ionian Synod². Twelve cities were peopled in Asia Minor by the association of the Ionic tribes, under the sons of Codrus. Androclus³, the founder of Ephesus, is said to have possessed an authority which extended over the other Settlements, and Ephesus always retained the Primacy, and directed the League: but each State enjoyed its own municipal administration, together with the rights of Sovereignty, subject only to the political supremacy of the Pan-Ionian Assembly^c.

The Pan-Ionian Synod composed of the Twelve Cities or States founded in Asia Minor by the sons of Codrus.

The affairs of the Tyrrhenian Commonwealth, consisting of Twelve Governments, were administered by a Senate, perhaps formed of the Twelve Kings or Principes, by whom each State was ruled. All the political relations of Etruria depended upon the deliberations of this Council; nor could any one city of the League conclude a peace without the assent of the federation. When war was declared, one of the Twelve Kings was chosen as the leader of the Confederacy. Amongst the tokens of royalty was the battle-axe, borne, together with the fasces, before the

The Twelve associated Cities of Etruria.

One of the Twelve Kings of the Etrurian Cities elected as the Emperor or military leader of the Confederacy.

^a Ἀμφικτύονες· οἱ ἐκ πόλεων καὶ ἐθνῶν αἵρετοὶ δικασταί, Suidas. [Amphictyones, those who are chosen as judges from the cities and nations.]

^b Strabo, lib. ix. Pausanias, lib. x. c. 1. Æschines, de Coronâ. Plut., Parall. Plut. in Themist. de Legat. Hesychius. Harpocration. Suidas. See also Mitford, Greece, chap. 3. § 3; chap. 27. § 1. Potter, Antiquities. Prideaux on the Oxford Marbles. Leland, Life of Philip, pref. St. Croix, Des Gouvernemens Fédéraux de la Grèce. Barthélemy, Voyage de la Grèce, vol. iii. p. 53.

^c Strabo, lib. xiv. Pausanias, lib. vii. c. 3. Herodotus, lib. i. c. 143-148.

Part I. Sovereign; the temporary elevation of the War-King was accompanied by the surrender of the insignia of his compeers, and the
Ch. III. Twelve battle-axes of the associated Commonwealth denoted the supremacy of the elected Commander^a.

Attica first settled by Twelve States or municipal jurisdictions.

Attica, under Cecrops, exhibited a State considered as a united population, yet containing Twelve distinct States or municipal jurisdictions, which were incorporated into the Commonwealth of Athens by the policy of Theseus^b: and this federative organization appears to have been deeply implanted amongst the nations of the Pelasgic race; for the Twelve Princes who shared the Sovereignty of the Phæacians, beneath the supremacy of Alcinous, present the aspect of a state formed by a similar union of Twelve dependent Lordships^c.

Twelve Principalities of the Phæacians.

In the last age, every chronicler of a European kingdom endeavoured to dignify the annals of his countrymen by deducing their origin and history, not only from the periods when the favoured nations of classical antiquity flourished in youthful vigour, but even from the genealogies of the primitive population of the world recorded in Holy Writ. Overloaded with uncouth learning, such disquisitions were too often intended as the vehicle of pedantic and awkward flattery offered to the prince, or as a vulgar tribute to the national vanity of the patron; and the wild theories, the indiscriminate use of materials and the inaccurate statements of facts with which they abound may have contributed to create a distaste towards any investigations, conducted, however temperately, upon those principles which lead the inquirer to dwell upon the primeval affinities of mankind. Yet it may be doubted whether the most extravagant asserter of Milesian antiquity¹ has marked out a path which will lead him so far from mere historical truth as that which is chosen by the philosophical critic, who, denying the records which, in his opinion, are consecrated by an imaginary creed, and equally rejecting the facts of the Pentateuch, and the promises of the Gospel, is willing to

^a Dionysius Halicarn., Ant. Rom., lib. iii. c. 61; lib. vi. c. 75; lib. ix. c. 18.

^b Strabo, lib. ix. Attica. Plut., Theseus.

^c Δώδεκα γὰρ κατὰ δῆμον ἀριπρεπέες βασιλῆες
 Ἄρχοι κραιίνουσι, τρισκαιδέκατος δ' ἐγὼ αὐτός.

Odyss., lib. viii. v. 390.

Twelve Princes in our Realm dominion share,
 O'er whom supreme, imperial power I bear.

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to the Romans, retaining, as it is thought, some portions of their ancient municipal policy; and their language continued to be spoken until the age of St. Jerome: though the Apostolic Epistle addressed to them has been adduced as a proof that they were also familiarly acquainted with the Greek tongue^{a1}.

Whether these Gauls are really to be considered as Celts or Teutons is a question of some difficulty. The region from whence they emigrated, is within the Celtic boundary; but the inferences to be drawn from the names of the leaders, might incline us to the supposition that they belonged to the Teutonic race^b; and we also have the authority of St. Jerome in asserting, that their language was that of the Treviri, who were certainly Belgians. A branch of the Tectosages, whom Cæsar deduces from Gaul, had long before his time conquered a domicile near the Hercynian forest², so that they may possibly have been a mixed nation^c, and the allies of Brennus may have been drafted from beyond the Rhine: but their origin is of far less importance than the facts disclosed by their history.

Hitherto, the Teutonic Settlements in Europe have been considered as isolated and independent jurisdictions; and in the period when the Germans first became known to us, no national government was then subsisting amongst them. Cæsar describes these nations as being destitute of any common jurisdiction, which could control the Magistracy of the Centena^d, or which could assist its powers, in case of litigations between individuals belonging to different jurisdictions, and which, for want of such supreme authority, must have assumed the character of a deadly feud, to be ended only in the field. The necessity of submission

^a Gillies, History of the World, vol. i. p. 592.

^b The names of *Leonorius* and *Lutarius* have been variously written; *Lonnorius*, *Lonorius*, *Λεονοριος* and *Λεωννοριος*,—*Λουτουρια*, *Λωθαριος* and *Λευθαρις*. The first, according to the conjecture of Gronovius, is *Leonhard*; and the second, *Lothar* or *Luder*. *Brennus*, by the Celtic antiquaries, has been supposed to be the title of the leader, the Cymric *Brennin*, *King*; though the Germans, on their part, maintain that the word is not a title, but an epithet derived from *Brennen*, to *bren* or *burn*, and expressive of the devastations of the Chieftain. And it might be suspected, that the appellation of *Belgius*, or *Βολγιος*, given to the companion of Brennus, was not a proper name, but merely the adjective denoting his race or nation.

^c Cæsar, de Bello Gallico, lib. vi. c. 24.

^d De Bello Gallico, lib. vi. c. 23.

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to the milder authority of the law would be felt long before it would be acknowledged. Inconsiderable as a clan may be, it has the pride and the attributes and the feelings of a nation. The privilege of wrong-doing with impunity is the last right of which either nations or individuals can be prevailed upon to divest themselves. Embellished by the well-sounding epithets of national dignity and independence, many acts are praised in a polished community, which excite far different feelings when viewed in the guise of a fray or foray: the conscience which justifies the reprisals of the subjects of Bourbon and Nassau, ought to excuse the spoilings of an Armstrong or a Macgregor. Eskdale and Liddesdale resisted the supremacy of the law as an affront or an injury; and the politicians of the Marcomanni¹ or the Quadi², would have smiled at the visionary project of establishing any tribunal by which the disputes of either bank of the rivulet could be settled, without unfurling the banner and unsheathing the sword. Yet, although no civil judicature was subsisting amongst the nations of the Trans-Rhenane Germans in the first century before the Christian era, confederations for military purposes were formed with no inconsiderable portion of political skill. Such was the association of the Suevi, composed of one hundred Pagi, each of which furnished a thousand warriors^a; and, in consequence of such military unions, the Teutonic Tribes, whilst war prevailed, submitted to one magistrate, having the power of life and death, the monarch of the community. This dignity, confined to the ruling families, was elective and temporary. Amongst the Old Saxons, one of their Ealdormen, who, according to the traditions of the country, were Twelve in number, was chosen by lot, as the War-King, his office ceasing with the necessity from which it had arisen^b. Military command must always be accompanied by a certain degree of authority, administered according to the spirit, if not to the forms, of municipal government; and, whilst the Old Saxons fought under the supremacy of their elected Imperator, he might be enabled to cause justice to be dispensed between different Tribes of the armed nation. Therefore, it was not without reason that the Anglo-Saxons, in their significant language, whose

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but accustomed to form Confederations for political purposes.

War-Kings elective, whose authority was temporary, chosen from amongst the Twelve Ealdormen of the Old, or Continental, Saxons.

^a De Bello Gallico, lib. iv. c. 1.

^b Bede, Hist. Eccl., lib. v. c. 10. Botho, Chron. Picturatum apud Leibnitz, SS. Rerum Brunswicensium, vol. iii. p. 292. [Conrad Bote, Picture-Chronicle, printed in Leibnitz, Writers of the History of Brunswick.]

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terms so frequently display a singular degree of philosophical refinement, gave the same name both to the helmet and the crown. The allegiance required by the General gradually became the fealty due to the Sovereign. Monarchy is founded upon military power; and the sword is always joined to the sceptre amongst the ornaments of royalty. Peace, however, deprived them of their common magistracy, and the cessation of external hostilities was the commencement of internal disunion: but they possessed within themselves the means of amelioration; and their peculiar policy, perhaps the wreck or reminiscence of a more perfect system, from which they had degenerated during their wanderings, afforded the groundwork of the general government of the community.

The Parliaments, &c. of the Middle Ages to be considered as the simultaneous meeting of different Courts and Councils, the armed Council,

One of the Supreme Councils of every ancient Kingdom was an armed Council of the Aristocracy, girt with swords, such as is so often mentioned in the history of the Gauls^a, convened for the purpose of deliberating upon the campaign or the siege, and which, in England, was held long after the establishment of a regular Legislature^b, in which it was usually concealed amongst the Senate and the Synod. For the States, or Parliaments, however they may be called, of the Middle Ages, are to be considered, not as simple and single conventions, but as the simultaneous assembly of different Courts, Tribunals or Estates, each of which also might, and sometimes did, assemble without the others, to whom it was more commonly associated.

the Supreme Judicial Assembly.

Another of the Supreme Councils, was the Supreme Judicial Assembly, which represented the distinct authority of each rank and order of which the state was composed, and of each jurisdiction which the country included. The court was divided into branches, the first consisting of those who were Judges, either in their own right, or as the Aulic officers of the King; and the second, of those whose functions were virtually derived from the people. Thus the general "Placitum," the Cour Plénière of the ancient Franks, was composed of all the Bishops, the Prelates, the Counts, and the Baronage, who were within the jurisdiction of the Imperial Missus, by whom it was summoned. But none of the powers of judgment could be exercised without the Twelve Echevins of every Centena, who attended the Count to the place

General "Placita" of the ancient Franks, composed of the Bishops, &c., and of the Twelve Echevins of every Centena.

^a Livy, lib. xxi. c. 20. Cæsar, de Bello Gallico, lib. v. c. 56. Nicholas Damascenus apud Stobæum, p. 470.

^b Such as the Council held at Worcester, 22 Ed. I.; and the Parliament at Salisbury, 25 Ed. I., Parliamentary Writs, vol. i. pp. 265 and 51.

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**Part I.
Ch. III.**

the Bishop,
two Priests
from the
Episcopal
Chapter, two
of the King's
Council

and the
Næmda of
Twelve men
elected and
named by
the King
and the
Landsmen.

Customary
laws of
Upland
revised and
re-enacted
under King
Bergher,
1296.

Næmda of
Twelve men
elected for
the purpose
of reforming
the laws.

Laws
declared by
the Næmda,
confirmed by
the royal
Charter.

Taxes im-
posed by the
Næmda.

The Estate
of the
Peasantry
in the
modern
Diets of
Denmark,
Sweden and
Norway,
created out
of the
Næmda.

Lawman, was Speaker or President; the Bishop, two Priests from the Episcopal Chapter, and two of the King's Council, were associated to him; and if the latter were absent, two good and free-born men were elected, to supply their places, by the Lawmen and the Clergy. The Commonalty were represented by Twelve men, who were elected and named by the King and by the Landsmen. The members of the Næmda, the Twelve men who were the Judges of the Lagsaga, were also its Legislators on those rare occasions when a new law was required. Thus the revised custumal of Upland is prefaced by a Charter, which affords some elucidation of their functions. The Lawman, in the name and on behalf of the people who had elected him, represented to King Bergher¹, that the old laws were hard to bear, and harder to understand, and prayed a remedy for those evils. "We delayed granting this request," it is declared by the King; "for we would not hastily change the 'old law.'" At last he issued a precept, by virtue whereof the Lawman proceeded to the nomination or election of a Næmda of Twelve men, who were to determine what was the old law of the country, and what was to be shaped and set together in the new law. This task they performed; and the new code, resulting from their declarations and opinions, was read to the assembled Bondes for their adoption and approval, which being obtained, it was ratified and confirmed by the Charter of the King^a. The Næmda of the Lagsaga had also the power of taxation; for no new tax or tribute could be imposed except by their authority^b. From these delegations the Parliaments of the North appear to have originated, in the same manner as the general Placita of the Franks were formed by the convention of the Scabini of each Centena; and the Næmdas of Twelve men were the precursors of the Estate of Peasants in the more modern Diets of the Northern Kingdoms: for in the singular and eventful history of these States, we can trace the gradual depression, step by step, and stage by stage, of the Bondes, from the era in which they constituted the very pith and nerve of the nation, to the annihilation of their independence.

Denmark and Sweden having, in some measure, remodelled their public law from the policy of the German Empire of the Middle Ages, it may not be irrelevant to exhibit the constitution of another general court, which, though possessing many

^a Uplandz Laghen, Foretal, pp. 1, 2.

^b Stiernhook, de Jure Sveonum, p. 48.

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peculiarities, tends to exhibit the principles of the conformation of the judicial tribunals of Scandinavia, in the remotest antiquity. Iceland, settled by the Northmen before the introduction of Christianity, and whilst they yet retained their ancient customs, without modification or alteration, was composed of districts entitled Godords¹, of which the jurisdiction was vested in an hereditary magistrate, called the Godordsman. He was the Priest as well as the Judge of his district; sacrifices were performed under his direction, and the rude Temples of Thor and Odin confided to his care. His judicial functions were exercised conjointly with a court of Twelve men, a Næmda, whose office appears to have been in most respects analogous to the same body amongst the Suio-Goths. The entire island was divided into quarters: the Northern Fierding² contained twelve Godords, the other three respectively only nine. When the supreme judicial and legislative Assembly or "Lögregta"³ was convened, the Godordsmen attended by virtue of their office; but as it was necessary that each district should be represented by the full legal complement of Twelve legislators, three additional Judges were taken from each southern quarter, and associated to the hereditary Godordsmen. Every one of these Barons of the Icelandic Parliament was to take two men from amongst the suitors of his court to bear Counsel with him. The ancient code from whence these regulations are derived, is not explicit with respect to the mode by which the Counsellors were elected; but they seem to have been named by the suitors of the Court of the Godord. When the Lögregta was assembled on the Hill of Pleas, it consisted of Twelve times Twelve, or one hundred and forty-four members, virtually representing the people; to whom were added the Bishops and the Lawmen of the Island. In this court the "Men of Iceland were to reform their laws, if they would." All reversals of outlawries were effected in the "Lögregta"; and there all concords were passed which required the assent of the Legislature. No measure could be adopted if less than Forty-eight members were present. Questions were decided by plurality of votes; and if the minority consisted of any number greater than Twelve, then the voters on each side swore that they had given their votes according to good conscience; but if less than Twelve were dissentient, that solemn sanction was not required^a.

Part I.
Ch. III.

Iceland, how governed.

The Godordsman, Priest and Judge of his District or Godord.

Acts conjointly with a Court of Twelve men.

Iceland divided into Fierdings, or quarters.

Lögregta, or supreme legislative assembly, composed of Twelve Godordsmen or Judges from each quarter; and each of whom was accompanied by two others, making altogether Thirty-six from each quarter.

Full Lögregta composed of One hundred and forty-four Godordsmen and Suitors, together with the Lawmen and Bishops.

^a Arnesen, *Islandske Rettergang*, pp. 380, 381. See Part II.,

Part I.
Ch. III.

The Anglo-Saxon Shires divided into two classes, such as in their origin were Kingdoms or independent States, Kent, Sussex, Essex, Norfolk, Suffolk, Middlesex, Surrey, Lindsey (or Lincoln), &c.,

or formed out of British States or Principalities.

Shires of the second class, dismemberments of larger States or Kingdoms, such as Yorkshire, Derbyshire, &c.

The country between the Ribble and the Mersey, not made shire ground before the Conquest. Shire of Winchelcombe added to Gloucester by Eadric Streona, about 1017.

I have digressed into the foregoing details, as introductory to the notice of the Anglo-Saxon Shire, a district which, in its origin, belongs rather to the political than to the legal history of the country. Kent, Sussex and Essex are to be viewed as Monarchies reduced to dependency, which, after having been governed by Kings, who, to use the expression of modern diplomacy, had been mediatized by their more powerful neighbours, were ultimately united to the crown of the sovereigns who obtained the pre-eminence of England. Norfolk, Suffolk, Middlesex and Surrey bear in their names a proof of being equally entitled to the rank of original settlements. The independence of other principalities, such as Lindesse, the modern county of Lincoln, and of "Hwiccas,"¹ a district conterminous with the ancient Bishopric of Worcester, may also be traced; the latter, in particular, having been governed by princes, under the title of "Subreguli," whose charters are yet extant. And the history of Mercia and Wessex affords the presumption that many other of the Shires of these Kingdoms were originally distinct and original Royalties, formed by the Anglo-Saxons as they were won from the Britons, either by conquest or by qualified submission, and even by the gentler mode of matrimonial alliance between the daughter of a British ruler and the stern invader. So that the acquisition of the Lordships of the Welsh Marches after the Conquest was only a continuation of the system which had preceded it; the same causes continuing to produce the same effects.

But there were Shires, constituting a second class, arising from the dismemberment of the larger Kingdoms, and which seem to have been formed by placing one or more Wapentakes or Hundreds under the government of an Earl or his deputy. Yorkshire was thus taken out of Deira; Derbyshire, originally a part of the ancient South Humbria or Mercia, is another Shire of the same description. The tract between the Ribble and the Mersey, the modern Lancashire, does not appear to have been made shire-land at all before the Conquest; and, in some instances, smaller Shires have been annexed to a larger district. "Winchelcombshire"² was thus united to Gloucester by Eadric Streona, of whom so much evil is recorded^a.

Proofs and Illustrations, pp. 272-273 for a fuller account of the Icelandic Courts.

^a Hemingi Cartularium, p. 280.

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Part I.
Ch. III.

The Four
Men and
the Reeve
of the
Township.

Ealdorman. The same delegation was required from the Burghs and demesne Manors of the Crown, which, as I have before observed, were equivalent to distinct Hundreds; and the Four Men and the Reeve from each Township, who were present on behalf of all of their Townships, who were not specially summoned, completed the assembly^a. In this court, most of the pleas, in which the King was a party, were determined. In criminal cases, these resulted from the infraction of that protection which was emphatically termed his Peace, and which might extend the cognizance of the court to almost every transgression. The rights of the Church were also determined in the Shiremoot; and the Judges of this high remedial tribunal appear to have been specially charged to protect the people against the abuses and oppressions of unrighteous power. There were many features, however, which the Shiremoots had in common with the Hundred, the promulgation of deeds and charters, for instance, might take place, either in the Shire or the Hundred; and it appears, that, in all civil suits, the Shire had an original jurisdiction, similar to that of the Hundred, besides the appellate jurisdiction over the subordinate community. It may be added also, that, like the Hundred court, the composition of the Shiremoot seems to have varied with its object, and that, like the ancient Parliaments, it appears to have contained within it more than one court or assembly; and that, therefore, if we do not find any appearance of the judicial delegation in these proceedings, which, from their nature, merely required the sanction of the Thaness or Baronage, we are not thereby compelled to deny their powers or existence.

Echevins,
or Jurors,
amongst
the first
Representa-
tives of the
People.

Laws of
Howel (see
above, p. 29)
enacted by
an assembly
composed
of Six men,
summoned
from every
Commot, or
Twelve from
every
Cantred,

I have observed that the Næmda was the foundation of the representation of the peasantry in the Scandinavian Diets; the conversion of Jurors or Echevins into virtual representatives of the people, in assemblies possessing the powers of legislation, is one of the most singular events in the history of the Teutonic jurisprudence; and it is so general, as to lead to the supposition, that almost every Court, Parliament, or Assembly, in which the Commons obtained a share in legislation, has arisen, in part, from a tribunal, in the nature of a Court of Echevins, of an Inquest, or of a Jury. Wales affords an early example of such a delegation, in the assembly convened by Howel for the reformation of the law. Six men were called from every Commot, that is to say, Twelve from every Cantred, versed in the law, and distinguished by their

^a Leges Henrici I., § 7.

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station. Their advice, joined to that of the Clergy, was given upon the basis of existing customs; they repealed the bad laws, amended others, and enacted new; and the Code so prepared, when confirmed by a second delegation of twelve laymen, and one clerk, Blegored the Wise, became the existing law. Four narratives are given of this transaction, each differing in detail, but all agreeing in the circumstances of the delegates from each Commot or Cantred^a; and although we may regret that a clear account of the assembly was not preserved, still the discrepancies perhaps rather confirm its authority on some of the points which are most material in the deduction of authority.

Part I.
Ch. III.

confirmed by a second delegation, composed of twelve laymen, and one clerk, Blegored the Wise.

Analogous to these proceedings, was the assembly held by William the Conqueror, and which Lord Hale was inclined to consider "as sufficient and effectual a Parliament as ever was held in England."^b The English, having demanded the laws of the Confessor, William, after some hesitation, gave his consent. Twelve men were then summoned from every Shire, who were sworn that they would well and truly declare the law, without addition, prevarication or concealment; and the presentments having been reduced into writing by the King's authority, they acquired or retained the force of law. Neither of these examples is free from objection. The mode of legislation adopted by Howel, stands, as far as I am aware, without any exact parallel in Wales; and the narrative of the assembly convened by William is not to be found in any contemporary authority. To the Cymric antiquary I abandon the defence of the laws of Howel; but with respect to the statements which we obtain from Hoveden, and the Chronicle of Lichfield, it may be observed that, although these existing texts are written perhaps a hundred years after the events which they record, the custom to which they relate is susceptible of a series of proofs, so close and continuous, that even if the Convention of the Conqueror should be rejected, the main argument will scarcely be weakened by its loss, for the custom of giving the law by the oath or presentment of a Jury, is susceptible of such an infinite number of examples, that the only difficulty is in selection.

Laws of the Confessor, demanded by the English (see above, p. 43), and declared by Twelve sworn men, summoned from every Shire;

whose presentments were confirmed by the Conqueror, in the same manner as the presentment of the laws of Upland (see above, p. 92).

Custom of "giving the law," by the presentment of a Jury; which presentment afterwards became ordinances, by-laws, &c.

Ordinances of Romney (see p. 82). Border laws declared by the oaths of Twelve English and Twelve Scottish Knights, 1249.

In its simplest form, we may quote the Ordinances of Romney Lathe; the Statute of the Twelve Knights of England and the Twelve Knights of Scotland, sworn to recognize the laws and

^a *Leges Wallicæ*, pp. 3, 5, 6, and 7.

^b *History of the Common Law*.

Part I.
Ch. III.

customs of the Marches^a and the Articles of the ancient Barmoot Court^{b1}, prescribed, ordained and set by the oaths of the grand Inquest of Warkesworth Wapentake, empanelled for the King^c. Of a more complex description is the great court of the Duchy of Cornwall. The Shires are divided into four quarters, each of which has its Leet, in which the trial is given by a Jury of Six Tinnors in Cornwall, and of Twenty-four in Devon. And such Jurors empanelled from each quarter, elected, sworn and tried, and united in one Convention or Assembly, constitute the ancient Stannary Parliament², whose acts and ordinances have the force of law^d.

The Isle of Man, long subject to Norwegian Sovereigns, but peopled by a Celtic race, consists, as I have before observed, of six Sheddings or Hundreds. In the Moar, the chief municipal officer of the Shedding, we have no difficulty in recognizing the Maer of the Cymri; but the Commons of Man were not ascribed to the glebe, and his authority appears to have been confined to the general superintendence of the peace of the community. The Judges, whose Gothic name appears to indicate a Gothic origin, the Deemsters³, in their Eyres through the Island, held the Courts of the Shedding, which were "fenced," by calling in the Four honest men of every Parish, by whose presentment offences were determined. The civil jurisdiction was vested in a Shedding Jury of Six lawful men, though the Four men of the Parish decided matters of smaller importance^e.

^a Statuta Viginti Quatuor Militum, &c., Bishop Nicholson's Border Laws.

^b More properly, Bergmoth or Berghmoot. "This Bergmoth, or Berghmoot, comes from the Saxon *Berg*, i.e. mons; and *mote*, or gemote, conventions: quasi the Court held upon a Hill (see below, p. 112), for deciding pleas and controversies among the Derbyshire miners," Cowell, Interpreter.

^c Warkesworth Wapentach'; Rotulus Curiae Magnae Bermot, tentæ apud Warkesworth coram Francisco Com. Salop', 20 Sep. 3 Ed. VI., Original in the Tower of London.

^d Carew, Cornwall. Pearce, Laws and Customs of the Stannaries, pp. 21, 98. Rotulus Magnae Curiae Domini Regis Ducatus sui Cornubiæ apud Crockentorre, 24 Sep. 2 Hen. VIII. Do. 28 Oct. 24 Hen. VIII. Great Court in Parliament of our Sovereign Lady Elizabeth, of the Duchy of Cornwall, holden at Crockentorre, Pearce, pp. 196-240.

^e Camden, Britannia. Chaloner, Discourse of the Isle of Man,

Articles of the Barmoot Court, ordained by the grand Inquest of Warkesworth Wapentake.

Stannary Courts, or Parliaments, of Devon and Cornwall, composed of four Leet Juries, empanelled from the four quarters of the Shire.

Isle of Man, composed of six Sheddings or Hundreds. (See above, p. 77.)

The Moar, or Maer (see above, p. 54), the chief municipal officer of the Shedding.

The Deemsters.

"Fencing" of the Shedding Court, Four men from every Parish.

The Shedding Jury.

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Part I.
Ch. III.

Keys, and the Four Men of every Parish, assembled for the redress of grievances, 1643.

Jury of Twenty-four elected; Twelve taken from the Keys and Twelve from the Four Men of the Parishes.

States of the Norman Islands, how similar, in general constitution, to the English Parliament.

Guernsey and Jersey each composed of Twelve parishes.

Vintains, said to have been formerly composed of twenty families.

Originally Twelve Vintaineers in each parish.

Military authority of the Vintaineers.

Taxes assessed by the sworn Dozeineers, or Twelve sworn men of each parish; also possessing a judicial authority.

Constable, chosen by the inhabitants of each parish.

Assisted by two Centeneers.

Twenty-four Keys, and the Four Men of every parish, assembled to consider and advise on the grievances of the Church and Commons of the isle. These principally related to the proceedings of the parochial Clergy; and to obtain a more definite statement of the alleged abuses, a Jury of Twenty-four men was chosen, Twelve taken from the Keys, and Twelve from the Four Men of the Parishes. By this Jury, a presentment was made, to which the Clergy were required to answer; and the proceedings being returned before the Lord of the island, he pronounced his decision or doom. The Bishop, the Clergy, and the Four Men of the parishes, assented thereto; the presentment of the Jury, sanctioned by the Sovereign, became a statute of the Legislature, and is now the law^a. The Keys, however, gradually assimilated the style of their enactments to that of the English Parliament, and they are allowed to retain their offices for life; yet they are still the representatives of the country, the grand inquest of the nation for all grievances touching the public, and the last traverse in all cases of common law^b.

In the Island of Man, the Jurors of the Tynwald have become the sole legislative estate. The States of the Norman Islands offer a more singular example of a government, not very dissimilar to the English Parliament, gradually formed out of the ancient Teutonic jurisdictions. Guernsey and Jersey each contain Twelve parishes, or rather Hundreds, which are composed of districts termed Vintains. It is stated that twenty families formerly dwelt in each Vintain, but this seems to be merely an opinion founded upon the etymology of the name; and as it was the original custom of the island, that there should be Twelve Vintaineers in the parish, we would rather suppose, that, in early times, the number of Vintains corresponded. A military authority belongs to these functionaries. All men of the Vintain are to be under arms at their command; and they collect the taxes, which are assessed by the sworn Dozeineers, a body of Twelve men, and who possess a judicial authority, the Vintaineers being only ministerial. The Constable of the parish, chosen by the votes of all the inhabitants, is the presiding magistrate; he holds his office for three years, and is assisted by two Centeneers, who are now in the nature of substitutes or lieutenants; and by these

^a Proceedings "apud Castrum de Rushin" [Proceedings at the Castle of Rushen], June and October, 1643, p. 119.

^b Sacheverell, Account of the Isle of Man.

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officers, peace and order are maintained, and all other things done which are found conducive to the good government of the community. Chieftains in their respective districts, the Twelve Constables also form the Grand Jury, by whose presentment criminals are tried; and they now appear as the Commons, the Representatives of their respective parishes, and the third estate of the Legislature of the island. Yet, by the ancient practice, they did not entirely supersede the legislative inquests, the laws and usages being declared by the verdicts of the Twelve Prodehomes¹ of each of the Twelve parishes of the island^a. King John, by his Constitutions, confirmed the right of election of the Twelve sworn Coroners or Jurats, who compose the supreme Court of Judicature, an authority which, however, they shared with the King's Justice, if he happened to be present in the island. Whilst every Judge in England was amovable at the pleasure of the Sovereign, the Jurats or Justiciars of Guernsey, for it is by the latter title that they are still known to the common people, held their offices during life, unless deprived for lawful cause. Their authority enforces on all persons the due obedience to the laws; they are the permanent conservators of the peace, and constitute the second branch of the Estates. The Clergy complete the legislative Assembly; and the Twelve Rectors of the Twelve parishes, forming the first branch of the Estates, represent the Church of the island. Guernsey possesses a very pure and ancient feudal nobility, and it is probable that the Lords and Tenants in capite were the Optimates, amongst whom the electors of the Jurats were to be found. But no individual Seigneur has now any right to sit in the States by reason of tenure, although he is bound to render suit and service to the "Court of Heritage," the Court Baron of the island; a circumstance which throws some light on the constitution of the English Parliament, and of other jurisdictions, where the remedial and the feudal Courts have become united. The earliest notice of the "Sworn Coroners," is found in the "provisions" of King John, which he ordained after Normandy was lost to the English Crown. Those who are conversant with ancient charters, know how generally the clause which professes to be a grant is in truth only a confirmation; and whatever stability the Charter of John

**Part I.
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Twelve Constables form the Grand Inquest of the island, and also represent the Commons of the island in the Assembly of the States.

Legislative Inquests; Laws and Customs declared by the verdicts of the Twelve "Prodehomes" of each of the Twelve parishes. 5 Ed. III.

Twelve sworn Coroners, Jurats, or Justiciars, who hold their offices for life, and form the second branch of the Estates.

Twelve parish Priests represent the Church and form the first branch of the States.

Tenants in capite, or feudal Nobility, have no entrance, as such, in the States, but bound to render suit and service to the Cour de Heritage.

^a Uzages et anciennes Custumes de Guernesey, approvees devant Sir Robert de Northone, Chivalier, et Sir Williame de la Rue, 5 Ed. III., MS. Sloane 3828, f. 184.

Part I.
Ch. III.

may have given to the franchises of his Norman subjects, the whole frame of their government bespeaks an earlier origin^a. No similar institution can be pointed out in the mother country; but the records of Normandy have perished; they were destroyed, as is said, by Richelieu¹; and the archives of Rouen afford no information whatever which can elucidate the ancient constitution of the Duchy anterior to the fourteenth century^b. The Armorican republic included the more modern Neustria within its boundaries^c; but its subsistence under the Frankish Sovereigns is very problematical. The States of Normandy, in the fourteenth century, were composed of the Deputies of the Clergy, the Nobility, and the "État Commun," one Commoner being returned for every Vicomté, a district corresponding, not to the English Shire, but to the Hundred. As the representation of the third estate is usually attributed to the age of Philip le Bel², the deputation of the Commons may be thought to have originated in that era. Normandy, however, affords an example of a singular, though transient, attempt for the establishment of such a Government in the tenth century. When the Norman villeins rose against the Nobility, asserting their pristine freedom, they elected two representatives from every Clan or Sept, who appeared on behalf of their constituents at a general Assembly. Seeking to emancipate themselves from predial servitude, they demanded the free use of the woods and waters, to be enabled to hunt the deer and cast the net, without restraint or impeachment. Raoul, Count of Ivry³, the uncle of Richard the Second, suppressed this incipient revolution, though not without the most atrocious cruelties, which form a dreadful blot in the annals of the reign of the "good Duke," as he is termed by the Monk and the Minstrel, and the Villeins

Great Rebellion of the Norman Peasantry, 996, who establish a general Convention, consisting of the representatives elected from every Clan or Sept. Rebellion suppressed by Raoul, Count of Ivry.

^a Falle, Account of Jersey, &c., pp. 231, 233. Disney, Account of Guernsey, pp. 77, 79. Constitutiones et Provisiones constitutæ per Dominum Johannem Regem postquam Normania alienata fuit. [Constitutions and Provisions established by our Lord, King John, after Normandy was lost.] The Constitutions are not extant in the original, being preserved in an inquisition taken temp. Hen. III., Falle's Appendix. Placita coram *Johanne de Fresingfield* et aliis Justiciariis itinerantibus in Insulis de Gernsey et Jeresey, &c., 2 Ed. II., Placita de quo Warranto, pp. 825, 826. [Pleas in the presence of *John of Fressingfield* and other Justices in Eyre in the Islands of Guernsey and Jersey, 2 Ed. II.]

^b Le Noir, Titres Normandes.

^c Decline and Fall, c. 31.

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Analogies
between the
customs of
Gothic Spain
and Scan-
dinavia.

were the usurpations of authority. Every year passed in inquiry, has accumulated evidence tending to refute that opinion, and to shew that wherever any extended right of suffrage exists, it is a victory obtained by the many over the few, and resulting from the destruction of the primitive custom, by which the legal right of election or nomination devolved either upon the chief members, the "magnates" of the people, or upon select bodies, acting on behalf of the community, a custom which may be equally traced amongst the Goths of Spain and the Goths of Scandinavia, and which has also prevailed in Great Britain, from time immemorial, in the municipal jurisdictions of the island.

Adalid, or
leader of
the Host,
elected by
a Jury
of Twelve
Adalides.

If Twelve
Adalides
could not
be found,
Jury com-
pleted by
a *tales*.

Inauguration
of the newly-
elected
Adalid : he
was girt with
the sword
and hoisted,
or lifted up,
on a shield,
by the Jury
of election.

Let us first view this custom in the South of Europe, as it was exercised by the Visigoths of Spain. Here the Jury of election formed a part of their military policy. What were the qualifications of the Adalid¹, the leader of the Host? Experience, prowess, good-sense and loyalty; and when a King, or other Lord, wished to create an Adalid, he was to summon Twelve Adalides, the wisest that could be found, and these were to swear, that the soldier whom they would raise to the rank of an Adalid possessed the qualifications required by the law; and a unanimous verdict being given, the office was bestowed upon the person so presented as worthy thereof. If Twelve Adalides could not be found, then the full number was to be completed by taking others, not Adalides, yet experienced in war, and the verdict so given was as good as if it had been given by Twelve Adalides; a regulation analogous to that prescribed with respect to the Echevins attending the General Placita, and resulting from the importance attached to the mystic number. After the verdict was pronounced, the Sovereign honoured the Adalid elect, in such a manner as beseemed him. Horse and armour, and robes and sword, were given to the Adalid, and a Lord of Knights girt him with the sword. A shield was laid upon the ground, upon which the Adalid placed his feet; the King drew the weapon from the scabbard, and placed the weapon in his hand; and the Twelve Adalides, the Jury whose verdict had elected the Adalid, lifted him on high, turning his face towards the east, and he cut the air with the sword, up and down and athwart, in the figure of a cross, exclaiming, "I challenge all the enemies of the Faith, " and of my Lord the King, and of his land"; a challenge which was repeated to the other three quarters of the world. His sword was now to be sheathed, and the King, placing a banner in his hand, declared him to be a lawful Adalid; and from

thenceforth he might bear arms and banner, and fight on horse-
back, and he was to sit at the board with the Knights; and over
the Knights and Gentlemen he was to command by speech, and
over the Almogavares¹ and foot-soldiers by deed^a.

Part I.
Ch. III.

No one could obtain the rank of an Adalid, unless he had first served as an Almocaden², or leader of infantry. The Peon, or foot-soldier, who aspired to this distinction, appeared before the Adalides, the leaders of the Host, who, summoning Twelve Almocadenes, demanded upon oath, whether the candidate was possessed of the necessary qualifications. What were the qualifications of the Almocaden? He was to be loyal, experienced, light of foot, and strong in arm; and if the verdict was favourable, he was conducted to the King, who clothed him anew, and delivered to him a lance, with a pennoncel or streamer, as the insignia of his office and station. Two lances were then crossed upon the ground, and the Almocaden, taking his stand upon them, was elevated by the Jury of Twelve Almocadenes, in the same manner as the Adalid was lifted upon the shield; and like the Adalid also, he repeated his challenge to the four quarters of the world. These ceremonies are eminently characteristic of the Gothic spirit, and I have related them in minute detail, because they bear an important relation to the general question. It was by the same significant forms that the King of Navarre was inaugurated, when, standing on the shield, he was lifted up in the presence of the people by the Twelve Ricos Hombres³, who composed the Council which was to guide him^b. At the period when the "Fueros" of Navarre⁴ were compiled, the Monarchy had ceased to be elective; but the civil government and the military policy of the Teutonic Tribes were closely connected, or rather identified with each other; and the elections of the leaders of the Castilian Knighthood probably retrace the institutions which prevailed amongst the Goths, when the King himself was but the Chief of an army encamped in the territory of an enemy.

Almocaden,
or leader
of the
infantry,
elected by
a Jury of
Twelve Al-
mocadenes.

Newly-
elected
Almocaden
hoisted by
the Jury
of election.

King of
Navarre
inaugurated
by a similar
ceremony.

Amongst the Suio-Goths, the customs of their distant brethren are incorporated in their political and constitutional jurisprudence. Thus the "Hærrudz-Hoffding" was elected by a "Næmda of Twelve," chosen by the Bondes of the "Hærrudz," associated to the "Lagman" of the province. By them, three persons were named and presented to the King, who selected one of them to

Hærrudz-
Hoffding, or
executive
Magistrate
of the
Suio-Gothic
Hærrudz,
elected by
the Næm^d.

^a Siete Partidas del Rey Don Alonzo⁵, P. ii. tit. 22. l. 1-6.

^b Fueros del Reyno de Navarra, lib. i. tit. 1.

Part I.
Ch. III.

Lagman,
or Judge of
the Suio-
Gothic
Lagsaga
or Shire,
elected by
the Næmda,
half of
Bondes, and
half of the
King's
feudal
Tenants.

King of
Sweden,
elected by
the Næmdas
of Twelve
Men,

and
afterwards
inaugurated
in each
Province,

for which
purpose
he makes a
circuit, or
"rides the
road of
Eric,"
through his
Kingdom.

Succession
to the
Crown of
Norway
decreed,

hold the office; a mode of election sufficiently familiar to the municipal laws of England. A process somewhat more complex was employed in the election of the Lagman. Eight days before the election, the Bishop summoned the "Almogen,"¹ or Commonalty to the "Landzthing." Six "Hoffmen," or Barons enfeoffed by the King, and Six Bondes, were chosen by the Commonalty; and the Næmda of Twelve, representing the nobility and people, and united to the Bishop and two Priests on behalf of the Clergy, nominated three persons, one of whom, as before, was selected by the King^a. The Crown was bestowed in the same manner as the office of the Judge. When the King departed this life, the Lagmen of each province, and the "Almogen," or Commonalty, named and chose Twelve Men, "wary and wise," who, on a certain day, were assembled at the rock of Mora, to elect the future King. Being so convened, the votes were given in succession: the first voice belonged to the Lagman of Upsala, and the Næmda of Twelve, who accompanied him; the others then followed in order; and the person who had the plurality of voices was adjudged to be King by the assembled Lagmen. Thus elected, the King swore on the Gospels that he would observe the laws. The Lagmen and the "Almogen," that is to say, the representative electors, on their parts, confirmed the compact by their oaths of fidelity. But the King was not fully in possession of his authority, until he had taken possession of the several States which had named him, and in each of which he promised that he would truly hold the oath which he had sworn at the rock of Mora; whilst the Commons, on their part, renewed their homage. In making this circuit, he was said "to ride the road of Eric,"² a term of very obscure signification, but which was derived from the age of Paganism, and, until it was performed, his rights do not seem to have been assured or confirmed^b.

In Norway, though the hereditary succession of the Crown was established by law, still the same assemblies were called, in order to settle the succession of the Crown, when the throne became vacant, either by the forfeiture or incapacity of the Monarch. In those cases, according to the law of Haco, the foster-son of Athelstane^c, the Archbishop and Bishops, and Twelve of our best

^a Sverikes Rikes Landzlagh; Tingmala Balker, cap. 1, 2.

^b Landzlagh; Konungs Balker, cap. 3, 5, 6.

^c Hagen Adelsteens Gule Tings Lov. Christendom's Balk., cap. 1.
See also the Hirdskraa, cap. 3.

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Part I. Norwegian Government to perform homage at the accession of
Ch. III. the Danish King^a.

Some of the instances which are adduced respecting the usage of the Duodenary courts, are comparatively recent, and I am aware, as I have before observed, that very competent authorities consider them as the creation of the period wherein they first appear; that the institution of the Scabini has been attributed to Charlemagne, and described or censured as an abridgment of the rights of the General Assembly of the Centena; it being supposed that these assessors were named and selected, to the exclusion of the other freemen, whose places they supplied in judicature and legislation. The appearance of the Judges of the Anglo-Saxon Hundred has been ascribed, in the same manner, to a gradual concentration of the Folkmoot^b. Were this really the case, a usage, whose date goes beyond a thousand years, is of sufficiently remote origin to be treated as a general and established principle of the jurisprudence of the Middle Ages; and with respect to England in particular, it is of very little consequence whether the germ of our municipal policy be found in the fifth century, or the tenth; whether it be the aboriginal custom of the Saxon, or an imitation of the policy of Charlemagne: and, therefore, without attaching any importance to the discussion, I shall briefly recapitulate the arguments in favour of the antiquity of these Tribunals. According to the Northmen, the institution of the Duodenary courts is coeval with their race. Beyond the Tanais¹, as we are told by Snorri, is the land, which men called Asaheim, or Asaland, and the chief city thereof is named Asgard. Odin was the ruler thereof, and it was a place of sacrifice and burnt-offering. And it was the law of Asgard, that the Twelve Priests of the palace should be the mightiest over all. They ruled over the sacrifices, and gave judgment between man and man; they were called Diar, Priests; or Drottnar, Lords; and to them did the people owe all honour. When the government of Asgard was transferred to Sigtuna², the town of Victory, the same tribunal was established there by Odin, in the persons of the Twelve head men, whom he nominated to doom the land's law: and immediately before the introduction of Christianity, the inhabitants of the Kingdom of Drontheim were under the religious authority of the gild or college of the Twelve Priests by whom the sacrifices were

Duodenary Courts, their origin ascribed to Odin.

Asgard, the chief City of the Land of the Ases, beyond the Tanais, governed by the Twelve Diar or Drottnar.

Twelve head men appointed by Odin, to "doom the land's law," at Sigtuna in Sweden. College or gild of Twelve ruling Priests.

^a Hickee, Dissert. Epist., p. 50.

^b Hallam, Middle Ages, chap. viii.

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performed^a. The earthly Asgard, which the Edda^b identifies with Troy, is, however, only the semblance of the habitation of the gods. There were the governors established in the beginning of the world, who were ordered to decide whatever differences should arise amongst men, and also to rule the heavenly realms. Gladheim¹ was their work; the Hall, in which they built Twelve seats for themselves, and their place of judgment, was under the Ash Ygdrasil², in the plain of Ida.

Part I.
Ch. III.
Earthly Asgard, the type of the habitation of the Twelve Dii Majores of the Scandinavians.

But may it not be objected, that the proofs are weakened by their extent? It has been urged, that the traditions of the Edda are the spurious inventions of the Middle Ages, the compilation of the Herodotus of the North, who amused his contemporaries, and deceived posterity, by combining his own fancies with the dreams of the Rabbinites and the poetical fables of classical antiquity; and that the mere mention of Troy, as the seat of the deified heroes of the Ases, is sufficient to disclose the imposture. Neither historical certainty, nor mythological consistency, can be sought in the fluctuating legends of a rude and half-civilized people. Dubious portions of a dubious history, they can only be received when corroborated by more trustworthy testimony; and they are to be admitted as indications of the course which we ought to pursue, only in the absence of more authentic guides. Taking the Saga as it has been transmitted to us, and giving it that large interpretation which is required by the mixture of fact, fable and allegory, there is no improbability in believing that the Duodenary Councils of the Teutons were traditionary reminiscences of the form of government, which, before the invasion of the sons of Hercules, appears to have been the foundation of the policy of the Pelasgic race. The Runes of Scandinavia bear so close a resemblance to the characters of the Etruscans, as well as to the alphabet of Cadmus, that no doubt of their common origin can be entertained; and the same affinity which imparted the art of writing, would equally communicate the model of government and authority.

Mythological traditions, how to be appreciated.

The constant uniformity of the general principle, exemplified amongst all the Teutonic nations,—for, I believe, there is none amongst whom it cannot be discovered—may furthermore be admitted, as tending to shew that such a conformity was the

^a *Historia Regum Norvegicorum*. *Hervarar Saga*, *Ynglinga Saga*, c. 2. Torfæus apud Gebhardi, vol. i. Intr. p. 41.

^b Edda of Snorri, Fables 7 and 8.

Part I.
Ch. III.

result of their original policy; for if we balance the conjectures, it will appear much more agreeable to the laws of probability, that a custom uniformly observed amongst so many distinct nations, resulted from a common prototype, wherever that prototype may be found, than that it was the effect of simultaneous invention, after these tribes and nations were scattered so widely; or of imitation, at a period when the world of each Tribe was almost bounded by the horizon.

Influence
of the
Federative
policy of
the Teutons.

Abandoning the speculations of the antiquary, it is of more importance to advert to the fact, that the judicial federations co-operated in creating the representative governments, which, perhaps, in their rudest forms, assisted the Teuton to gain his triumph, and to use his victory. When we recollect the powers which remained to the Romans, even in their days of degeneracy; their strongly fortified cities; their hereditary skill in military tactics; their keen weapons; their adamantine armour, it will seem doubtful, whether the mere physical strength of the Barbarians could have enabled them to obtain so complete a mastery; and the success which attended their invasions may be perhaps ascribed, and in no inconsiderable degree, to their habits of political union, and of obedience to the law. Nor must it be forgotten, that the land of philosophy and of song might have enjoyed all the inestimable advantages of justice and of tranquillity, if her sons had been willing to accept these boons; but they would only listen to the voice of the demagogue, and obey the rude empire of the lawless multitude. Democracy prepared the way for the legions of the enemy; and the starveling Greek, sunk into the debasement of habitual and hopeless servitude, degraded even by his talents, became the laughing-stock of the Roman Conqueror; unconscious himself of the destiny which awaited the Empire of the Cæsars, raised by that military despotism which ensured its fall.

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Part I. of the resolutions which had been adopted by the Peers in the
Ch. IV. presence of the Sovereign.

Places of
meeting:
under
ancient
trees,

Religious feelings, no less than motives of convenience, seem to have been the cause that the popular meetings were frequently called beneath the shade of ancient trees, the objects both of worship and of veneration. The Oak of Guernica¹, yet flourishing in verdant age, saw the States of Biscay assemble under its branches for more than a thousand years; until the constitution of the Vascongados², which had been spared by the despotism of Austria and Bourbon, was destroyed by the liberality of the Cortes of Cadiz: and very many of the trysting places of the English Courts, were marked, in like manner, by the Oak, the Beech, or the Elm, the living monuments of nature, surviving through many a generation of the human race. Natural hills, or artificial tumuli, upon whose summit the Judges might debate, visible to the surrounding multitude, yet separated from the throng, were also appropriated to the popular assemblies. Such was the Mons Placitorum³, or Moot-hill of Scone, the only portion of the royal domains retained by Malcolm⁴, when he is said to have bestowed all his lands upon the Barons of his realm^a; and such still is the Tynwald-hill^b of Man. The Stannary court was summoned on the dreary summit of Crockentorre⁵, where the seats,

on hills
or tumuli,

^a Laws of King Malcolm Mackenneth, c. i.

^b From *Thing, Ting* (S.G. and Isl.), or *Ding* (Germ.), a Court of Justice, and *Völld*, a Hill. Of the word *Thing*, a term in frequent occurrence, Ihre gives the following etymology; *Tinga est colloqui*. Apud Ulphilam *Mathls* Forum est, *Mathlian* loqui. *Mallus* in Legibus Longobardicis nomen habet a *mäla* loqui, *mal*, sermo. *Sprache* et *Gespreche* in vetere Germania conventus publicos designabant, qui iidem Latine colloquium nominabantur. *Burspråk* apud nos erat Curia civitatum et concilium civium, a *språka*, colloqui. Sic Angli Gallique concilium maximum *Parliamentum* vocant, a *parler*, loqui. [*Tinga* is to converse. In Ulphilas, *Mathls* is Market-place, *Mathlian*, to speak. *Mallus* in the Lombardic Laws has its name from *mäla*, to speak, *mal*, a speech. *Sprache* and *Gespreche* in old Germany designated public meetings, and the same, in the Latin tongue, were called colloquium. *Burspråk* with us was the Court of the cities, and the council of the citizens, from *språka*, to converse. So the English and French call their greatest council a *Parliament*, from *parler* to speak.] The "*Bauersprache*" in Germany, is a declaration or presentment of local customs made by the Villeinage. The Guildhall of the city of Canterbury was anciently called the *Speech-house*. (Somner, Canterbury.)

(See II.,
p. 201.)

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roughly hewn in the moor-stone, indicated the tribunal. Many of the earthworks, often supposed to be camps or military stations, were more probably intended for judicial purposes; at least, the entrenched Hill of Fliccheham Burgh, where the East Anglian Hundred of Freebridge was holden, was of this description^a: and if the intent of the ramparts were not known, the antiquary would have attributed the seeming fortification to the armies of the Briton, the Roman or the Dane. The Druidical Circles, as they are called, have an equal claim to be considered both as temples and as places of judicial conventions, where the priesthood offered the sacrifice and delivered the law; where the accused submitted to the fearful ordeal, and where the offender was punished for his crime. Runnymede, the field of council, where, in times of yore, the Anglo-Saxons were wont to meet and consult on the welfare of the state^b, may also be interpreted the field of mystery. And the laws which, down to the eleventh century, prohibited the Anglo-Saxon from worshipping the tree, the rock, and the stream or fountain^c, shew that the vicinity of the popular courts to these objects of the Pagan faith was not altogether an accidental coincidence.

Part I.
Ch. IV.

in circles
of stones,

or near
rivers;
all of
which were
places of
heathen
worship.

Assembled in the open day, the oral proceedings of the court followed the course of the traditionary law. “Amongst savage nations, the want of letters is imperfectly supplied by the use of visible signs, which awaken attention and perpetuate the remembrance of any public or private transaction.”^d And the symbolical language, which the civilians derided and retained, was equally in use amongst the Teutonic tribes. Even after writing became known, the deed or record was often only collateral to the form and ceremony. Land was conveyed by the seisin given on the soil: or the turf or the stone, taken from the land and placed in the hands of the grantee, or laid upon the altar of the Church, effected the transfer of the territory, which these symbols represented^e. The Charter was, in truth, only a memorandum that the investiture had been performed in the presence of the witnesses. Usufructuary interests were generally created by the delivery, in England, of a rod or branch of a tree; in Scotland,

Visible signs
and tokens,
their use
in the
Roman law.

Land con-
veyed by the
delivery of
earth and
stone, of a
rod or
branch, &c.

^a Blomefield, Norfolk, vol. viii. p. 419.

^b Matt. West., 1215.

^c Canons of Edgar, § 16. Canute, I. § 5.

^d Gibbon, Decline and Fall, c. 46.

^e Concilia, vol. i. p. 63.

Part I.
Ch. IV.

Mancipation
and Tradition
of the
Romans.

of a straw^a. It is important to remark that, in practice, these two sets of symbols, respectively representing the soil, and the productions of the soil, and respectively conveying the right of property and the right of usufruct, are seldom interchanged or confounded. Seisin is not given by the rod; nor is the customary estate granted by the delivery of the fragment or particle of the land^b. These ceremonies correspond, in spirit, to the "Mancipation"¹ and "Tradition" of the Romans: the first of which transferred the "Dominium directum," or ownership of the soil; and the second, the "Dominium utile," conferring only a title of enjoyment, the ownership continuing in the state or sovereign^c. Tradition was effected by the delivery of a symbol, the Mancipation, by a fictitious sale before five witnesses: but the right to the soil was vindicated by bringing a turf or glebe from the field or farm, and which was delivered to the person to whom the Prætor adjudged the possession; and the livery of legal seisin by the Roman Tribunal bears the nearest affinity to the forms of the Gothic law^d.

Courts
summoned
by the
delivery of
a token,
which was
passed from
hand to
hand;

The general summons of the Gothic courts was effected by a process which resembles the gathering of the Clans of the Gael, when the fiery cross² made its circuit through their glens and wilds. Borne, by each Ceorl or Bonde, from dwelling to dwelling, over marsh and moor, the symbol, which was passed from man to man and from home to home, announced the approaching

^a Martin, Western Islands.

^b Some of the forms of investiture amongst the Teutons and Scandinavians, are given in Part II., *Proofs and Illustrations*, pp. 325, 326.

^c . . . uti prædia in Italico solo mancipi res erant; ita provincialia ante Justinianum nec mancipi habebantur. Nam cum tributaria ea essent, vel stipendiaria, non poterant mancipio a provincialibus dari. Usus duntaxat et fructus, seu $\chi\rho\eta\sigma\iota\varsigma$ eorum ad provinciales pertinebat: mancipium et proprietas populi Romani erat, Heineccius, *Vocabularium Juris*, &c. [Just as landed estates on Italian soil were "res mancipi"; so lands in the provinces, before Justinian, were considered "nec mancipi." For since they were tributary or rent-paying, they could not be given by mancipation by provincials. Only their use and enjoyment or $\chi\rho\eta\sigma\iota\varsigma$ belonged to provincials; the ownership and the property belonged to the Roman people.] Cod. Theod., lib. viii. tit. 12, LL. 4, 8, 9. See also Mr. Spence's *Inquiry*, pp. 32, 34, where the author has collected the authorities with his usual diligence and fidelity.

^d Aulus Gellius, xx. 10. Burrow Laws, ch. 136.

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Part I.
Ch. IV.

No legal records amongst the Anglo-Saxons.

Proof of legal proceedings given, by appealing to the testimony of living witnesses.

But the Landbocs or Charters admitted as proofs of title to land.

Purchased by the possessor of the land, when outstanding in the hands of other parties.

Compromises of suits recited in the Landbocs or Charters.

Legal archives, in the proper sense of the word, did not exist amongst the Anglo-Saxons. On rare occasions, the verdicts of the Hundred or the Shire might be written in the blank leaves of the Missal belonging to some neighbouring Minster; but, though this mode of preserving the history of the transactions might be adopted, the document had no legal effect. It could not be pleaded; and the strict and proper mode of legal proof was by appealing to living testimony. If evidence was required of judicial transactions, the proof was given by the Hundred or the Shire in its corporate capacity; the suitors bearing witness to the judgments which they or their predecessors had pronounced, or to the acts which had taken place in their presence. An exception is found with respect to the instruments by which the dominion of landed property was transferred. The Landboc, or Charter, appears to have been considered as affording evidence which could be opposed to living testimony. High value was therefore attached to these instruments; and, though the title to real property depended mainly upon possession, still the Charters afforded so much protection, that, when they were outstanding in the hands of other persons, who were neither in possession of the land, nor had any legal claim thereto, the rightful owner was happy to be enabled to purchase the deeds by the payment of large sums of money. When the Landbocs were destroyed by accident, the Witenagemot, proceeding upon the petition of the landowners, might decree that new deeds should be made out; and if no transcripts remained, the Charters were re-written to the best of the belief of the Witan: and the legislature could further enact that, if the old documents should ever appear again, they should be void and of no effect^a. It happened, not infrequently, that a hostile suit concerning land was terminated by an amicable agreement before the Witan^b, and such a compromise would be commemorated in a Charter, in which the suit was recited, and which became one of the title deeds. Hence the origin of the opinion amongst our common lawyers, that Fines for the assurance of land are older than the understand; and *Wita*, or *Wite*, is employed both for a Judge, a Senator, a Counsellor, and a Witness. (Lye.) The Echevins of the Vehmic, or Secret Tribunal of Westphalia, were also called *Wissende*. See Part II., *Proofs and Illustrations*, pp. 195–205, especially pp. 199, 203, 205, and note b.

^a Hemingi Cartularium, pp. 66, 325. Monasticon, vol. i. p. 50.

^b Hist. Eliensis, pp. 466, 473.

Conquest; which is substantially true, if we consider the purport and object of those instruments; though erroneous, if applied to a "Concord," grounded upon a writ of entry, and conducted according to the forms of Anglo-Norman jurisprudence.

Part I.
Ch. IV.

The worth of the Charters naturally induced a great degree of care for their preservation; and about the eleventh century, a practice began to prevail of depositing them for safe custody in the King's Treasury, under the care of the "Bur Thegn," the "Cubicularius" or Chamberlain; or in the King's Chapel, where they were preserved, together with the relics, by the King's domestic Priests or Chaplains: and in these offices we discover the first traces of the establishments, which afterwards attained such importance, as the Exchequer and the Chancery of the Anglo-Norman Kings^a.

Landbocs deposited with the "Bur Thegn," the Cubicularius, or Chamberlain, in the "Hord" or Treasury (afterwards the Exchequer); or in the King's Chapel (afterwards the Chancery).

A depository of legal archives, so far as they related to land, was thus forming, but the testimony of the decisions pronounced in Courts of law, still rested on the oral evidence of witnesses. The principle of appealing to the Witan prevailed almost universally, and it continued long after writing became in more common use. They remembered or "recorded" the proceedings; and in all the ancient writers, the phrases, "making Record," or "bearing Record," signify the power of giving such testimony as, in that particular case, was final and incontrovertible, and against which no exception could be maintained. Thus, in Normandy, all matters which had taken place in the Court of the King sitting as Duke of Normandy, were "recorded" by his testimony, added to that of one other witness; or he might depute two other "Recorders" in his stead. Seven witnesses were required for the Record of the Exchequer, or of the Assize. In all such proofs, the author of the Norman Custumal never contemplated the production of a written roll or register as evidence of past proceedings. The persons who "made the Record," testified as to what they had heard, and what had been said; and by such testimony, the parties were to stand or fall^b. When any distance of time had elapsed, such a mode of proof must often have been attended with considerable difficulty. John of Ibelin,

"Record," the testimony of witnesses, whose declaration was final and conclusive. "Records" of the King's Court in Normandy, of the Exchequer, &c.

^a Hist. Ramesiensis, p. 458. Monasticon, vol. iii. p. 36.

^b Coustumier de Normandie, chapters 102, 103, 104 and 107 of the printed editions. See Part II., *Proofs and Illustrations*, pp. 213-215, in which the passages here referred to are given from the St. John Manuscript, now in the possession of the Earl of Gosford.

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therefore, the sage author of the Assizes of Jerusalem, advises the suitor to collect in Court as many of his friends as he possibly can, “and to pray them to be attentive to the words which are spoken “in the pleadings; to hear well and to recollect well, in order that “they may be able to record the plea when need shall require.”^a

Record of Court, according to the English law. “Record” of a Fine, made by the Judges and Four Knights, who were present when the parties entered into the agreement.

Record of a suit in the County Court, by Four Knights, who were present at the plea, &c.

Record of Court, as understood by the ancient English lawyers, is no other than such a power of bearing testimony^b. If a Concord was passed before the Justices in the Eyre, it was certified by summoning the Justices before whom the agreement was made, together with those discreet Knights who were present, and by whom the truth could be better known. Sometimes the Knights were sent, without writ, on behalf of the County, to the King’s Justices at Westminster, to “make their Record,” both of the plea and of the peculiar custom of the Shire; or to declare that no outlawry had been awarded against the supposed criminal. A suit in the County Court was authenticated in the same manner, by summoning the individuals, who, in the Saxon period, would have been designated as the Witan. The Record of the Constable of the Tower was his verbal statement of the essoin, by which the defendant excused his default. And the main distinction of the Record of the King’s Court and the Record of inferior jurisdictions was, that whilst the first could give incontrovertible

^a Assizes de Jerusalem, c. 45.

^b Glanville, lib. viii. chapters 5, 6, 9, 10, 11. Bracton, lib. v. chapters 4 and 10. Placita apud Westm. Mich. 6 Ric. I. Placita apud Westm. Trin., &c. 5 John. See Part II., *Proofs and Illustrations*, pp. 215–218, where some other instances are given. The Latine men use *Recordor*, when they wil signifie to keepe in minde or to remember; in which sence the Poet said, “*Si rite audita recordor*” [*If I remember properly what I have heard*]. And after the same sence also doth our law use it. For Records be nothing else but memorials (or monuments) of things done before Judges, that have credit in that behalfe. And, therefore, where King Edward I. doth, in the beginning of the Booke called Britton, set foorth the Judges of his Courts, he saith of some that they should have authoritie of Record, and of others, that they shall beare Record; both which speeches do meane but one thing.... And we yet say in common speech, “such a man shall beare record of a thing,” when we intend to say that he remembreth it, and can beare witnesse of it.... This Record (or Testimony), is first contained within the breast of the Judge (as our law speaketh), and afterward committed to the Rolles, which are, therefore, figuratively called Records also, Lambard, *Eirenarcha*, bk. i. c. 13.

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The preference given to oral testimony, even when written documents could be produced, was not altogether without its reason. When writing was an art known only to the few, and the alphabet was a rare acquirement, the subtle clerk might easily produce his forgeries, without the hazard of detection; but the verification of the proceedings by the mouth of the witnesses, known men of established fame and credit, was much less liable to suspicion, or susceptible of falsification.

Technical forms and proceedings religiously adhered to by the Scandinavians.

The same causes which dictated the employment of the visible symbols of the law, induced the Teutons to attach the greatest importance to their technical forms and proceedings. Of these, the most numerous are preserved in the codes of the Norwegians, though some, of great singularity, are extant amongst the Anglo-Saxon customs. Every act by which an obligation was incurred, by which civil rights were acquired or created, which constituted a stage in the suit, or was connected with its process, required to be enounced in the phraseology, and accompanied by the rites, which immemorial tradition had prescribed. The plaint or appeal preferred to the court, the betrothing of the maiden, the legitimation of the child, the manumission¹ of the slave, all had their peculiar forms; and, with the nicety which afterwards characterized the Anglo-Norman law, the variance of a word, or the lapse of a syllable, annulled the entire proceeding. The Normans of Normandy inherited their proverbial love of litigation, so often the object of wit and satire, from the first followers of Hastings and of Rollo; and the subtleties of the Exchequer of Rouen were lineally descended from the wisdom of the Folkmoot of Drontheim². Practice and experience could alone teach these forms; the important knowledge was not generally diffused amongst the people; and the lore was concealed, with jealousy, from the profane multitude, by the wise and powerful "Lawmen." Such was the efficacy ascribed to these mystic phrases, that words, which seemed spoken in sport or heard with inattention, the citation repeated as a jest, or the bridal pledge uttered by the child, were afterwards found to be invested with the rigid strength of judicial validity. Like the maxims of the law, many of these formulæ appear to have been originally framed in verse or metre, and some may be quoted, which still retain their poetical guise. In their substance, they seem to ascend into the age of Paganism;

Any slip or error in the forms annulled the proceedings.

i. p. 248. Brook, Title London.—Roll Abr., 579, 580. Viner Abr. Customs of London, 2 Inst. 126.

and the magical powers assigned to the ancient legal sentences, perhaps evince their connexion with the ancient mythology and the heathen creed ^a. Part I.
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To dilate on the manners and usages, however singular or interesting, of ancient times, would lead me too far from my present inquiry; and I have, therefore, merely noticed some of those circumstances relating to the modes of proceeding, which had an evident influence upon the essential portions of our constitutional jurisprudence. The principle of entrusting the "Record" of the law to the breasts of the ancient popular members of the tribunals, belongs to this class; it worked incessantly on the law. Instead of opening the book to determine the contested custom, instead of reading the protocol, to ascertain the facts of the transgression, the King's officers were compelled to appeal to the virtual delegates of the people, and to be confronted on all occasions by their authority. The popular branch of the remedial tribunals could not be lopped off; and the Scabini, or the Næmda, or the Jurors, from being the witnesses of the law and the fact, became the Legislators. Publicity could not be avoided, nor concealment obtained; and the people obtained that participation in judicial proceedings, which affords the most effectual counterpoise to the discretionary authority of the Court, so dangerous to freedom, and yet so indispensable for the preservation of good order and the furtherance of justice.

Consequences of the prevalence of oral testimony.

The mere accidents of locality or separation, of distance or juxtaposition, often produce the most important consequences. If, under our Edwards, the Procurators of the Capitular and Parochial Clergy had resorted to the Palace and Abbey of Westminster, the deputies of the inferior orders of the hierarchy would probably have become as integral an Estate of Parliament as the representatives of the laity; but, holding their Convocation in the New Temple or the Cathedral of St. Paul's, they were confirmed in the character of a distinct body. All the causes which gave them a separate interest from the secular members, acted with tenfold vigour when aided by a visible separation, and they ceased to be numbered amongst the constituent portions of the great Councils of the realm. By assembling in the open air, the suitors of the Hundred and the Shire Courts retained an importance which they would have lost had they been confined within the limits of the Moot-hall; and it is

Consequences resulting from the custom of holding the County Courts in the open air.

^a See Part II., *Proofs and Illustrations*, pp. 185-188.

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(See Chap.
VIII.)

not too much to assert, that the present political influence of the body of the people is, in great measure, derived from the mode and manner of their meeting. William the Conqueror, by enacting a law like the capitulary of Charlemagne, would have more effectually checked the growth of the influence of the English people, than by erecting all the massy dungeon towers, whose ruins are yet frowning over the land. If, instead of causing the men of Kent to assemble on the wide Heath of Pennenden¹, to witness the discussion of his pleas, he had commanded those who were selected and chosen to testify on behalf of the county, to meet in the Speech-house of Canterbury, the elections of Knights of the Shire would now, at this day, be made by a close Corporation. The records exist which shew, that as the suffrage of the Borough belonged to the delegated bodies, acting on the part of the community, so the choice of the Representative of the County, or rather of the County Court, belonged to the Magnates or their Delegates, few in number, high in station, and without any commixture of the minor suitors, who continued spectators, until they acquired a deep and general interest in the proceedings of the Legislature, and in the affairs of the community. They then became loud and active partizans; they were on the spot, they mingled with their superiors, they asserted the same rights: but the "great, outrageous and excessive number of people of small substance and no value," would never, in the angry words of the Statute, "have pretended to a voice equivalent with the "most worthy Knights and Esquires,"^a if the English Sheriff had been enabled, like the Mayor, to close the door upon the unwelcome intruders.

^a 8 Hen. VI., c. 7.

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as monuments of venerable antiquity, by the Anglo-Norman King^a. None of the other religious foundations of England asserted a similar descent; and the Prelates, who filled the Episcopal Sees of the States included in the Heptarchy, even of those which were last acquired from the Britons, would have rejected any title, save that which was derived from St. Augustine and his disciples. Acknowledging no other founders but the Missionaries who were despatched by the Roman Pontiff, and by whose exertions the Anglo-Saxons were received into the pale of Christendom, they claimed no kindred with the more ancient Church, which numbered amongst her sons the protomartyr of Britain. Between the extinction of the British Kingdoms and the arrival of St. Augustine, the British hierarchy ceased to have any recognized existence amongst the mixed inhabitants of the subjugated realms. The ecclesiastical government was destroyed with the national independence; the Chieftains of British race either fled or perished in the field, and the greater portion of the British people, who constituted the villeinage, relapsed into those errors from which they had been imperfectly reclaimed.

Extinction of the British Hierarchy in the Anglo-Saxon Kingdoms.

That such an apostasy took place amongst the "Welsh," or British subjects of the Anglo-Saxon nations, will appear probable from the following circumstances. According to the discipline which prevailed throughout the Empire, when the ecclesiastical establishment of the Romanized Britons was first organized—and there is no reason to suppose that any departure from the general model took place in the Roman Provinces of this island—the metropolitan or mother church was the only one which possessed any endowment. Constituting one jurisdiction, under one Pastor, the Diocese was the "Parochia" of the Bishop, who appointed the Presbyters to officiate in the various districts, as appeared most required by the spiritual wants of the congregations. All the property of the Church, whether arising from tithes, from land, or from voluntary oblations or offerings, formed a common fund, of which that portion which remained, after providing for the charges of divine service and the maintenance of the poor, was distributed amongst the Clergy^b. Upon the conquest of each British city by the Anglo-Saxons, the ruin of the Cathedral would necessarily destroy the whole dependent priesthood, destitute of

Ancient organization of the Church, the Diocese, the Parish of the Bishops,

who appointed the Presbyters to officiate in the rural congregations; the latter being destitute of any specific endowment. The property of the Diocese formed a common fund, out of which the Clergy were maintained.

^a See Charter of Hen. II., printed by Hearne, from the Chartulary of Glastonbury, Hemingi Cartularium, App. 603.

^b Bingham, *Origines Ecclesiasticæ*, bk v. ch. 6.

any permanent glebe or domicile in the districts of the surrounding country, and with no other followers but the husbandmen, the cultivators of the soil, scattered under the authority of their heathen conquerors. Even in this disastrous situation, a firm belief might have preserved a wreck of Christianity; but its doctrines do not appear to have been cordially received by the ancient British Tribes, or to have become the national religion. Amongst the Roman Colonists and the Romanized Britons of the higher ranks, the Gospel was preached with effect. Alban sealed his faith with his blood; nor did he alone obtain the crown of martyrdom: and the citizens of London and Verulam¹ may have profited by the zeal of Eleutherius², and the piety of Lucius, the British King^a. But the country was still unconverted; and though the bloody sacrifices of the Druids had brought down the anger of the Romans upon them, their mysteries, purified by the abolition of a savage ritual, were perpetuated by the Order. Taliesin hardly conceals his belief in the religion of his forefathers; and the Druidical worship, which was still recollected in Strath Clyde and Cumbria, was so strong and vigorous on the opposite shores of Deira, that the British inhabitants not only preserved their priesthood, but had induced the Anglo-Saxon conquerors to embrace their faith; for the name of Coifi, the Pontiff^b, by whose persuasion Edwin embraced Christianity, is no other than the title of the Chief of the Druids^c. Whether the Northumbrians had entirely abandoned their Teutonic creed, or whether they had merely amalgamated their pristine mythology with the lessons of the worshippers of the oak, cannot be ascertained, though the latter supposition has most probability, for the early paganism of the Northmen was tolerant; or rather they seem to have felt its vagueness, and to have yearned for any change. When they associated with the Vendic³ tribes, they adopted the many-headed idols, Prono, and Radegast, and Siva, whom the Slavonians seem to have brought from the mountains of Hindostan; and the same flexibility of creed, which allowed

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Christianity not generally received by the British Tribes; but probably confined to the Romans and Romanized Britons of the Municipia and Colonies.

Druidical faith subsisting in Strath Clyde and Cumbria, and amongst the mixed population of Britons and Anglo-Saxons in Northumbria.

Coifi, Chief of the Druids of Deir A.D.^a 627

Flexibility of the Northern polytheism.

^a A.D. 180. Lucius Britanniae Rex, missa ad Eleutherum epistola, ut Christianus efficiatur impetrat, Bedæ Chronicon. Hist. Eccl., lib. i. c. 4. [Lucius, King of Britain, having sent a letter to Eleuther, obtains his request that he may become a Christian.]

^b Hist. Eccl., lib. ii. c. 13.

^c In Gaelic, *Coivie*, *Cuimhe*, or *Choibidh*. See Jamieson, Scottish Dictionary; Supplement.

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Redwald to raise the altar of the Eucharist^a in the structure where he propitiated his demon deities, would easily induce the Anglo-Saxon to unite the worship of Thor and of Tarannis, the Teutonic and the Celtic Thunderer.

Foundation
of the
national
Dioceses of
the Anglo-
Saxons ;

their
munificent
endowments.

Founded, therefore, in a community, in which there were few who had any recollection of Christianity, and those in the humblest classes, and deprived of their hierarchy, the temporal establishment of the Church was entirely Anglo-Saxon, and the organization of its Prelacy was wholly of new introduction. It was a National Church, in every sense of the word; for the few individuals of foreign origin, who appear in the very early Fasti of the Northern Sees, scarcely form an exception of any moment in our ecclesiastical history. A Bishop was first appointed for each people, or for each dominion, and the limits of the State became the boundaries of the Diocese. Large endowments of land accompanied these foundations. Ethelbert surrendered his own palace and lands to St. Augustine. Selsea and a considerable portion of the Isle of Wight were granted to the first Bishop of the South Saxons. The zeal which prompted these grants increased rapidly. But the liberality of the Anglo-Saxon Monarchs did not lead them to destroy the services due to the State. They maintained their royal pre-eminence; and they provided for the religious instruction of the people, without impairing the resources of the community.

Wihtræd,
King of
Kent (700),
and Ethel-
bald, King
of Mercia
(742 and
749), dis-
charge the
Church from
secular ex-
actions, i.e.
the payment
of rents in
kind, &c. ;
but
reserve and
enforce the
performance
of the
Trinoda
Necessitas;
viz. Brycg-
bot (the tax
for the
reparation of
bridges and
highways);
Burh-bot
(tax for
repairs of
walls and
fortresses);
and the Fyrd,
or military
service.

Wihtræd of Kent and Ethelbald of Mercia, declare that they were anxious to purchase the remission of their sins by the good work of relieving the churches and monasteries of their Kingdoms from all secular exactions, works, rents and tributes. But by these exactions were intended the farm or rents in kind, the ale, the corn, the cattle, which were due from the land to the "Theode Hlaford," the Sovereign of the people, from the lands which had been his demesnes, as well as the services of building and repairing the King's mansions, specified in the British laws. But whilst they abandoned their peculiar sources of opulence, they did not necessarily surrender the rights of the State; and the decrees of Ethelbald, which recite and explain the Kentish Charter, reserve, in the most express terms, the three important duties, in which all the people were bound to share, when enjoined by the King's edict, command, or summons. The payment of the imposts required for the repairs of the bridges and highways; the

^a Hist. Eccl., lib. ii. c. 15.

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Continental
Clergy,
under the
lower
Empire,
exempted
from similar
burdens ;

which
exemptions
were re-
newed by
Charlemagne.

St. Boniface,
Bishop of
Mainz,
complains
of the
"servi-
tude" of
the English
monasteries,
A.D. 745.

Ethelwulf
grants one-
tenth part
of the land
in his
Kingdom of
Wessex, for
pious uses,
A.D. 855 ;

the "Metatum" and the "Paraverda," the obligations of entertaining the soldiers, harbingers, and officers of the Emperor, and of furnishing horses and vehicles for the public service; the first of which duties, under the Frankish Sovereigns, was known by the name of the "Mansionatica" or "Parata." A partial revocation of this immunity was made, or rather attempted, by other Emperors: yet it seems to have subsisted, either from the indulgence of the public functionaries, or from a tacit repeal of the unfavourable laws; and the privileges of the Clergy were renewed by the capitularies, which followed and adopted the Roman legislation^a. Charlemagne strictly forbade the Dux, the Castaldus¹, the Centenarius, the Huntsman, and the Falconer, from oppressing the churches and monasteries; and the enumeration of the exactions from which the Clergy were relieved in France, shews the extent of the burden to which they were liable, under the less indulgent Sovereigns of England. Hence the loud complaints of St. Boniface, who exclaims with much anger, that in the whole Christian world no such servitude was imposed upon the Church, as amongst the English nation^b. Nor were these expostulations entirely without effect; and the apprehensions or the piety of the Sovereigns extorted many special exemptions, derogating from the general law of the land, according to which law, the lands possessed by the Clergy were liable to the same public services as the rest of the community^c. Of these exceptions, the most extensive resulted from the grants made by Ethelwulf, who bestowed one-tenth part of the land in his Kingdom of Wessex, and in its dependencies, Kent and Sussex, upon the servants of the altar, or for the sustenance of the indigent^d, discharged from every territorial tax and duty.

^a Cod. Th., lib. vii. tit. 8; de Onere Metati, lib. viii. tit. 5; de Cursu publico, lib. xvi. tit. 6; de Episc., lib. viii. x. xiv.; Cod. Justin., lib. x. tit. 41; de Metatis, lib. xii. tit. 51. Epistola Karoli Magni de Pace Ecclesiarum Dei, A.D. 807. Capit., lib. xi. § 16.

^b Epistola Bonifacii Archiepiscopi Maguntini ad Cuthbertum Archiepiscopum Cantuariæ de corrigendis vitiis Anglorum, Concilia, vol. i. p. 93. [The letter of Boniface, Archbishop of Mainz, to Cuthbert, Archbishop of Canterbury, concerning the correction of the faults of the English.] "

^c Wilkins, Concilia, pp. 63, 100. Grant of Ethelred, Dux or Ealdorman of Mercia, to the Abbot and Monks of Berkeley, A.D. 883. Hemingi Cartularium, p. 103.

^d Charter, dated A.D. 854. "Die vero Paschali in palatio nostro

In the words of the ancient chronicle, “he enfranchised one-tenth Part I.
“ part of his Kingdom from all royal tribute and service, for the Ch. V.
“ honour of God, and the salvation of his own soul.” Ethelwulf, with the consent of the Bishops, “Comites,” and great men of his Kingdom, without whose assent no royal domain could be alienated^a, made this grant on his return from Rome, where he had induced the Pontiff to crown and anoint the young Alfred as his destined successor; and it has been considered as the legislative enactment by which the lands were first subjected to the payment of tithes to the Clergy^b. But the right of the Church had already been recognized, in the most unequivocal manner; and the grants, many of which are extant, do not afford any voucher for the opinion which Selden¹ erroneously entertained. The general Statute expressly points out a decimation of the land by metes and bounds, to be held free from all secular services, exonerated from all tributes to the Crown, and from the charges to which, of common right, all lands were subjected, namely, the “Fyrd,” the “Brycg-bot,” and the “Burh-bot”; and this exemption was made, to the end that the grantees might sedulously and without intermission, offer up their prayers for the souls of Ethelwulf, and of those who had concurred in the donation; the land was, therefore, to be held in Frank-almoign. Proceeding upon his general enactment, Ethelwulf carried his intentions into effect by the specific endowments which he conferred upon the various churches and their ministers, of lands which may be termed ecclesiastical benefices, rendering no service except at the altar. By some historians the grant has been construed into an enfranchisement of all the lands which the Church then possessed, an interpretation not altogether void of probability; yet, if it be adopted, we must admit that the exoneration only affected the lands which the Church possessed when the decree was made; it could not extend to the lands granted at subsequent periods with the reservation of the Trinoda Necessitas; and at the period of the Conquest, a large, if not the largest portion of the church property, was held

not a grant of tithes, as erroneously supposed, but a grant of the tenth part of the land by metes and bounds, free from the Trinoda Necessitas.

quod dicitur Wiltun.” [On Easter Day in our palace which is called Wilton.] Monasticon, N.E., vol. i. p. 514. Sax. Chron., A.D. 854, 855, 856, p. 94. Simeon Dunelmensis, A.D. 854, pp. 121, 140. Malms. de Gest. Reg., lib. ii. c. 2. Matt. West. A.D. 857. Flor. Wigorn., A.D. 855. Asser, A.D. 855. Ethelwerd, p. 478.

^a Concilia, vol. i. p. 178.

^b Selden, The Historie of Tithes.

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Donations of the Anglo-Saxon Kings derived from two sources: I. demesne lands, II. common lands of the Townships, &c.; which, being granted with the Tenants settled on the appropriated tenements, became new Townships. Mode of making donations, by grant to a Thane, who then transferred the land to the Church;

sometimes with a reservation of life interests.

Conjecture that in some cases the land held by "folkright" may have been surrendered to the King, in order that the owner might receive the land under a new tenure, with power of alienation.

like the domains of the secular Lords, the Prelates sending forth their vassals to the wars, and contributing their due proportion to the Treasury of the Sovereign.

The sources, from whence the munificent donations of the Anglo-Saxon Kings were derived, seem to have been two-fold: as the first, we may reckon the demesne lands, to which the Saxon Kings had succeeded in the right of the British Reguli. The second is more obscurely indicated; but it appears to have existed in the powers assumed by the King and the Witan, of granting a part of the common lands of a Township, together with the "Manentes," or "Bondes," who had settled upon the appropriated tenements, and that, in such case, the grant was a transfer of the superiority; by which means, each portion so severed became a new Township. Ethelwulf's grants were not always made directly to the Church; but the land being assigned, in the first instance, to the "Minister" or "Thane," with the power of naming his "heir," an expression which must be understood according to the Roman and not the English law; the grantee of the Crown then transferred the property to the Church, either by a donation, or by his will. Thus, in the instance quoted from the muniments of Rochester^a, the Thane—perhaps a married Clerk, for the "Mass-Thane"¹ and the "World-Thane" equally bore the same title—bequeaths the land to his wife, "to use for all her days," with the reversion to the Cathedral. There may have been an implied condition in the grants of Ethelwulf, that the first donor should execute the pious intention which is specified in the preamble; and, compared with the permanent interest of the ecclesiastical corporation, the life-estate may have appeared to be of little import. But conveyances, made by grant from the King to the Thane, and from the Thane to the Church, were very frequently in use: and this mode of transfer was probably the result of some incident of tenure; possibly the land was originally held by "folkright," and then not susceptible of alienation from the heir, and the owner, by surrendering it to the King, and taking back a new estate, acquired a power of disposition which did not exist before.

Adilberga², whilst her husband, Ethelbert, was still a heathen, had already re-established the deserted Church of Saint Martin, situated to the east of the City of Canterbury, and the hymn and the prayer were again heard within its re-consecrated walls.

^a Textus Roffensis, p. 102.

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Part I.
Ch. V.

Laws of Edgar and Canute, allowing the appropriation of tithes to new parish churches, but prohibiting such appropriation to domestic chapels.

century describing the exemptions of the Clergy, as well as their liabilities, almost in the language of the Parliamentary subsidies^a. The Canons of Egbert were promulgated only for the province of York, or, in other words, for the Kingdom of Northumbria; but it is probable that this was the law throughout England, until it was modified by Edgar and Canute^b, whose statutes allowed the Thane to endow a church, situate upon his Bocland, with one-third of the tithes, if a burial-ground was annexed thereto; but if it had not a burial-ground, then he was to continue to pay tithes to the Mother-church, and to provide for the Priest out of the remaining nine parts. These regulations seem to relate respectively to the foundation of new parish churches and of new private oratories. On the creation of a new Manor, by severing it from a larger Township, it would naturally become expedient that the inhabitants of the subdivision should have a place of worship of their own; and the desire, that the civil and ecclesiastical authorities should be concurrent, would incline the "Landlord" to endow the new foundation, a power which was thus allowed, with some attention to the rights of the existing incumbent. In the second case, while the law licensed the Noble to found a private oratory, it prevented him from bestowing the wages of the parish-priest upon a domestic Chaplain.

Continental Clergy, governed by the Roman law, the "Barbarian" losing his national law by ordination.

In the Carlovingian empire, the Ecclesiastics were universally governed by the Roman law. When the Frank received holy orders, he ceased to be subjected to the jurisprudence of his ancestors. The Salic or Ripuarian customs no longer protected or coerced him. He cut off his long hair, the mark of freedom and nobility; the penalty of excommunication was denounced against the Clerk who refused to comply with the Canon; and the clerical tonsure was the outward sign of the alteration of his civil rights, consequent upon the adoption of the servant of the altar into a new community^c. The written jurisprudence of the Theodosian Code¹, or of those extracts and abridgments which supplied its place, became the personal law of the Priest. This change, however, was not in consequence of any subordination

^a Grant of the ninth, 25 Ed. I.; Parliamentary Writs, vol. i. p. 62, No. 42, &c.

^b Edgar, I. § 11. Canute, I. § 11.

^c Dubos, *Établissement de la Monarchie Française dans les Gaules*, vol. iv. p. 407.

to the Bishop of Rome; but because the main body of the Clergy was first composed of the ancient inhabitants of the country, of those individuals who possessed the rights of Roman Citizenship, and, by their birthright, were entitled to be judged accordingly; and when others, of Barbaric race, were gradually aggregated to the Roman Hierarchy, it seemed to be reasonable that all the members of the Priesthood should be governed by one jurisprudence, in respect of its civil rights, though not by reason of their connexion or communion with the Roman See. Amongst the Anglo-Saxons, where the old succession was entirely interrupted, this consequence did not take place; and the Clerk and the layman were alike governed by one code, and subject only to one jurisprudence, except only as to disputes between the priesthood; which, in conformity with the ancient Canons, it was thought more seemly to refer to an ecclesiastical tribunal. But, whatever may have been the extent of this internal jurisdiction, the claims of clerical privilege and immunity, which, in after times, were arrayed so proudly against the secular authorities, did not exist. The Bishop was deprived by the authority of the Great Council of the Nation; and the Priest who had offended against the law was degraded from his Order, surrendered into the hands of justice, and condemned to expiate his crime by the ignominious punishment which awaited the meanest offender^a. Yet, notwithstanding this rigid justice, the Clergy enjoyed unbounded reverence and respect. The Anglo-Saxons placed a most extraordinary degree of confidence in the Clergy, when they were called upon to give that species of testimony, which, as we have before noticed, was resorted to, when direct evidence could not be obtained; the compurgatory oaths of the Priest, the Deacon and the Monk, if the latter belonged to an inferior order of the hierarchy, being respectively equal to those of one hundred and twenty, of sixty, and of thirty Ceorls or Bondes, and probably of the equivalent numbers of Eorls and Sithcund men. A Bishop had equal dignity in the State with an Ealdorman or an Earl, his "word," or testimony, like that of the King, was conclusive in itself, and did not require to be supported by the oaths of Compurgators^b; and the Mass-Thane, the servant of the altar, had the same honour and degree, as the

Part I.
Ch. V.

Anglo-Saxon Clergy retain their national laws, and are subjected to the secular tribunals.

Rank of the Clergy: value of their compurgatory oaths (see above, p. 10).

Bishops ranked with Ealdormen; Mass-Thanes (i.e. Priests) with World-Thanes (i.e. Knights).

^a Alfred, § 21. Hist. Eliensis, p. 482.

^b Dialogus Egberti; Concilia, vol. i. p. 82. Alfred, § 15. Wihtræd, § 10.

Part I. World-Thane, with whom he was ranked in the scale of the
Ch. V. Community.

Privileges
of the ec-
clesiastical
edifices.

Civil im-
munities
granted
to the
possessions
of the
Clergy.

Origin of
the Palatine
jurisdiction
of Ely.

Privileges
granted to
the Town-
ships, &c.
of the
Clergy,
which gave
them a
separate
jurisdiction,
in the nature
of those
enjoyed by
the King's
Burghs.

Temporali-
ties of Dur-
ham created
by a dis-
member-
ment of
Northum-
bria. That
Kingdom
divided
into Earl-
doms, about
A.D. 950.

Affording a sanctuary to offenders, the sacred edifices them-
selves were not to be profaned by force or violence. Any offence
within the walls of the head Church or Cathedral was visited with
that increase of penalty or punishment, which resulted from
breaking or infringing the "Peace of the King"; homicide, there
committed, was inexpiable, no blood-fine could be accepted; and
unless the King pardoned the offence, the criminal forfeited life
and land. In many places it is observed in the ancient Custumal,
that the Bishop has the privilege of the Hundred^a; that is to say,
the Bishop's Township was, like the King's Town, separated from
the Hundred, and governed by a Court of its own, equivalent in
jurisdiction. This was also the case with most of the lands of
the great monasteries; not as an ecclesiastical immunity, but
as a favour, specially conceded to the Church by the charter of
the King. Edgar thus created the Palatine privileges of Ely, by
granting, though not gratuitously, to the monastery, all the rights
of the Crown within the two Hundreds of the Isle, and that no
one within its bounds should have any jurisdiction except St.
Etheldreda^{b1}. Sometimes these special exemptions resulted from
the clause, that the lands should not be subject to the summons
or exactions of the King, the Earl, the Sheriff, or the Hundred;
sometimes by bestowing, in express terms, the power of taking
cognizance of those offences which peculiarly belonged to the
King's Court, and for which he received the fines. All these
various privileges, of which the general effect was to concentrate
the general powers of jurisdiction, have their parallel in the
franchises of the King's Burghs and Demesnes, and, like the latter,
they afterwards became the foundations of the rights of many of
our municipal corporations. The more important privileges of
Durham resulted from the dismemberment of the Kingdom of
Northumbria^c. Oslac became the Earl of modern Yorkshire
and its dependencies. Oswulph obtained the territory north of
the Tyne; and the domain between the Tyne and the Tees, then
confirmed to St. Cuthbert, however it may have been obtained,
was held by the Bishop in dependence upon the Crown; yet with

^a Alfred, § 5. Edward and Guthrum, § 1. Canute, I. §§ 2 and 3.
Textus Roffensis, p. 46.

^b Liber Eliensis, p. 491.

^c Chronicle of Durham; Monasticon, vol. i. p. 235.

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Part I
Ch. V.

Rochester
plundered
by Godwin.
Leofric
invades the
possessions
of Worcester.

Leofric
restores a
portion of
the land,
and pro-
mises that
the rest
should
revert to
the See
after his
decease;
his
widow,
Godiva,
bargains for
the pos-
session of
the lands,
which,
after her
death, were
seized by
Edwin and
Morcar.

Spoliations
of Worcester
recorded by
Hemingsus.

William the
Conqueror
continues
these
spoliations.

lords. Ely, Croyland, Medeshamstede or Peterborough, Peykirk, and Bardney^a, were thus divided by Beorred amongst his Nobles, his Ealdormen, his Thanen, his Banner-bearers and his Stipendiaries or Soldiers; and if Edgar had not sedulously sought out the old charters, which identified the possessions of other monasteries, the "Magnates," who occupied the lands, would have retained them without challenge or impeachment. In the eleventh century, these spoliations were renewed. Rochester had to deplore the robberies of Earl Godwin^b. Leofric plundered Worcester with equal recklessness. The Earl of Mercia not only invaded the property of the See himself, but encouraged and supported his followers in similar acts of rapine. Repenting his misdeeds, it is true, he restored a portion of the Church-lands; and the promise, that the other Manors which he had usurped should revert to the monastery after his death, seems to have satisfied his conscience. Godiva, his widow, in declaring her intention to fulfil the wishes of her husband, again bargained with the Monks for the possession of the lands during her life, after which it was agreed that they should revert to the See; but Edwin and Morcar seized the property of Godiva; the right of the Church was for ever lost; and the prayers addressed to St. Oswald¹, the patron and advocate of Worcester, were of little avail in inducing the Knights of the Earl of Hereford to restore the Townships of which they had been enfeoffed by his lawless liberality. The possessions "given to St. Mary by the devout, "and afterwards taken away by the fraud, force and violence, "of the wicked," are carefully registered in the Chartulary of Worcester; and had the other churches possessed a scribe endowed with the diligence of Hemingus², they would probably have exhibited a similar catalogue of spoliations. William the Conqueror had, therefore, at least a precedent for his violations. Pursuing the same system, he did not scruple to grant the lands, even of Glastonbury, to the Norman soldiery; and when a tardy restitution of parts and parcels of the property could be obtained, the charter carefully confirmed the donations which had been made to his feudal followers^c. These events, and they were

^a *Historia Eliensis*, 464. *Ingulphus*, 25. This is one of the passages in which the agreement of Ingulphus with other authorities, gives him an unusual degree of credibility.

^b Thorpe, *Registrum Roffense*, p. 525.

^c *Malmesburiensis, de Antiq. Glaston. Ecclesiæ*, p. 331. Hemingi

repeated, more or less, in every country in Europe, shew that the influence of the Hierarchy has been much overrated. They were never certain of their political existence. The sword was always suspended over their heads, until they united their interests with the worldly Powers. All the imprecations denounced against the invaders of the lands of the Church, the awful curses which resounded in the charter, the threats of everlasting punishment, were insufficient to protect the tempting domains from the grasp of the despoiler. This insecurity must be considered as one of the main causes of the crooked policy of the Papal See. The Clergy resorted to arts and wiles, as their defence against a turbulent Aristocracy or a rapacious Sovereign: the cunning of the weak was opposed to the arms of the strong. For, from the age of Charles Martel, down to the reigns of Henry, or Joseph, or Napoleon, when could the Pontiff or the Priest retain any possessions which the King and the Soldier were determined to acquire?

Part I.
Ch. V.

The pre-eminence of the Primate of all England over the Churches of Wales has been much contested. By the secular authority of Ethelbert, the Bishops of the Britons were summoned to meet St. Augustine, at that Oak which long afterwards bore his name^a; and their submission to the mandate of the King of Kent, proves, that the dominions still held by the British Reguli were subject to the imperial supremacy of the Bretwalda. Upon this right of Monarchy, it is probable that Gregory grounded the Bull which gave to Augustine the Primacy of the Britons; for it must be recollected, that the ecclesiastical jurisdictions always followed the temporal Sovereignty, and were created by it; and the assignment of one Metropolitan to London or Canterbury, and of the other to the capital of the Kingdom of Northumbria, resulted, not from the geographical, but from the political division of the island. The refusal of the British Prelates to obey the Roman Legate, was accompanied by an attempt to regain the national independence; but the Anglo-Saxons ultimately asserted

Primacy of
Canterbury
over the
British
Bishops
granted by
St. Gregory
to St.
Augustine,
in conse-
quence of
the temporal
Sovereignty
of Ethelbert

Cartularium, p. 263. Carta Will. Conquestoris de Possessionibus Ecclesiæ restituendis; Monasticon, N.E., vol. i. p. 478. [Malmesbury, On the Antiquities of the Church of Glastonbury, p. 331. Heming's Chartulary, p. 263. Charter of William the Conqueror for the restoration of the possessions of the Church.]

^a *Augustinaes Ac*, probably in Worcestershire. See Hist. Eccl., lib. ii. cap. 2; and Camden, p. 629.

Part I.
Ch. V.

Picts and Scots not subjected to the authority of the Archbishop of York. Lowlands of Scotland, south of the Firths of Forth and Clyde, part of the ancient Kingdom of Northumbria.

Lothian included in the Bishopric of Lindisfarne, until the erection of the Bishopric of St. Andrew's

Bishop of Candida Casa, Whithern, or Galloway, acknowledges the Primacy of York.

their superiority. Oudoceus¹ of Llandaff received his consecration from St. Augustine^a. And the obedience of his successors to the See of Canterbury cannot be disputed. Amongst the Picts and the Gael, the Anglo-Saxon Prelates had no authority; they were considered as strangers in nation, and almost in creed. But a considerable portion of modern Scotland was included in the Province of York; the Firths of Forth and Clyde constituted the boundaries of the State of Northumbria, and of the Bishopric of Lindisfarne: and the town of Edwinesburgh or Edinburgh, together with many other domains, had been bestowed upon the See by the bounty of Ceolwulf². The ancient Bishops of the Scots, co-ordinate in rank, and without any distinction of Province or See, equally exercised their pastoral functions in every part of the land which was peopled by their countrymen. And when Lothian was separated from the Crown of Northumbria, these Prelates descended into the Saxon Lowlands, whose connexion with Lindisfarne had been destroyed. Malcolm Canmore first divided his Kingdom into dioceses, and the Bishop of St. Andrew's acquired the rights of St. Cuthbert beyond the Tweed: yet they were not forgotten; and Ralph Flambard endeavoured, though in vain, to re-assert his privileges over the less-distant Teviotdale^b. Whithern, or "Candida Casa," was the seat of another Bishopric, founded by Ninian³, and which extended over that part of Galloway which was subjected or tributary to the Anglo-Saxons of Northumbria. Exposed to the incessant invasions of the Scots and the Picts, this "extreme region of England," as it is termed by Malmesbury, seems to have been separated from Northumbria in the period of anarchy which succeeded to the assassination of Ethelred⁴; the Bishopric became extinct; and the inhabitants of the district are thought to have submitted to the spiritual jurisdiction of the Norwegian Prelate of Man and the Isles. When the See was revived in the eleventh century, the Bishop elect, Gilla Aldan, was admonished to place himself under the archiepiscopal authority of the Primate of England. Gilla Aldan obeyed; and the attendance of the Prelates of "Candida Casa,"

^a Usher, *Britannicarum Ecclesiarum Antiquitates*, p. 46.

^b Bede, *Hist. Eccl.*, lib. iv. c. 26. Sim. Dunelm., pp. 69, 139. Hoveden, p. 418. *Monachus Dunelmensis de Episcopis Dunelmensibus*, *Anglia Sacra*, vol. i. p. 708. Will. Malm. *de Gestis Pontificum*, lib. iii. p. 155. Spottiswood, *History of the Church of Scotland*, pp. 4, 29. Chalmers, *Caledonia*, pp. 329, 427, 674.

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Part I.
Ch. V.

in which
many laws,
relating to
the Church,
were en-
acted.
Proceedings
of the
Council of
Cealchythe,
A.D. 785.

Kingdoms: the temporal statutes usually stating, though with some varieties of expression, the consent of the Bishops, the Abbots, and the servants of the Lord; and the ecclesiastical canons being enacted at the same time with the statutes relating to general government and policy. The proceedings of the Council of Cealchythe^a, which have been accurately preserved, throw great light upon the constitution of these assemblies. George, Bishop of Ostia, and Theophylact, Bishop of Tuderta, opened their mission, by presenting the Papal Bull to Offa, King of Mercia, and Cenwulf, King of Wessex; and the Sovereigns, with the advice of their Bishops and Ealdormen, allowed the first-named of the Legates to meet the Clergy of Mercia and the Britons, then subjected to the English power. Theophylact proceeded to the Court of Athelwold, King of Northumbria, bearing with him a "Capitular," containing the canons and regulations adapted to the state of the country, which he expounded to the Sovereign, the Prelates, and the Witan,—Dukes and Senators, Judges, "Optimates," and Nobles,—whose signatures testified their consent, as well as that of the people, who attended during the discussions. Sanctioned, in this manner, by the Supreme Assembly of Northumbria, the Decree was entrusted to the Legate, to the Ambassadors or Messengers of Athelwold, and to the Archbishop of York, who bore it to the Supreme Council of Mercia. Offa, and the "Senators" of his land, the Archbishop of Canterbury, and the other Prelates, were assembled to meet them; in their presence, the Chapters were read both in Latin and in Anglo-Saxon, "in order that all might understand"; and the acceptance of the canons, by the King, Prelates, and "Principes," one of whom, "Brorda," bore the special title of Prince, or Ealdorman of the Mercians^b, ratified the law^c. The canons of the Clergy, therefore, had no avail, unless confirmed by the secular authorities; and the Precepts of the Roman See derived their legal effect from the will of the Sovereigns of England.

In the earlier ages of the Anglo-Saxon history, the Clergy,

^a The modern name of this place, which, in the proceedings of the Councils, is styled "Locus celeberrimus," is not ascertained¹.

^b Concilia, vol. i. pp. 145, 151.

^c Anno 799. Brorda, Princeps Merciorum, qui et Hildegils vocatur, defunctus est, Sim. Dunelm., p. 10. [Brorda, Prince of the Mercians, who is also called Hildegils, died.]

and perhaps the people, may have been occasionally allowed to concur in the choice of their Pastor; but the instances of such elections are far less numerous than those which might be adduced to shew that the nomination was vested in the Sovereign. This power, indicated in the earliest age of Anglo-Saxon Christianity, was so fully established after the Danish invasion, as to leave no doubt of the ample extent of the ecclesiastical authority exercised by the Anglo-Saxon Kings. When Edward the Confessor notified the promotion of a Prelate, it was by the promulgation of a Charter, which stated that he had given and granted the Bishopric with all that thereto belonged; not the slightest allusion is made to the will of the Pontiff, or the postulation of the Clergy. He declares his will and pleasure, and in terms more than emulating those employed by our eighth Henry in the plenitude of his power^a. The same royal authority controlled the other branches of ecclesiastical promotion: the Abbot was elected by the King's consent, he resigned his monastery in favour of a successor, by the King's license^b; and when the Bishop wished to remove his See, he applied in the first instance, not to the Pope, but to the King^c.

Part I
Ch. V.

Bishops,
nominated
by the King.

Edward the
Confessor
grants the
Bishoprics
by "gewrit
and in-
siegel";
i.e. writ,
Charter, or
Patent under
seal.

This ecclesiastical supremacy, though it evinces the very limited authority of the Bishop of Rome, was neither salutary nor efficient. The peculation so loudly laid to the charge of the early Anglo-Norman Monarchs, the simoniacal sale of the dignities of the Church, existed to the most deplorable extent amongst the Anglo-Saxons; and the gifts by which Wini¹ obtained the Bishopric of London from Wulfere, King of Mercia, testify both the value of the See, and the antiquity of such violations of trust and duty^d. Though the same corruption cannot be brought home to Edgar himself, yet the "Principes" of his Court were allowed to barter his ecclesiastical patronage for their own lucre and profit^e. And when Edsi², the Archbishop of Canterbury, vacated his See, he consecrated his successor with the utmost haste and the greatest secrecy, "lest some other

Simoniacal
presenta-
tions.

Wini buys
the Bishop-
ric of Lon-
don from
Wulfere,
King of
Mercia,
A.D. 666.
Patronage
of the
"Prin-
cipes" of
Edgar.

^a Hicke, Gram. Anglo-Saxonica, pp. 160, 161.

^b Sax. Chron., A.D. 1044.

^c Will. Malm., de Gestis Pontificum, lib. ii. p. 142. [Malmesbury, Acts of the Bishops.]

^d Hist. Eccl., lib. iii. c. 7.

^e Osbernus in Vita Odonis Archiepiscopi Cantuariensis; Anglia Sacra, vol. i. p. 85. [Osbern in the life of Odo, Archbishop of Canterbury.]

Part I.
Ch. V.

Edward the
Confessor
connives at
abuses.

Adventures
of Sparha-
foc, Abbot
of Abingdon,
and after-
wards
Bishop of
London,
1048-50.

man should beg or buy" the desirable preferment^a. Edward the Confessor, who was then reigning, exercised his powers of appointment with the advice or concurrence of the Witenagemot, and his character may clear him from any participation in these disgraceful bargains; but, however uninfluenced by sordid motives, this weak and wavering Sovereign connived at the most flagrant abuses. Archbishop Aldred was thus allowed to keep the Abbey of Winchcombe "in his own hand" until the Monks submitted to his will, and elected for the Abbot, Godric, the son of Godman, the King's Chaplain^b. Sanctioning such outrages, he yielded with the utmost facility to the flatteries of the unworthy; and even the monkish chronicler does not attempt to veil or palliate the consequences of his errors. "Edward the King," it is stated, "gave the Bishopric which Ednoth had, to Ulf, his Priest, but it ill-betided him; and he was driven from it, because he did nought like a Bishop therein, so that it shameth us now to say more."^c Of the adventures and character of Sparhafoc, another of the Confessor's favourites, further details are preserved^d. This Monk of St. Edmunds, who, like St. Dunstan, was eminent for his skill, as a cunning worker of metals, was first appointed to the Abbacy of Abingdon by the Confessor, and afterwards obtained a grant of the Bishopric of London; at the same time that the Abbey, which he vacated, was bestowed upon "Rothulf, the King's kinsman." A fertile Manor belonging to Abingdon, and granted to Stigand, Bishop of Winchester, facilitated the nomination of Sparhafoc to the vacant See; but on applying to the Metropolitan for confirmation, the latter refused obedience to the King's commands, alleging that the Pope had forbidden him. A second demand received the same answer. "And then went the Abbot to London, and sat at the Bishopric which the King had given him, with his full leave, all the Summer and all the Autumn." Though thus enthroned by the King's power, he did not long retain his station. In the following year, we find that "Abbot

^a Sax. Chron., A.D. 1044, p. 214.

^b Flor. Wigorn., A.D. 1053, p. 626.

^c Sax. Chron., A.D. 1039, p. 223.

^d Sax. Chron., A.D. 1050, 1051, pp. 224, 225, 232. Flor. Wigorn., A.D. 1050, p. 626. *Historia Coenobii Abendonensis*, A.D. 1048, 1050; *Anglia Sacra*, vol. i. p. 167. *Liber Abendonensis*; MS. Cott. Claudius B vi. f. 113.

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Part I.
Ch. V.

Eleven of
the King's
Capellani,
together
with the
Twelfth, the
Cancellarius,
subscribing
a royal
Charter.

Chancellors
of the
Gothic and
Frankish
Sovereigns.

Edgar ap-
propriates
the Chan-
cellorship to

as Chancellor, confirm a Charter, which, though executed after the Conquest, is in every respect conformable to the usages of Anglo-Saxon diplomacy^a. These titles and officers had been borrowed from the more polished nations of the Continent. Originally the confidential secretary of the Prætor, the Chancellor rose to a corresponding station in the Palace, and his rank in the court of the Anglo-Saxon Monarch can be understood from the Registers of Theodoric of Verona. To his fidelity was entrusted the custody of the royal "Consistory." He was the receiver of the petitions or requests which the People addressed to their Chief Magistrate, the King, and the suppliant, who approached the royal Person, was conducted to the presence chamber by the Chancellor^b. Such also was the "Summus Cancellarius," or High Chancellor of the Frankish Sovereigns, who transmitted the royal capitularies to the Counts of the Empire^c, and acted as the medium of communication between the monarch and his judicial officers. Amongst other functions of a mixed nature, but principally relating to the dispensation of mercy, grace and favour, the "Summus Cancellarius" was the President of the Board or College of "prudent, intelligent and faithful men," the "Palatine Clerks," or Chaplains, before mentioned, who were enjoined to write or engross the King's writs or precepts "without exacting any inordinate fees"^d: a description nearly agreeing with that which Fleta has afforded of the King's Sworn Clerks in the thirteenth century^e. Besides the Chief, or High Chancellor, it is ascertained from the capitularies, as well as from the Ripuarian law, that there was a Chancellor in every "Pagus," who was merely a notary or scribe, and whose signature authenticated private deeds or charters^f. Edgar appropriated

^a Charter of Will. Rufus, granting the Abbey of St. Peter, at Bath, to John, Bishop of Somerset or Wells, A.D. 1088; Hickes, Dissert. Epist. p. 47.

^b Cassiodori Variorum lib. xi., formul. 6. Cod. Theodos. lib. i. tit. xii., de Assessoribus domesticis et Cancellariis; and the Commentary of Gothofredus.

^c Ludovici Pii Capit., A.D. 823.

^d Hincmari Epistola de ordine Palatii, § 10. [The letter of Hincmar on the administration of the Palace.] See also Du Cange, s.v. *Capella* and *Capellani*, and Part II., *Proofs and Illustrations*, p. 274.

^e Fleta, lib. ii. cap. 13, de Cancellaria.

^f Caroli Magni Capitulare Tertium, A.D. 903, § 24. Capit. lib. iv. cap. 43.

the office of the Chancellorship of his court to the Abbots of Ely, St. Augustine's, and Glastonbury. Each of these Prelates was to exercise his office during four months of the year, an employment which necessarily compelled him to follow the person of the King^a. The concession, which restricted the Monarch in the choice of his Ministers, did not long subsist. Under Canute, we find five "Secretaries," one of whom, Etheric, Bishop of Winchester, appears to be the individual corresponding to the Chancellor of Edgar; and he is noticed as accompanying the Monarch when, according to his custom, he was making his judicial Eyre through the Kingdoms which he ruled^b: and Leofric, the King's Priest, a Briton by birth, but educated in Lorraine, became the Chancellor of the Confessor, and the first Bishop of Exeter, to which city the See of Crediton, or, more properly, the Bishopric of the Britons of the West, was transferred^c. Could the authenticity of the Legend of Thurkettle¹ be maintained, the rank and dignity of the Anglo-Saxon Chancellor would not rest upon conjecture^d; but we need not dwell upon this dubious authority, since from the earliest period when the organization of the government becomes intelligible, we find that the Chancellor was considered as an official member of the King's Court, whilst the King's Clerks or Chaplains were equally constituted its constant attendants: and a situation was thus given in the supreme Tribunal to a small and select body of the Clergy, not in respect of their order, or of their possessions, but solely for their skill in those acquirements, which were required for the administration of justice. The art of writing was almost wholly confined to the Priesthood, and the King's Clerks, therefore, naturally became his Scribes. The Royal Charters and Muniments, treasured amongst the relics, were entrusted to their care; and upon them also devolved the task of composing the Writs or Mandates which emanated from the King's Court, the Supreme Remedial Tribunal. Hence arose the Chancery, the "Officina Brevium," whose functions, when sanctioned by usage, became a barrier to the Prerogative of the Crown in some of its most oppressive branches, and the means of effecting great changes

**Part I.
Ch. V.**

the Abbots of Ely, St. Augustine's, and Glastonbury each taking his turn for four months of the year. The Five Secretaries or Chancellors of Canute.

Leofric, Bishop of Exeter, Chancellor of Edward the Confessor.

The King's Clerks, acting as his Scribes, became a permanent branch of his Court, and keepers of the Records deposited in the Royal Chapel (see above, p. 117), being the establishment afterwards called the Chancery.

^a Hist. Eliensis, p. 501.

^b Hist. Ramesiensis, p. 441.

^c Sax. Chron., A.D. 1046, p. 216. Flor. Wigorn., p. 625. Sim. Dunelm, p. 180. Will. Malm., de Gestis Pontificum, lib. ii. p. 145.

^d Ingulphus.

Part I. in the general system of the law. So many important events in
Ch. V. the history of the Constitution resulted from the existence of
this ecclesiastical ministry, that it is interesting to trace it in
its remotest origin.

The canons and exhortations addressed to the Anglo-Saxon Clergy, during the tenth and eleventh centuries, testify their failings. Inebriety, sloth, ignorance and debauchery call forth the censures and admonitions of those Prelates, who were, perhaps, scarcely less reprehensible than the inferior orders of the hierarchy. The power assumed by the Sovereigns of nominating to the Episcopal office was much abused, and no competent authority existed which might have checked the degeneracy of the Clergy. The contest between the head of the Church and the head of the State, was, in effect, merely a quarrel for the spoil; and whether the good red gold was paid for the Pallium in the Vatican at Rome, or in the Treasury at Winchester, for the "writ and seal," the best and dearest interests of religion were equally sacrificed to avarice and cupidity.

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Part I.
Ch. VI.

to submit to the judgment of the Hundred^a; a fourth day of appearance was to be appointed by the Shire; and if the defendant still continued contumacious, the Complainant had then liberty to seize the property of his adversary wherever he could find it, and at his discretion. When the King's Courts were fully established, the power of distress, as the enforcement of civil process, was properly assumed by the Tribunal; and the Sheriff, acting by virtue of the King's writ, exercised the function which it was no longer expedient to vest in an interested individual, who might pursue his demand harshly and vexatiously, and perhaps even without any real foundation for his claim. Grounded thus upon the Anglo-Saxon or Teutonic law, the Anglo-Norman jurisprudence first required the defendant to appear by the lawful summons of the officer, no arrest of the person being ever allowed at common law, except when justified by a breach of the peace, or a contempt of the King's authority. If he neglected the warning, then those mandates issued, by virtue whereof his chattels were seized as the "pledges" that he would underlye the law, the writ of *Distringas*^b being, as I have before observed in a similar instance, only the Teutonic law clothed in a more definite form. But there are still cases in which the law "allows a man to be his own avenger, or to minister redress to himself"^c; the most extensive and best known, being when distress is made for rent arrear. Until the common law was greatly altered by modern statutes^d, a distress corresponded to the Anglo-Saxon procedure; for the property was only taken as a pledge or security that the Tenant would submit to his Lord, and perform his service; and the summary power of sale, now exercised, has been created by the recent statute law, with more attention to the profit of the rich, than to the rights which were secured to the poor by our ancient jurisprudence.

When blood had been shed, and the foe had fallen, the Anglo-Saxon law allowed an ample power of vengeance. It was by raising the Feud, that the kinsman sought to retaliate upon the enemy. Septs and Tribes were arrayed against each other, and the vassal fought beneath the guidance of his Lord. The short

Process of the Courts of common law, by summons and *distringas*, grounded upon the Anglo-Saxon law.

(See above, p. 115.)

The Landlord's power of distressing for rent, derived from the same source.

Deadly feuds allowed by the Anglo-Saxons.

^a Canute, II. § 18. Laws of William the Conqueror, XLIV. Robertson, View, p. 236. See Part II., *Proofs and Illustrations*, p. 185.

^b 3 Blackstone, 6.

^c Blackstone, 280. App. xvii.

^d 2 W. and M., c. 5. 8 Anne, c. 14. 4 Geo. II., c. 28. 11 Geo. II., c. 19. See Blackstone, vol. iii. pp. 14, 15.

terms of truce prescribed by the legislator, only afforded breathing time to the offender, without protecting him from the assailants^a; and the fines imposed upon the armed troop who killed the guiltless man, testify that if a crime had been imputed to him the deed would have been a justifiable homicide^b. But the right of retributive aggression might be limited by the weakness of the aggrieved party; destitute of the support of his kindred, he might be unable to pursue his adversary: the State was then bound to interfere, and the Ealdorman, or even the King, might be required to supply that strength which could not be exerted by the individual.

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If the general authority by which justice ought to be administered is so inefficient, that it cannot easily strike the guilty, or if such general authority does not exist, past offences are redressed, and future injuries prevented, by rendering the community to which the individual belongs answerable for the acts of the transgressors, who, amenable only to their own immediate superiors, would otherwise escape the punishment due to their crimes. Should a Syrian village be plundered by a band of Bedouins, who acknowledge a vague submission to the successor of the Caliph, but without allowing him any direct interference in their policy, the Pacha will make reprisals upon the Tribe, and thus compel the Emir to produce the robbers, or to restore the spoil. International wars are best justified upon the plea, that the want of a common jurisdiction leaves no other mode of obtaining justice except by an appeal to force; and when one sovereign issues his orders to waste and destroy the property of the subjects of another, he inflicts these sufferings upon the innocent, because the dispute cannot be ended by the decree of a tribunal possessing a coercive and pacific authority over the Chief of the opponent State, who is only to be reached through the inconveniences which he thus indirectly sustains. The power given to the Conservators of Magna Charta, of compelling King John to observe its provisions, by attacking and distraining his possessions, was perhaps less derogatory to his ideas of royal dignity, than a formal submission to the Supreme Council of the realm. Considering, therefore, the Anglo-Saxon Commonwealth as the union of jurisdictions originally independent, and confederated, rather than incorporated, under one government, we shall find that no considerable portions of its laws consist of the expedients by which

Reprisals,
the mode
of obtaining
justice when
the law
cannot reach
the offending
or guilty
party.

^a Alfred, § 38.

^b Alfred, § 26.

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the responsibility of the members of the commonwealth was either enforced or superseded; enforced, when they were compelled to employ their powers in obedience to the government of the state; superseded, when their authority was transferred to the general legislature, and the regular administration of the law substituted for the rude and uncoerced exercise of natural justice.

As the first government arose from parental authority, so the most obvious liability resulted from the ties of relationship. It was the ancient custom of the Celts, that every Head of every Sept, and every Chief of every Clan, should be accountable for any one of their Sept, when charged with any crime^a; and until Ireland was fully reduced into shire ground, the statute laws of the English Government continued to enforce this responsibility^b. Under the Anglo-Saxons, whose policy was less patriarchal, there was no Ceancinnith; but the responsibility was attached to the "Maegth," who, if they did not discharge the legal fines, in cases where the individual could not make compensation from his own means, were bound to surrender him into slavery^c. A Ceorl or Litus who killed an individual of the Earl-kind or noble rank, drew down a heavy punishment upon his lineage; the blood of six of the subject-caste might be required, according to the Anglo-Saxon law, to compensate for the treason committed against the majesty of the sovereign people, whilst the more rigorous continental code demanded the sacrifice of seven^d. The thief, who, under the Code of Athelstane, might be thus redeemed from death for the first offence, was delivered into the custody of his kindred, who were ever afterwards the special pledges for his good conduct^e. And if a "landless-man," discharging himself from the service or commendation of his Lord, was received or harboured by his Sept, they were equally under the obligation of "leading him to folkright," if he were guilty of a crime, or of making full compensation for the offence if he absconded^f. Nor were these provisions unreasonable, according to the spirit of the Anglo-Saxon jurisprudence,

^a Spenser, A View of the State of Ireland.

^b An Act that five persons of the best and eldest of every *nation* amongst the *Irishrie* shall bring in all the idle persons of their surname to be justified by law. 11 Eliz., c. 4.

^c Edward the Elder, § 9.

^d LL. Saxonum, Tit. 2, § 5. Anglo-Saxon Customs.

^e Athelstane, II. § 1.

^f Athelstane, II. § 8.

(See above,
p. 57.)
Responsi-
bility of the
"Maegth,"
or Kindred,

(See above,
p. 10.)

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but more probably resulting from a law which placed all strangers under the "Mund," or protection of the King.

statute^a, having been a great source of oppression to the people. Whilst the existence of the custom is fully proved, we may be permitted to doubt the traditionary accounts of its origin. In the statutes of the Danish King no mention can be found of this peculiar penalty; and I would rather view it as grounded upon the custom which placed the stranger under the immediate safeguard of the King, and, as such, entitled the Monarch to a considerable share of the "Were" or blood-fine^b. The "murdrum" imposed or confirmed by the laws of William, was incurred when any Freeman was killed, and the men of the "Visne"¹ failed to apprehend the criminal within one week after the event^c; and the presentment of "Englischerie," as practised in later periods, seems to have been the result of a confused application of the old laws, enforced under monarchs who sought every occasion of increasing their revenues.

Wealth of ancient Nations principally consisting of flocks and herds, as indicated by the etymologies of "pecunia" from "pecus," "Feoh" and "Chattel" (see below, note d),

Flocks and herds constituted the chief wealth of ancient nations; the common speech of the Roman, the Norman and the Anglo-Saxon discloses the class and character of the objects which were first considered as "Chattels" or "pecuniary" property^d: and whilst the political economist vainly labours to define his abstract "Capital," the term, in its original signification,

^a 14 Ed. III. Stat. i. c. 4. "Presentment of Englischerie shall be clearly extirpate."

^b Ina, § 23. Canute, II. § 37.

^c Laws of William the Conqueror, XXII. Part II., *Proofs and Illustrations*, pp. 136, 173.

^d In the Anglo-Saxon, "Feoh" is used indiscriminately for both species of property, for beasts and for money. (See Lye.) The German "Vieh," retains only the primitive sense.

CAPITALE, CAPTALE dicitur bonum omne quod possidetur, præsertim vero bonorum species illa, quæ in pecudibus consistit, quam Forenses nostri *Catallum* vocant, voce a *Capitale* et *Captale* deducta. Nam *Capitum* vocabulo pecudes intelligi docemus infra: unde quicquid boni in armentis et pecudibus est, *Capitale*, *Captale* et *Catallum* appellatum est.

CAPUT dicitur quodcumque in recensione numerum efficit, sed præcipue usurpatur in armentis et gregibus. Hinc *Caput*, pro ipso animali, Du Cange.

[CAPITALE, CAPTALE is the name given to every kind of goods which we possess, but especially to that species of goods which consists of herds, which our men of the market call *Cattle*, a word derived from *Capitale* and *Captale*. For we shew below that by the word

merely results from the rude enumeration of the stock, by the heads of the animals of which it was composed. The Anglo-Saxon theft-laws relate almost wholly to the protection of cattle, and their general police was in great measure consequent upon the precautions adopted for the security of this species of property. For a system of practical law is generally established upon confined and narrow regulations, intended to attain peculiar objects, and afterwards applied to purposes never anticipated by the pristine legislator, and to which the laws are adapted by the expansion of society. Whenever the kine could be tracked into a district, the responsible parties were bound to shew the track by which the beasts had passed out of it. Were they unable to do so, the mark of the hoof was equivalent to the oath, by which a pursuer or plaintiff sustained his cause, and the burden of proof was immediately cast upon the defendants, who, unless they produced the thief, were liable to payment of the single value of the property. This was the law between Township and Township, between Hundred and Hundred; and also between Nation and Nation^a: and the compact between the Britons and the English on either side of the Exe¹, exhibits the first example of the law, which was retained without any alteration in the Highlands of Scotland from time immemorial. When stolen property could be traced within the district of any particular village, the inhabitants were bound to make good the loss to the injured party, unless they could shew the track of the cattle passing again without their territories^b. The Lord of the Anglo-Saxon Township was directed to appoint an officer, who was to assist in searching for the stolen cattle^c; and in each district, the "Gerefa" was enjoined to raise the power of his bailliwick, and to join in assisting the parties grieved, who, in the language of the border law, followed their lawful "trodd, with hue and cry and with hound and horn,"^d until the discovery of the offender.

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and hence the Anglo-Saxon laws of theft are principally adapted to the protection of cattle.

If the "Spor" or hoof marks of the stolen cattle could be tracked into an Anglo-Saxon district, the inhabitants were bound to track them out, or to pay the value.

Similar law prevailing between the Britons and Anglo-Saxons of the West; and also in the Scottish Highlands.

"heads," herds are meant; hence, whatever property consists of flocks and herds, is called *Capital, Captal* and *Cattle*.

CAPUT is used of any unit which makes up a total in counting, but is employed especially with reference to flocks and herds. Hence *Caput* is used for the animal itself.]

^a Devonian Compact, § 1. Athelstane, II. § 2. By-laws of the London Frithgild, Wilkins, p. 68.

^b Millar, English Government, vol. i. p. 194.

^c Edward, § 7.

^d Leges Marchiarum, p. 89.

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Warranty.

"Team,"
or Genera-
tion, i.e.
proof that
the cattle
were born
on the land
of the party
claiming
them.

"Fore-ath,"
or oath of
the pursuer,
supported by
one com-
purgator.

Rebutted by
the oath of
the
defender,
supported by
two com-
purgators.

Sales of
cattle, not
legal, unless
made in the
presence of
witnesses ;

Possession appeared to afford a colourable title. Judging from the general principles of the law, the intervention of a short space of time was sufficient to raise the presumption that the cattle had been lawfully acquired; and in such a case the holder was allowed to call in the warranty of the person from whom he had obtained the contested property. The warrantor might appeal to a second, and he, in his turn, to a third; but beyond the third, no warranty was allowed. In all the Teutonic laws, the doctrine of evidence perplexes the modern inquirer: for it was so familiar to the people, as to render any minute explanation entirely unnecessary in the law book; and the omission of the details upon which the system was founded will often prevent our viewing the theory in its real aspect, or developing its true meaning. It may be collected, however, that there were two modes by which the demand of the plaintiff might be established, or the possession of the defendant might be confirmed. Either party might prove that the animal in dispute had been reared by him from the birth. "Team,"^a or "Generation,"¹ was the name given to this conclusive proof, and it was applied equally to "men," that is to say, to Theowas, if they absented themselves from the domains of the Lord; and to his horses and to his oxen^b. On a claim being preferred, five "neighbours," indwellers of the same Township, or members of the same "Tithing," were named to the plaintiff, from whom he selected one to support him on his oath. He swore that his demand was according to law, and the compurgator swore that the oath of the principal was true and according to good conscience. If the possessor wished to vindicate his right, he rebutted the claim by his oath, confirmed by two compurgators, selected, as before, from an array of ten neighbours, a mode of trial which will be afterwards more fully explained. When the title was not established in the Anglo-Saxon Court by "Team," it was then to be made out, by shewing that the chattels were obtained by sale in due form of law. No purchaser acquired a legal right in his bargain, nor could he retain the property which he had bought or bartered, unless the transaction had taken place in market overt, and before

^a From *Tyman*, to teem or bring forth. Hence *Bearn-team*, a family of children. In Sussex they yet say, a *team* of ducklings or chickens, for a brood. See Lye; and Part II., *Proofs and Illustrations*, p. 167.

^b Alfred and Guthrum, § 4.

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Pains and penalties incurred by the owners of cattle, who omitted to make the declarations required by law.

with their concurrence, he was required to depasture the beast in the common fields or leasowes of the Town. If he failed to do so, the Townsmen were to denounce him to the Ealdorman of the Hundred, and the beast was forfeited; half the value belonged to the "Landlord," and half to the Hundred^a. If the Townsmen omitted to inform against the offender, they incurred a wite or penalty, and the Herdsman was to be scourged for his connivance. When such a default had taken place, there was no excuse. The witnesses might be named, and their testimony might be satisfactory; but still the cattle was forfeited, as a punishment for the omission of the legal declaration. If an appeal was made to the Jurats and found to be untrue, the offender was to be deemed a thief; he was punished with the greatest severity; he suffered death, and forfeited all his property^b.

These regulations, which embodied a species of municipal magistracy, not only in the walled Towns, but in the open Country, and created a class of public functionaries who were required to interfere in all private dealings, appear to have been again altered under the Danish Kings. Canute directs that no chattel, "living or lying," above the amount of fourpence, shall be bought or sold, whether within the Burgh or in the upland Country, unless in the presence of four good men and true. A further variation was introduced by the Conqueror, according to whose laws, three witnesses only were required; but all dealings were now to be confined to Cities, Boroughs and walled Towns. In secured places alone, the Cheap or Market was to be held, and there the power of jurisdiction and legal testimony was confined by the law. The formal portions of these laws fell into desuetude before the reign of Henry II., but so much of the old Saxon doctrine subsisted in the common law, that the sale in "fair or market," which exonerated the holder of stolen goods from suspicion, was required to be made before the Bailiffs and Good men, who could testify that the toll had been duly paid, without fraud or concealment^c. From the spirit of the Anglo-Saxon law, we derive the modern statutes which regulate the transfer of that

Alterations of the laws of Edgar and Canute by the Conqueror.

Partial subsistence of the Anglo-Saxon law.

^a Edgar, II. §§ 7, 8, 9, 10.

^b Edgar, H. § 11.

^c Canute, II. § 22. Laws of William the Conqueror, XLV. Part II., *Proofs and Illustrations*, p. 145. Bracton, lib. iii., de Corona, cap. 32. Mirror, chap. 1. See also Blackstone, vol. ii. p. 449.

kind of property, which, as in the Saxon times, is much exposed to rapine and depredation^a.

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Whilst the regulations of the market were thus established for the purpose of preventing the fraudulent alienation of stolen property, another very singular institution was created, intended to preserve the public peace, and to enforce the obedience of the people to the provisions of the law. Peculiar to England, the "Frankpledge"¹ has been a favourite theme of admiration; the patriotism of our legal writers has induced them to bestow the loudest praises upon that "masterpiece of judicial policy," which, as it is said, rendered "each man answerable to his "immediate Superior, for his own conduct and for the acts of "his neighbours"^b; and the exalted imagination of the historical enthusiast has framed many a fair theory of Utopian reform, whilst wrapt in the visions which displayed the symmetrical courts of an elected Magistracy, formed by and out of the people, rising above each other in harmonious progression and numerical order, and invested with an increasing share of authority and power^c. The law of Frankpledge, however, when minutely examined, loses many of the characters which have been bestowed upon it by legal or political zeal or fancy; and instead of constituting a judicial hierarchy, and resulting from the exercise of constitutional freedom, we must view it as a system of strict espial, subordination and coercion, and divided into two branches, which must be carefully distinguished from each other: the first

The
"Frank-
pledge."

Mistaken
opinions
respecting
the intent
and charac-
ter of the
Frankpledge.

Divided into
two branches,
the Seignorial
Freeborh,
where the
Lord was
permanent
"Borh," or
pledge for the
appearance
of his
retainer or
manupast;

^a 1 and 2 Phil. and Mar., c. 7, "an Act against buying of stolen horses." 31 Eliz., c. 12, "an Act to avoid horse stealing."

^b 4 Blackstone, p. 412.

^c "An Account of the Constitutional English Polity of Congregational Courts, and more particularly of the great annual court of the people, called the View of Frankpledge, wherein the whole body of the Nation was arranged into regular divisions of Tythings, Hundreds, &c. The happy effects of that excellent institution, in preventing robberies, riots, &c., whereby, in law, it was justly deemed 'summa et maxima securitas'; that it would be equally beneficial to all other nations and countries, as well under monarchical as republican establishments; and that, to the English Nation in particular, it would afford an effectual means of reforming the corruption of Parliaments by rendering the representation of the people perfectly equal, in exact numerical proportion to the total number of householders throughout the whole Realm." By Granville Sharp. 2nd Edition. London, 1786.

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being the seignorial or personal liability of the superior, which rendered him the permanent surety for the appearance of his vassal, retainer or inmate; and the second, the collective or mutual responsibility of the villeinage, as included in their Tithings, associations which, in the Saxon era, were of unequal extent, according to the custom of the country, Ten being the smallest number of which a Tithing could be composed, and from whence it derived its name.

The dependence of the various classes of the community formed, as we have before observed, the basis of the Anglo-Saxon law; and the peculiar obligation, which rendered the Lord the surety for the appearance of his "men," or vassals, just as every householder was charged with the production of the "Agen hyne," is defined with sufficient clearness and precision. "Let every Hlaford have his retainers in his own pledge; and if they be accused, let them answer in the Hundred according to law."^a If the party accused absconded, the Hlaford forfeited the amount of the "Were" to the King. If it was laid to the charge of the Hlaford, that the criminal had escaped by his connivance, then the superior was to clear himself by the compurgatory oaths of five Thanes, his Peers, he being the sixth; when this proof failed, the "Were" was exacted, as before mentioned, and the fugitive became an outlaw^b. From other portions of the Anglo-Saxon code, the general responsibility of the Lord for his vassals, and still more, for those whom we may term his subjects, may be ascertained; this responsibility being conformable to the British law, according to which, every Foreigner and every vassal was to be under the oath and pledge of the Lord of the district, and of his Lord and Master^c.

The nature of the obligation accords with the general policy of the nations amongst whom it prevailed; but neither the date, nor the origin of the second portion of the Anglo-Saxon system, namely, the pledge resulting from the collective Freeborhs or Tithings, can be ascertained; though it appears that this legal Clanship, if we may so denominate the associations of the Twi-hynde class, was gradually exchanged, at some unknown ancient period, probably anterior to the Conquest, for the ancient union

^a Laws of William the Conqueror, LII.

^b Canute, II. § 28.

^c Triads, Ancient Welsh Laws, p. 34. Transactions of the Cymmrodorion, p. 111.

and the collective Freeborh, consisting of certain associations of the Ceorls or Villeins, who were mutually "Borh," or pledges for each other; which Associations were called Tithings, ten being the smallest number of which they were composed.

(See above, p. 16.)
Seignorial Freeborh or Frankpledge, being the responsibility of the Lord for his Vassal, &c., defined by the Anglo-Saxon law.

Uncertain antiquity of the collective Frankpledges or Tithings;

which appear to have replaced the responsibility of the Sept or Clan.

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Supposed
origin of the
Tithings,
as deduced
from certain
associations
created by
the Anglo-
Saxon by-
laws of
London.

none have been presented to the reader which cannot be distinctly applied to the personal pledge of the superior; and if they denote the collective "Freeborhs" of the villeinage, the ambiguity of the expressions conceals the meaning from our view. An institution, however, was formed in the time of Athelstane, which has been considered as illustrating the origin of the Decennary communities. In a state which, like the Anglo-Saxon Commonwealth, is loosely compacted, the execution of the laws must depend upon the good will and alacrity of the people. Thus, after the statute of Athelstane was enacted, each jurisdiction was allowed to devise the means of carrying its provisions into execution; and the by-laws, which were enacted in the "Burgh" of London, for the better observance of the general statute, shew the manner in which it was there enforced. The rigour of the law is increased by this singular document, which incorporates the tenour of the statute. Other regulations are expressed with great obscurity. They indicate, however, that a common stock or fund was raised for the purpose of making compensation for such cattle as might be stolen, and also for assisting in the recovery of property belonging to the members of the gild. Ten men were to be reckoned or told together, the "eldest," or senior, having the superintendence of the other Nine. To these was to be associated an Eleventh Man, chosen by the men of the "Hindena," a term, which, as it can only be interpreted by conjecture, I may, perhaps, be allowed to consider as designating the Hinds or Ceorls, and who was to summon the others whenever their duty was required. As far as the very confused and difficult wording of the original law can be understood, the men so selected constituted an acting committee of police, who were to direct the pursuers of the robber; to collect and keep the money contributed by the men of the "Hindena"; and to make such payments as became due under the regulations of the gild. The document is of great value in demonstrating the extent of self-government amongst the Anglo-Saxons, and the manner in which the people resorted to associations amongst themselves for the protection of their property. Still it furnishes no proof of that mutual responsibility which distinguishes the collective "Freeborhs." Nor is this obligation clearly pointed out even in the law of Canute, which declares that every "Freoman,"^a

Laws of
Canute
apparently
noticing the
Tithings.

^a Canute, II. § 19. This passage, here quoted, will be found in Part II., *Proofs and Illustrations*, p. 167; but it must be recollected,

above twelve years of age, who wishes to be worthy of the privilege of compurgation, shall be brought in the Hundred and the "Tithing," whether he be a householder or a "Folger." A second paragraph, repeating that every one shall be brought into the Hundred and placed beneath the "Borh," who shall produce him in justice, rather refers to the relation of Lord and Manupast¹; and the statutes of the Conqueror being, as we have before observed, only versions of the Anglo-Saxon laws, are not more explicit or conclusive.

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Usage and tradition, therefore, must explain the law, and we must be contented to consider the Free-pledge, as it existed after the Conquest, in East Angha, Kent, Wessex and many parts of Mercia, in which districts the nation was divided into three classes, corresponding, in some measure to the Twelfhynde men, the Sixhynde men, and the Ceorls or Twihynde men, of the early Anglo-Saxon era. The first class consisted of "Archbishops, Bishops, Earls, and Barons," all "who had Sac and Soc, and Toll and Team"; and who, being deemed entirely trustworthy before the law, were allowed also to become Sponsors for their military followers, whether Knights holding by tenure, or soldiers receiving pay. Such a Lord was also answerable for his own immediate Manupasts, the retainers, who feasted at his board, and were sheltered beneath the roof of his Hall, and whom he was bound to produce in justice when required; or to be hable for the legal forfeiture^a. The third class was composed of the Burghers, and of the Ceorls or Villeinage, who, as it will be recollected, were freemen, according to the Saxon law, all of whom were enrolled in their Decennaries, Tithings, or associated Freeborhs^b. The collective Free-pledges were not formed according to a uniform system. In East Angha, in Middlesex, in Kent and in many Shires of Mercia, the Villeins were told off into bands, of not less than ten, commanded by the Chief Pledge or Senior of the Borh,

Collective Frankpledge; description of this institution collected from the Legal Treatises and Records between the reigns of Hen. II. and Ed. I.

Collective Free-pledges, sometimes independent of any territorial divisions, being bands or companies, named after the Chief Pledge or Borsholder (i.e. Borge-ealdor), by whom they were commanded;

that the word "Freoman," employed in the original, is to be understood as equivalent to Ceorl or Villein.

^a Placita Coronæ, 10 Ric. I. m. 1.

^b The authorities for the description of the Freeborhs, are Bracton, lib. iii., de Corona, c. xi. and xii.; Britton, c. 29; Mirror, c. i. § 17; the Fragments of Anglo-Saxon Customs in the Holkham MS. and the quoted Records: but the ancient legal writers do not entirely agree with each other, nor with the Records. See Part II., *Proofs and Illustrations*, pp. 167-175.

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e.g. "Francum Plegium Hugonis de la Gravc," "Decenna Thomæ de Weston," &c.; sometimes including all the inhabitants of a Township, which was hence called a Tithing.

Persons who were exempted from the Free-pledge, both seignorial and collective, if their property was of sufficient amount to be considered as a permanent security for their good behaviour.

Collective Free-pledge supposed, but erroneously, to exist amongst the continental nations.

from whose personal appellation the "Tithing" or "Borh" was named, just as in common language a company of soldiers is called after its officer. An ancient fragment of a Saxon custom shews that the number might be greatly extended by the custom of the country, and, occasionally, the whole Township formed but one Frankpledge, to which the name of Tithing was given; in some of the Shires of Wessex and Mercia, we find them used as convertible terms, yet not so but that it may be perceived that the "Villa" was the designation of the district; whilst the "Teothung" was the proper denomination of the inhabitants which it contained^a.

The second, or intermediate class, who were neither Pledges for others, nor in pledge themselves, consisted of those whose freehold property was of sufficient amount to be considered as a permanent security for their good behaviour, and equivalent to a "Freeborh." The order of Priesthood was, in like manner, accepted as the pledge of the Ecclesiastic^b, who was also controlled by the jurisdiction of his Ordinary. Women, who were supposed to be under the domestic government of their male relations or husbands, were also exempted from the Freeborh. But with these exceptions, to which may be added the temporary excuse arising from itinerancy, the men of the Township were not to receive any resiant above twelve years of age, unless he was either numbered in a collective Freeborh, or entitled to claim the protection and warranty of the natural Magistracy of the land.

As the inquiries into the origin of the Anglo-Saxon laws are so frequently explained by the customs of the Continent, it has been supposed, that "the division of a village, with its corresponding territory, into ten Wards or districts,"—for this version has been given to the decennary system,—"probably arose in those European Kingdoms which had first attained a regular form, and was afterwards extended to the Saxons in England,"^c after having been adopted by all the barbarous nations who settled in the provinces of the Roman Empire. This hypothesis proceeds, in the first place, upon the assumption

^a Magn. Rot. 5 Ric. I. Warr. and Leyc. Madox, Exch. 393. Plac. Coronæ, 10 Ric. I. m. 8. Rot. Itin. Stafford 5 John. Rot. Itin. Kanc. 11 Hen. III. Rot. Itin. Devon. 22 and 23 H. III. Kirkpatrick's Collections in the Office of the Town Clerk of Norwich.

^b Bracton, as above.

^c Millar, English Government, vol. i. p. 176.

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dependence of Lord and vassal, became ancillary to the preservation of good order, at the period when the Anglo-Saxon Clans were so broken, that the ancient security derived from their incorporation ceased to be effective. There was no distinction between the Soldier and the Citizen, and the country was defended from rapine and spoil by Guards, who, whether called out to protect the Lieges against the foreign enemy, or to pursue the domestic robber or marauder, were equally arrayed as a military body, perhaps the only form in which a police can be unoppressive and effective. Watch and Ward on the King's highway was performed by four men, summoned from every hide in the hundred, mustered under the command of the Wardreeve, who, in consideration of this service, held his own land free from taxation, like the Thannadars, the ancient peace-officers of Hindoo villages^a. These Wardens were personally liable for any act of negligence; they were fined, if the robber escaped with his prey^b; every man performed military service in his turn, and as the whole Township was charged with the duty of enforcing the law within its bounds, it might appear that an additional security was obtained by rendering each band of the territorial militia answerable for the appearance of its members when accused of any of those crimes which the community was bound to repress. The laws which imposed upon the suspected person the obligation of defending his character by the compurgatory oaths of his fellow tithingmen, would also be easily deduced from the same obligation. Perhaps one argument in favour of this origin of the collective Frankpledge, may be found in the circumstance, that "Ward" and "Teothung" were synonymous in the ancient law; and, as like causes continue to produce the like effects, it is important to remark, that the military organization, deduced from the Anglo-Saxon law, and improved by the statute of Winchester, thus passed into the service of justice. The Constable, the mailed leader of the militia of the Hundred in the reign of Edward I., became a rustic peace-officer before the sixteenth century; and the military "Conservators of the Peace," whose first avocation was the pursuit of offenders with the power of the county, armed with spear and sword, were gradually transformed into a tranquil provincial Magistracy. Nor

^a Heber's Journal, vol. i. p. 224.

^b Laws of William the Conqueror, XXVIII. Part II., *Proofs and Illustrations*, p. 138.

Military Police of the Anglo-Saxons.

"Stretwarde," or the duty of guarding and patrolling the King's highway, performed by four men from every hide of the hundred, under the command of the "Wardreeve."

Military organization, founded upon the Anglo-Saxon law, and improved by the statute of Winton, 13 Ed. I., converted, in process of time, into a mere Police Establishment, the Constable being originally a leader of the levies. And the Conservators of the Peace (whose powers afterwards merged in the commissions

is it improbable, but that the collective Frankpledge may have been more rigidly enforced by the Conqueror than under the Anglo-Saxon government, and extended by him perhaps beyond its original boundaries, it being favoured by the government, as an efficient preventive police, and also as the means of obtaining a firmer hold upon the obedience of the people.

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of Justice of the Peace) being, at first, military commanders.

There was a political end answered by this institution. When the "View of Frankpledge" was held^a, the members of each Decennary took the oath of allegiance, in which they swore that they would be faithful and true to the King and his heirs, and bear him faith and loyalty, of life and limb and worldly honour, and defend him against all his enemies^b. This was the oath which the Conqueror imposed upon all his subjects who were free, that is to say, not in "Theowet" or slavery^c. All those who were "settled upon the land," throughout England, no matter whose Vassals they were, took this oath, and became the Vassals, as well as the subjects of the Conqueror^d. Even when a Gild or Sodality was established, the promise of obedience to their "worldly Lord, Wilham" constituted the first clause^e of the

Oath of allegiance, taken by all who were enrolled in the Frankpledge ;

being the same oath as was imposed by William the Conqueror upon all his subjects.

^a The "View of Frankpledge" must not be confounded either with the Sheriff's Tourn, or with the Court Leet, in which it was usually held. There was no View of Frankpledge, either in the Courts Leet of the Northern Baronies¹, or in the Northern Wapentakes; though, in other respects, the jurisdiction was entirely the same with that of the Southern Lordships and Hundreds. This distinction is important, because the View of Frankpledge has been considered as the foundation of the Court Leet and Sheriff's Tourn; though its non-appearance in the Courts of half the Island, shews that it is only incidental to the tribunal, and not necessarily united to the inquisitorial jurisdiction of the Jury. Part II., *Proofs and Illustrations*, pp. 171-174.

^b Fleta, lib. iii. c. 16. Mirrour, c. ii. § 9.

^c Carta Will. Conquestoris de quibusdam statutis, § 52. [Charter of William the Conqueror concerning certain statutes.]

^d In the Sax. Chron. A.D. 1086, they are styled *ealle þa land sittende menn þe ahtes wæron ofer eall Engleland*. In German, *land Sassen*. They are divided by Eichhorn into *Freie Land Sassen*, Tenants holding of the Nobles, and nearly corresponding to the Anglo-Saxon *Sithcund men*; and *Hinter Sassen*, a class which includes the Burghers of the Towns and the Boors of the upland Country, the Ceorls of the Anglo-Saxons.

^e Rules or Statutes of the Brotherhood founded by Æglewy, Abbot of Evesham, &c., about 1072; Hickes, Dissert. Epist. 19.

Part I. compact, which united the brethren in a communion of good
Ch. VI. works, of pious suffrages and of prayers. Since the oath was
 taken on occasions so little connected with worldly policy, we
 may infer that it was repeatedly exacted; and that when the
 Commonalty were arrayed and marshalled for the purpose of
 enforcing their obedience to the law, the Conqueror may have
 particularly directed that they should renew their pledge of
 fidelity to their common Sovereign.

Collective
 Frankpledge,
 not
 universal
 throughout
 England.

Most of our historians have considered the collective Frank-pledge as universal throughout all England, and the ancient legal writers do not notice any exception to the general rule. But, from the more certain testimony of records, we can collect that it did not exist in the Shires which constituted the ancient Kingdom of Northumbria^a. The men of Salop equally claimed to be excepted from the Tithing^b; and there were some, at least, of the Mercian Burghs into which it was not introduced^c. To account for its non-existence, various conjectures might be hazarded, and the obliteration of the system by the Danes, or its creation whilst the Sovereigns of Wessex had only a paramount sovereignty over Northumbria, would equally explain its non-appearance in that realm. Its partial absence in Mercia may have resulted from local customs. But the Freeborh, though it facilitated the execution of the laws, did not make any alteration in their general policy; the pledge concentrated the responsibility of the community, but it did not create the duty; for in the Shires where the collective Free-pledge did not exist, the whole responsibility of the police was cast upon the inhabitants of the territorial district^d. If the men of the Township failed to pursue the murderer with hue and cry, they were hable to an amercia-ment for the escape^e; the older laws considered the same neglect as a contempt of the Royal authority^f; their obligation was not

No variation
 of policy
 occasioned
 by the
 absence of
 the collective
 Frankpledge,
 the
 Township
 incurring the
 liability
 which would
 have at-
 tached to
 the Decenna.

^a Rot. Itin. Westmorland, 20 Ed. I.

^b Rot. Itin. Salop. 40 Hen. III.

^c Bristol and Worcester, for instance. Rot. Itin. Wygorn. 5 Hen. III. Rot. Itin. Glouc. 5 Hen. III. m. 9.

^d Magn. Rot. 16 Hen. II. Rot. 3. Northumbr. Madox, Exch., p. 385.

^e Magn. Rot. 14 Hen. II. Rot. 5, 6. Magn. Rot. 7 Ric. I. Rot. 1. Kanc. Magn. Rot. 32 Hen. II. Rot. 12. Dors. and Somers. Madox, Exch., p. 386.

^f Laws of William the Conqueror, XLIX, L. Part II., *Proofs and Illustrations*, p. 148.

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Crimes
divided by
the Anglo-
Saxons into
"Bot-leas,"
or inex-
piable
offences;
and those
for which
compensa-
tion could
be accepted.

Crimes were divided, by the Anglo-Saxon jurisprudence, into two classes. Inexpiable crimes, for which death was inflicted without remission; and those for which the offender might redeem his life or his liberty, by the payment of the stated penalties. No compensation was accepted from the traitor, who had conspired against his Sovereign or his liege Lord^a. Desertion from the banner of the military Leader was equally penal. Open theft, when the offender was taken with the mainour, was an inexpiable crime. House-breaking belonged to the same class: and murder was punished by death; but if the slain was fairly killed, without malice prepense, then the crime was only manslaughter, and the payment of the legal fines appeased the vengeance of the relations, and satisfied the claims of the community. We are warranted by the laws, in taking this distinction between murder and manslaughter, though it may be difficult to give an accurate definition of all the circumstances by which bloodshed was justified. An affray at a banquet was considered as an adequate excuse; and he who laid his enemy low in fair and open fight, though accompanied by a violation of the peace, was allowed to tender the legal blood-fine. Pecuniary commutations for crimes were never formally abrogated; and as, according to the common law, an appeal of murder was a civil suit, the price of blood might still be exacted. There was neither law nor custom to prevent the kinsman from receiving any sum which he could exact from the convicted criminal, since the Plaintiff had the power of pardon. It is true, that this was after trial; but some kind of adjudication probably took place amongst the Anglo-Saxons before the "Were" could be required. As the law now stands, damages recovered in a civil action, for an assault or any personal injury, not being a felonious act, correspond to the Anglo-Saxon "Were"; whilst we inflict the "Wite," in the shape of the fine imposed upon the traverser, if he is indicted for the breach of the peace. In other words, we have divided the remedial process of the Anglo-Saxons, and not always to the advantage of the Individuals belonging to the humbler classes of society, whose avocations and habits expose them most to violence, and who, if they seek redress, are driven either to encounter the costly intricacy of a civil suit, or to a prosecution in the name of the King, from which the aggrieved parties cannot legally derive any compensation for the harm which they have sustained.

"Were," a
compensa-
tion, now
received in
the shape of
damages.
(See also
above, p. 25.)

^a Alfred, Preface and § 4. Ethelred, I. § 2. Canute, II. §§ 54, 61.

Theft was an offence of a deep and disgraceful dye. All the Germanic Tribes held this crime in great abhorrence. A thief, in the language of the capitularies, was “unfaithful to the Kingdom of the Franks.” Nearly the same expression occurs in the Anglo-Saxon and Saxon laws, in which he is said to be “untrue to the Hundred,” or “untrue to the people.”^a At one period, wife and child, and every inmate, above the age of ten years, passed into slavery, if they assisted in the concealment of any stolen property^b; for the Anglo-Saxon law of larceny included two degrees of offence: the act of “open theft” or rapine, which, as has been before observed, was irremissible; and the offence incurred by the individual who was found in possession of the stolen property, in which case, however, whether he was the thief or the receiver, his crime might be pardoned by the payment of a penalty. Under Canute, the law, which had been modified from time to time, sustained further alterations^c. For the first offence, compensation was to be made to the injured party by restoring twice the value of the stolen property, besides the “Were” to the Lord; and if the theft had been committed by a Serf, he was branded with a hot iron: but for the second offence, the “Theow” suffered death; the Freeman or Ceorl was to lose his hand or his foot, or both, according to the magnitude of the crime; and if these mutilations were not adequate to appease the vengeance of the law, the eyes of the wretched culprit were to be plucked out, or his nose and lips cut off, or he was to be scalped; punishments which form a singular contrast to the merciful sentiments evinced by the same code, and expressed with the most energetic simplicity. “He who has the power of judgment, should earnestly think on that, which he implores for himself, when he prays ‘forgive us, Lord, our trespasses, as we forgive them that trespass against us’; and we forbid that Christian men be put to death for trivial causes; nor should we rashly destroy the Lord’s creation which He redeemed so dearly.” The sentences threatened by the law were worse than death; but in countries thinly peopled, chequered with wastes and wilds, affording the ready means of escape and concealment, and where the rude and solitary habitations and sequestered domains of the landholder were extremely hable to the attack of the robber, it might be deemed necessary to protect

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Theft, severity with which it was punished. The thief stigmatized in the Capitularies, as being “infidelis regno Francorum”; and in the Saxon laws, as “Folc-ungetreu.”

Increased severity of punishment under Canute.

^a Canute, II. § 30¹.

^b Ina, § 7.

^c Canute, II. §§ 26 ff.

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the rights of property by punishments which, to us, appear grievous and disproportionate beyond all measure; and there are some who may think that even our present civilized Criminal Code retains more of its ancient barbaric severity than is warranted by the general state of society. The Anglo-Saxon law was mitigated, by allowing the offender, if he could, to make compensation; otherwise, his services as a slave were to be accepted by the injured party. A justification for inflicting the punishment of death may be conceded to the legislator, in those cases where the probable consequences of the crime will lead to bloodshed. And, as the resistance to open violence, or the struggles made by the robber to retain his spoil, were most frequently followed by the mutual fray, the ancient law, which authorized the summary decapitation¹ of the criminal, may be reprobated as harsh, though not altogether stigmatized for its barbarity: it proceeded by military execution, sudden, appalling and effective. The fearful mutilations which rendered the maimed and miserable offender a ghastly spectre, visiting the haunts of living men, have long ceased to be the terror and warning of the wicked; but it is hardly a paradox to assert, that humanity has not gained greatly by the abolition of these cruel and revolting punishments; and that by adopting a code, apparently more mild, we have not diminished the mass of suffering and pain. It is one of the evils resulting from a polished and refined state of society, and by which many of its advantages are dearly purchased, that the higher classes become insensible to the afflictions of their inferiors, when concealed from their view. Let us assume the existence of a statute enacting that any person suspected of petty larceny should forthwith have his right hand struck off in court, so as to disable him for the remainder of his life. Under this legislation, our Magistrates, constituted as they now are, would certainly entertain great aversion towards the infliction of so disproportionate a punishment. The sight of the bleeding, maimed limb, would sicken them. It would hurt their feelings to sit upon the Bench and witness the agony, and listen to the shrieks and moans of the felon; for their own sakes, as well as for his, they would investigate the case with tenderness and caution; and it is probable, that in order to reduce the number of offenders, they would use very earnest endeavours to establish such a domestic police as would lessen the temptations, both physical and moral, which are rife in the land, and to diminish the opportunities which lead to the commission of crime.

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CHAPTER VII.

Summary Punishment of the Offender taken in open delict—Infang-thief—Rules by which the Franchise was restrained—Presentments of Crimes by the Thaners of the Hundred—by the Men of the Township—Appeals—Compurgation or Wager of Law—Battle Trial—Ordeal—Torture.

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Summary Punishment inflicted by the old English law upon Criminals taken in open delict;

in which case no further trial was required.

Artificial presumptions raised by the Anglo-Saxon law, and considered as equivalent to positive evidence.

WHEN a capital offence was flagrant, committed in open day, and under such circumstances as to render the act capable of instant and indisputable proof, no further trial was required: no evidence was discussed, and no defence was allowed. Mercy was never extended to the outlaw; he was said to bear a "wolf's head," and, like the wild beast to whom he was compared, he was slain whenever he approached the haunts of humankind^a. He was also emphatically termed the "friendless man," one who had forfeited his country, who had lost the countenance of his kinsmen and the protection of his King. He had broken the compact which united him to society. Every hand might be raised to strike him; none, to revenge his fall. If a thief was apprehended, "hond-habbend,"¹ and "back-barend," or in actual possession of the spoil, he was hanged or decapitated by his pursuers, without respite or delay^b. Similar proceedings took place with respect to the murderer^c. If he was found standing near the corpse with the bloody weapon in his grasp, no witnesses could be heard, for the purpose of explaining away a token, which, according to the average of human probability, was necessarily the accompaniment of the transgression. Nor did the Anglo-Saxons stop at this point; for, when they legislated concerning theft, they established that many circumstances of suspicion might be equivalent to evidence. A stranger lurking in the woods, who

^a Dialogus de Scaccario, lib. ii. § 10. Bracton, lib. iii., de Corona, cap. 12, §§ 1, 3; cap. 14, § 3. Magn. Rot. 7 Ric. I. Wircestrescira, Madox, Exch., p. 136.

^b Rot. Itin. Lanc., 31 Hen. III.

^c Bracton, lib. iii., de Corona, cap. 18. Rot. Itin. Salop. 40 Hen. III.

did not blow his horn, or otherwise proclaim that he was in distress and anxiety, was to be judged as a thief, though no other indication of crime could be alleged against him. He was condemned upon the inference supplied by the law^a, that such a wanderer could not seek concealment except for the purpose of perpetrating an unlawful deed.

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Perhaps the name of legal procedure can scarcely be given with propriety to these plain and speedy modes of administering justice; they are acts deduced from the mere exercise of the passions natural to man, and the law consists only in the restrictions by which the powers of self-protection and defence were prevented from degenerating into wanton and unprovoked cruelty.

After the Conquest, we find that many limitations were imposed by the decisions of the King's court, which qualified the exercise of "Infangthief." Thus, to render the judgment legal, it was necessary that the culprit should be taken and executed upon "fresh suit," that is to say, upon the hue and cry of the Township, raised as soon as the crime was perpetrated, and followed without a moment's interval: or whilst he was still in the actual possession of the "mainour," or the articles which he had stolen. Unless one of these circumstances, at least, concurred with the caption, the territorial jurisdiction could not legally take cognizance of the crime. There might be no doubt of the guilt of the thief, yet the transfer of the chattel from his person, by gift or sale, was held to disqualify the local authorities. If one night was allowed to elapse before the felon had suffered death, then the King's court alone could legally punish him^b. In some Shires, for the custom of the country regulated this, and every other legal proceeding, the presence of the "Grith-Sergeant," or "Land-Sergeant,"^c seems to have been required to warrant the execution. Half Anglo-Saxon and half Norman, the first term literally implies a Peace Officer. These functionaries were sometimes appointed by the King; but they were not infrequently the military retainers of the Lord, whose tenure bound him to maintain the public tranquillity^d: and the decollation of the

Limitations imposed by the King's Court, after the Conquest, upon the exercise of the Franchise of "Infangthief," or the right possessed by the Lord of the Township of inflicting summary punishment.

The Grith-Sergeant or Peace Officer, his presence necessary in some Shires for the purpose of legalizing the summary execution of Offenders.

^a Ina, § 20.

^b Bracton, lib. iii., de Corona. Rot. Itin. Devon, 33 Hen. III. m. 28. Rot. Itin. Westmorland, 20 Ed. I. m. 8.

^c Rot. Itin. Lanc., 30 Hen. III. Rot. Itin. Westmorland, 10 Hen. III.

^d Grant of the Master Sergeancy of Macklesfield, by Ralph, Earl of

“master-robber,” by the feudal gens-d’armerie, will appear less wild and barbarous, if we recollect that it was the consequence of the martial institutions, to which the Country owed its safeguard and protection.

Any deviation from the law, expounded by the Judges, was followed by a seizure of the Franchise into the King’s hands; in which case, the jurisdiction was not restored until the Lord had compounded with the Sovereign for his misdemeanor; or the irregularity was punished by an immediate amerciamento of the suitors. That many or most of these principles were known to the Anglo-Saxons, is highly probable; some are indicated in their laws^a, others accord with the customs of Lothian, the faithful mirrors of Anglo-Saxon antiquity. Anterior to the Conquest, however, the high authority which became vested in the Curia Regis, as instituted, or at least new modelled by the Anglo-Norman Kings, did not exist; and the restraining laws can have possessed only a slight degree of efficacy. But as the Government became settled, the Supreme Courts constantly endeavoured to discourage the Territorial Franchises, and the paramount authority of the King’s Justices and Conservators of the Peace had the effect of causing them to fall into desuetude. Beyond the Tweed, where the same causes were not equally active, the Royal authority did not extinguish the rights of the minor Dynasts: and the “pit” and the “gallows” marked the rank of the Baron, until the abolition of the heritable jurisdictions. In England, the records and annals of the law have not furnished any instance of the exercise of “Infangthief” after the reign of Edward III.^b, except in one northern Borough, Halifax¹, where a judicature, grounded upon the Anglo-Saxon Custom, subsisted until a comparatively recent era^c.

When the nature of the crime forbade its summary punishment, there were three modes by which the criminal might be brought to judgment. According to the first process, the offence might be denounced by, or on behalf of, the community. If the

Chester. Inq. post mortem Rogeri de Davenport, 16 Ed. I. Ormerod, Cheshire, vol. iii. p. 35.

^a Ina, § 73.

^b A thief taken “cum manuopere,” was hanged by the judgment of the Hundred of Reppington, about the 4th Ed. III.; Placita de Quo Warranto in Com. Derb., 4 Ed. III. Monasticon, vol. iii. p. 46.

^c Quon. Attach., chap. 6.

(See Chap. IX.) Criminal jurisdiction, subsists in Scotland till the abolition of the heritable jurisdictions in 1747: falls into desuetude in England about the reign of Ed. III., except in the Borough of Halifax, where the old law of “Infangthief” was retained (but with some modification) as a local law.

Three modes of Arraignment amongst the Anglo-Saxons, viz.

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Part I. had not been convicted of theft within the period of limitation,
Ch. VII. which appears to have been usually fixed from the last great Council^a, and had never paid the theft-fine. This declaration was confirmed by the oaths of two other true men, or Thanegs; and the culprit had then the privilege of clearing himself, either by simple compurgation, or by the simple ordeal. If he asserted the liberty of appealing to that testimony of character which was termed compurgation, he himself swore to his innocence, and a certain number of his neighbours, whose "worth," according to the legal arithmetic of the Anglo-Saxons, was considered as equivalent to one pound, were assigned as his compurgators. If they confirmed his oath by their own, he was acquitted of the charge: but if he was unable to procure this testimony, and dared to abide the "Judgment of God," he plunged his arm into the boiling cauldron up to the wrist, or he bore the red hot iron in his naked hand for the distance of nine paces, and if, after the lapse of three days, no marks of injury appeared, he was declared innocent of the crime.

which, if favourable, entitled him to defend himself by the "Lad," or simple compurgation, or by the simple ordeal (see above, p. 10).

But if the testimony of the Lord was unfavourable, the culprit was bound to undergo the threefold ordeal, or to find a triple "Lad" or compurgation.

Compurgation as directed by the laws of the Conqueror. If the culprit obtained "good testimony," his own oath was sufficient. If otherwise, by eleven compurgators, taken from an array of fourteen.

If accused of breaking into a house, or violating the immunity of the church, the simple compurgation was to consist of eleven taken from an array of fourteen; and the triple, of

Such was the proceeding when the testimony of the Lord or Superior was in favour of the Accused. But, if he refused to afford the testimony which diminished the suspicions of the law, then the culprit was bound to undergo the threefold ordeal; he plunged his arm into the boiling water up to his elbow, the iron was of treble weight, and his compurgation, if he preferred that mode of trial, consisted of five compurgators, he being the sixth hand. In the laws of the Conqueror, the principle remains the same, but the details do not exactly correspond. If "good testimony," that is to say, the declaration of the Lord, was obtained, the oath of the party was alone sufficient to discharge him; but, if he had been accused before, he then waged his law, with eleven compurgators, taken from an array of fourteen "named" and lawful men. Perhaps these were Ceorls, whilst the array prescribed by Canute was to be composed of Sithcund men, who, together with the "hand" of the accused, would be equivalent in legal value. If the culprit had increased his guilt by violating the immunity of the church, or by breaking into the dwelling, the simple compurgation consisted of eleven taken from an array of fourteen, and the triple compurgation was formed by

^a Thus, according to the Statute of Ethelred, I. § 1, he was to be clear since the "Gemot" at "Bromdune." The time of limitation fixed by Canute, is since the "Gemot" at Winchester; II. § 30, 1.

thirty-six compurgators taken from forty-eight, who were to be "named" or chosen as before^a.

It is probable that this mode of waging law was much varied by local customs and usages, and also by the value of the property. In civil suits, the relation between oath and value is often expressed. Edgiva, the widow of Edward the Elder, thus redeemed the land which had been mortgaged by Sighelm her father, by wager of law, the *oath* being equal in worth to the money which Sighelm had paid to the mortgagee, and for which he had neglected to obtain a charter of release^b. The Cymric scale of compurgation is fully stated^c. And, according to the old Northumbrian law, if a dispute arose concerning boundaries, the land of each "Tributarius" or Ceorl which was claimed, required the oaths of one Priest, of two Deacons, or of three Monks, to transfer it into the domain of the party who was able to produce such testimony^d. The intricacies of the legal computations to which we have before alluded, baffle all complete interpretation in modern language; nor can we distinctly elucidate the allusions to the mode of valuing oaths by hides^e, although it is evident that the credibility of the compurgator depended upon the nature and extent of his landed qualification; just as, according to the modern law, it is the freehold alone which renders the individual capable of serving as a Juryman in cases of High Treason.

If property was one of the tests of legal worth, the rank of the party was also an element in this mode of trial. The King's Thane, accused of homicide, was directed to wage his law by the oaths of twelve of his Peers; an inferior Thane, by eleven of his Peers and of one King's Thane^f. Beyond the Tweed, the thief was to acquit himself by the oath of twenty-seven men and of three Thaness; whilst the oath of twelve men was required for the exculpation of the Burgess^h. In the English Burghs, the Anglo-Saxon compurgation existed long after it

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thirty-six, taken from an array of forty-eight.

Compurgation in civil suits regulated by the value of the property.

Compurgation of the King's Thane, by twelve of his equals; of an inferior Thane, by eleven of his Peers and one King's Thane.

Wager of Law allowed in cases of Felony in certain English Burghs, after it had been generally abolished by the "Assizes" of

^a Laws of the Conqueror, XIV. XV. Harleian and Holkham MSS. Part II., *Proofs and Illustrations*, pp. 129-131, 160-166.

^b Charta Edgifæ Reginae, A.D. 960; Lye, App.

^c LL. Wallicæ, p. 217. Ina, §§ 18, 23.

^d Dialogus Ecgberti; Concilia, vol. i. p. 82.

^e Ina, §§ 19, 52.

^f Alfred and Guthrum, § 3.

^g Skene, Regiam Majestatem, book iv. chap. 21.

^h Burrow Laws, c. 28.

Part I.
Ch. VII.

Clarendon
and North-
ampton,
enacted by
Hen. II.
(See
Chap. VIII.)

had been abrogated in the Guildable or Shireground by the "Assizes" of Henry Plantagenet. The Burgess of Egremont was allowed to clear himself of the accusation of theft, by the oaths of thirty-six men, and he did not forfeit this privilege until he had been thrice found guilty by his Comburgesses. The proceedings of the Hundred of Winchelsea, are, perhaps, amongst the latest in which the privilege was allowed, and there the felon, indicted by the oaths of the twelve men, claimed the right of making his defence by the thirty-six, whom he selected as the testimonies of his innocence and good fame^a.

Wager of Law, or Trial by Compurgation, as above described, is exhibited in its last stage of conformation. Originally, the compurgators appear to have been taken from the relations of the accused party^b, a custom, which, in certain cases, was retained by the Citizens of London subsequently to the Conquest^c. But, by degrees, the Teutonic nations altered this usage; and an array, of which the elected "consacramentales" composed one moiety^d, was an expedient employed for the purpose of rendering the trial more impartial, or, at least, less easy to the accused.

In England, when the system of Clanship was destroyed, the compurgators were to be found, at least in part, in the Freeborh of the accused party, the Tithing being, as I have before observed, a Corporation formed by the law, and which succeeded to the obligations and privileges of the ancient Lineages. This regulation, which appears in a law of Athelstane^e, affords a satisfactory comment upon the expressions so forcibly employed by Canute, that "every Freeman who wishes to be worthy of compurgation is

(See above,
p. 164.)

Compur-
gators to be
selected
from the
Freeborh
of the ac-
cused, the
privilege,

^a Charter of Egremont granted by Ricardus de Luci; Hutchinson, Cumberland, vol. ii. p. 25. Arraignments of John Thomas, and of Agnes Archer, in the Hundred Court of Winchelsea, 13 and 19 Hen. VI. From the Lieger Book of the Town. MS. Cott. Julius B iv. See Part II., *Proofs and Illustrations*, pp. 162-165.

^b LL. Bajuvariorum, Tit. 7, § 15. LL. Burgund. Tit. 8, § 1. LL. Wallicæ, p. 217.

^c Custumal of London, MS. Harl. 746. See Part II., *Proofs and Illustrations*, pp. 161, 162.

^d Pactus pro tenore pacis Dominorum Childeberti et Chlotharii Regum, A.D. 593. [Treaty for the keeping of the peace between our Lords the Kings Childebert and Clothair.]

^e Athelstane, I. § 9. Saxon Customs, from the Holkham MS. Part II., *Proofs and Illustrations*, pp. 168, 169.

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Part I.
Ch. VII.

Duel
between
Gunnlaug
Ormstungu,
i.e. Gunn-
laug with
the serpent's
tongue,
and Rafn
the Skald,
A.D. 1013:
which
occasions
the abolition
of the duel
in Iceland.

Scandi-
navian
duels,
not to be
considered as
Judicial
Battles.

Their
regulations.

(See above,
p. 113.)

Trial by
Battle in
civil actions
or suits
concerning
territorial
possessions,

adversary, could never afterwards defend himself by oath or be received as compurgator. Many a combat originated in "ladies love and druery."¹ The last and most memorable duel in Iceland, was fought between "Gunnlaug with the serpent's tongue,"² and Rafn the Skald^a. They contended for the hand of the fair-haired Helga, and both died in the conflict. The fate of these youthful heroes excited the greatest commiseration; and it was enacted, "in one of the greatest folkmoots ever known "in Iceland, and by the advice of the wisest men in Iceland," that thenceforth the duel should be no longer allowed. These conflicts, however, were not judicial trials in the strict sense of the expression; they were not commanded by the law, but the parties resorted to them like modern duellists, because no award of a Judge could either redeem their honour or satisfy their injured feelings. The clamour of arms was heard because the laws were silent. And although the Sagas furnish many instances of duels in which the rights of property, the debt, the dowry, or the inheritance, might be the object of contention, yet it cannot be asserted that Trial by Battle was the legal mode of deciding a civil action; and, if the litigants fought instead of pleading, it was because they found that the stroke of the sword quieted possession more effectually than the judgment of the tribunal.

Desperate warriors chose an island or "Holm"; so that neither party could flee from the spot; whence the combat acquired the name of the Holm-gang. A narrow space was assigned to the duellists: a hide, nine ells in length, was extended upon the ground on which they fought. Sometimes the lists were inclosed by hazel-stangs, or a ring was marked out by stones; and the circles where the tribunal was convened might also be used for the purposes of single combat. He who fell under the barrier, or was driven out of the ring, though his foot only passed the boundary, was considered as conquered. And this was King Frotho's law. Such regulations were intended to save the waste of human life. A conventional termination was given to the battle, which satisfied the honour of the victor, whilst the vanquished knew that he could not obliterate his disgrace by protracting a useless conflict^b.

Whilst the common possession of land continued amongst the

^a Gunnlaug's Saga.

^b See Part II., *Proofs and Illustrations*, p. 279, for a collection of examples relating to the ancient Battle Trials.

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Teutons, an individual would have little inclination to contest the precarious possession of the field which, at the end of the year, reverted to the community: the autumnal crop was his only property. But the invasion of one Sept upon the territory of another, would be the frequent cause of hostilities, when the Tribes began to be united in nations; and if we were to theorize on the expedients by which a rude, bold and military people would endeavour to diminish the evils arising from such dissensions, none would appear more obvious than an agreement to abide the event of a single combat between their respective champions. Now, this supposition, which would be plausible as a mere hypothesis, is verified by the documents which exist. When a controversy arose between two Septs or "Genealogies" of the Alemanni, concerning the boundaries of their territories, the parties in possession perambulated the district. They then raised a turf taken from the contested land, on which they planted branches torn from the trees which grew upon the soil, and bore the symbol before the Count of the Tribe, in whose presence the assailants lifted it up, and presented it to him as their Chieftain. The Count then wrapt the token in a banner, and sealed it with his seal, and deposited the emblem in the hands of some trustworthy person, who was to keep it until the appointed "Placitum," or judicial assembly. Wager of battle was given; and when the champions met they placed the turf between them, and touched it with their swords, and declared their faith that the righteous cause would be crowned by victory^a.

Whilst an allodial property and a transmissible right could be acquired in the land by cultivation and labour, he who had first reclaimed the "Assart"¹—for this term of the English law is to be found in the Barbaric codes—and appropriated the product of the field, was its rightful lord. The title thus depended upon priority of occupation: and, when this priority was contested, the claimant did not begin his suit by words; he did not resort to pleadings before the Mallum: but he collected his forces, and vindicated his supposed property by making an entry upon the land which he alleged to be his own; and when he was thus Tenant in possession, he swore with six compurgators that he had not unlawfully intruded upon the tith of the Disseisee, who,

**Part I.
Ch. VII.**

to be considered as the termination of a war between two Septs or Clans, who agree to terminate their hostilities by abiding the event of a single combat between their respective champions.

The foregoing proposition proved and exemplified by the Laws of the Alemanni, in which Trial by Battle is described as the means of ending disputes between two Septs or "Genealogiæ," concerning the boundaries of their Townlands.

Trial by Battle, allowed for Allodial Lands, in which an absolute property had been gained by appropriation, according to the Laws of the Bavarians.

The Claimant begins by ousting the person in possession, and then wages his law to prove that he had been the first occupant.

^a LL. Allemannorum, tit. 85. De hiis qui de terrâ suâ inter se contendunt. [Laws of the Alemanni, tit. 85. Concerning those who contend about the ownership of land.]

Part I.
Ch. VII.

The late Occupant (who, being turned out of possession, is now the Plaintiff) replies, that *he* has witnesses to prove that *he*, or those under whom he claims, had priority of occupation.

No witnesses received unless qualified by holding allodial lands, and possessed of pecuniary property to the amount of six solidi.

Oath of the witness.

The Tenant falsifies the declarations of the witness, and demands wager of battle.

“Ornest,” or Trial by Combat, not mentioned in the Anglo-Saxon laws, and first noticed, in terms, in the statutory charter promulgated by William the Conqueror;

ejected from the domain, was now compelled to become the demandant—“Nor am I to go forth,” was the plea of the invader,—when he was sued by the party whom he had so lately ousted,—“since my work and labour was prior to thine.” The replication of the plaintiff was to the following effect: that he had witnesses who could prove that *he* had taken the profits without disturbance; that he had first cleared, ploughed, and cultivated the ground; or that it had descended to him from his father. In such a cause no witness could be allowed to give evidence, unless he was qualified by holding allodial land within the same “March” or district; and also by being possessed of as much chattel property as was equivalent to the “were” or fine imposed upon the disseisor, if he failed in asserting his legal right to the possession which he had obtained. The oath of this witness, and which he took upon his sword (see above, p. 175), was in the following words: “I heard with my ears, and saw “ with my eyes, that the tillage of this man on the land was prior “ to thine, and that he took the fruits of his labour”; and this oath, if uncontradicted, was conclusive. But the replication of the tenant was no less categorical. He gave the lie to the party who had borne testimony. “Thou hast sworn falsely against us,” he exclaimed: “I demand wager of battle”; and the title was decided by the event of the combat^a.

Battle Trial is not mentioned in any of the written Anglo-Saxon laws which are now extant; and the “Ornest”^b being first expressly noticed in a statutory charter of William the Conqueror, it is usually supposed that he introduced the duel, which has therefore been considered as one of the badges of Norman servitude^c. The law to which this effect is attributed,

^a LL. Bajuvariorum, tit. 16. De testibus et eorum causis, cap. 3, § 5. [Laws of the Bavarians, tit. 16. Concerning witnesses and their causes.]

^b Ornest vel Eornest. Duellum, monomachia, certamen inter duos: sic dictum forte, quod de lite certamine dirimenda, arrhis datis vel pignore deposito (quod nostratibus hodie etiam *earnest* vocatur), mutuo se obligarunt pugiles, Lye, Dict. Sax. [*Ornest* or *Eornest*. A Duel, single combat, contest between two persons: so called perhaps, because the combatants mutually bound themselves for the settlement of the suit by fighting, by giving earnest (i.e. part payment in advance) or depositing a pledge, which even to-day is called *earnest* by our people.]

^c 3 Blackstone, p. 337; 4, pp. 346–418. Mr. Hallam and Mr. Reeves follow the same opinion.

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nor do they direct the Trial by Battle in civil causes.

Wager of Battle offered by the "Witnesses" of Wulstan, Bishop of Worcester, against Walter, Abbot of Evesham, circa 1077.

Battle joined in the Anglo-Saxon County Courts.

According to the English Common Law, a forcible entry seems to have been originally the first step taken by a claimant to recover his lands.

Forms of Process invented by Henry II.; such as the Grand Assize, Assize of Novel Disseisin, &c. (see Chap. VIII.)

circumstance, that the laws of the Conqueror only relate to criminal charges, and that they are silent with respect to the Combat in civil causes, and that, therefore, they do not account for the Battle, by which the "real action" was decided. Upon this difficulty, it has been remarked, that "when William had ordained that this martial practice of his own country should be observed here in criminal trials, it became very easy to introduce it in civil ones"; and, being only used "in the Curia Regis, it had not, among other novelties of that Court, as it certainly would have had in the County Court, or any other of the tribunals of Saxon origin, the appearance of a singular innovation."^a In reply to these observations, it must be admitted, that an Anglo-Saxon duel cannot be adduced; but the argument which rests upon the absence of Trial by Battle in the Courts of Anglo-Saxon origin, is not entirely correct. Immediately after the Conquest, the "Witnesses" of the Church of Worcester offered to become the champions of St. Mary, and to defend the rights of Bishop Wulstan by Combat, against the claims of the Abbot of Evesham^b. It was in regular course, according to the common law, to join battle in the County Court, when the cause was not removed into a superior tribunal. If we reject the subtleties, the distinctions, and, above all, the technical expressions which unquestionably were due to the Anglo-Norman lawyers, and invented or perfected under the Anglo-Norman Sovereigns, the principles which govern the proceedings of Judicial Battle are so nearly identified with those which are to be collected from the Teutonic codes, as to afford a probability that they were parts of the Anglo-Saxon law, preserved by the usage and traditions of the people.

Paradoxical as the position may appear, there is reason to suppose, that, according to the English common law, a forcible entry was the most lawful mode of asserting the title to territorial possessions, and that in the same manner as the personal action was originally commenced by seizing the goods of the defendant, so the claim to the domain was properly enforced by an invasion of the territory. It happens that the details of a real action in the King's Court cannot be given earlier than the reign of Henry II., when a new series or system of legal remedies had been created, by which the pristine resort to arms was much restrained. Yet, even in the thirteenth century, if we allow for the innovations

^a Reeves, English Law, vol. i. p. 82.

^b Hemingi Cartularium, p. 82.

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resulting from the vigilant jurisprudence of Henry, the indications are sufficiently manifest of the spirit of an earlier age. Thus, the most ordinary case of claiming possession, was that which originated upon an intrusion. When the father died, a stranger^a would enter into the vacant land during the infancy or absence of the heir, to whom the right of possession had descended. In this case, it was entirely lawful for the heir, if he could, to eject the intruder by main force, and thus to recover the enjoyment of his inheritance. Indeed, this was the first remedy enjoined by the law^b. He was exhorted not to yield to that cowardice or supineness by which his warlike privilege might be lost. If the representative of the deceased land lord neglected either to eject the intruder by force, or to have recourse to the remedy given by the "Assize," then lately enacted in his favour, such a right accrued to the occupant, as was transmissible to *his* heir, who then became the lawful Tenant of the freehold, until his title was defeated or disproved in its turn. It may be now assumed, that the individual out of possession, unwilling to await the formalities of the law, made such an attack as would have been strictly lawful if it had been commenced when the invasion or disseisin was yet recent and notorious. The occupant, in that case, was fully justified in opposing force to force. He forthwith assembled his friends and his retainers; the private war was renewed; and, though the parties are advised, if possible, to abstain from bloodshed, still it does not appear, that, even at a more recent period, the homicide committed under similar circumstances was the subject of judicial inquiry. Supposing the owner *de jure* thus baffled by him who was the owner *de facto*, what was his remedy? He was compelled to bring his Writ of Right, a process by which he claimed not the possession, but the property of the land; and when, after many proceedings which are not relevant to our present inquiry, the parties appeared in court, the demandant set forth his claim^c. He "counted" or alleged, that his ancestor was seized in demesne of the disputed property, from

Part I.
Ch. VII.

Intrusion,—
a Disseisin
committed
by a Stranger
entering
upon the
vacant
possession
immediately
upon the
death of the
Ancestor,
and when
the Heir
was an
infant or
absent.

A freehold
acquired by
the Heir
of the Dis-
seisor, if
the latter
was allowed
to continue
in pos-
session of
the property
until the
time of
his death.
And there-
fore if the
Heir or
Owner *de
jure* at-
tempted to
regain pos-
session by
force, the
Heir or
Owner *de
facto* might
resist him
by force.

Writ of
Right
brought by
the Heir or
Owner *de
jure*.

^a Bracton, lib. iv., de Assisa Novæ Disseisinæ, c. 2. [Bracton, concerning the Assize of Novel Disseisin.]

^b Bracton, lib. iv. c. 5, de primo remedio post disseisinam et ubi incontinenti licet rejicere, et quomodo et quando. [Bracton, concerning the first remedy after disseisin and where it may be rejected forthwith, and how and when.]

^c Glanville, lib. ii. c. 3.

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whence he took the profits, or "esplees,"¹ in corn, in hay, and other produce; and this, he continued, "I am ready to prove by my freeman,"—naming the witness,—“who saw it and heard it.” Or the demandant, in place of the eye and ear witness, might produce one by whom the testimony had been received from his parent; who, on “his death-bed, enjoined the “champion by that faith which a son owes to his father, that “if he ever heard a claim concerning the land, he should prove “the fact of seisin, as that which his father had seen and heard.” The tenant, if he determined to defend his possession by combat, then falsified or contradicted this testimony. He denied it, word for word; and the witness, now the champion, was required to meet his opponent in the field, and the event of the conflict constituted the final decision of the controversy^a.

It is scarcely necessary to remind the reader, that such a trial, as described by Glanville² and Bracton, follows, step by step, the course of the ancient Teutonic codes, and that it differs from them only in consequence of certain restraints and limitations imposed upon the exercise of absolute force in acquiring possession, constituting a species of Law of Nations within the state. Every man was at liberty to commence a private war for the recovery of the lands which he considered to be his own. It is true that he acted at his own risk, and was liable to a pecuniary amerciament, though of no great amount, if his warfare was commenced upon illegal grounds. But, if he had a claim, the event, when crowned by success, justified the means. In proportion as the supreme Tribunals became more effective, this right was diminished. The mootings of the Serjeants in the Hall became more frequent than the encounter of the doughty champions in the lists; and the declaration and the plea became more manageable weapons of attack and defence than the baton and the target. Still the ruling idea of the law was, that legal proceedings only came in aid of the exertions made by the individual to obtain

^a See Glanville, lib. ii. c. 3; Bracton, lib. iv., de Assisa Novæ Disseisinæ, cap. 6. Quod oportet de necessitate ad Superiorem recurrere ubi non poterit disseisitus per se disseisitorem suum incontinente rejicere [Bracton, book iv., concerning the Assize of Novel Disseisin, chapter 6. That one must of necessity have recourse to the Superior where the person who has suffered disseisin cannot forthwith by himself eject his disseisor], and the Records in Part II., *Proofs and Illustrations*, see pp. 25 and 213 ff.

Wager of Battle, Oath of the Witness who swore that he had seen the Ancestor of the Demandant (i.e. the Owner *de jure*) in possession of the disputed lands, or that his Father, who had seen the Ancestor in possession, had enjoined him to prove the facts.

(See above, pp. 181, 182.)

In questions of disputed title, though the law came in aid of the parties, yet they were nevertheless forced to do their best to gain or maintain possession by force. “Nunc autem dicendum qualiter recurritur ad Superioris auxilium, cum utramque amisserit possessionem, naturalem videlicet et civilem.”³ “Cum igitur disseisitus ita negligens fuerit in hac parte, quod nolit vel non possit disseisitorem suum rejicere, de beneficio Principis succurritur ei per recognitionem

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Part I.
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extremely faulty when the causes which first introduced them ceased to operate; but, in their origin, they were founded upon such sufficient premises as rendered them tolerable and acceptable. Man never begins by introducing any law which is entirely unreasonable; but he very frequently allows a law to degenerate into folly, by obstinately retaining it after it has outlived its use and application. An issue joined upon a Writ of Right, in the reign of Elizabeth^a, in which the validity of a purchase is to be determined by two Masters of defence, wielding their staves before the venerable Justices of the Common Pleas, dragged from their tapestried recesses and compelled to seat themselves upon their Bench, removed to Tothill Fields, to their great annoyance and disquietude, may be viewed as the very acme of solemn absurdity. But if we carry back our imagination to the age when the Isle of Harty, in which the lands were situate, was ruled by one petty savage Chieftain, and Thorney Island, where the court was held, by another, we shall be convinced that it was an advance in civilization to substitute one conclusive trial of strength between the champions, in the place of the mutual depredations of the belligerent powers: for it must never be forgotten, that all real property was originally in the nature of a sovereignty; and that the first Battle Trials were not for a field or an acre, but for an entire Lordship or Domain.

Does it become necessary to complete our apology for Trial by Combat, by appealing to the still-continuing existence of the duel amongst us, proscribed by the laws of the Realm, but enforced by the code of honour? It was long since remarked, that if the law affords no redress for contumely, "men will have recourse to "the law of nature, and do themselves right by the sword."^b And the argument thus addressed to the Tribunal is the best recognition of the protection which ought to be afforded by the law, though the proceedings of the English Courts are only declarations of its inefficiency. Our common law began by refusing to entertain any action for mere words, unless the slander, if true, was such as would endanger the life of the object of it. This safeguard was enlarged scantily and slowly, until it attained its present

^a Chevin and Paramour's Case, Trin. 17 Eliz., Dyer, 301.

^b Argument in the Case of the Jurisdiction of the Earl Marshal; Chambers *v.* Jennings, Hil. 1 Annæ in B. R. 7 Mod. Rep., p. 126. 3 Blackstone, p. 123. Com. Dig. Tit., Action upon the case for defamation: § What words are not actionable.

extent, enabling the individual to recover a pecuniary satisfaction for such defamation as may impair his trade, or exclude him from society, but compelling the courts to disclaim any knowledge of the sentiments and feelings which pervade our present state of society. The most opprobrious assertions against the character of a gentleman, the most galling affronts, the most scurrilous language, will not command one farthing damages. We cannot, therefore, contradict the writer who, rejoicing in the discovery of the defect, maintains, that, on these points, our English jurisprudence is eminently faulty^a, and that it has not advanced with the spirit of the age. If the "sum of guilt" produced by the practice of duelling be rightly estimated by one^b who has had full opportunity of calculating its effects upon and amongst the higher classes of society, it is surely imperative upon the Legislature to remove the provocations occasioned to the individual by the inefficiency of the law. Nothing more is required than to declare, that the Common Law shall conform to the rules of Common Sense. The legal intendment should run equally with the common understanding of the world. Let the feelings of the individual be understood and estimated by Judge and Jury, as they are in the ordinary intercourse of life; and a challenge arising from the inconsiderate intemperance of the tongue, will then be deemed as absurd as it would now appear, if the question, whether an entail be duly barred, were to be decided by the champions in the field.

Trial by Battle originally resulted from the absence of competent jurisdiction. Trial by Compurgation and the Ordeal were expedients intended to mitigate the rigour of the law, and to compensate for the uncertainty or absence of human testimony. Witnesses must often have been entirely wanting; for it was not every one who could testify in all cases; the right of giving evidence was annexed to station and wealth; and there were occasions when an individual, not possessing a certain qualification of rank and property, was as incompetent to give testimony as a slave in the West Indies, whose evidence must be rejected by the court, though he may be the only person capable of convicting a culprit guilty of the foulest crime, or proving the innocence of the prisoner. Furthermore, the Barbaric nations rejected all circumstantial evidence. A direct assertion of the fact was

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Modern duels occasioned by the narrowness of the common law, which refuses to take any cognizance of affronts, such as calling a Gentleman a scoundrel, a rogue, a villain, or a cheat, giving him the lie, &c.

Compurgation and Ordeal: Principles upon which they were introduced.

^a See Jeremy Bentham, *Traité de Législation*, vol. ii. p. 233.

^b Wilberforce, *Practical View*, chap. 4, § 3.

Part I. required from the witness; he was to speak from the positive
Ch. VII. information of his senses; and a short interval of time was con-
 sidered so far to weaken this positive testimony, as to reduce it
 to a secondary probation.

It is not necessary to maintain that these principles, as rules of evidence, are wise in the abstract: they must be considered with reference to the general state of knowledge. Even now, with all the advantages derived from an improved system of jurisprudence, and with all the aids imparted by civilization, the condemnation of the criminal whose guilt is to be inferred from presumptions, is often a perplexing task, always a painful duty. Illiterate Judges, unaccustomed to investigation, and whose minds were unimproved by thought and reflection, might therefore feel, that if they refused to undertake the labour of unravelling a mass of perplexed statements and contradictory testimony, they avoided the hazard of injustice. Popular tribunals are always prone to convert suspicions into proofs; and we may doubt whether these Tribunals, taken from the people, were altogether to be censured for this distrust of their own wisdom.

An Ap-
pellant to be
considered as
a witness in
his own
cause.
Presentment
of the
Hundred or
Township,
a charge
grounded
upon general
suspicion.

When an accusation was preferred by an appellant, he may be considered as a witness in his own cause; he was, therefore, to be received with a certain degree of distrust. The inculcation by the presentment of the hundred, was a charge preferred against an individual upon the suspicion which prevailed in the community. He was believed to be guilty by all the country, but still the law would not venture to condemn him, until the bad opinion entertained of him in this particular instance, and by which he was accused of a definite act of guilt, had been weighed against the general character of his life and conversation. He was, therefore, allowed, as a preliminary defence, to call upon the voucher of his Lord, a wealthy and responsible member of the community, who was his legal protector. And if the superior deposed upon oath that the accused was a man of unspotted fame, and also fortified this declaration by the collateral oaths of his own compeers, then the testimonial began to counterbalance the statement of the appellant, or the floating opinion of the people. The defendant now stands in court as one who is above mere suspicion; and if a certain number of his relations or neighbours will swear to their belief of his innocence, their solemn asseveration is considered as sufficient to clear him from a charge which, in the beginning, was destitute of positive proof. When the superior will not dare to testify to the good character

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Part I.
Ch. VII.

Torture, employed by the Civilians in cases where the evidence, according to the English Law, would warrant a capital conviction.

by two witnesses at the least; the deposition of one is of no avail whatever. *Unius responsio testis omnino non audiatur*^a [the evidence of one witness is not to be admitted at all], is the universal maxim of the Civil Law; and though the English lawyer^b, always prone to flatter our Pharisaical English pride by depreciating the institutions of the rest of mankind, may raise loud objections against the absurdity of this restriction of credibility, yet, even if, according to his usual course, he refuses to recollect the precepts of the Divine Law^c, he must admit that a very philosophical authority defends the rule and the principle which it involves—"For the assertion of the one witness who affirms is only equal to the assertion of the criminal who denies, a third is needed to decide between them."^d However full and precise, therefore, the evidence of one witness may be, the Civil Law considers his testimony as affording only a vehement presumption, and not as a proof. Furthermore, be the witnesses ever so numerous, still, unless the multiplied testimony be direct and positive, affording proofs "as clear as the light of the sun," their evidence is an incomplete probation; for the Civil Lawyer does not consider himself as convinced by the metaphysical proof resulting from circumstantial evidence, or from the comparison or union of facts, which, simply and singly considered, are not proofs of guilt: but which, when linked and conjoined, are held, according to the English Law, to produce a supposition in the minds of the Jurymen, that the deed has been perpetrated by the culprit, though it was never seen by mortal eye. In either of these cases, then, the Civil Law pauses; but the Law of England hastens to condemn^e. Amongst us, it is fully settled, that the positive evidence of a single witness, whose credit is untouched, though the testimony be entirely unsupported by any collateral circumstances, is sufficient to warrant a conviction, even for a capital crime; and the condemnation of the criminal, upon the hypothesis suggested by presumptions, all positive testimony being entirely absent, is an event of daily and familiar occurrence. If the murder, for instance, is inferred by the chain of moral evidence, coming within the boundary which has been assumed as legal, the offender undergoes his doom. But the Civilian, as

^a Cod. 4—20—9.

^b 3 Blackstone, p. 371.

^c Deut. xvii. 6; 2 Corinthians xiii. 1; Timothy, v. 19.

^d Montesquieu, liv. xii. c. 1.

^e Starkie on Evidence, Part III. §§ 58, 64—68.

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above observed, refuses to condemn upon that probation which he defines as imperfect, and only raising a violent presumption of guilt; and if a Pothier¹ could visit an English Assize-Hall, he would exclaim against the cruelty and injustice of the common lawyer who sends forth the wretch to the place of execution, pronouncing his judgment upon the fallible, or, perhaps, corrupt or vindictive evidence of one single individual: or upon the artificial and fine-drawn fabric of legal faith, not established upon the facts which, as far as human testimony may be trusted, are established by witnesses, but upon circumstances, inferences and surmises. To complete the full and indubitable proof, the Civilian, in such a case, requires the confession of the criminal himself. He is solemnly warned and required to speak the truth; if, after time given for reflection, he refuses to acknowledge the crime of which he is accused by vehement presumptions, he is then stretched upon the rack; and should his innocence or his fortitude enable him to persist in his denial, he is absolved from the capital charge, and his life is saved. Loudly, therefore, as we praise the superior excellence of our institutions, the difference between the Civil and English Law is reduced to the single point, that where the English Law inflicts the punishment of death, the Civil Law grants a respite, and directs the torture, leaving to the criminal a possibility of escaping the capital conviction.

The proceedings of the Civil Law, when fairly conducted—for the application of torture after conviction, or for the purpose of obtaining evidence against other parties, rests upon a very different ground—result from the scruples of a timorous conscience, earnest to administer justice, and yet fearing to incur the responsibility of passing the decree of death, upon fallible testimony; and the theory of the Civil Law is really milder and more humane than the theory of the English Law. But the fallacies which led to the extreme practical cruelty of the Civil Law are easily detected. If the Civilian was uncertain whether his extraneous evidence warranted the sentence of death, he should not have inflicted those sufferings which are more terrible than death. If he saw any reason to distrust the witness, or if he supposed that the truth was so concealed that it could only be wrung and extorted from the agony of the criminal, he should have refrained from capital punishment altogether. Human legislation can only act upon human testimony. Vengeance does not belong to man; and, if evidence cannot be obtained which satisfies the conscience of the tribunal, the love of justice must

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Part I. not degenerate into bloodthirstiness, so as to seek, at all events,
Ch. VII. the condemnation of the offender.

The rules of evidence adopted in this country are framed with great acuteness and caution; and, generally speaking, are admirably calculated for the furtherance of justice in the ordinary affairs and dealings of society. The debt cannot be recovered, unless the liability of the defendant be shewn in the most irrefragable manner; and property is fully protected by the precautions which guard the inheritance against fraud and conspiracy. But whether any mortal judge can be warranted in consigning a fellow creature to death, upon any testimony less conclusive than the direct and positive establishment of the accusation by the mouth of two or three witnesses, may be reasonably doubted, and the doubt is confirmed by the volumes of the English Law. Whatever may be urged by the political reasoner, it is difficult to find any valid reason why the law insists upon two witnesses to prove the guilt of high treason, and is contented with one, if the indictment relate to a capital felony. If a government be so wicked as to attempt to murder its enemies by false witnesses; and if men can be found who will become the instruments of such villainy, there will, in such a state of society, be no deficiency of perjury to help the hatred or malice of any individual; and the special rule imposed by the Statutes of High Treason is a distinct admission that the general law is imperfect, if not unjust. Indictments, however, grounded upon the oath of one witness, are not so frequent as those which are sustained by circumstantial evidence. The force and tendency of the presumptions industriously collected by the prosecutor, and logically arranged by the ingenious advocate, may oftentimes produce a belief of the charge: and, as the law is now administered, the Judge is compelled to pronounce the fatal, irreversible, irremissible doom, unless the criminal can assert his innocence by negative proof; a proof, of all others, the most laborious to procure, the most difficult to establish, the most liable to cavil and exception. Should the statesmen who support the existing practice urge, that the commission of crime would be encouraged by a Code which refused to inflict capital punishment upon circumstantial evidence, it is at least incumbent upon them to revise the laws which diminish the reasonable safeguards due to the prisoner, and impede him in his defence; and, above all, they should exert themselves to render the whole system more conformable to those principles, which alone can afford any real support or guidance to the institutions devised by human wisdom.

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Part I. whose franchises were established by pleading the usages which
Ch. VIII. had prevailed under Edward the Confessor. So great, indeed, was the traditionary veneration inspired by the hallowed name of the last legitimate Anglo-Saxon King, that the Normans themselves were willing to claim him as the author of the "wise customs" of their native country^a. And we may be also inclined to believe, that, notwithstanding the very strong terms in which the Chroniclers describe the despotism of the Conqueror—"All "things," it is said, "divine and human, obeyed his beck and nod"^b—his supremacy over the Church was the principal oppression of which they complained. But the employment of foreign functionaries was followed by new forms of proceeding, not accompanied, perhaps, by any decided intention of innovating, and dictated merely by the pressure of circumstances, which, nevertheless, had afterwards the effect of displacing much of the old jurisprudence, or of causing it to assume another guise. During the tyrannical reign of Rufus, the arbitrary will of the Monarch constituted the only code by which the subject was ruled; but the Charter of Henry I. "restored the law of Edward"; or, in other words, re-established, or intended to re-establish, the Anglo-Saxon jurisprudence as it existed before the invasion. To what extent the alterations, consequent upon the change of property amongst the higher orders, had modified the older institutions, we cannot entirely ascertain; and some of the doctrines introduced by the Conqueror were silently preparing the way for future revolutions. But, in theory, the customs of the ancient national Monarchs still prevailed; and the administration of the law, though severe, was neither discreditable to the Government, nor ungrateful to a people, then advancing in good order and civilization. This progress was suddenly interrupted by violence and anarchy. Under the turbulent and miserable usurpation of Stephen, neither government nor law existed in England. The realm was entirely given up to violence: every powerful man built his castle, which became a den of robbers; the towns and the open country, the clergy and the peasantry, all suffered equally from spoil and rapine: pestilence and famine swept away the people, and the labours of agriculture were abandoned in despair: to till the ground was to plough the sea; the earth bare no corn, for the land was all wasted by these deeds. "Such things," continues

Anarchy and misery of the reign of Stephen.

^a See Rouille's Commentary upon the Grand Coustumier, Pref.

^b Eadmer, p. 6.

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the Monk of Peterborough, "did we suffer for nineteen years
 "for our sins,"^a until the accession of "Henry Fitz-Empress,"
 considered by the English as representing the ancient national
 dynasty. They traced his descent to Alfred and to Cerdic^b;
 but the son of Geoffrey Plantagenet was a stranger by birth
 and education; and the Anglo-Saxon jurisprudence was finally
 subverted by the restorer of the Anglo-Saxon line.

Part I.
 Ch. VIII.

Henry II.
 founder of
 a system,
 which was
 afterwards
 matured
 into the
 "Common
 Law."

If we seek the character of the founder of the Common Law,
 in the pages of the Justiciar, we shall view him as greater and
 more powerful than any King who had hitherto borne sway in
 England. Just, discreet and merciful; a lover of peace, but
 whose humanity did not degenerate into indolence or supine-
 ness; mighty, but who never allowed his strength to tempt him
 into tyranny. By the force of his right hand he crushed the
 violence of the proud and intractable, whilst he extended his
 sceptre to the indigent and lowly. None of the Judges of his
 Court could dare to deviate, however slightly, from the path of
 righteousness, nor to utter a sentence contrary to the dictates
 of truth. In his supreme tribunal, the power of the adversary
 oppressed not the poor man; neither could favour or credit drive
 the lowly from the seat of judgment. Such are the sentences
 which preface the earliest Treatise on the Law^c. But in the
 portrait which we receive from the Ecclesiastic, every virtue
 disappears. Unchaste, greedy, avaricious, capricious and cruel,
 he abolished all the old and rightful laws of the country by the
 new ordinances, termed "Assizes," which he promulgated every
 year. Severe beyond example, his jurisprudence was subversive
 both of natural justice and of the laudable customs of the realm.
 Attacking, with an even hand, the honour, the privileges and the
 property of the Aristocracy, and the franchises of the Clergy;
 no individual was so exalted as to be above the reach of his
 arbitrary power; no one so insignificant as to be sheltered by
 obscurity from his searching tyranny^d. This strange discrepancy
 between the Minister and the Monk, may be attributed, in part,
 to the difference of their respective stations. The persecutor of
 Becket could find little favour from the Churchman; and the
 charge preferred against him, that he "kept the guilty Priest

Contra-
 dictory
 portraits of
 Henry II.
 Represented
 by Glanville,
 the Justiciar,
 as a just and
 merciful
 King;

and by
 Radulphus
 Niger as the
 worst of
 tyrants.

^a Sax. Chron., A.D. 1137.

^b Radulphus de Diceto, *Imagines Historiarum*, p. 529.

^c Glanville, *de Legibus*, in Pref.

^d Radulphus Niger¹. MS. Cott. Cleopatra C x.

Part I. “in fetters, making no distinction between the Clerk and the
Ch. VIII. “Churl,” may not be considered as a proof of the impartiality of
the complainant; but the fiscal extortions of Henry, together
with the abuses resulting from the sale of right and justice, have
been faithfully recorded. In opposition to the praises of his
equity, so loudly bestowed by Glanville, we can quote the de-
claration of the suitor, who counts the bribes which he paid to
the Monarch; and the testimony afforded by the Justiciar is
rendered suspicious by his known perversion of the law to answer
his own sinister designs^a.

(See above,
p. 184, and
below, p.
213.)

Institutions
firmly
established,
if not
introduced
by the Laws
of Henry II.:
Trial by
Jury,
Judicial
Circuits &c.

Henry was, however, a wise and intelligent legislator. The
“Assizes,” whose necessary severity ensured the tranquillity of
the country, exist either in a satisfactory abstract, or in their
original form. And, though the milder statutes which altered
or regulated the mode of trial in civil actions have been lost,
sufficient notices of their purport are to be collected from the
incidental notices preserved by the first systematic writers on
the English Law. The acts of the Counsellor are frequently
ascribed to the Sovereign; but the encomiast and the detractor
both agree in ascribing the “Assizes” enacted by Henry to the
bent of his own mind. Nor was he deficient in that cultivation
which is most essential to a lawgiver. More than usually versed
in historical literature^b, the hereditary office of Grand Seneschal
of France, which he held, acquainted him with the details of
judicial policy. The peculiar characteristic of his legislation is
the sagacious application, or rather amplification of rude and
imperfect institutions, which he encouraged and fostered into
greater efficacy and power; and, although he was not, in strict-
ness, the inventor of that legal constitution which succeeded to
the Anglo-Saxon policy, yet, “Trial by the Country” owes its
stability, if not its origin, to his jurisprudence. That adminis-
tration of justice which is said to bring the law home to every
man’s door was permanently established in his reign; and,
perhaps, even the Remedial Court of Parliament itself is a
remote consequence of the jurisprudence of the Anglo-Norman
King. Yet all these institutions were strangely modified by
time and chance. They were gradually shaped out by the col-
lision of events, and by small and partial alterations, the silent

^a Richard de Anesty’s Narrative; Part II., *Proofs and Illustrations*,
p. 9. Benedictus Abbas, 408, 500.

^b Giraldus Cambrensis, *Hibernia Expugnata*, p. 784.

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Continue

Part I.
Ch. VIII.

been committed, and examined privily and apart by the Judge before they were confronted with the Prisoner.

“and how it happened.” None were to be adduced whose integrity or credibility might be reasonably distrusted, either by the accuser or the accused. Known friends, or declared enemies, and near relations of either party, were excluded from the Inquest; and the jurors were to be brought into court suddenly and without notice, so that they might not be bribed, intimidated, or corrupted. Before the culprit was put upon his trial, a preliminary inquest was taken by Four Knights, who were questioned touching their belief of his guilt; and, in their presence, the Bailiff afterwards interrogated the twenty-four jurors, not as composing one body, but privately and separately from each other. They were then assembled and confronted with the culprit, who could challenge any one for lawful cause; and if the challenge was allowed, the testimony of that juror was rejected. The Judge then “recorded,” or declared the verdict, in which twenty, at least, were required to concur^a.

Norman
“Recognitors” in
civil cases.

Recognitors^b, as they were called in Normandy, were in like manner the witnesses of the fact in civil cases. On the trial by “the Brief d’Establie,” or the Norman Writ of Right, we are told that those are to be sworn “who were born in the neighbourhood, and who have long dwelt there; and such ought they to be, that it may be believed they know the truth of the case, and that they will speak the truth when they shall be asked.”

Norman
Inquests or
Recognitions, by
which public
rights or
privileges
were
testified.

Public rights and privileges, claimed either as belonging to the Sovereign of Normandy, or to the community, were testified by Inquests, in which a similar language is employed. The “Inquest of the King’s Regalities in the Archbishopric of Rouen,” is a plain narrative of facts, said or told by the sworn Knights, who recollected the proceedings which had taken place in former times upon the vacancies of the See. And the “Establishment,” intended to decide the conflicting pretensions of clerical immunity and territorial jurisdiction, is founded upon the declarations of the Barons, who, by virtue of their oaths, “said forth” that which they had seen in the days of Henry and of Richard, late

^a Grand Coustumier, chapters 68, 69, 103. See Part II., *Proofs and Illustrations*, p. 267.

^b The Knights of the Grand Assize are usually called *Recognitors*, κατ’ ἐξοχήν. But any persons sworn upon an Inquest were indifferently termed “Juratores” and “Recognitores”; Bracton, lib. v. c. 9, de Warrantia, § 14.

Kings of England^a, and who in person recorded the testimony which they gave.

Part I.
Ch. VIII.

The same features are found in the old English law. The jurors were confessedly witnesses; when they swore, with uplifted hands, "Hear this, ye Justices! We will say the truth concerning those matters which ye shall ask on the King's behalf; and for no cause will we be hindered, that we shall not speak the truth."^b And the grievance which the Church sustained by subjecting her members to the jurisdiction of the secular Tribunal, which condemned them as thieves and murderers, is described in the Papal Bull as a trial in which Twelve Laymen are admitted as witnesses against the Clerk, to whom, if they declare that he committed the crime, such faith is given, that the culprit is condemned to death^c. In civil trials, their functions are declared with equal clearness; and the legal rules relating to their character, together with the forms and practice of the Courts, are consistent, as applied to persons under judicial examination, but entirely unintelligible if they are considered in any other capacity. If any of those Knights who appeared upon the Grand Assize happened to be unacquainted with the truth of the matter, they were to be rejected and others to be chosen, until Twelve were unanimous. If the jurors professed to know the truth, but dissented from one another in their statements of the fact, the array was "afforced"; that is to say, other witnesses were sought for, cognizant of the disputed allegations, until Twelve at least could be found who would give testimony—for that number was deemed almost indispensable. In the charter which exempted the patentee from serving on Juries or Assizes, the privilege was not to avail him when his attendance was required as a witness in a deed. "If there are not any Knights"—it is Sir Ranulf de Glanville who proposes the question—"in the neighbourhood, who

English Inquests, composed of Witnesses, sworn to speak the truth according to the best of their knowledge.

Ancient legal rules respecting Jurors, consistent with their character as witnesses.

Rejection of Witnesses or Recognitors, who had been summoned, but who were unacquainted with the facts, and substitution of others in their stead.

^a *Inquisitio de Regalia Rothomagensi*, Duchesne, *Historiæ Normannorum Scriptorum*, p. 1057. *Stabilimentum factum apud Rothomagum inter Clericos et Barones Normanniæ*, A.D. 1205, Duchesne, p. 1059. [Inquest concerning the Regalities at Rouen, Duchesne, *Writers of the History of the Normans*, p. 1057. Settlement made at Rouen between the Clergy and Barons of Normandy.]

^b Bracton, lib. iii., de Corona, c. 22. *Mirror*, § 38.

^c Bulla Papæ Clementis V. "de Gravaminibus," dated 28 Nov. 1308. [The bull of Pope Clement V., concerning Grievances.] *Concilia*, vol. ii. p. 323.

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Part I. rule of law which, in civil cases, was equally adopted in
Ch. VIII. England^a.

Witnesses
or Jurors
amongst the
Franks, how
elected and
examined.

Human institutions, like the works of nature, are links of one chain: they cannot be severed, so as to fit in all respects into an artificial classification; and we may readily admit, that these Tribunals were not always distinguishable from each other with perfect accuracy; yet it is evident, that neither the Compurgators nor the Echevins were required to perform the duties which uniformly belonged to the Jury. But, in the capitulary, which directs that the "Witnesses" were to be chosen from the peculiar neighbourhood, the Pagus, the Town, or the County, we recognize the principle of the English "Trial by the Country," to which the ancient common law adhered so anxiously, that, if the venue was laid in a peculiar street, the Jury could only be returned from the street itself; whilst a trespass committed in Westminster Hall was to be testified by a Jury of the dealers and traders who were stationed at their booths within its spacious walls. The election of the Frankish witnesses was to be made by the "Missus" or the "Comes," as amongst us by the "Vicecomes,"¹ or Sheriff, who replaced the ancient Earl. They were to be separately examined, in the manner directed by the law of Normandy^b. Twelve are enumerated as offering their testimony. Until they gave their verdict they were to be kept without meat or drink; and none could be challenged but for lawful cause^c.

Juries in
criminal
cases
sometimes,
but er-
roneously,

It has been maintained, with some degree of confidence, that this "admirable criterion of truth, and most important guardian of public and private liberty, is due to our Saxon ancestors"^d;

^a Magn. Rot. 31 Hen. II. rot. 14. Londonia et Midd. Ibid. rot. 11. Devenescire. Madox, Exch. p. 379.

^b Tabularium Persiense, A.D. 818. Du Cange, vol. i. p. 1600.

^c Car. Magni Cap. Secundum, A.D. 805, § 11. Cap. Tertium, A.D. 805, § 13.

Car. Magni Cap. Primum, A.D. 809, § 16.

Car. Magni Cap. Tertium, A.D. 812, § 3.

Ludovici Pii Cap. Primum, A.D. 829, § 10.

Capitul., lib. iv. App. II., § 16.

^d Blackstone, vol. iv. p. 414; who follows Lord Coke, Spelman and Nicholson. Hickes takes the opposite side of the question, and maintains that the Inquest is purely Norman. It will be recollected that both parties have omitted to mark the essential distinction between what may be termed *Municipal Juries*, described in Chap. III.,

and those who support this proposition have adduced the chapters which we have before quoted from the Anglo-Saxon laws. An accusation, however, is not a trial; and there is a wide difference between the Jurors who were recognized functionaries bound to bear testimony by virtue of their station, and the array summoned to give evidence on a particular case, and whose office determines with the occasion for which they were convened: and the individuals who have been considered as Jurors, in the modern sense of the term, were either sworn Magistrates, or performing municipal duties. Assembled in the Wapentake, like the Frankish Echevins, the charge preferred upon oath by the Twelve Thanes and the Gerefa was a denunciation or impeachment, not an investigation of the crime. If, as may be admitted, they declared the law upon oath, they did not examine the guilt of the party; whilst the Jurats who were assigned to legalize the transfer of personal property, and who seem to have been afterwards united to the municipalities of the Burghs, could only give their verdict with respect to the transactions which they had been called in to witness.

Part I.
Ch. VIII.

supposed to be an Anglo-Saxon institution. The Twelve sworn Thanes of the Wapentake (see above, pp. 80 and 175) possessed the power of accusation, but not of trial. The Attesting Jurats (see above, p. 155) were only empowered to give a verdict respecting the transactions which they had been required to witness.

With the exception of the special cases to which the statutes of Edgar apply, the usual mode of proof was by the unsworn testimony of the suitors. Contracts for the sale of land, Charters by which the property was transferred, were proved by the Suitors of the Folkmoot; and their evidence was frequently required, though other individuals who had specially attested the transaction, were sometimes vouched as Witnesses, together with the "Meliores,"¹ "Fideles," or "Proceres" of the Hundreds. It is therefore probable that when the proceedings were regularly conducted, the witnesses proved the payment of the money or the covenants of the sale; whilst the Hundredors were required to declare those facts which were notorious to the community at large; such as the quiet possession and seisin of a party through whom the title was derived.

(See above, pp. 155, 156.)

(See above, p. 116.)

Compurgation was always made by oath; the solemn assertion was the very foundation of the process. Evidence, on the contrary, was usually given upon the simple affirmation of the witness. It may be objected that amongst the Saxon Customals is an oath adapted to the examination of a witness testifying the facts which he had seen and heard. This oath, however, was applicable only

Distinction between the Anglo-Saxon Compurgators and the Anglo-Saxon witnesses; the former being always sworn, whilst the

and the Traverse Juries employed for the proof of facts in relation to the trial of an individual.

Part I. to those special and selected witnesses who were required by the
Ch. VIII. law for the purpose of attesting contracts and legal transactions^a;
 the evidence given by the suitors of the Folkmoot was not necessarily confirmed by this sanction: there were deviations from this practice, but the exceptions prove the rule, that they could only be required to state their evidence, which was received as an unsworn declaration. If they chose to strengthen their assertions by an oath, they might do so; and we find cases in which the oath was proffered; but even then it was only the vociferation of the crowd, tendered rather for the purpose of bearing down opposition, than for the furtherance of justice. If an appeal was made to the suitors of the Hundred, their testimony often became the mere acclamation of an angry multitude, better calculated to inspire apprehension than to afford satisfactory evidence of the truth. Lawsuits were prosecuted with the greatest bitterness and pertinacity. Ignorant and uncivilized men view the proceedings of the law merely as an incident in the quarrel, not as the means of restoring peace between the parties. The witness is an avowed and open partizan: his honour and his interest are involved in the success of his principal; and the litigant who could appear in the "Maxima Concio"¹ of an Anglo-Saxon Kingdom, at the head of a thousand sturdy witnesses, all ready to swear on behalf of their Leader, must have had little reason to doubt the result of a controversy with an inferior adversary^b. The suspicious character of these proceedings is shewn by the expedients to which the courts had recourse for the purpose of avoiding them. When a more accurate and dispassionate investigation was required, it was the practice to elect some of the best men of the country, named, examined and sworn by mutual consent of the parties, who had agreed to abide by their verdict^c.

latter gave their evidence without oath, except in certain cases, forming an exception to the general rule.

Custom introduced in the Anglo-Saxon Courts of occasionally selecting some of the best men of the Country, who were named, sworn and examined by the mutual consent of the parties. Anglo-Norman tribunals incline towards the introduction of Trial by Inquest or Jury, as in the trial of the

This practice formed a near approach to the "witnesses" of the capitularies; and, after the Conquest, whenever any discussion arose in the King's Courts, or by virtue of his writ or mandate, we may observe the tendency of the tribunal to encourage a proceeding, which, without being entirely new to the Anglo-Saxon, might be brought within the canon of the Norman law. Of this, we find an early and important example in the memorable suit in

^a Canute, II. § 24.

^b Hist. Eliensis, pp. 473-476; and see Hickes, Dissert. Epist. p. 42.

^c Hist. Ramesiensis, p. 456.

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Part I.
Ch. VIII.

Examples of
Inquests in
the reigns of
Hen. I. and
Hen. II.

Sometimes
required to
be chosen
from the
oldest men
of the
County.

In the subsequent reigns, declarations upon oath, or "recognitions," as they were occasionally termed, made by the "probi homines" of the jurisdiction, began to be more frequent. Still the practice appears only as a mode of ascertaining facts, which, however expedient or favoured by the law, was not restricted by any positive and inviolable rules. The Reeve or Dapifer, and such "good neighbours" as he might name, could be empanelled to "declare the truth"; and, pursuant to their verdict, the Plaintiff obtained the enjoyment of his Franchise^a. Sometimes, a general direction was given; and the men of the County were charged, "as they loved the King," to "say forth the truth," by which the tenure was to be decided^b. Sometimes, after a complaint had been preferred to the King, the Hundreds were convened before the Sheriff, and the inquisition was taken pursuant to his command, by sixteen good and lawful men from four adjoining Townships^c. If a right of pannage was claimed in the Royal forest, the King informed himself of the justice of the demand by the recognition of the lawful men of the Hundred^d. In another case, fourteen of the oldest men of the City of London were empanelled in the Court of Husting, according to the King's writ, to decide a suit brought by the Abbot of Caen for the possession of a curtilage. Four only swore; and their oath being deemed sufficient, the Abbot discharged the others from the panel. The direction, that the Jurors or Witnesses should be chosen from those individuals whose age rendered them more competent to declare the truth, is particularly enforced by another writ of Henry II., which commands the Sheriff to cause Twenty-four of the County of Berks to be selected from amongst the oldest men of the time of Henry I. If they could swear that

p. 197. [Concerning the suit at Pennenden between Archbishop Lanfranc, and Odo, Bishop of Bayeux.]

^a Writs of William the Atheling, son of Hen. I., issued by him during the absence of his father, from the Black Book of St. Austin's. MS. Cott. Julius D ii. Part II., *Proofs and Illustrations* pp. 239, 240.

^b Writ of Hen. I., granted at the suit of the Abbot of Abingdon. Book of Abingdon. MS. Cott. Claudius D vi. See Part II., *Proofs and Illustrations*, pp. 242 ff.

^c Proceedings *tempore* Hen. II. From the Chartulary of St. Stephen's at Caen, in the possession of the Abbé de la Rue. Part II., *Proofs and Illustrations*, p. 246.

^d Writ of Hen. II. in favour of the Monks of Abingdon. Book of Abingdon. See Part II., *Proofs and Illustrations*, p. 245.

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the Monks of Abingdon had fully enjoyed the rights of the market in those days, "then let it be so now"; but, if they saw it not, and could not swear to the fact, the claimants were to lose the franchise which they asserted. The Jurors were named from amongst the suitors in full county, and a verdict was given for the monks; but the men of Wallingford having persuaded the King that the tenants of the Abbot were more anxious to promote the temporal interest of their Lord, than to obey the dictates of conscience, he commanded that a second inquest should be taken, in which half the "Seniores" were to be chosen from the Burgh of Wallingford, and half from the County at large; and all tenants of the Abbey were to be excluded. Each array gave a separate, discordant and unsatisfactory verdict; and the Earl of Leicester, who presided as Justiciar, would not undertake to pass judgment, but reported or recorded the proceedings to the King. At the same time, however, the Earl gave evidence, that he, when a boy, was educated at Abingdon, and that he had seen that, in the days of William Rufus, the monks enjoyed the franchise which they claimed. "And the King, delighted with the testimony of such "a man," was convinced that more faith was to be placed in one speaker of truth, than in the declarations of many, whose disputes induced them to depart from veracity^a.

Part I.
Ch. VIII.

Suit between the men of Wallingford and the Convent of Abingdon, 1159-1169. Jurors elected by the Sheriff in full County.

Testimony of Robert de Beaumont, Earl of Leicester, the Justiciar, considered as counter-vailing the discordant verdicts of the Jurors.

Trial by a tribunal of sworn witnesses, elected out of the Popular Courts, and employed for the decision of rights of property, may, as before mentioned, be traced to the Anglo-Saxon period; but, in criminal cases, the Jury appears to have been unknown until enacted by the Conqueror; for the same Charter, which compelled the Englishman to resort to the Battle Trial, authoritatively directed the "Witnesses," according to the "Law of Normandy," as the test of the guilt or innocence of the accused. Yet, the Statute was adapted to the peculiar case of Appeals between the Anglo-Saxon and the Norman, and does not profess to be a general regulation. Amongst the Anglo-Saxons, therefore, and in the Courts which were purely Anglo-Saxon, the mode of trial, at first, remained unaltered; though a near approximation to it was effected by those laws which, in all cases, conjoined the oath to every accusation or impeachment preferred by or in behalf of the country.

Statute of William the Conqueror (see above, p. 182) introduces trial by "Witnesses" in the particular case of an Appeal brought by an Englishman against a Norman, or vice versa.

^a Placitum de Foro Abindoniæ, Book of Abingdon. [Plea concerning the market at Abingdon.] MS. Cott. Claudius B vi. Part II., *Proofs and Illustrations*, p. 244.

Part I.

Ch. VIII.

Assize of Clarendon, re-enacted at Northampton, enacted by Hen. II. "per consilium Archiepiscoporum, Episcoporum, Abbatum et ceterorum Baronum suorum,"³ about 1176. Frankpledge, both seignorial and collective, enforced by these Assizes or Statutes.

Inquests to be taken by Twelve Knights of each Hundred, and by the Four Men of each Township, assembled according to the Anglo-Saxon law, and sworn according to the Norman law; the Twelve Knights being probably substituted for the Twelve Thanes of the Anglo-Saxon period.

The "Assizes" of Clarendon or of Northampton¹, enacted by Henry II., were intended, in the words of the preamble, "for the preservation of the peace and the furtherance of justice," and increased the rigour of the preceding laws^a. All the customs relating to the Frankpledge, both seignorial and collective, were enforced. No one was to receive or harbour any man in his House, his Land, or his Soke, unless he would be answerable for their appearance, or unless they were in Freeborh. With respect to the Decennaries, it was declared, that no Franchise, not even the privileges of the honour of Warenne², should exclude the Sheriff from entering the jurisdiction, to see that the Frankpledge was duly held; and it may be observed, that such a clause bespeaks a very extraordinary confidence in the strength of the Royal authority.

In all the Shires, the Justices who represented the King's person, were to "make inquiry," by the oaths of Twelve Knights or other lawful men of each Hundred, together with the Four Men from each Township, of all murders, robberies, and thefts, and of all who had harboured such offenders since the King's accession to the throne. It appears that the same power of inquiry was given to the Sheriffs; but, in such case, the conviction was to be "recorded" to the Justices in the following Iter, by two lawful men of the Hundred, who appeared as representatives of the Twelve. We have seen that the Twelve sworn Thanes or Echevins, who were also the Judges of the Hundred, in the Anglo-Saxon era, performed the duty of these selected Knights; and it is probable that a new organization of the territorial Municipality was completed by Henry's Assizes. It is impossible to ascertain the period when the change began; but the concurrent existence of the Judges and the Jurors of the Shire^b, seems to shew

^a This "Assize" was first enacted at Clarendon, and afterwards "recorded" at Northampton. It must not be confounded with the Constitutions of Clarendon. An "Assize," enacted by Hen. II., which, from its tenour, appears to be either the original "Assize of Clarendon," or an "Assize" founded upon that law, exists in a very valuable Manuscript in the Museum (Bib. Reg. 14. C. 2.) from which it is printed in Part II., *Proofs and Illustrations*, p. 221. Another text, containing the re-enactment at Northampton, A.D. 1176, but apparently somewhat abridged, is given by Benedictus Abbas (p. 131), and from him by Hoveden. See also the "Dialogus de Scaccario."

^b Magn. Rot. Anno incerto Hen. I., vulgo 5^o Steph. [The Great Roll of the Pipe of an undetermined⁴ year in the reign of Henry I.,

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Part I. privilege which the Anglo-Saxon had possessed of defending
Ch. VIII. himself by the opinion of his neighbours, was lost to the community
 at large, and is henceforth to be traced only as a special franchise
 in some of the Boroughs to which the Assize did not extend. The
 first presentment, instead of being considered as affording grounds
 for suspicion, became nearly equivalent to a final trial; and the
 appeal to the Ordeal, whilst it gave the prisoner one chance more
 of escaping without loss of life or limb, still only enabled him to
 purchase the remission of his crime by perpetual banishment and
 poverty.

The Presentment rendered nearly equivalent to a final trial.

Assize 5 Ric. I., A.D. 1194, regulating the mode of electing the Knights of the Hundreds.

Mode of Trial, as collected from the "Assizes" and the records of the "Curia Regis"; The criminal, on being declared by the Inquests to be "male-creditis," or Folcungetreu (see above, p. 169), is adjudged to undergo the Ordeal; if he fails, he is subjected to capital punishment.

"Assizes" of Henry II. relating to civil trials, of which the text is lost, but of which the substance is noticed by Glanville and Bracton.

Inquests or "recognitions" directed by the Constitutions of Clarendon.

An Assize enacted by Richard, soon after his return from the Holy Land, regulates the mode of electing the Knights of the Hundred^a; and the practice of the King's Court becomes intelligible from the preservation of our legal records, of which the series now begins. Upon the presentment of the "malecredence," or violent suspicion of the Jury, which usually consisted either of the Four Men of the three adjoining Townships, or of the Knights of the Hundred, the culprit was adjudged to clear himself by the Ordeal: and the water or the fire might be equally chosen by the offender. If the Knights of the County "suspected" those criminals whom the Jurors of the Hundreds had exonerated, the same judgment was passed, and the first acquittal was not considered as a bar to the second trial of the Culprit. The failure of the test subjected the offender to the utmost penalty of the law^b.

Whilst the exercise of criminal jurisdiction was regulated by the laws of Henry II., a much greater extension was given to Inquest Trial by other "Assizes," of which the text is wholly lost, but whose substance is noticed by our ancient legal writers, and from whence many of the forms of process still subsisting have been deduced. Wherever it was practicable, Henry seems to have directed that his Court should proceed by "Recognition," which, notwithstanding his experience of its fallibility in peculiar instances, was greatly favoured and encouraged. If the contest arose between the Clerk and the Feudal Lord, concerning the tenure of the Church Land, the question, whether the glebe was

^a Hoveden, p. 744.

^b Magn. Rot. 31 Hen. II. Everwickshire; 32 Hen. II. Lanc.; 31 Hen. III. Essex and Hertf. Placita Coronæ apud Stafford, 10 Ric. I. m. 8. Placita Coronæ in Com. Wilts. an. incert. Ric. I. m. 4. Rot. Itin. Bedford, 4 John, m. 5. Rot. Itin. Stafford, 5 John. Rot. Itin. Northampton, 5 John, m. 1.

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held in Frank-almoign¹ or as lay fee, was determined by the “recognition” of the Twelve lawful men empanelled before the King’s Justiciar^a; and the same regulation, repeated nearly in the same words, in the Establishments of the Norman Barons, and in the decrees of the Exchequer of Normandy, shews the conformity of the legislation which prevailed in his dominions^b. Another Assize forbade the forcible entry upon the lands, when possession had given a freehold right to the tenant; and the fact of the “invasion” having been committed within the period of legal limitation, was ascertained by the recognition of the twelve free and lawful men, taken pursuant to the writ of “Novel Disseisin,” an expeditious and useful remedy, due to the “wisdom of the Sovereign,” and praised by the Jurist as having been framed with great study and care^c. And, instead of leaving the right of ownership to be determined by the conflict of the Champions, a Statute emphatically termed the “Grand Assize,”² enabled the Defendant, if he thought proper, to abide by the testimony of the Twelve good and lawful Knights, chosen by Four others of the Vicinage, and whose oaths gave a final decision to the contested claim. This law was described as a benefit, which the clemency of the prince had bestowed upon the people; and when the Tenant chose to avail himself of its provisions, he was said to “put himself upon the King’s Assize,” or “to pray “the benefit of the law.”^d In all these cases, the employment of the Recognitors, which had hitherto been arbitrary and undefined, became subjected to fixed rules. The same mode of ascertaining disputed facts was rapidly extended to many other of the pleas which were brought before the King’s tribunal; and in the following era, the Jury appears a well-known mode of trial, holding the most prominent station in legal procedure; yet not,

Part I.
Ch. VIII.

Assize of
“Novel
Disseisin.”
(See above,
p. 186.)

“Grand
Assize,”
which gave
the Tenant
the option
of trying his
right by
“recogni-
tion,”
instead of
defending
himself by
his Cham-
pion.

^a Constitutiones Clarendoniæ, c. 6.

^b Stabilimentum apud Rothomagum, quoted at p. 201. Arrestum Scaccarii Normanniæ an. 1218, apud Falesiam in Scaccario Paschæ. De recognitione facienda utrum aliquid eleemosyna vel feudum laicale sit, Concilia Rotomagensis Provinciæ, p. 127. [Settlement at Rouen. The Decree of the Exchequer of Normandy, made at Falaise at the Easter Exchequer, 1218. Concerning the holding of an inquest whether anything be Frank-almoign or lay fee, The Councils of the Province of Rouen, p. 127.]

^c Glanville, lib. iii. c. 32. Bracton, lib. iv., de Assisa Novæ Disseisinæ, c. 6.

^d Glanville, lib. iii. c. 8.

Part I. however, so as to exclude such proofs as might be more conclusive,
Ch. VIII. nor, in some cases, could it be employed without the express
 consent of both parties. A defendant might thus rely upon an
 unsworn "Secta," and refuse to abide by the oaths of the Jury^a.
 A question of parentage was investigated, in the first instance,
 by the testimony of the relations; for an "Assize" would not
 lie between parties descended from the same ancestor. The
 kinsmen, in such a case, were examined in court, and judgment
 given for him who was nearest to the common stock, without
 calling in the aid of a Jury to testify to facts which had been
 sufficiently proved by the members of the same family. The
 state of the villein was determined by the condition of those
 who had sprung from the same stock and lineage, and not by
 appealing to the country^b; and, as it must be recollected that
 in no case whatever does it appear that a "Witness" or "Sectator"
 was sworn, the absence of the oath entirely separates these proofs
 from the Jury Trial.

Juries not generally in use in personal actions, in which the Plaintiff usually supported his claim by unsworn witnesses, or the "Secta," whose testimony was rebutted by the Compurgators on the part of the Defendant.

In personal actions, the Jury was more rarely employed than in suits relating to land or to territorial franchises; and "Wager of Law," derived from the Anglo-Saxon Compurgation, usually supplied the place of the Recognitor's testimony^c. If one Witness or Sectator was produced in support of the plaintiff's demand, the defendant might rebut it by his own oath, which appears in substance as a version of the Anglo-Saxon formula; and this oath, when supported by the asseveration of two neighbours, was sufficient to exonerate him from the claim. Two Witnesses were refuted by Four Compurgators; and so on, until the full number of twelve was completed, beyond which it was not necessary to proceed.

Juries not introduced in the popular Courts of Anglo-Saxon origin, except by virtue of the King's writ. Thus, in the County Court, the Sheriff could not empanel a Jury, except by virtue of a writ of "Justicies."

It may be observed, that an inquest or Jury, in civil cases, was never adopted according to the usual course of the popular Courts of Anglo-Saxon origin, unless by virtue of the King's special precept. When an action was commenced in the County Court by that writ, which empowered the Sheriff to act as the King's Justiciar, an inquest might be summoned; but, if the suit was grounded upon a plaint, the opinion of the suitors, or the compurgatory oath, constituted the common law trial: in

^a Rot. Itin. Northampton, quoted at p. 212.

^b Glanville, lib. ii. c. 6.

^c Fleta, lib. ii. c. 6; but the form of Wager of Law was not uniform at different periods. See Part II., *Proofs and Illustrations*, p. 165.

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Part I. known or unknown, of good or bad fame, as his witnesses. The
Ch. VIII. procedure of the Civilians, perhaps contemplated by the Jurist^a,
never became the law; and, as the Sectator was not sworn, the
most manifest falsehood escaped without punishment or penalty.
Such evidence, therefore, was considered only as an imperfect
proof or presumption; and the permission given to the defendant,
of defeating the assertions of the "Secta" by the oaths of men of
established credit, was almost necessary for the due administration
of justice, as a counterbalance to the defective proceedings allowed
by the law on the part of the plaintiff. Compurgation has been
stigmatized as encouraging corruption, by laying a snare for the
conscience of the hardy defendant and his ready and officious
friends, who might be easily tempted to perjure themselves, in
order to defeat a legal claim; and it may be asked, why, instead of
this dubious and awkward expedient, the English legislature did
not at once meet the difficulty by enacting such laws as should have
ensured a fair and cogent examination of the witnesses on either
side? The most plain course is, however, not always the most
obvious; and men often attempt to neutralize the mischief of one
imperfect law, by enacting another law equally imperfect, but of
a contrary tendency. The plan of allowing the defendant to
swear away the claim, is certainly of this description; but in the
nineteenth century we have not been able, as yet, to discover
any mode of mediating between honesty and fraud, between
avarice and misfortune, otherwise than by appointing one set of
Judges, who, after great vexation and expense to the creditor,
send the debtor to prison; and then employing another set of
Judges, who, at the costs and charges of the insolvent, deliver
him from confinement, a scheme which is scarcely less rude than
the most inartificial portion of the Anglo-Saxon law.

It is probable that a Norman might, in certain cases, waive
his Trial by Battle, and claim a Trial by Inquest of Witnesses,
"according to the laws of Normandy." By following the Con-
queror into England, his companions did not lose the privileges
of their birthright: what they had, they kept. An Anglo-Saxon
was, in like manner, left in possession of his national mode of
Trial, by Compurgation, provided there was no conflict of juris-
diction in consequence of the personal laws of the parties. A jury
was given only when a Norman was concerned. An Englishman,
when accused by another Englishman, or put upon trial in an

^a Glanville, lib. x. cap. 5.

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Anglo-Saxon Tribunal, could not demand an Inquest as a matter of right: the law did not extend to such a case, unless by permission of the King. And to this cause I am inclined to assign the first origin of the practice, which enabled individuals, when charged with criminal offences, whether by appeal, or otherwise, to purchase the right of being tried by a Jury of Knights, or, as it was sometimes termed, by "a good Inquest," for which they paid a fine; and which was evidently considered as a more easy or more impartial mode of obtaining evidence than they could otherwise have claimed^a. Somewhat of the same description was the proceeding whereby a person apprehended as a felon or murderer, was let out upon bail, after it had been shewn by an "Inquest," that the accusation was grounded upon hatred and malice. It is probable, that, so long as the Normans and the English continued distinct races, the former could always claim the Jury; but, as early as the reign of Henry II., the two nations were nearly blended into one, and the son of the Norman, born in England, seems to have been governed, in all respects, by the English law, however proudly he may have recollected his blood and lineage. During the whole of the reign of John, therefore, the law to which the people were subjected, continued in the course which it had settled by the Assizes of Clarendon and Northampton, varied only by an occasional employment of Inquest Trial, when it was granted either as a favour, or as a species of exception from the general rule; and the only Jury which could be demanded as a right, was the "inquisition," whereby the prisoner obtained his enlargement until trial, by virtue of the writ "de odio et atîâ,"¹ and for which, according to Magna Charta, no fine was to be paid^b.

Part I.
Ch. VIII.

Trial by Inquest or Jury occasionally purchased by the parties, who preferred this mode of trial to the Ordeal or the D^rel.

Whilst the law was in this state, a decree was promulgated by the Council of Lateran, forbidding the Ordeal Trial throughout Christendom. The sanction which the Clergy had hitherto given to this superstition was withdrawn; and it was now declared to be unlawful. The mandate of the universal Synod of the Western Church was obeyed in England: but the authority which prohibited the Ordeal, substituted no other mode of trial in its stead. During some years, therefore, great doubts prevailed respecting the trial of those who were accused or indicted of theft, robbery, or murder, or other capital crimes; and to

Ordeal, forbidden by the 18th Canon of the fourth Lateran Council, November, 1215.

Great doubts prevail in England as to the mode of trial to be substituted in the place of the Ordeal.

^a Plac. apud Westm. 6 Ric. I. m. 7. Rot. Itin. 5 John. Stafford.

^b Magna Charta, Cap. 26; and see also 2 Inst.

Part I. whom the Battle was denied, since the accusation resulted from
Ch. VIII. the voice and fame of the country, and not from the charge of an individual appellant. Under these circumstances, the interposition of the legislature was imperatively required, and the substance of the temporary ordinance enacted by the King's Council for the guidance of the Courts of Law, is contained in a Writ addressed to the several Justices Itinerant, before commencing their circuits. Instructions are given with respect to the greater offenders, who, if they were so vehemently "suspected" of the crimes of which they were accused, that, even if they undertook to abjure the realm, as enjoined by the Assizes of Northampton and Clarendon, there would be reason to distrust their future good conduct, were to be kept in safe custody. If the presumptions of crime were less violent, the offender might take refuge beyond the seas; and those charged with more venial transgressions were to be liberated upon finding bail for the keeping of the peace. But the writ concludes by emphatically repeating, that "nothing certain had "been ordained for the present"; and that the Justices were to act in such a manner as would be most conformable to the dictates of good conscience and sound discretion^a.

Writ issued 3 Hen. III., containing instructions to the Justices respecting the imprisonment or enlargement of offenders, but without giving any positive directions for their Trial.

Practice introduced of allowing the party appealed or indicted, to put himself upon a Second Inquest (now called the Petty Jury),

From the remarkable language employed in the precept, it is evident that the King's Counsellors were perplexed in determining the future mode of the trial of the offenders; and the mandates thus issued were merely intended to afford some directions to the Justices during one particular year. The minority of the King may have had some share in causing this hesitation: the royal advisers may even have meditated the introduction of proceedings analogous to those of the Civil and Canon Law, which, in France, were now beginning to be received into practical jurisprudence; and, if the obvious expedient of summoning the witnesses individually before the Judge, and taking their depositions upon oath had been adopted, all vestiges of trial by Jury would soon have disappeared. But the destiny of nations, like that of individuals, is decided by accidents. No further enactment was made; and the usages which already prevailed, led to a general adoption of the proceeding which had hitherto existed as a privilege or as a favour, that is to say, of proving or disproving the testimony of the first set of Inquest Men, by the testimony of a second array; and the individual, accused by the Appeal, or "presented" by the general opinion

^a Writ tested at Westm. 26 Jan. 3 Hen. III. Rot. Pat. m. 5.

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Part I. established by the legislation of Edward I., or was created by an
Ch. VIII. unwarranted extension of the directions which the Statute contains. That, in point of fact, the obdurate prisoner was exposed to such "penance" as occasioned his death, is attested by the contemporary Chronicler, who, in recounting the severity, if not the cruelty of the Justices Itinerant, seems to deplore the fate of the gentle-born offender^a. Much, however, in these early periods, was left to the discretion of the Judges, who, representing the King's person, possessed his power of explaining, directing and modifying the practice and principles of the law. The accidental humanity of the Jailor occasionally diminished the punishment; and it may be conjectured that the criminal was not invariably consigned to the horrors of starvation and protracted agony, until the reign of Henry IV., when the judgment took its definite form, that the "man or woman shall be remanded to prison, and laid
 " there in some low and dark house, where they shall lie naked on
 " the bare earth, without any rushes, litter or other couch, and
 " without any garment or clothing, and that they shall lie upon
 " their backs, their head uncovered and their feet; and there
 " shall be laid upon their bodies iron and stone, so much as they
 " may bear, and more; and the day following, they shall have
 " three morsels of barley-bread without any drink; and the second
 " day they shall drink thrice of the water that is next the house
 " of the prison, except running water, without any bread; and
 " this shall be their drink till they die."^b But still this most grievous punishment is not to be considered as a judicial sentence. The offender was not convicted: he did not die an attainted felon: his blood was not corrupted: the heir succeeded to the estate which was transmitted to him by the father; and parental affection has been known to submit to this fearful infliction, for the purpose of protecting the child from want and infamy. "Peine forte et dure" was abolished in the last century^c; and the silence of the offender was rendered equivalent to a legal confession of his crime. Still, in this case, he was not *tried*; and the actual consent of the prisoner was expressly required before

Judgment of
 "Peine
 forte et
 dure" as
 settled in
 the 15th
 century.

^a Chron. Dunst., 609.

^b The judgment is thus given by Coke, 2 Inst., p. 178, from the Year Books, Mich. 8 Hen. IV., 1., and 4 Ed. IV., 11.; and his words are retained because they contain an emphatic summary of the law. See Part II., *Proofs and Illustrations*, pp. 264–265.

^c 12 Geo. III., c. 20.

the Jury could be empanelled to give their verdict; a form which continued indispensable until a very recent Statute abolished the solemnity of the common law^a.

**Part I.
Ch. VIII**

The Inquest was thus ingrafted upon the administration of Justice; and, without any definite law having been passed, it imposed an indirect limitation on the royal authority. Henceforth, when the King was the prosecutor, Twelve Witnesses were required to insure the conviction of the offender; and, whilst Trial by Jury was affording its protection to the life and liberty of the subject, it also became the means by which the demands of the Crown were enforced and ascertained.

Limitations of the royal authority, resulting from the custom of the Inquest Trial.

Alfred is said to have caused a general survey to be made of his dominions by Counties, Hundreds and Tithings, which, being entered upon a roll, was preserved in the Treasury of Winchester^b. The authority of Ingulphus is very questionable; yet, the work which passes under the name of the Abbot of Croyland appears founded upon more authentic materials; and such "descriptions" had been in use amongst the Romans, and were continued by the Frankish Kings. Chilperic¹ thus caused a new and burdensome survey to be made of his whole kingdom, by which the territorial taxes of Gaul were so much increased, that many of his subjects abandoned their homes and possessions, and fled into other realms. Dangerous rebellions were excited, which were repressed by acts of great severity; but the clamour of the people continued, and their misery increased, until Fredegonda interposed. The Queen pleaded the cause of the people; and, casting into the fire the Cadastre of those domains which had been assigned to her for her dowry, she besought her husband to follow her example; and so earnest were her entreaties, that he yielded, and consigned the records to the flames^c.

Survey of the Kingdom supposed to have been made by Alfred.

"Descriptions" or Territorial registers of the Lower Empire, by which the quota of direct taxes was assessed, continued by the Frankish Kings. Chilperic directs the formation of a new Cadastre, by which the taxes were much increased, but desists at the request of Fredegonda. A.D. 580.

The formation of "Domesday" had, therefore, a precedent in the archives of the continental States, if not in England; and to these examples we may, perhaps, refer the proceedings which were adopted by William the Conqueror. After much earnest debate and solemn deliberation, it was enacted by the "Witan" at Gloucester, that the King should send his representatives throughout the kingdom, with commissions empowering them to inquire how many hides of land were liable to "Geld" or taxations, in each shire; what land the King himself had, and what

Domesday Book.

Great Council held at Gloucester, A.D. 1085, in which the survey was decreed.

^a 7 and 8 Geo. IV. c. 28.

^b Ingulphus.

^c Greg. Tur. Hist., lib. v. c. 29, 35. Dubos, vol. iv. pp. 342, 346.

Part I. stock upon the land, and what was the annual revenue which he
Ch. VIII. was entitled to receive; how much land his Archbishops had, and
his Diocesan Bishops, and his Abbots and his Earls; and what or
how much every other man who was settled upon land in England,
had either in land or stock, and how much money it was worth.
So very narrowly, continues the Saxon Chronicle, did he com-
mission them to search it out, that there was not one single hide,
nor a yard of land; nay, moreover, it is shameful to tell, though
he thought it no shame to do, not even an ox nor a cow, nor a
swine was there left, which was not set down in his records.
These are the expressions of the vernacular Chronicle; but it
is wholly silent as to the mode pursued; for the survey enacted
by the Legislature, and which was to be conclusive of the rights
both of the Crown and of the people, was not effected by the mere
will and dictation of the Commissioners, but resulted from the
sworn declaration of the parties who were to be charged. The
Inquests were of two classes: the first, consisted of the Barons,
or men of every Hundred, Frenchmen as well as Englishmen,
though, of course, the former preponderated greatly in number
over the ancient lords of the soil. To these the Sheriff of the
County and the Præpositus¹ of the Hundred were added, who,
as the King's Officers, were able to watch over his interests and
correct the evidence of the landholders. The second class was
composed of the Villeinage. Six Ceorls were returned from every
Township, who, together with the Parish Priest and the Town
Reeve, also made their statements upon oath, to the Royal Com-
missioners^a. The information which they gave, when abridged
and methodized, constituted the volumes which are yet extant;
but, had it not been for the accidental preservation of some
fragments of the original Inquests, the process which formed
the Record would never have been ascertained. The tran-
scribed volumes were placed, like the Charters and Muniments of
the Anglo-Saxon Kings, in the "Hord," or in the Treasury of
the Exchequer, where they now remain^b, forming the first of the
unrivalled series of territorial records, which enable us to trace
the history of landed property in England, from the settlement of
the Anglo-Norman Monarchy.

Inquests
upon which
Domesday
was founded.

(See above,
p. 117.)

^a Inquisitio Eliensis, p. 497.

^b A more particular account of Domesday, and of the other Surveys
of a similar nature, will be found in Part II., *Proofs and Illustrations*,
pp. 845-858.

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Continue

Part I. the obstinacy of one sturdy Knight or Yeoman in the distant
Ch. VIII. Shire.

Carucage, 8 Ric. I. collected in each Shire by the King's Commissioners & Two Knights, (probably elected by the Communitas), and assessed by the oaths of the Seneschals of the Barons, the Lord of each Township, or his Reeve, Four Men and the Reeve, representing the sworn and virtual Tenants of the Township (being the individuals who composed the Anglo-Saxon Folkmoots, see above, p. 96), and Two Knights, who appear to have represented the military Tenants of each Hundred.

Taxes upon personal property. Three stages in the mode of assessment, I. By compelling each individual (Earls and Barons excepted) to swear to the amount of his income. (8 Joh.)

Taxation was controlled in the same manner by the voice of those who were most liable to oppression. Not that there was any popular representation, either in the assembly of the Shire, where the aid or loan was requested from the "Magnates"; or in the general Council of the Realm, from whence a more liberal subsidy was sought. The Prelates and Barons, who assented to the grant in their own proper persons, bound their Tenants, who had neither the power nor the privilege of refusing their compliance. But when the carucage was claimed by the King, it was assessed by a proceeding analogous to that by which Domesday was formed. The Knight, the Clerk and the Sheriff, empowered by the King's Letters Patent, were conjoined to other lawful Knights, elected for the purpose, and probably by the "Communitas" of the Shire. Before these Commissioners, the Barons were summoned; the Lord of each Township or Vill was also required to appear, but the Reeve or Præpositus was allowed to supply his place; and the Four Men, either holding in socage or by villein tenure, accompanied their superior as in the Saxon times. So that, in fact, all the individuals attended who composed the Anglo-Saxon Folkmoot, the imposition of the oath constituting the only material difference in the assembly; and the Two Knights who appear to have represented the military Tenants of each Hundred, had also their prototypes before the Conquest. The individuals thus convened, declared upon their oath the number of ploughlands in cultivation; and according to this Inquest the levy of the carucage was made^a.

In the earliest instances of taxes charged upon movable property, every individual was sworn as to the amount of his income, Earls and Barons only excepted, who made their declarations by their constant representatives, their Seneschals and Bailiffs^b. In the subsequent reign, a fifteenth is assessed in the same manner by the Four Knights elected from every Hundred, in the presence of the Justices itinerant; but we may trace the progress of the application of the Jury, in the clause authorizing the Commissioners

^a Hoveden, p. 443.

^b Letters Patent for collecting the aid of twelve pence upon every mark of annual rent, &c., granted in the Council of Oxford. Tested at Northampton, 17th Feb., 8th John. Rot. Pat. m. 3. *Fœdera*, vol. i. p. 97.

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to summon an inquest of twelve good and lawful men, in case of any doubt arising respecting the accuracy of the taxations^a. Somewhat later occurs a remarkable grant of the fortieth of all movable property; and in which the Villeins are stated to have concurred, together with the Earls, Barons, Knights and Freemen of the kingdom. The Knights Assessors were to be chosen as before; but the assessment was to be made by the oaths of the Four Men and the Reeves of the Townships, who were convened for that purpose by the royal commissioners^b; or, in other words, a Jury was empanelled to adjudge the proportion due to the Sovereign; and this course was not essentially varied, even after the right of granting aids to the Crown was fully acknowledged to be vested in the Parliament of the realm^c. The people taxed themselves; and the collection of the grants was checked and controlled, and, perhaps, in many instances, evaded by these virtual representatives of the community.

Part I.
Ch. VIII.

II. By summoning an inquest, if the oath of the party was doubted or disputed. (9 H. III.)
III. By discarding the individual oaths, and empanelling inquests for the Townships or Hundreds. (16 Hen. III. and from that period to the reign of Ed. II.)

The principle of the Jury was, therefore, not confined to its mere application as a mode of trying contested facts, whether in civil or criminal cases; and both in its form and in its consequences, it had a very material influence upon the general constitution of the realm. In its first and earliest stage, the elements of the Jury existed amongst all the continental nations; and, though the institution was by no means free from defects when considered as the mode of trial between man and man, still, a satisfactory proof of its political excellence will be found in the comparison between the state of England and of those countries wherein the "inquest" was not allowed to expand from its primitive germ. Had it not been for the constant exercise of the functions which the people of England possessed when they assisted in the administration of the law, they would never have

^a Letters Patent tested at Westminster, 15th Feb. 9 Hen. III. Rot. Pat. p. 2. m. 7.

^b Commissions tested at Westminster, 28th Sept. 16 Hen. III. Rot. Claus. m. 2.

^c In the taxation of the thirtieth, 11 Ed. I., an inquest is not expressly mentioned, but implied. The fifth, eighth and ninth, 25 Ed. I., and the fifteenth, 29 Ed. I., were taxed by the oaths of four or two from each Township. The twentieth and thirtieth, 34 Ed. I., by twelve from each Hundred, and four men and the Reeve from each Township. (Parliamentary Writs, vol. i. p. 12, no. 10; p. 54, no. 9; p. 62, no. 42; p. 105, no. 46; p. 179, no. 48.)

Part I. been qualified to claim their political rights. When no species
Ch. VIII. of popular suffrage existed; when the bulk of the people had no political existence; when the "Magnates" of the Shire or their Seneschals returned the Knights, and the Knights appeared in Parliament as suppliants before the Council and the King, then, and during the whole of that period of the infancy of liberty, the main spring of the machinery of remedial justice existed in the franchise of the lower and lowest orders of the political hierarchy. Without the suffrage of the Yeoman, the Burgess and the Churl, the Sovereign could not exercise the most important and most essential function of royalty: from them he received the power of life and death; he could not wield the sword of justice until the humblest of his subjects placed the weapon in his hand.

It is a singular and instructive example of the vicissitudes of human affairs, that the best safeguard of a free constitution should have resulted, not from forethought or prospective wisdom, not from the plans of the patriot or the deliberations of the sage, but from the dictates of a Conqueror, anxious only to rivet the yoke upon the people whom he had reduced to vassalage. By introducing the "Law of Normandy," William prepared the way for the revolutions which were destined to subvert the pride and policy of his government; and, when forming that volume which the English nation considered as the most grievous monument of his tyranny, he was establishing the principles which ultimately destroyed the independence of the Crown.

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Part I.
Ch. IX.

The Sovereign
anciently
the
Supreme
Judge of
the State.

Prerogative
Jurisdiction
of the
Anglo-Saxon
Monarchs
over the
tribunals of
the Anglo-
Saxon States,
which were
subjected to
one
Sovereign
without
being united
or incor-
porated.
(See above,
pp. 37, 38
and 94.)

(See above,
pp. 15, 159.)

Downfall of
such feder-
ative States
as have been
destitute of
a central
jurisdiction,

the Sovereign was the Supreme Judge of the State. Modern policy has reduced the judicial attributes of the Sovereign to a legal fiction, by effecting a complete separation between his executive and judicial functions, the latter, though exercised in his name, being vested in a distinct order, constituting a permanent Magistracy; but this form of government is comparatively a recent invention. Even when the tribunal was filled by the servants of the altar, the doctrine of the union of sovereignty and judicature was not affected; because, in those cases, the State was really governed by the hierarchy.

Originally uniting the characters of King, of Priest, and of Warrior, the rulers of the Anglo-Saxons seem, from the earliest period of their authentic history, to have possessed a transcendent jurisdiction, which extended to all those cases when the ordinary Courts were inefficient, or the local authorities destitute of energy and vigour. This prerogative authority became the more necessary in proportion as the Dominion of the King, or the Empire of the "Bretwalda" or "Ruler of Britain," became enlarged, and embraced a greater number of communities within its boundaries. The Anglo-Saxon States were united, without being incorporated. The men of Kent and the men of Sussex, though both obeyed the sceptre of Athelstane, were fellow-subjects without being fellow-citizens; and the more jealous each Tribe or Clan would be of preserving its independent existence beneath the paramount authority of the Crown, the more would the public tranquillity demand that the Supreme Magistrate should be invested with the salutary power of regulating and correcting the defects of the popular administrations. Complaints of abuses perpetrated in a popular court, preferred to another popular tribunal, generally lead either to the defeat of the appellant or to the most destructive national dissensions. The sway of a master is less irksome than the preponderance of an equal in rank; and, if the welfare of the Anglo-Saxon Commonwealth required that the suitor of the Burgh or the Shire should obtain relief, in default of justice, the members of the Folkmoot would be less aggrieved by the interposition of the crowned and anointed Monarch, than by the mandates of individuals who were their peers. The utility of admitting of a mediating authority, even though purchased by some sacrifice of individual self-will or liberty, cannot be better exemplified than by adverting to the downfall of the federative states, whether ancient or modern, which have wanted a central point of judicial

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union. No man ought to be judge in his own cause; and, great as the evil may prove when a Sultan or a Sophi assumes that office, the oppressions of despotism only change their form, without being less vexatious, when the citizen has to combat a tyrant in every one of his equals. Time alone can shew, whether the institutions of the Republics of English America are capable of counteracting the vices and wickedness of democracy; but the political student will be instructed by observing, that, even now, there are symptoms of approaching dissensions between the Supreme Court and the States of the Union; which, if not repressed, must end either by destroying the controlling jurisdiction assigned to the Judges who administer the Federal law; or by investing them with rights approaching to a sovereign prerogative, and hitherto unknown to the Anglo-American constitution. In England, the introduction of lawless despotism, under the guise of discretionary authority, has been effectually prevented by the distribution of power amongst the Sovereign and the hereditary, the appointed and the elected Magistracy; yet all the remedial functions which belong to the Parliament and the various Judges of the Land, have been derived from the Crown; and the history of English law and policy consists in little else than in a demonstration of the manner in which the exercise of power has been transferred from the Sovereign to his Counsellors and to the Courts which bear his name, a process by which the ancient royal prerogatives, arbitrary and indefinite in their nature, have either been coerced by the law, or shared with those who have become the organs of the national influence and authority. Whenever the Crown has been deprived of a prerogative during the revolutionary struggles which compose our annals, royalty, though afterwards restored in appearance to its original state, has never regained its pristine strength, although the Government may have resumed its legitimate course. The flood has always been less than the ebb: and it would be difficult to deny the proposition, that the Crown has always lost in authority by the compacts which have been made between the King and the people. For the rights which the Sovereign has ceded by Charter or Statute, he has never obtained any full equivalent; and even the instruments of monarchical sway have been converted into permanent limitations of the Monarch's power. "Nullum tempus occurrit Regi" may have been the maxim of the Judge on the Bench; but, whilst the King's right to a fishery or a forest, a marsh or a moor, was guarded with the most jealous care and asserted

Part I.
Ch. IX.

correcting and restricting the defects of the popular tribunals. United States of America; conflicts of jurisdiction between the Supreme Court and the State Courts.

Legal Constitution of England resulting, in great measure, from the gradual transfer of the authority of the Chief Magistrate to his Justices, Ministers and Counsellors.

Part I.
Ch. IX.

with the utmost vigilance, his most lofty prerogatives have been bestowed, by habit and practice, upon his advisers or his servants, who at first were the mere temporary depositaries of his will, but whose claims have been allowed to become indefeasible against their Sovereign and master.

Let it not be supposed, even for a moment, that such victories are to be stigmatized as usurpations, or deplored as misfortunes. In their consequences, they have proved equally beneficial to the Ruler and to the people. By releasing the Crown from all responsibility, these innovations have given a security to royalty, which is utterly unattainable when the personal acts of the King are presented to the view of the people; and the steady empire of the law has been substituted for an uncertain, and therefore arbitrary, rule. But it still must be confessed, that many of the barriers which now control the royal authority have been erected upon the real and unquestionable ancient domains of the Crown; and, in developing the principles of the Constitution, we must constantly disclose the encroachments of the subject upon the Sovereign. Fortunately, however, for us, a period has arrived in which the origin of our Government may be discussed without the danger of affording any arguments which may tend to unsettle its present principles; nor is it necessary that the theory of the historian should seek support or favour from the prejudices or the predilections of the reader to whom his work is addressed.

Judicial
functions of
the Anglo-
Saxon
Monarchs,
ordinary and
extra-
ordinary.

The judicial functions of the Anglo-Saxon Monarchs were of a twofold nature: the ordinary authority, which the King exercised like the inferior territorial Judges, differing perhaps in degree, though the same in kind; and the prerogative supremacy, pervading all the tribunals of the people, and which was to be called into action when they were unable or unwilling to afford redress. The jurisdiction which he exercised over his own Thaness^a was similar to the authority of any other Hlaford: it resulted from the peculiar and immediate relation of the Vassal to the Superior. Offences committed in the Fyrd or army were punished by the King, in his capacity of Military Commander of the People. He could condemn the criminal, and decree the forfeiture of his property, without the intervention of any other judge or tribunal^b. Furthermore, the "rights which the King had over "all men," though slightly differing in "Danelage" from the

Pleas of the
Crown ac-
cording to
the Anglo-
Saxon Law.

^a Lib. Const. apud Wilkins, p. 118.

^b Hist. Eliensis, p. 476.

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Equitable jurisdiction, first delegated by the King to his Council, and afterwards assumed by his Chancellor.

The King, the Supreme Conservator of the Peace.

The four Roman Roads placed especially under his protection, from whence all highways obtained the name of the King's Highway.

Verge of the King's Palace, within which his "Grith" or peace was to be firmly observed.

Times and Seasons when the King's peace was to be kept

denied the King's help in civil suits, until an endeavour had first been made to obtain redress in the inferior Courts, became the leading allegation in the "Writ of Right Close"; this prerogative process being founded upon the default of the Lord's Court^a, and issued lest the King should hear any more complaints for want of justice. And the "alleviation of the heavy law," is the primary source of the authority delegated by the King to his Council, and afterwards assumed by his Chancery and Chancellor, and from whence our Courts of Equity are derived.

Other branches of jurisdiction resulted from the King's character of Supreme Conservator of the Peace throughout the Empire. Thus, the four Great Highways which crossed the island, from east to west, from north to south^b, were placed under his special protection or guardianship; and some of the names borrowed from the primeval mythology of the Teutons, and assigned to these monuments of Roman, or perhaps British, toil, may possibly indicate, that, in heathen days, the sanction of religion was added to the doctrines of the law. Crimes committed upon the "King's Highway," a term which was soon extended to all public roads leading from town to town, were within his immediate jurisdiction, and considered as violations of his supremacy, notwithstanding any franchise enjoyed by the Lord through whose territory the road passed^c.

The King's presence imparted peace, not only to his residence, but to a considerable district around it. Three miles, three furlongs, and three acre-breadths, nine feet, nine palms, and three barley-corns constituted the mystical radius of the verge, which was reckoned from the town or mansion where the King held his court^d; and within this ambit the protection afforded by royalty was to remain unviolated. At certain times and holidays also, the King's peace was to be observed throughout the realm. The week of the ceremony of the Coronation constituted one of these privileged periods: they also recurred periodically at the three great festivals of the year, Christmas, Easter and Whitsuntide, being the several seasons when the King wore his crown in the great Councils of the respective

^a Glanville, lib. i. c. 4.

^b Ikenild Street, Watling Street, the Fosse, and Irmin Street. Part II., *Proofs and Illustrations*, pp. 189-192.

^c LL. Edwardi, cap. 14. Placitum apud Pennenden.

^d Anglo-Saxon Customs. Wilkins, p. 63.

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p. 17.

p. 33

Anglo-Saxon States or Kingdoms. Lastly, the King's Peace could be "given" by his word and will, by his "hand," or by his writ, or by his seal; and the punishment of the transgressor was greatly enhanced if he violated the protection thus afforded. In some Shires the breach of the King's Peace, or violation or contempt of the royal authority, increased the mulcts paid by the offender; in others, it placed his life and limbs at the King's mercy, or exposed him to the dread penalty of outlawry; rendering him guilty of a capital crime, which was visited by the extreme rigour of the law^a. Sometime after the Conquest, all these special protections were disused: but they were replaced by a general proclamation of the "King's Peace," which was made when the community assented to the accession of the new Monarch; and this first proclamation was considered to be in force during the remainder of his life, so as to bring any disturber of the public tranquillity within its penalties. So much importance was attached to the ceremonial act of the proclamation, that, even in the reign of John, offences committed during the interregnum, or period elapsing between the day of the death of the last Monarch, and the recognition of his successor, were unpunishable in those tribunals whose authority was derived from the Crown.

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King's Peace, how "given" by his command, his writ, &c.

Custom introduced, after the Conquest, of proclaiming the King's Peace upon his accession, and which continued in force during the whole of his reign.

The manner in which the Sovereign was bound to exercise his judicial functions, may, in some measure, be ascertained by the praise bestowed by the Chroniclers upon those who faithfully fulfilled the most useful of the duties annexed to royalty. Edgar the Pacific became the honour and delight of England. In his time, there was no thief or freebooter. His laws were severe, and he enforced the execution of them in person. Twice in every year, in the winter and in spring, he made the circuit of his dominions, protecting the lowly, rigidly examining the judgments of the powerful in each Province, and avenging all violations of the law^b. These judicial Eyres, which in the reign of Canute seem to have been regularly held^c, resulted from the political relations of the country. When Egbert became the Bretwalda or Emperor of Britain, the situation of the Anglo-Saxon States

Judicial Circuits of Edgar.

The relations of the States combining the Anglo-Saxon Monarchy,

^a Domesday, vol. i. Oxenefordscire, p. 154; Wirecistrescire, p. 172; Notingehamscire, p. 280; Evrwicscire, p. 298; Lincolescire, p. 336. Ethelred, p. 117.

^b Sim. Dunelm. de Gestis, p. 160.

^c Hist. Ramesiensis, p. 441.

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Part I.
Ch. IX.

resembling the relations between England and Scotland, after the union of the crowns, and before the union of the Kingdoms; or, perhaps, to the Netherlands under Charles Quint. (See also above, p. 228.)

The Eyres or progresses of the Anglo-Saxon Kings facilitated by the dispersion of the Royal Demesnes, which afforded stations and resting places, where the followers of the Court could consume the provisions or rents in kind (see above, pp. 23, 53, 126), which were not easily transportable from one part of the kingdom to another.

Administration of justice by the Dukes of Normandy.

may be compared to England and Scotland after the union of the crowns, and before the union of the Kingdoms, or, perhaps, to the provinces of the Netherlands under Charles Quint. Each separate realm, though acknowledging the same Monarch, preserved its own laws and customs^a, and its own peculiar form of government. Hence, it was requisite that every portion of the Empire should be visited in its turn by the Sovereign, whose authority was to awe the powerful oppressor, and redress the injuries of the humblest of his people.

These progresses were also facilitated by the nature of the property annexed to the Crown. The most considerable portion of the King's wealth, we may almost say of his subsistence, arose from the rents in kind, due from the tenants who were settled upon his Townships, and which were not, as yet, commuted into money payments. The share of the crops and produce which was allotted to the Royal Land Lord, could not be transported with facility from one part of the kingdom to another. The Sovereign and his retainers were compelled to consume the "Feorm,"¹ on the land which yielded the tribute. Had the royal household continued stationary at the palaces of Kingston and Winchester, the "Thanes" or "Ministers" who surrounded the Throne, or banqueted in the Hall, would have derived but little benefit from the beeves, the sheep, the grain, the ale, or the honey rendered by the Ceorls of the distant Shires; and the interest and convenience of the Sovereign coincided with the task which he had to perform.

Upon the conquest of England, the spirit of the administration of justice by the Sovereign did not sustain any immediate change. The dispensation of the law was the office, and had been the praise, of the ancient Dukes of the Northmen. Rollo was the Father of his people; and it was supposed that, merely by uttering his name, the oppressed invoked the assistance of the law^b.

^a Will. Malm., de Gestis Regum, lib. ii. c. 2.

^b *Harau, hareu, haro, harol, harou* : Cri, clameur pour implorer du secours ou réclamer la justice; invocation de nom de Raoul; terme factice pour signifier, allez, allons. Ces mots viennent de *ha*, et de *Raoul*, à cause de Raoul, 1^{er} Duc de Normandie, qui se rendit célèbre et cher à ses sujets par son amour pour la justice et sa sévérité à la rendre, ROQUEFORT. [*Harau, hareu, haro, harol, harou* : Cry, shout to implore help or claim justice; invocation of the name of Raoul; a fancy term to signify, go, let us go; these words come from *ha*, and

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times; and the rapid extension of the remedial functions possessed by the Curia Regis in the following reigns, held nearly at the times appointed by William, and composed of the same members, may lead to the supposition that he gave greater stability to the powers of judicature therein exercised.

The Conqueror appoints Justiciars or Regents to govern England during his absence, and who administer the law in his stead.

The frequent absence of William from his insular dominions, occasioned another mode of administration, which ultimately produced still greater changes in the law. It was the practice of appointing Justiciars to represent the King's person, to hold his Court, to decide his Pleas, to dispense justice on his behalf, to command the military levies, and to act as Conservators of the Peace in the King's name. No exact parallel to these deputations can be found amongst the Anglo-Saxons. If the Ealdormen or Earls possessed the right of judicature, it resulted from the dignity with which they were invested. They were either mediatized Princes, who had lost their political independence, but who retained a degree of royal power beneath the sway of the Bretwalda or of the King; or potentates, to whom, as in the reign of Canute, a portion of the realm had been granted, with a subordinate authority. If we may use the expression, they enjoyed a real dignity annexed to the land or domain, and not a personal office. But the Justices who were assigned in the name of the Sovereign, and whose powers were revocable at his pleasure, derived their authority merely from their patent; and if we consult the documents of the Anglo-Saxon jurisprudence, we cannot discover any approximation to this practice, except in some very few extraordinary instances in the last age of the Monarchy, when Commissioners were named by the King's Writ to hear a particular cause.

Odo, Bishop of Bayeux, the half-brother of the Conqueror, and William Fitz-Osbern first appointed to this office, 1067.

It is a proof of the pre-eminence attached to the administration of justice, as annexed to the Crown, that the Viceroys who supplied the place of the distant Monarch, derived their name from the judicial functions of Royalty; and the ancient title of "Lords Justices" has continued to be the proper and constitutional term for the members of a Regency unto the present day. Odo, Bishop of Bayeux, the half-brother of the Conqueror, and William Fitz-Osbern^a, were first appointed to this high office, which continued nearly upon its ancient scheme until the reign of Henry III. So long as the Justiciar was invested with the

^a Ordericus Vitalis. Hen. Hunt. lib. vii. p. 213. Will. Malm., de Gestis Regum, lib. iii. 6.

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delegated functions of Royalty, he was the guardian of the land, the keeper of the peace of the kingdom; and for these purposes all were to aid his endeavours, and obey his commands^a.

Part I.
Ch. IX.

In the reigns subsequent to the Conquest, the decline of the ancient local courts, added to the increasing complexity and refinement of the law, would probably tend to enhance the importance and utility of the office; and hence we are probably to date a further alteration in the arrangement of the authority imparted to the King's Justiciars. Some of these Judges were usually deputed for the purpose of relieving the King from the burden of his judicial functions; and the urgent affairs which compelled Henry II. to divide his time between England and his Continental possessions are noticed as the particular causes which compelled him to appoint these his Lieutenants, over whom he nevertheless exercised a constant inspection and control^b. But the number as well as the variety of names of the Justices appearing in the early Chirographs of "Concords," leave reason for doubting, whether, anterior to the reign of Henry III., a Court, whose members were changing almost at every Session, can be said to have been permanently constituted. It seems more probable that the individuals who composed the tribunal were selected as suited to the pleasure of the Sovereign and the convenience of the Clerks and Barons; and the history of our legal administration will be much simplified, if we consider all those Courts which were afterwards denominated the Exchequer, the King's Bench, the Common Pleas and the Chancery, as being originally Committees, selected by the King when occasion required out of a larger body, for the despatch of peculiar branches of business, and which Committees by degrees assumed an independent and permanent existence. Even after the accession of Edward I., when the two Benches of Justices respectively assigned for "Common Pleas" and for "Pleas before the King" were regularly settled and constituted, it was not only the theory but the practice of the law to consider them merely as the representatives or assistants of the Sovereign. All the Justices of the King's Courts were instituted^c because he

Appointment of Justiciars to discharge the judicial functions of the Sovereign.

Such Justices appointed to aid the King; who might nevertheless resume any portion of his judicial functions when he thought proper; the doctrine "that the King cannot determine any cause but by the

^a Commission appointing Peter de Rupibus, Bishop of Winchester, tested at Portsmouth 1 Feb. 15 John. Rot. Pat. 15 Joh. m. 3.

^b Narrative of the suit between Gilbert de Balliol and the Monks of Battle, temp. Hen. II. Chron. of Battle; MS. Cott. Domitian A ii. See Part II., *Proofs and Illustrations*, pp. 4, 96-106.

^c Bracton, lib. iii. De Actionibus, cap. x. § 1. Britton, c. i.

Part I. could not suffice to hear and determine the complaints of the
Ch. IX. people. They were appointed to relieve him in a task which one individual was unable to perform. Nor did the King, by any such nominations, so far depart with his authority as Supreme Judge of his people, but that he might, whenever he thought fit, resume that character and exercise those functions, which were neither forgotten nor lost by the confidence which he had reposed in his judicial ministers. When John passed sentence upon the malefactors in the presence of Pandulphus¹, although he sought to intimidate the Legate, yet the act itself was a part of his royal duty: and the exercise of criminal jurisdiction by the Monarch gives rise to no comment and excites no blame^a. The frequent grant of the privilege which imported that the party was not to be impleaded except before the King or before his Justiciar, shews that the Sovereign and his deputy were equally contemplated in practice; and the doctrine that a plea which concerned the King could only be heard by him in person, would frequently call this royal judicature into action^b. Henry III. exercised the severest justice against the citizens of Winchester, without needing the aid of Prelate or Baron. He threatened to assemble "all the Counties of England to convict them as traitors." When the first inquest empanelled before him concealed the truth, he ordered, by word of mouth, that the Jurors should be cast into prison, and by a summary verbal mandate another array was summoned, according to whose verdict the offenders were executed. Nor were the Judicial Iters of the Sovereigns, in which they exercised all the functions committed at other times to the Justices in Eyre, entirely discontinued until the accession of Edward III.^c, under

^a Ann. Burton, p. 266.

^b Placita de Quo War., 23 Hen. III. Madox, Exch., p. 70.

^c Breve de Venire fac. xii. Milites, &c. coram Rege apud Wigorniam in primo adventu suo; Magn. Rot. 6 Joh. Fines et amerciamenta de itinere Regis; Magn. Rot. 10 Joh. Breve de audiendo appello coram Rege in proximo adventu ejus apud Norhamptone; Magn. Rot. 12 Joh. De amerciamentis et finibus de Assisis novæ disseisinæ captis coram Rege itinerando versus Bromholm; Magn. Rot. 22 Hen. III. Assisæ novæ disseisinæ captæ coram Rege in itinere suo versus Scociam; anno regni Regis Henrici, fil. Regis Johannis, xxviii. Placita coram domino Rege apud Acton Burnell, 11 Ed. I. [Writ to cause twelve knights to come before the King at Worcester immediately on his arrival, Great Roll, 6 Joh. Fines and amerciaments on the King's journey, Great Roll, 10 Joh. Writ concerning the hearing of an appeal before

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he has committed
the whole of his
judicial
authority''
(4 Inst. 73), not
being then
recognized.

Examples of
criminal juris-
diction exercised
in person by
John, Hen. III.,
Ed. I., and Ed. II.

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Continue

Part I.
Ch. IX.

Normandy, and which are described by the Chroniclers of the age as being very remarkable and memorable. Great oppressions had been committed in the kingdom during the absence of the Sovereign. In order to remedy these abuses, the King, by the advice of his "Optimates," nominated certain persons, designated as "Barones Errantes,"^a who made their circuits through the Kingdom, with the most ample powers. All Sheriffs and their subordinate Officers or "Ministers," were to give pledges to appear before the King at a certain day, to do right, and to make amends at the suit of those whom they had injured. Each County was to be convened, and an oath was to be administered to all the Barons, Knights and Freemen, and to all the Citizens and Burgesses, that they would say the truth concerning all that should be required of them on behalf of the King, and that they would not conceal the truth for love or hatred, favour or affection, gift or reward. This, it will be observed, is the usual Grand Inquest oath; and the difficulty of examining the whole population may suggest a doubt whether the expression of Gervase of Canterbury is to be construed literally, so as to exclude the more reasonable supposition, that the verdicts were given, as was usually the case upon similar occasions, by the selected members who were empanelled on behalf of the community which they represented.

Empowered
to make
"inquiry"
by oath or
inquest.

Articles of
inquiry.

In order to obtain the verdicts before the Justices Itinerant, it was usual to exhibit chapters of inquiry adapted to the objects of the Eyre; and in this instance the first article related to the unjust exactions of the Sheriffs and their Bailiffs, whose situations gave them great powers of extortion. Their conduct was to be most strictly investigated; and the amount of the money which they had unduly levied upon the Hundreds or Townships since the King had passed into Normandy, and whereby the land or the tenants thereof were injured, was to be ascertained. Another article related to indictments under the "Assize" of Clarendon; and the Jurors were to declare, whether the innocent had been accused without cause, or the guilty allowed to escape without punishment. An inquiry was to be made, which appears

^a The Barones Errantes for the Home Circuit, or the Counties of Kent, Surrey, Middlesex, Oxford, Berks, Bucks and Bedford were the Abbots of St. Austin and of Chertsey, the Earl of Clare, Willielmus de Abrancis, Manassier de Dammartin, Geroldus fil. Radulphi, Gilebertus de Pinkeni, Willielmus filius Heltonis, Willielmus fil. Nigelli, Wills. fil. Martini, Radulphus de Hospitali, Radulphus de Dene.

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extended to the whole body of land-holders, and the Justices were to be informed of what they had taken from their tenants by lawful judgment, or without judgment. The sums unduly exacted by the Archdeacons and Deans of each diocese were to be presented; and a return was to be made of the names of all those who had omitted or refused to do homage to the King. In pursuance of these commissions and of the King's command, the Convention took place at London; the Bishops, Abbots, Earls, and Barons throughout England, the Sheriffs, the "Præpositi," the Aldermen, with their pledges, all attended, greatly appalled; each fearing the accusation of his conscience, and unable to anticipate the intentions of the Sovereign. To the surprise of the assembly, he caused his son to be anointed and crowned as King. On the following day, the King of Scotland, David his brother, the Earls and Barons, and all the "Freeholders" of the kingdom, did their homage to the new Monarch, who was associated to his father in the functions of royalty. Almost all the Sheriffs of England were removed from their offices^a. The other delinquents, however, escaped; and even the obnoxious "Ministers," after a short time had elapsed, were restored to their offices, though not without payment of heavy fines.

Part I.
Ch. IX.

Convention
at London,
14 June,
1170.

This singular assembly, which had evidently some connexion with the recognition of the young Prince as the heir to the monarchy, is not described with sufficient clearness by the annalists. It is evident, however, that the Justices Itinerant were merely empowered to take the inquests; they could inquire, but they could not determine: judgment was reserved to the King; and therefore offenders were attached to appear in person at the bar of his tribunal. Such a proceeding, however, was oppressive without being effectual; and the division of the kingdom into six Circuits, established by the Great Council at Northampton, afforded a more convenient legislation and a more efficient machinery^b. Three Justices were appointed in each Circuit, to whom the fulfilment of the "Assizes" was entrusted. They were authorized to pass sentence upon the offenders convicted before them, at the same time that they were invested with the most ample powers for the preservation of the public tranquillity. The proceedings are strikingly similar to the course indicated by the Capitularies; and though the Circuits of the

Justices
Itinerant
appointed by
Henry II. in
the Great
Council at
Northamp-
ton, 1176
(see above,
p. 221), Eng-
land being
divided into
six Circuits.

^a Benedictus Abbas, p. 34. Gervasius Dorobernensis, pp. 1410-12.

^b Benedictus Abbas, p. 131.

Part I. "Missi" had been so long intermitted in France, that they could
Ch. IX. be only known to the antiquary, it might almost be imagined that
 Henry II. had attempted to imitate the example afforded by the restorer of the Empire of the West.

Four Circuits appointed in the Council at Windsor, 1179.

Six Justices appointed in the Northern Counties, designated as "Justiciarii in Curia Regis constituti ad audiendum clamores populi."

Ancient separation of Northumbria from the rest of England still indicated in the reign of Edward I. by the convention of two Parliaments or Great Councils, 11 Ed. I., simultaneously assembled at York for the Northern Counties, and at Northampton for the Southern Counties.

Justices Itinerant appointed by Richard Cœur de Lion, on his return from the Holy Land, A.D. 1194. (See above, p. 212.)

"Custodes Placitorum Coronæ," afterwards called Coroners, elected in each Shire, who united the characters of representatives of the people and of officers of the King.

Another similar appointment was made in the Great Council held at Windsor. Henry, having convened his "Bishops, Earls, "and Proceres" before himself and his son, by their advice he divided England into four parts, and over each part he assigned the wise men of his Kingdom, who were to administer justice to the people^a. In the three southern Circuits, five Justices were nominated; and it may be observed that each Commission contained a Bishop and one or more of the King's "Clerks." For England north of Trent and Humber^b, which constituted the fourth Circuit, six of these Justices were assigned, who are specially designated as "the Justices of the Curia Regis, appointed "to hear the complaints of the people"; terms which imply that they possessed a more ample power than the other Commissioners, whose authority, perhaps, did not extend to certain weighty cases which were specially reserved to the King. The distance of the Northern Counties from the usual seat of government, rendered this arrangement a benefit to the people; but it is to be considered as involving a more important principle than mere convenience, and as a reminiscence of the political separation of the kingdom of Northumbria from the rest of England, which, in some respects, continued until the fourteenth century.

Soon after the return of Richard from the Holy Land, he despatched, as his father had done, the Justices Itinerant, whose instructions for proceeding in the "Pleas of the Crown" have been before noticed. They were also empowered to cause three Knights and one Clerk to be elected in each County, as "Keepers of the Pleas of the Crown." Whether any such election ever took place before does not appear; but these officers, who were afterwards called "Coroners," were equally the representatives of the people and the officers of the King; for, whilst they were chosen by the "Communities" of the Shire in full County Court assembled,

^a Benedictus Abbas, p. 317.

^b Or nearly so, the following being the Counties to which the Six Justices were assigned:—Nottinghamshire, Derbyshire, Yorkshire, Northumberland, Cumberland, Westmorland, Lancaster and the land between Ribble and Mersey, which seems to have been considered as a distinct shire.

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Part I.
Ch. IX.

The King's
Peace pro-
claimed.

Ordinance
made by the
Justiciars,
Prelates and
Magnates,
that the laws
of Henry I.
should be
kept, and
all bad laws
utterly
abolished,
&c.

Convention
composed
of certain
Knights
(who had
been
specially
summoned),
of the "body
of the
Baronage,"
and four
discreet
Knights of
the Shire,
to speak
with the
King; 15
Joh. 1213.

be taken of the injuries sustained by the Ecclesiastics, and of the amount of the damages which he owed to them^a. Geoffrey Fitz-Peter and the Bishop of Winchester, the Justiciars to whom the King had committed the government of the Kingdom, presided in the Council of Prelates and Magnates, before which these Good Men and Præpositi were called. By them, the Peace was proclaimed; the Sheriffs, the Foresters, and others of the King's Ministers, were commanded to abstain from their extortions under forfeiture of life and limb; and on the part of the King it was declared, that the laws of Henry I., which professed to be a confirmation of the laws of the Confessor, should be kept and observed, and all "iniquitous laws" from thenceforth be utterly abolished and annulled.

Matthew Paris describes the "Four men and the Reeve" as being returned only for the purpose of answering those points of inquiry which related to the clergy, and which were of the greatest importance in his eyes; but the extensive nature of the relief resulting from the Council, may induce the opinion that the authority of these Representatives was more enlarged, and that, instead of confining themselves to a presentment of the spoliations sustained by the Church, their inquests related to the general grievances of the kingdom.

After a short interval, we find another assembly held, pursuant to writs^b which required the Sheriff to cause all the Knights of his bailliwick, who, as it is therein stated, had been previously summoned to Oxford, to appear before the King with their arms, together with the "body of the Baronage," but unarmed, and "Four discreet Knights" of the Shire, to speak with the King concerning the affairs of the kingdom. It has been, however, conjectured^c, that these four Knights of the County were, like the "Four men" and the "Præpositi" of the Demesne Towns, returned by the Sheriff in the nature of Jurymen; but nothing further is known of the transaction: we can only describe the proceeding as it appears on the Record, and as an indication of the various conformations of these remedial assemblies, which, without any strict adherence to any settled scheme, were called together when required, for the welfare of the Commonwealth.

^a Matt. Paris, p. 239.

^b Tested 15 Nov., 15 Joh. Rot. Claus., p. 2, m. 7. *Fœdera*, vol. i. p. 117.

^c By Prynne. See Hallam, *Middle Ages*, c. 8. part 3.

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Notwithstanding these discrepancies, we can discern, however, that, as far as any consistent principles existed in the policy of a turbulent people and a discontented state, the ancient constitution was worked by two classes of functionaries, established for the preservation of the public tranquillity: a certain number of high Officers, bearing various names, some in the Geldable of the Shire, others within the King's own Forest ground, and possessing the executive functions, the power of the sword, who were nominated by the "Communitas"; and a Body of virtual Representatives, who, upon their oaths, presented or made known the grievances of the people. Without any declared theory of government, it was, in practice, divided between the Sovereign and the Nation; yet, notwithstanding these elements of popular authority, no proceeding of importance could be established, confirmed, or perfected without the concurrence of the Sovereign. The Conservator of the Peace, though chosen by the landholders, was finally appointed to his office by the royal writ or commission; whilst the verdict of the Jury required the sanction of the Monarch before it obtained a legal sanction or validity. Thus, it was one of the provisions of Magna Charta, that all the bad customs of the Forests and the Warrens, of the Foresters and Warreners, of the Sheriffs, and other officers or Ministers of the Crown, should be "inquired" in every Shire, by twelve sworn Knights of the same Shire, to be chosen by the "probi homines" thereof, and that, within forty days after the taking of the inquisition, they should be utterly abolished by the Knights, and never renewed: and by Writs^a sealed upon the field of Runnymede, the Sheriffs were directed to make such elections at the next County Court, the inquisitions to be taken agreeably to the tenour of the Charter. But it was at the same time provided, that the King, or his Justiciars, in case he should be absent from England, should be first informed of the result of these verdicts, or, in the legal phrase, that the inquests were to be returned before him. In consequence of this stipulation, a solemn instrument was executed by the Prelates^b, declaring that the article was understood on either part, by the King and by the Barons, not to extend to those customs which were essential

Part I.
Ch. IX.

Two classes of functionaries established by the ancient constitution for the preservation of the public tranquillity. The Executive, who, under the names of Coroners, Conservators of the Peace, Verderers, &c. were the King's Officers, elected by the "Communitas"; and the Inquisitorial, selected from the people, who "presented" or made known the grievances of the State by their verdicts upon oath: but the Conservator of the Peace was confirmed by the King, and the verdicts of the Juries required the assent or judgment of the Crown before they could be acted upon.

Magna Charta provides that all bad customs, &c. are to be inquired into by twelve sworn Knights of each County, to be chosen by the "probi homines" thereof.

Writs issued accordingly, 17 Joh. 1215.

Inquests taken accordingly.

^a Tested 19 June, 17 Joh. Rot. Pat. m. 23. Fœdera, vol. i. p. 134.

^b Letters Patent under the seals of Stephen Langton, Archbishop of Canterbury, the Archbishop of Dublin, and the Bishops of London, Winchester, Bath, Lincoln, Worcester, and Coventry and Lichfield. Rot. Claus., 17 John. Fœdera, vol. i. p. 134.

Part I.
Ch. IX.

Ratification of the Great Charter demanded of Henry III. by the Barons, in the "Colloquium" held at London in eight days of the Epiphany, 1223. Hen. III. agrees that the evil customs, &c. should be inquired into by Twelve sworn Knights in each Shire, the verdicts to be returned before him on the morrow of the Clause of Easter, (being the time when the Curia Regis usually assembled.)

Provisions of Oxford, 1258, by which it was ordained that four Knights should be elected in every County, who should make inquiry by the Jurors of the Hundreds of all grievances occasioned by the oppressions of Sheriffs, &c.

to the government of the Forests. So that whatever may have been the judgment of the twelve sworn Knights, it was of no avail until examined and ratified by the King.

This course is more distinctly pointed out by the transactions which took place when Henry III. renewed the Great Charter^a. The King, meeting his Barons in Parliament at London, was required by Stephen Langton and the "Magnates" to confirm those liberties and franchises for which they had warred against his father. Henry could not refuse his consent, though opposed by William Briwere, who held a distinguished rank in his councils. "These liberties which ye ask," said the latter, addressing himself to the Archbishop, "extorted by force, ought not to be observed according to law." An angry reply ensued; but the King pacified the disputants; and, immediately deliberating with his council, writs were transmitted to all the Sheriffs of England, commanding them to make inquiry by the oaths of twelve of the most lawful and discreet Knights of the County, by whom the truth might be best known, of all the customs and liberties which belonged to King John, his father, in the day when the war began between him and the Barons. These "customs" were to be held as lawful customs, and the inquests and the names of the "Inquisitors" were to be returned before the King on the morrow of the Clause of Easter, the time when that Great Council, or Curia Regis, which afterwards merged in the High Court of "Parliament," was to hold its Session according to the ancient usage of the kingdom.

In the proceedings which have hitherto been noticed, the custom of redressing the wrongs of the people by means of the Inquisition of the Shire does not bear any permanent relation to the supreme judicial assembly. The project of a constitution, intended to afford a more constant mode of transmitting the complaints of the people to a central and supreme tribunal, destined to become the Grand Inquest for the entire community, seems to be due to the memorable Parliament of Oxford, when those celebrated "Provisions" were enacted, which transferred the most important powers of Government to a body of "Redesmen" or Counsellors, some named by the King, others by the Earls and Barons on behalf of the "Communitas."^b By the first article

^a Matt. Paris, p. 317. *Fœdera*, vol. i. p. 168.

^b *Annales Monast. Burton*, p. 412. The import of "Communitas," as here employed, has been much contested; but we have the benefit

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Continue

Part I. and from the Parliament at Westminster, "on certain affairs
Ch. IX. "concerning the Commonalty of all the County," nearly in the form which, when the Commons House of Parliament was fully established, became in use for the Knights of the Shire; and according to the practice stated to have been "accustomed and used" in the first writs for the expenses of the Commons, now extant upon the roll.

Conservancy
of the King's
Peace.

We must return to the "Conservancy of the King's Peace," the organization adopted for the preservation of the tranquillity of the Country. Originating out of the Anglo-Saxon Watch and Ward, as renewed and enforced by the Conqueror, this Militia, disciplined by the Conservators, was gradually improved into an effective system of police, and engrafted upon the political constitution of the Realm. When the military array of the Shire for the purpose of internal defence was held pursuant to the King's command, all the Knights and Freeholders were bound to attend in person. Each Burgh answered by twelve Burgesses: and the four men and the Reeve, the invariable representatives of the Anglo-Saxon Townships, appeared for the villeinage of their respective communities^a. Convened for military purposes, these musters were composed of the members who attended the judicial assemblies of the Shire; for the military and civil policy of the ancient nations were combined, the Army being only another name for the State or Commonwealth. The various improvements in the art of war, in the period intervening between the Conquest and the reign of Henry II., had probably occasioned the first enactment of "the Assize of Arms." From the Norman, the English Ceorl had learned to bend the bow and direct the arrow; the less expert of the rustic levy wielded the gisarme¹, brown with rust, the bill and the scythe; the burgess appeared arrayed in his wambace² and poisoning his lance; and the tenants of freehold land, marshalled according to their revenues, displayed the helm and the hawberk; those of the highest amount and value only being mounted on their steeds^b. Some portions of these

Conventions held for that purpose, consisting of the Knights and Freeholders, who were bound to attend in person, of Twelve Burgesses for every Burgh, and Four Men and the Reeve for every Township.

Array of the Shire, in which each man was armed according to his degree.

^a Writs docketed "de provisione facta ad pacem Regis conservandam" [concerning the provision made for keeping the King's peace], tested at Portsmouth 20 July, 37 Hen. III. Rot. Claus., m. 7. *Fœdera*, vol. i. p. 291.

^b *Assisa Regis Henrici II. de habendis armis in Anglia*, A.D. 1181 [Assize of King Henry II. concerning the provision of arms in England], *Benedictus Abbas*, p. 365. The bow is first mentioned in the writ of Hen. III.

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forces were bound more peculiarly by reason of their tenures; such were the "Red Spears" of the North, whose service was charged upon the land which they held^a, and the right or duty of bearing the pennoncel before the Hundred, might devolve upon the owner of a peculiar tenement^b; but by far the greater part of the members of the "Fyrd," were called out by the general duty imposed upon all the lieges of defending the King's Peace, and thus insuring obedience to the law. The Hundreds were commanded by the Chief "Constables," who appear, under this foreign title, as leaders of the military levies early in the reign of John^c, and who are directed to enforce the peace in the "Provisions" enacted by Henry III. Other constables were to be constituted in the Townships, before whom the Resiants were to be sworn to arms, a duty, which, in the Cities and Burghs, was assigned to the municipal officers, the Mayor and Bailiffs. In process of time, the constabulary force appears to replace much of the Anglo-Saxon Decennary system, but the alteration was probably more in name than in substance: the individual elected as the Anglo-Saxon Tithing-man, or the Borges-ealdor, also performed the duties prescribed by the Anglo-Norman Sovereigns; and the presentment or election of this officer, now of such mean estate, by the Leet Jury of a Township, recalls the ancient election of the Adalides and Almocadenes of the Castilian armies.

Part I.
Ch. IX.

Service by
Tenure,
"Red
Spears" of
the North.
Service
resulting
from al-
legiance.

37 Henry
III. 1253.
Ordinance
for the Con-
servancy of
the Peace
enacted by
Hen. III.
Constables
to be elected
in every
Hundred,
before whom
the Resiants
were to be
sworn to
arms.

Military
Conserva-
tors of the
Peace (see
above, p.
164) elected
by the Com-
munitas of
the Shire,
and after-
wards em-
powered by
the King's
commission;
required
to possess a
qualification
of land, in
default of
which they
might be
removed
from their
office.

At common law, the Sheriff was entrusted with the powers by which the King's Peace was to be preserved, a function which may be obscurely traced as far back as the reign of Athelstane; but in the ordinances of Henry III., we find the first appearance of the military "Conservator of the Peace," who, according to the ordinary course, appears to have been elected or nominated by the "Communitas" of the Shire, as the "Heretochs" of the Anglo-Saxons are said to have been, and who, after such nomination, was accepted by the King, and empowered by the Royal writ or commission^d. The choice usually fell upon the most influential landholders of the Shire; and if it appeared that the Conservator

^a Hutchinson, Cumberland, vol. i. p. 520.

^b Placita Coronæ de Comitatu Oxoniæ, 24 Hen. III. m. 4. [Pleas of the Crown for the County of Oxford, 24 Hen. III. fourth membrane.]

^c Magn. Rot. 3 John. Madox, Exch., p. 27.

^d Rot. Pat. 5 Ed. I. m. 13. Parl. Writs, vol. i. pp. 389, 390, nos. 24 and 25.

Part I.
Ch. IX.

Authority of the Conservator; empowered to raise the hue and cry, to arrest offenders, but not authorized to summon a Jury or to try the offenders, who were to be committed to prison until delivered according to due course of law.

Keepers of the Peace assigned, pursuant to an Ordinance made 48 Hen. III. 1264.

Conservators directed to cause Four Knights to be elected in each Shire to treat with the King and with his Prelates and Magnates on the affairs of the kingdom.

did not possess the requisite qualifications, he might be removed from his office, and another appointed in his stead. Representing the property of the Shire, the Conservator was answerable for the public tranquillity, and an ample authority was entrusted to him. All robbers and malefactors were to be arrested at his behest; when needed, he raised the "Posse Comitatus," and followed the offenders with hue and cry from Hundred to Hundred: he was also charged with the array of the County, and he enforced the due performance of Watch and Ward; and when it became necessary either to deliver his commands or to require the concurrence of the community, the business, as before observed, was transacted in the usual constitutional County meeting of the Knights, the Freeholders, the Four Men of the Townships, and the Twelve lawful Burgesses of each Burgh. But the Conservator had no judicial authority, nor could he summon a Jury; the Knights or Good Men composing the Inquests were summoned before him by the Sheriff, and the criminals whom the sworn witnesses or Jurors accused, were committed to prison until delivered according to due course of law; for all power of judgment remained in the Crown, and was exercised by the Justices, who tried the offenders whom the Conservator had apprehended. By an Ordinance made while Henry III. was a captive in the power of Simon de Montfort, it was directed that Keepers of the Peace should be appointed in every County of the realm, until it should be otherwise provided by the Barons and the King^a. These Special Conservators are stated to be assigned by the advice of the Barons; a phrase which, however, does not necessarily exclude the previous nomination of the community. Leaving, however, this question undetermined, we find that the Commission, besides the powers appropriate to the office, contains a further clause, noticing the then instant Parliament, and enjoining the Custos "to send four good " and discreet Knights of the County, for that purpose elected by " assent of the County, to be at London in eight days of the Holy " Trinity, to treat with the King, his Prelates, and Magnates upon " the urgent affairs of the kingdom." No further definition of the character and functions of these Knights is given: but, when the whole tenour of the instrument is compared with its predecessors,

^a Commissions tested at St Paul's, London, 4 June, 48 Hen. III. Rot. Pat. m. 12. *Fœdera*, vol. i. p. 442. See also Part II., *Proofs and Illustrations*, p. 858.

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**Part I.
Ch. IX.**

Convention
on the
accession
of Ed. I.,
consisting
of the
Prelates and
Magnates,
and of four
Knights
from
every Shire,
and four
Citizens
from every
City.

In the following month of January, a Convention of all the Prelates and Magnates of the kingdom was held at Westminster, at which were assembled all the Archbishops, Bishops, Earls, Barons, Abbots and Priors; from every County four Knights; and from every City four Citizens, who, in the presence of the Archbishop of Canterbury, Robert de Mortimer and Robert Burnell, the King's Clerk, again took the oath of allegiance to Edward, and undertook to preserve the peace firmly and faithfully in his name. This narrative is one of the many proofs of the insufficiency of the arguments drawn from the silence of records, for no writ or roll affords any notice of this Council, whose existence is proved by trustworthy and contemporary evidence^a. But the Knights and Citizens were not empowered to act as legislators, or to sustain the character of representatives in the modern sense of the term; and we can only explain their appearance by supposing that their presence was enjoined, in order that they might co-operate in the general Conservancy of the Peace, nearly in the same manner as they would have done in the jurisdictions to which they belonged.

7 Ed. I.
1279.
Adam de
Stratton,
Chamberlain
of the
Exchequer,
impeached
by twelve
Jurors
returned
from all the
Shires of
England.

It will be recollected that Henry III. threatened to assemble all the Shires of England, that is to say, all the Juries of the Shires, to punish the men of Winchester. In the case of Adam de Stratton, the Chamberlain of Edward I., who was accused of various acts of extortion and oppression, we have another example of this practice^b. To do justice upon this mighty offender, proclamation was made in every County in England, that all who had sustained any injury by his acts should appear before the Barons of the Exchequer, to prefer their complaints, and to receive what the King in Council should ordain; but the culprit was not to be tried upon the mere assertions of the complainants, for the Sheriff was commanded to return a Jury of twelve men from every Shire, to appear at the same time and place, by whom the King might be better certified, and the truth better known. However, this inconvenient and operose proceeding, which has some analogy to the assembly held under the Conqueror, was never adopted again; and the plan of transmitting the results of the inquests, instead of requiring the Jurors to record their verdicts in person, was resumed.

^a Parl. Writs, vol. i., Chron. Abstract, p. 1. Annales Waverlienses, p. 227.

^b Memoranda in Scaccario, 7 Ed. I., apud Maynard, p. 10.

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The Statute of Winton, which afterwards became the foundation of the police of the kingdom, appears equally grounded upon the Anglo-Saxon common law, and upon the Ordinance of the Anglo-Norman Kings. By this act, which has, perhaps, been too hastily abrogated^a, the liability of the Hundred was regulated and enforced; no unknown stranger was to be harboured in the "upland towns." It directed how the armed night-watch was to be set in the Cities and Burghs of the realm; how the hue and cry was to be raised; and it specified and described the armour which every man was to have in his house, for the preservation of the peace according to the ancient Assize. To ensure the observance of the statute, the Constables, elected in every Hundred and Franchise, were to present the defaults to the Justices assigned, when they should come into the country, and the Justices assigned were "to present the defaults which they should find to the King " in every Parliament, and the King shall find remedy therein."

Part I.
Ch. IX.

Statute of
Winchester
13 Ed. I.
1285.

Anglo-Saxon
customs
enforced.

Constables
to present
defaults to
the Justices
assigned
pursuant to
the statute,
and the
Justices to
carry up the
presentments
to the King in
Parliament.

The regulations established by Edward I. were so comprehensive, that in future the police of the country depended more upon the letter of the written law than upon the traditions of the common law; and therefore the substance of the statute is inserted in the first general commissions appointing Conservators of the Peace, which appear to have been issued subsequently to the promulgation of this solemn act of the Legislature^b. These Conservators, as before observed, were elected by the County; and the commission directs them to take inquests, by the oaths "as well of Knights as of others," of all breaches of the statute, and to certify their proceedings to Edmund, Earl of Cornwall, then the King's Lieutenant in England, at Westminster, in three weeks of Easter, "in order that, the defaults being heard and "discussed, a fitting remedy may be provided." The records of this year are very imperfect; but, by comparing the provisions of the statute with the language of the commission, we collect, that the "return" was to be made in a Parliament or Great Council of the King and his advisers, and that a remedial Ordinance was to be enacted by them.

15 Ed. I.
1287. Com-
missions
issued
appointing
Conservators
of the Peace
pursuant to
the statute.

(See above,
pp. 250, 251.)

^a It is repealed by the recent Statute 7 and 8 Geo. IV. c. 28, entitled, An act for repealing various Statutes in England relative to the Benefit of Clergy, and to Larceny and other Offences connected therewith, and to malicious injuries to Property, and to remedies against the Hundreds.

^b Tested at Westminster, 20 Jan. 15 Ed. I. Parl. Writs, vol. i. pp. 388-91, nos. 25, 26.

Part I.
Ch. IX.

18 Ed. I.
1290. Two
or three
Knights to
be elected
from each
County, to
advise upon
and consent
for them-
selves and
the County to
what should
be ordained
by the Earls,
Barons, and
Proceres.

Writ re-
turnable at
Westminster
in three
weeks of
St. John
Baptist,
15 July.

The
majority
of which
Knights
consisted of
the indi-
viduals who
had been
also elected
as Con-
servators of
the Peace.

Within three years afterwards, a Parliament was held, which has been considered as forming an epoch in our constitutional history. The writ^a recites, that the King, having had certain requests made to him by the Earls, Barons, and others of the "Proceres" of the kingdom, he wished thereupon to have a "Parliament, and debate," as well with them as with the others of the Counties of the kingdom: the Sheriff was therefore commanded to cause two or three of the most discreet and competent Knights to be chosen, to appear before the King, with full power for themselves and all the Commonalty of the said County, to advise upon and to consent to such matters as by the Earls, Barons, and Proceres should be then ordained. The returns of these writs are extant: and as the greater number of the Knights thus elected are the very same who were the Conservators of the Peace, lately elected, and who were to communicate their proceedings to the Sovereign, it is difficult to resist the supposition, that, at this period, the persons elected and empowered to inquire into the observance of the laws, were also considered the proper and natural deputies of each Shire in the Supreme Tribunal of the realm; and we are thus led to conclude, that the political representation of the Commons, if not created, was at least strengthened and corroborated by the executive functions of the Knights of the Shire.

Assuming "Parliament" to be an assembly resulting, not from any preconceived system, but from the consolidation and subsidence of earlier institutions, we may, perhaps, be induced to think, that the delegation of the Conservators of the Peace, the Conventions of the Knights charged to bring up the inquests of the Hundred Juries, the assemblies of the older Echevins, and the representation of the Townships in the ancient Folkmoots, were all elements which entered into the composition of the national representation; and that the proximate causes of the origin of the House of Commons are partly to be sought in the remedial representation of the Burghs and Townships, as well as in the custom introduced during the reign of Henry III., of requiring the attendance of the Justices of Inquiry before Parliament. Unquestionably this hypothesis is liable to great difficulties, and it can only be presented as a theory open to examination and

Difficulties
attending
the theory,

^a Tested at Rose Castle, 14 June, 18 Ed. I. Parl. Writs, vol. i. p. 21. See also Part II., *Proofs and Illustrations*, p. 860, for an abstract of the returns.

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**Part I.
Ch. IX.**

Probability that the claims of St. Albans and Barnstaple were grounded upon the ancient remedial representation.

(See above, p. 243.)
(See above, p. 248.)

claim of St. Albans is followed by the case of the men of Barnstaple, who alleged that they had sent Burgesses to Parliament since the days of Athelstane, from whose real or supposed charter their immunities were supposed to be derived. Upon these cases, it has been forcibly remarked, that if the appearance of Burgesses in Parliament had been a novelty, introduced within the century, it is scarcely possible the Burgesses could have ventured upon an assertion, which would have been contradicted by the public notoriety of the Kingdom^a. The supposition, that in any early period the Burgesses had a voice in the solemn acts of the legislature, is untenable; and the pretensions of the Burghs in assuming that their ancient representatives possessed the powers assigned to them in the fourteenth century were entirely unsupported and unfounded. But the recollections of the suit and service performed by the men of the Burghs in the remedial assemblies, such as that held at St. Albans, or in connexion with the Conservancy of the Peace, may have easily given rise to the error, without any intentional falsification. The fact of the attendance was known, though its reason had become obscure; the effect was equally known, though the cause was perhaps forgotten; and when the Commons were rising into importance, they would willingly lean to any hypothesis which might add the sanction of antiquity to the rights which they enjoyed, and the privileges which they then had gained.

(See above, pp. 90, 91.)

The relation between remedial representation, whether in the guise of Echevins or Jurors, to the station of the Commons, is so obvious, that it would probably have been long since acknowledged by our constitutional historians, had they not been determined on considering Parliament merely as a political Congress; instead of viewing it as a Court of Justice which was gradually united to other assemblies convened for the general administration and welfare of the Realm, and whose original attributes slowly passed away. How this great change was effected, must be the subject of subsequent investigation. Much, it will be found, was created by positive compacts and enactments. Force also aided in producing our constitution. But the most powerful of the causes to

^a Hallam, *Middle Ages*, c. 8. part 3. Brady, *Introduction*, p. 38. Petyt, *Rights of the Commons*, p. 3, &c. Lord Lyttelton, *History of Hen. II.*, vol. iii. p. 280; vol. iv. p. 83. Madox, *Exch.*, c. 17. Willis, *Notitia Parliamentaria*, vol. ii. p. 312. Rot. Par. 8 Ed. II. § 195.

which our Government is indebted for its system, has been the **Part I.**
silent legislation of precedent; occasional acts becoming usages **Ch. IX.**
and customs; usages and customs becoming laws: generally so
obscure and indifferent in their primary origin, as neither to excite
notice nor to awaken anxiety or opposition; but which, after long
pursuing their slow and steady course, unheeded and unobstructed,
are at length seen in full vigour and activity.

CHAPTER X.

History of the Middle Ages—not to be disconnected from the History of the Roman Empire—States of Modern Europe to be considered as representing the Fourth Monarchy—Britain under the Romans—State of its Population and Government at the period of the Roman invasion—Alterations consequent upon that event—Rapid introduction of Roman manners and customs—British Chieftains retaining a subordinate authority—Constitution of the Roman Provinces as settled after the reign of Diocletian—Institution of the Comitial dignity—"Comites," or Counts, how created—Counts of the Provinces—Irenarchs—Municipal Corporations—The Decurions—Colleges or Guilds of Operatives—Assemblies of the Provincials—The Council of the Seven Provinces of Gaul—Provincial organization of Roman Britain—Military Colonization—Lands held upon condition of performing Military Service by the Veterans, the Limitanean Soldiery, and the Barbarians—Origin of the Feudal System—Military Counts and Dukes—Military Government of Roman Britain—Adoption of Roman forms of Government by the Founders of the Barbarian Dynasties.

Part I. Ch. X.

Political Constitution derived, to a considerable extent, from the Legal Constitution; the law resulting from the state of the people, and the Political Constitution, from the machinery employed to execute the law.

HITHERTO I have purposely avoided noticing the political constitution of the country, otherwise than as it appears to be connected with certain judicial customs and institutions which may be supposed to have contributed to form the supreme Councils of the Realm. Laws, according to the natural tendency of society, arise from the state and condition of the people; and the government results from the machinery employed for carrying the laws into effect. In every community not absolutely degraded into lawless despotism, this course may be always inferred, though occasionally interrupted by violence, or obscured by the total loss of historical evidence and legal records; and the development of the various branches of the Legislature cannot be traced either with truth or clearness, unless we proceed to the investigation with a full knowledge of the jurisprudence which these bodies were

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Part I.
Ch. X.

much difficulty, but which has rendered those races upon whom it is now impressed, diverse from all the other nations of the world.

The affinities of the ancient Britons have often been discussed with great learning, and sometimes with more acrimony and vehemence than the subject requires; but the materials for investigation are confined within a narrow compass. Excepting the guidance received from the tokens, generally plausible, though not always infallible, of language and dialect, our knowledge does not extend beyond a very few facts contained in the classical writers; and these indicate that the soil was unequally divided between several distinct lineages. The position of the cities, the bays and the promontories of ancient Britain are given by the Geographer; and considering the great changes of inhabitancy which have since taken place, the easy identification of his descriptions is a singular test of his knowledge. But the tables of Ptolemy¹ could not describe the sinuous demarcations and lengthened frontiers of the territories occupied by the different nations; and the ecclesiastical divisions of England having been remodelled after the Anglo-Saxon Conquest, we cannot, as is the case in Gaul, ascertain the boundaries of the British States from the circumscription of the Episcopal Dioceses.

When Cæsar landed in Britain, many Tribes had recently passed over from Belgic Gaul^a. The names of their Colonies attested their consanguinity with the parent States on the Continent: and the Southern, and perhaps the Eastern districts, were inhabited by these Teutonic settlers, the "refuge-taking tribes" of the Triads. It is possible also, that detachments of this, or of some kindred race, may already have occupied some of the shores beyond the Thames; and the Coritani², who have been considered as Teutons, had established themselves near the Humber. By these immigrations, which the traditions of the Cymri represent as pacific, or the result of compact, the earlier Celtic population had been dispossessed of no inconsiderable portion of their territories: yet, from the estuary of the Clyde to the Channel, Britain was peopled by the descendants of Gomer, the first occupants of the ocean islands; many of whom still continue as a distinct and unmingled race unto the present day. Far in the North were the Caledonians³, including the tribes afterwards called Picts, whose history is one of the enigmas which will never cease to amuse and baffle the sober inquirer.

^a Cæsar, lib. v. c. 10.

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Ancient British Tribes.

Ptolemy, general accuracy of his notices.

Geographical position of the British Tribes uncertain.

Ecclesiastical divisions of France, generally agreeing with the limits of the ancient population.

Belgic Tribes: their settlements in Britain; probably the "refuge-taking tribes" of the Triads. (See above, p. 21.)

Cymri, the population of the West.

In time of peace, it is stated that the tribes of Britain owned no common Sovereign, yet each separate state was a monarchy; at least all the communities noticed by the Roman historians were subjected to Chieftains. The modern county of Kent alone possessed four such Reguli^a. Probably the system of Clanship generally prevailing in ancient Britain did not differ materially from that which existed more recently in Ireland, and also in the northern parts of the island, where it survived, unbroken by subsequent revolutions. But even with the information derived from the Cambrian laws and the analogous customs of the Gael, the outline of the British policy can only be filled up by fancy. It may, indeed, be assumed that some of the usages and maxims of the Druidical era are not unfaithfully recorded in the Triads: nor can we refuse to admit that the practical code of Howel may occasionally be founded upon the primeval jurisprudence and policy of the Cymri. Yet the principles and doctrines so collected or surmised cannot supply a view of the political state of society anterior to the Roman invasion, without the aid of a series of arbitrary conjectures: and I will not indulge in them beyond the single supposition, that the "Pencenedyllion" were the representatives of the ancient chieftains, who retained the headship of their people, although they had not acquired the sovereignty of the soil upon which their subjects and kinsmen resided.

The royal authority, as is familiarly known from the instances of Boadicea¹ and Cartismandua², might be exercised by a female; and indeed it is not improbable but that, in some cases, the descent of the chieftainship proceeded in the female line, as amongst the Picts. The strange custom of the Britons, by which one wife was assigned to many husbands, was probably the original cause of this mode of inheritance amongst the tribes wherein it prevailed^b: and the occasional admission of women to the rights of sovereignty is one of the few marked points of disagreement between the laws of the Celts and the unmixed Teutonic nations. The latter never allowed the sceptre to fall into the distaff.

Part I.
Ch. X.

The British Tribes subjected to Kings or Chieftains, who were very numerous. Clanship; probably subsisting amongst the ancient Britons in the same form as in Ireland and Scotland at later periods.

Pencenedyllion (see above, p. 55) supposed to be the descendants of the primitive Chieftains, who retained the headship of the Clans, without acquiring the sovereignty of the soil.

Royal authority might be exercised by women.

Descendible in the female line amongst the Picts.

Women not admitted to command amongst the unmixed Teutonic tribes.

^a Cingetorix, Carvilius, Taximagulus, Segovax; Cæsar, lib. v. c. 22.

^b Cæsar, lib. v. c. 14. Dion Cassius apud Xiphil. Cæsar says, that the children considered the first husband as their father; Dion, that the husbands brought them up in common. These contradictory authorities do not shew the laws of inheritance; they seem to relate only to the *theory* of relationship in such a family.

Part I.

Ch. X.

Gaul, when first visited by Cæsar, was composed of numerous "Civitates," or States; some governed by Kings, others by an aristocracy; but who were united in artificial and well organized confederacies. Their general councils or assemblies were invested with the power of administering public affairs; and the whole system of their government may be considered as indicating a degree of civilization, which had advanced beyond the policy prevailing amongst the coeval Alemannic or Germanic tribes, whose federations, though not unwisely or unskillfully planned, present the organization of an army rather than the plan of a Commonwealth. The vestiges of an older and better state may be discerned amongst the Teutons; but they had retrograded, and they were then connected more by the desire of plunder, or the fear of danger, than by feeling the necessity of submitting to the mandates dictated by international law. I use the term international, because the populations inhabiting the same tract, and often known by the same collective name, had in no instance become really amalgamated into one commonwealth, whose members were subjected to one pervading sovereignty. The disunion of the Britons, their civil dissensions, and the absence of any steady system of defence^a, may perhaps be considered as negating the existence of any general government, analogous to that which prevailed in the neighbouring Gaul, though it is evident that several tribes were not infrequently governed by one supreme leader, who acted as their King.

With the loss of their independence, the internal organization of the British tribes immediately sustained great changes. The conquests of the Romans were attended with violent confiscations of property; like Prasutagus, the island sovereigns saw their territories transferred to the victors. In those states which were converted into Colonies, the possessions of the inhabitants were seized without mercy; the domains of the Rulers became the endowments of the veteran soldiery, and the inferior orders, reduced to a state of qualified servitude, cultivated the glebe, to which they were attached by the bond of villeinage. After the reign of Claudius¹, however, it is probable that these spoliations ceased; and the lands which continued to be granted as the reward and condition of military service, were either such as had been acquired from tribes in actual hostility to the subjects of the Empire, or constituted the imperial demesnes. When

^a Tacitus, Agricola, c. 12.

Gaul, a confederacy of "Civitates," or States.

Teutonic confederations, calculated rather for military operations, than for civil government.

Dissensions of the Britons, and want of political union, though, in some cases, various tribes were combined under one leader.

Roman invasion: many British Kings dispossessed of their territories.

Military Colonies: lands of the Britons confiscated and granted to the Roman soldiery, to be held by military tenure (see below, p. 288).

Inferior orders, reduced to the state of "Coloni" or Villeins.

No traces of such spoliations after the reign of Claudius.

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Part I.
Ch. X.

with the monuments of Roman magnificence. Malmesbury appeals to those stately ruins as testimonies of the favour which Britain had enjoyed; the towers, the temples, the theatres, and the baths which yet remained undestroyed, excited the wonder and admiration of the chronicler and the traveller^a; and even in the fourteenth century, the edifices raised by the Romans were so numerous and costly, as almost to excel any others on this side of the Alps. Nor were these structures amongst the least influential means of establishing the Roman power. Architecture, as cultivated by the ancients, was not merely presented to the eye; the art spake also to the mind. The walls, covered with the decrees of the legislature, engraved on bronze or sculptured in the marble; the triumphal arches, crowned by the statues of the princes who governed the province from the distant Quirinal; the tessellated floor, pictured with the mythology of the state, whose sovereign was its pontiff; all contributed to act upon the feelings of the people, and to impress them with respect and submission; the conquered shared in the fame and were exalted by the splendour of the victors.

Whilst the Britons were thus becoming Romanized, the national characteristics were not obliterated, nor did an entire and overwhelming revolution take place in their institutions, whether religious or political. Admitting that many of the modern theories concerning the doctrines and rites of the Druids are unfounded and visionary, there is still no reason for rejecting the supposition that the order of the Priesthood continued to be upheld, not only in name, but as constituting a flourishing hierarchy. When the first fury of war had subsided, there is no evidence of any further attacks upon the British aristocracy; and though we may collect from Tacitus, that the rank of the

descent, in deploring the cession of Auvergne to the Visigoths; *Facta est servitus nostra pretium securitatis alienæ. Arvernorum, prohdolor, servitus, qui, si prisca replicarentur, audebant se quondam fratres Latio dicere, et sanguine ab Iliaco populos computare.* [Our subjection has become the price of others' safety. The subjection of the Arverni, sad to tell, of those who, if we were to recall the ancient story, once dared to call themselves brothers to the Latins and to reckon the descent of their race from Trojan blood.]

^a Higden, lib. i. p. 199. Will. Malm., de Gestis Regum, in Proem.; id., de Gestis Pontif., lib. iii. p. 147. Giraldus Cambrensis, Itin. Kambr., c. 5.

Roman monuments existing in the Middle Ages, so considerable at York, Caerleon, Carlisle, Hexham, Lincoln, Bath or Aquæ Solis, &c. as to excite the astonishment of the antiquary.

Moral influence of architecture as practised amongst the ancients.

Subsistence of Druidism,

and of British princes beneath the Roman supremacy.

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British rulers had been diminished, still it appears that they retained a degree of subordinate authority. Cogidumnus¹ was confirmed in the royal power by Claudius; he obtained an increase of territory from the bounty of the Roman Emperor; and Lucius, under whose reign Christianity is said to have been first preached in Britain, is supposed to have been a descendant of the monarch of the Regni^{a2}. The existence of the royal title in the provinces of the Empire, was one of the proudest trophies of Roman supremacy. In Africa, the Kings of Mauritanian race acquired only an inchoate right by descent: they were raised to the throne by the Emperor, from whose hands they received their regalia; and it is a singular circumstance, that, even when these feudatories were engaged in war with the Empire, this investiture was requested and obtained from the chiefs of the hostile Commonwealth. Such, indeed, had long been the public law of the Empire: the vassals who were allowed to retain the royal title, accepted their inheritance as a gift, and were well contented to hold their dominions by the permission or indulgence of their masters. Limited and restrained, the British allies and tributaries subsisted in various districts, intermingled with the territories in which the inhabitants were subjected to the Empire, without any intermediate authority.

Part I.
Ch. X.

Cogidumnus.
(Tac., Agric.,
c. 14.)

Kings of
Mauritania
received their
investiture from
Rome, even in
time of war.
(Procop., de Bello
Vandalico, lib. i.
c. 25.)

British Kings
rule with a
similar degree of
dependence.

At the era constituting the dawn of the history of modern Christendom, and when the complicated policy, introduced by Diocletian and improved by Constantine, received its fullest extent and perfection^b, four Prefects were entrusted with the administration of the Roman world; and the Prefect of the Gauls, holding his court at Trèves, extended his sway from Tingitania in Africa to the mountains of Caledonia. The Prefectures were divided into Dioceses; these again into Provinces,

Government of
the Roman Pro-
vinces as settled
between the
reigns of
Diocletian and of
Arcadius and
Honorius, being
the period in
which the history
of Modern Europe
properly begins.

The four
Prefectures, their
division into
Dioceses and
Provinces,

^a Stillingfleet, Orig. Britan., p. 67.

^b Gibbon, vol. iii. ch. 28. A complete general view of the provincial organization of the Empire, as it subsisted in the early part of the fifth century, is afforded by the "Notitia Dignitatum utriusque Imperii" [List of Titles of Dignitaries in both Empires], a work of great singularity, and deserving of more attention and editorial care than has hitherto been bestowed upon it. The matter is arranged according to Provinces, stating the rank and titles of their civil and military governors, and their establishment and staff. The stations of the military are also detailed; and the manuscripts contain drawings of the ensigns and devices, as well of the governors, as of the various bodies of soldiery.

Part I.
Ch. X.

governed by
Vicars, or
Vice-
Prefects,
Presidents,
or Con-
sulars.

The
Comitial
dignity.

The
"Comites,"
at first
merely the
associates or
confidential
friends of
the earlier
Cæsars,
gradually
assume the
character of
Privy
Councillors,
and obtain
a recog-
nized rank
in the
Empire.

Receive an
allowance
from the
Emperor,
and are
divided into
classes.

respectively subjected to the Vicars or Vice-Prefects, or to the Presidents or Consulars, each in their degree invested with the various powers of judicial government and civil policy. About the same time that this system was matured, a new order of public functionaries became a recognized rank of nobility in the Empire. Under the earlier Cæsars, the distinguished individuals whom the Sovereign chose to select as his "Companions," might probably claim an unrestrained admission to his presence. A chosen friend is usually a confidential adviser. When the Emperor sat in his Prætorium, he permitted his associates to deliver their opinions, or perhaps he claimed their ready and convenient help to sanction his determination by their voice and assent, or to assist him by their prudence in delivering his judgments. This participation so speedily acquired the appearance of an established custom, that Hadrian appeared to be an innovator, when he composed a Council of judicial assessors, comprehending not only his Counts but also a bench of Jurisconsults, who, although distinguished for their learning and wisdom, did not enjoy the known intimacy of the Emperor^a. And the allowances which the Counts expected from the Emperor, as well as their division into classes^b, may lead us to suppose that various duties were assigned to the shadows of the imperial presence, who,

^a Cum judicaret, in consilio habuit non amicos suos aut *Comites* solùm, sed jurisconsultos, et præcipue Julium Celsum, Salvium Julianum, Neratium Priscum, aliosque, quos tamen senatus omnis probasset, Spartianus, Vita Adriani, c. 18. [When he was sitting in judgment, he had as a council, not only his own friends or *Companions*, but persons learned in the law, and especially Julius Celsus, Salvius Julianus, Neratius Priscus, and others, of whom however the whole senate had approved.]

COMES, COMITES, a comitando primum dicti aulæ Romanæ ac Imperatorii Palatii Proceres, quod ii Principem sectarentur, ejusque lateri adhærerent, seu domi maneret, seu in expeditionem proficisceretur. Hinc *Comites Imperatorum* vel *Augustorum* in veteribus inscriptionibus passim Romæ, Du Cange. [Count, Counts, the Nobles of the Roman Court and Emperor's Palace, so called first from "accompanying," because they followed the Prince and kept by his side, whether he remained at home, or set out on an expedition. Hence the expression, *Counts of the Emperors* or *Augusti*, in old inscriptions everywhere in Rome.]

^b Suetonius, Vita Tiberii, c. 46; and the comment of Salmasius. Lampridius, Alex. Sev., c. 20.

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Part I.
Ch. X.

Irenarchs,
officers per-
forming
duties
analogous to
the Anglo-
Norman Con-
servators of
the Peace.
"Irenarchæ,
Magistratus
Militares
qui ad id
constituti
erant, ut
Provincial-
ium tutela
suscepta,
quietis et
pacis per
singula
territoria
concordiam
stare
facerent,"
Du Cange.
Counts of
Cities.

officers, denominated "Irenarchs," or Conservators of the Peace, commanding an armed police, whose posts were dispersed over the Provinces. Soldiers, yet under the guidance of the civil power, their peculiar duty was the apprehension of malefactors, and the general preservation of the public tranquillity^a. Governors of cities were also appointed by the same name and with the same honours as the "Rectors" of the Provinces, and possessing the same, or perhaps more extended powers^b.

^a The Irenarchs were abolished, at least in the Eastern Empire, by Theodosius (Cod. Theod., lib. xii. tit. 14, de Hirenarchis). They appear to have been the "Adsertores Pacis" [Guardians of the Peace] of the Visigoths (LL. Vis., lib. ii. tit. 1, §§ 16 and 26). The Irenarch was particularly charged with the pursuit of robbers, but all offenders might be arrested by him. Saint Nestor, Bishop of Mandi, was thus brought to judgment by the Irenarch of the City. (Acta Sanct. Februarii iii. p. 628.) The Conservators of the Peace of the Anglo-Normans (see above, pp. 245-249) correspond so closely with the Irenarchs, both in name and office, that we might almost be tempted to suppose that the English Legislators had borrowed from the Roman Code. The "Centenarius" of the Franks (see above, p. 72) had a striking similarity to the Irenarch.

^b The Theodosian Code, and its indefatigable Commentator, supply the principal information respecting the duties and functions of the Provincial Governors; lib. i. tit. 7, de Officio Rectoris Provinciæ: lib. vi. tit. 17, de Comitibus qui provinciis regunt. It is not always easy to distinguish them from the Military Counts, and they have been sometimes confounded, even by Gothofredus; but that the Counts of the Provinces were the civil governors appears from the rescript of Constantine, "Ad Provinciales A.D. 331" (Cod. Theod., lib. i. tit. 7, l. 1), intended to remedy the extortions of the ministerial officers of the Counts, and which empowers the parties aggrieved to prefer complaints, "apud Comites Provinciarum, aut apud Præfectum" [before the Counts of the Provinces or before the Prefect]. Cassiodorus has preserved the general precedent for creating a "Comes" of a Province (Variæ, vii. 1), and the particular instruments appointing the Counts of Syracuse (ii. 22), of Naples (vi. 23), and of Ravenna (vii. 14); and I follow the example of Du Cange, Gibbon and Dubos, in supposing that the forms of the Gothic Chancery may be quoted as faithful examples of the imperial administration. The patent or diploma of the Count was accompanied by a writ or mandate addressed to the lieges whom he was to govern. In the case of the Comes of Naples, it is directed to the Honorati, the Possessores, and the Curiales

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Concurrently with this delegated authority, a portion of administrative jurisdiction remained to the subjects of the Empire. Notwithstanding the supremacy of Rome, and the general communication of the rights of citizenship, the individual existence of the vassal nations was always recognized and sometimes respected. They were aggregated to Rome, without being incorporated either with the Roman people or with each other. And the Emperors were placed at the head of a vast dominion, composed of communities, united by obedience to the behests of their masters, equally enjoying the same rights, and, as far as the government thought fit, subjected to the same laws; but retaining their peculiar systems of policy and jurisprudence^a, which were allowed to possess legal validity, if consistent with the policy of the Empire and unrepealed by the supreme legislature.

So long as the maxims of Republican Rome were yet respected, the rights of the Colonies, of the Municipia, and of the Latin cities were carefully and accurately distinguished; and the settlements of the Roman citizens, who founded for themselves a new home and country, could not fail to be invested with more ample privileges than those communities, who, whether subdued by force or allied by compact, derived their franchises from the clemency or gratitude of the Emperor. But in the age of the Antonines¹, the characteristic distinctions between these different bodies were almost forgotten by the practical jurist^b; and the law completed the obliteration which had been nearly effected by time. In the decline of the Empire, they were all invested with equal immunities, and their respective constitutions were only diversified by local customs, which did not disturb the general bearing and tendency of the imperial laws. Instead of three classes of municipal corporations, only one existed in effect, though perhaps the individual communities composing that one class were not reduced to an entire uniformity.

An extensive territory was included within the jurisdiction of every "Civitas"; in Gaul, these districts appear to have been conterminous with the political divisions established amongst the Barbarian inhabitants before the Roman invasion. Each Civitas represented an ancient Gaulish State, and the entire

(vi. 24), and the general precedent is to the same effect (vii. 28). It is possible that, in some instances, the title of "Comes" was given by courtesy, like the title of "Lord" in England.

^a Dig., lib. i. tit. 3, l. 31; lib. xxxiv. tit. 35, l. 36.

^b Aulus Gellius, lib. xvi. c. 13.

Part I.
Ch. X.

Roman Empire, composed of nations which were aggregated together without being incorporated; and which retained their local customs and peculiar laws, both written and unwritten, when not contrary to or repealed by the general laws of the Empire.

Roman settlements originally divided into Colonies, Municipia and Latin Cities.

These distinctions, obliterated in practice.

"Civitates" of Gaul formed out of the ancient Gaulish States.

Part I.

Ch. X.

The "Decuriones" or "Curiales," of whom the "Ordo" "Curia," or Senate of the city was composed.

Decurionship, hereditary in certain families, resembling the patrician families of Nuremberg, Frankfurt, and other German cities. But individuals possessing a certain qualification of property might also be compelled to accept the office, which, though honourable, was also very burdensome, the Decurions being personally and individually liable to

country was composed of these communities, no part of the territory being extra-municipal. A ruling body or Senate, whose members were termed the "Decuriones" or "Curiales,"¹ acted as the directing power of every city. The burden of discharging this office was appropriated to peculiar families: the obligation of the Decurion resulted from his birth; the language of the law emphatically declares, that he was bound to perform the senatorial duties in consequence of his race, blood and origin^a. But pecuniary wealth also imposed the same functions; and the "Possessor" who owned a certain extent of land, obtained, in like manner, a qualification which rendered him hable, however

^a Per originem obnoxii Curiis: qui sanguinis nexu Curiae tenentur: qui ex curiali stirpe descendunt: qui sanguine curiali obstricti: qui sorte nascendi municipalibus muneribus obligati. [Bound to the Curia by their origin: those who are bound to the Curia by the tie of blood: those who descend from curial stock: those who are bound by curial blood: those who are under an obligation to serve municipal offices by the chance of their birth.] These and many other similar expressions fully shew that the rank was inheritable, just as, in most English boroughs, freedom is acquired by birth, not by birth in the place, but by being the son of a freeman. The qualification by property is not without analogy to that acquired by Burgage tenure. The materials for the history of the municipal corporations of the Lower Empire are to be principally collected from the Theodosian Code, lib. xii. tit. 1, de Decurionibus, containing one hundred and ninety-two laws, of which about one fourth only are retained by Justinian. Gothofredus cannot be said to have illustrated this very important inquiry; for though his very bulky commentary at once embraces every authority which can be quoted, yet he leaves all the difficulties untouched and unexplained. A good summary of the laws will be found in Pancirollus, de magistratibus curialibus et corporibus artificum [Concerning curial magistrates and corporations of craftsmen]. Gibbon makes a transient allusion to the Decurions (vol. iii. ch. 27), but without entering into any further discussion. Mr Spence has pursued the inquiry with great diligence; and Savigny, in his masterly work (so neglected in this country that an able translator was compelled to abandon the undertaking after publishing the first volume) has treated it with profound knowledge and acute criticism, though he acknowledges that many portions of the laws are almost inexplicable. The obscurity of the subject must be my apology for any errors into which I have fallen, when I have had the temerity to depart from the opinions of my predecessors.

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Continue

Part I.

Ch. X.

Said to have been first created by Numa.

Religious ceremonies or mysteries practised in these societies.

Employments hereditary, so that the son of the handicraftsman became a member of the "College" by birth or caste.

No exemptions or excuses allowed to the male children, and the females compelled to espouse persons of the same avocation; a stranger marrying the daughter being bound to take up the employment of her father.

the first creation of the companies of artificers to Numa^a, is only another mode of asserting that they had subsisted from immemorial antiquity. Each society venerated its tutelary genius or deity, in whose temple the members assembled, and whose protection they invoked^b. Peculiar religious rites were also practised there, perhaps with a veil of secrecy; and those forms of worship constituted an additional bond of union. The members of some of these Corporations partook of the fare afforded by a common table; and the term "Sodalitas," applied also to the analogous guilds of the Middle Ages, indicates the fellowship which prevailed amongst the workmen following the same trade^c.

The Collegiates were linked to their avocations by caste. If the laws of the Theodosian code were duly enforced, the son was compelled to follow the employment of his father; he did not acquire an exemption even by entering into holy orders; and the suitor who sought the hand of the daughter could only obtain his bride by becoming wedded to the calling of her family. Immunities were bestowed upon the artificer, with the intent that he might be the better enabled to instruct his son in the

^a Plutarch, Numa. Plin., Hist. Nat., lib. xxxiv. c. 1; lib. xxxv. c. 12. The Colleges were abolished by the Senate A.U.C. 685; re-established by Clodius (Cic., in Pisonem; Asconius, Cornel., p. 137, in Pisonem, p. 158); but abolished, as to all except those of ancient foundation, by Julius Cæsar; *cuncta Collegia, præter antiquitus constituta, distraxit*, Suetonius, Jul., c. 42. These spurious Guilds, however, revived, and were again suppressed by Augustus; *Collegia, præter antiqua et legitima, dissolvit*, Suetonius, Aug., c. 32 [He dissolved all the guilds, except the ancient and lawful]. Lampridius specially notices certain Colleges, created by Alexander Severus (c. 33), and states that all the corporations of artificers were created by him. This assertion, however, can only refer to additional privileges which he may have granted to these bodies, or to their restoration.

^b Heineccius, de Collegiis Opificum. Beaufort, vol. ii. p. 141. Dubos, vol. i. p. 34. Spence, p. 21, &c.

^c Constantine enumerates thirty-five classes of artificers, whose employment required so much skill as to entitle them to the peculiar favour of the legislator. Cod. Theod., lib. xiii. tit. 4, de excusationibus artificum [concerning the exemptions of craftsmen]. Amongst them are the *Architecti*; and the English Freemasons have claimed a relationship to the Roman *Mystery*. According to the constitutions of the "Lodge of Antiquity" at York, the Craftsmen are the successors of the architects sent to Britain by Claudius.

useful knowledge which he possessed; and though apprentices or disciples might be received into these corporations, there is no reason for supposing that, when once admitted, they were exempted from the general law, or that the profession was not equally hereditary in their posterity. Mere workmen, or "artificers," do not appear to have been necessarily ascribed to the glebe; but the mixed employments which required the occupation of the soil, were exercised by those whom we may assimilate to the villeins regardant of the Middle Ages, and whose condition, at a remote period, seems to have been of the same nature. For in these crafts, the occupation, so inherent in the race, was also annexed to the possessions held by the individual, who was therefore fettered by a double tie, by caste, and by a species of prædial servitude.

It may not appear altogether unaccountable that the individual who possessed the mill, the bakehouse, the cattle and the slaves, should be compelled to carry on the necessary trade which fed the hungry multitude; or that the wretch who had been condemned to the toil for his crimes should not be allowed to depart from his place of punishment. The same reason, however, does not apply to the master manufacturer, who received the produce of his forced labour; and yet an equal obligation was annexed to the ownership of the town mansion or the country farm, which the "Pistor" held as his private property. The sale of such possessions to persons of the senatorial rank was prohibited, on the express ground of the service which the purchase imposed upon the person holding the land; and as the same obligation is annexed to other "Colleges" mentioned in the laws, it appears to have been the general principle of one branch of these communities. The "Navicularii" were under similar circumstances, and we may obtain a tolerably accurate idea of their situation by comparing them with the fishermen, who, anterior to the Conquest, were annexed to an Anglo-Saxon lordship, and who even now exist as prescriptive corporations^a.

Part I.
Ch. X.

Apprentices might be received; but the employment descended to their children, in the same manner as the original members.

"Colleges" in which a double bond existed, *Caste*, as before mentioned, and a species of prædial servitude or villeinage, the obligation of carrying on the employment being annexed to land; and the purchaser of the land, if the same was alienated, becoming bound in the same manner as the hereditary operative, as instanced in the case of the "Pistores," who were both millers and bakers; and the "Navicularii," a species of lightermen.

Analogies between their employments and the fishermen, annexed as villeins to an Anglo-Saxon manor.

^a Such as the twenty-four fishermen appurtenant to the Manor of Gorleston (Domesday, Suffolk, p. 283). The free fishermen and dredgers of the Manor and Hundred of Faversham are a corporation by prescription, holding their oyster-grounds of the Lord (8 Durnford and East, p. 352). The dredgers of Whitstable (now incorporated by statute) were originally of the same description. They also have held

Part I.

Ch. X.

The custom of assigning lands as the recompense for various laborious or menial duties, which was practised amongst the Celts^a, still flourishes in Hindostan, and the Roman system appears to have been formed upon an ancient traditional system, greatly modified by more recent law. It is evident that the "Colleges" were not of a uniform constitution. Some were entirely grounded upon personal obligations; others, if we may borrow from our legal nomenclature, savoured of the reality; and the supposition that the Roman jurists, either willingly or inadvertently, forgot or confounded the primitive distinction, may partly account for the perplexed organization which the Colleges assumed.

However servile the condition of the members of these corporations may appear—and to the restrictions before enumerated, must be added the obligation of constantly residing within the jurisdiction of the city to which they belonged—they enjoyed very considerable privileges. It is established as a general principle by Gaius, that all Colleges lawfully constituted, and that of the *Pistores* (the Bakers) is one which he instances in particular, were to be considered as minor republics. Possessing a common property, and a common fund, they were empowered to regulate their own affairs by the enactment of by-laws, binding all the members of the community. And whilst they might avail themselves of the protection of a Defensor or patron, they also asserted their rights by the appointment of a perpetual Actor or Syndic, who represented them, without any special warrant, in all judicial proceedings and on public occasions. General meetings of the Colleges were held, distinct from the assembly of the municipal Curia of the *Civitas*^b; and, allowing for the difference of rank in the political hierarchy, they seem to have stood in the same relation towards the Sovereign as the municipal corporations in which they were locally included^c. By the doctrine that no their oyster-fishery as tenants under the Lord of the Manor from time immemorial (4 Maule and Selwyn, p. 53).

^a Ware, p. 70.

^b As at Lyons. Heineccius, xii.

^c Cod. Theod., lib. xiii. tit. 5, de Naviculariis; tit. 6, de Prædiis Naviculariorum; lib. xiv. tit. 2, de Privilegiis Corporatorum urbis Romæ; tit. 3, de Pistoribus et Catabolensibus; tit. 4, de Suariis, Pecuariis et Susceptoribus vini; tit. 6, de Calcis Coctoribus; tit. 7, de Collegiatis; tit. 8, de Centonariis et Dendroforis, cæterisque Corporatis. Dig., lib. iii. tit. 4, Quod cujuscumque universitatis nomine

Lands assigned upon condition of fulfilling certain employments (not being strictly agricultural) amongst the Celts of Ireland, and also in the Hindoo villages.

Law relating to the Roman "Colleges" probably modelled by the jurists.

Members of the "Colleges" bound to reside within the banlieu of their city.

"Colleges" described by Gaius as minor republics.

Meetings of the "Colleges" distinct from the meetings of the Curia of the City.

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Part I.
Ch. X.

A council might be held either for the entire Diocese, or for any single Province of the Diocese, or for any single City of the Province.

Councils of the Provinces or Dioceses usually composed of the Primate of the cities (p. 271), and of individuals who had filled Prætorian offices (the latter of whom might act by proxy)

Difficulty of understanding the precise conformation of the Councils, the laws in the Theodosian Code having been selected for practical use, and not for the purpose of elucidating the constitution of the Empire: this deficiency partially supplied, as to Gaul, by the edict of Honorius (A.D. 418) reviving the meetings of the Concilium of the Seven Provinces held at Arles (previously regulated by the Prefect Petronius), but which had been discontinued in consequence of the calamities of the country.

Councils of Britain and Spain and the other Dioceses comprehended in the Prefecture of the Gauls, probably very similar to the Council of Arles.

without any special mandate or authority; or extraordinary, and convened pursuant to the letters or writs of summons issued by the Civil Governor when the Common Council was required by any sudden emergency. The laws appear to establish that the federative policy allowed of assemblies, either of the whole community or of any member thereof, and with equal privileges and facility. The Sovereign might be addressed by the Council or Senate of any single "Civitas," and such a council was composed of the "Curiales" or Decurions, though perhaps in some instances the colleges of operatives, appearing by their Syndics, may have assisted in its proceedings; and even a single Guild was equally empowered to meet, to deliberate apart from the Municipality. When an entire Province or an entire Diocese was called together, the Primate of the cities were the natural representatives of the municipalities to which they belonged, whilst the individuals who had filled Prætorian offices were allowed to depute proxies in their stead, to convey their individual opinions to the assembly of their fellow citizens. The minute particulars of this branch of government are imperfectly understood. A practical legislator consults the convenience of his contemporaries, not the instruction of posterity; the excerpts and fragments relating to the constitution of the Councils, contained in the Theodosian Code, were selected because they embodied some useful principle of general law, capable of being adopted as a universal canon of jurisprudence; whilst those which merely related to local customs and franchises, without affording any useful precedent or rule, were rejected from the compilation which they would have encumbered.

An edict of Honorius¹, regulating the Convention of the "Seven Provinces" of Gaul, a Council which was held annually at Arles, fortunately furnishes us with details, which would have been misplaced in the law-book intended for the whole Empire; and the Constitution possessed by this opulent region may be reasonably considered as analogous to the government of the other Dioceses of the same Prefecture. From this document it appears that the Assemblies had been previously held by the Prefect Petronius, but that the accustomed Sessions had been interrupted by the calamitous invasions of the Barbarians. When revived by Honorius, the Bishops took their seats as the Fathers

lawful day of their council meeting had passed, which day is with them once a year, appointed Severus and Flaccianus to be legates.]

of the Church; their appearance in the Senate began to be deemed one of the duties which belonged to their functions, and, perhaps, as devolving upon them in consequence of the endowments of their sees. The Counts of the Provinces, the "Judices" of the Cities, and the "Honorati" or "Curiales," attended by virtue of their offices; but the distant provinces of Novempopulania and the Second Aquitaine supplied the places of the magistracy by special deputies. Lastly, certain of the "Possesores," or Landholders, were called to the Council; but the expressions indicating that their property was their qualification, do not enable us to discover the course pursued in selecting them from amongst the Estate to which they belonged^a. Honorius appears to grant or confirm the privilege of legislation in matters relating to the concerns of the Province; and the representatives of the Cities, when united in one Chamber, probably possessed the same powers which belonged to each individual community within its own jurisdiction, extending to all regulations required for the internal administration of the country. And though we cannot suppose that any law was enacted at Arles, which would diminish the prerogatives of the Emperor, or interfere with the system of jurisprudence established in the Empire, still, the necessities of local government, and the "consulta" grounded upon local customs, would furnish sufficient business to give respectability to the authority which the Convention possessed. The Council of Arles constituted the Senate of the Seven Provinces: and we can discover that its members emulated the privileges of the conscript fathers of the Capitol. Avitus, after being saluted Augustus by the legions at Toulouse, was invested

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Composed of the Bishops, the Counts of the Provinces, the "Judices" of the Cities, the "Honorati," or "Curiales," and the "Possesores," or Landholders.

Provinces of Novempopulania and Aquitania Secunda (Gascony, Poitou, &c.), allowed to supply the places of their Magistrates by special deputies.

Powers of local legislation possessed by the Council of Arles.

Council of Arles, considered as the Senate of the Seven Provinces.

Imperial dignity conferred by the Council upon Avitus (A.D. 455) after he had been saluted Emperor by the legions; in the same manner as practised in similar cases, by the Roman Senate.

^a This edict, which has been also attributed to Constantine of Britain (v. Chap. XI.), was first published correctly by Father Sirmond, in his notes upon Sidonius Apollinaris. The substance of the decree is also given by Hincmar. It was promulgated A.D. 418. The Seven Provinces were the Viennensis, the Maritime Alps, the First and Second Narbonnese, Novempopulania, and the First and Second Aquitaine, and are nearly co-extensive with the "Langue d'oc" of modern France. De Marca (Marc. Hisp., p. 91) derives the name of the Gothic Septimania from the Seven Provinces. The Kingdom itself comprehended Aquitania and Novempopulania (Hist. de Languedoc, vol. i. note 57). It is singular that Gibbon (vol. v. c. 31) should have considered this assembly as having been created by Honorius, since the edict refers to the previous regulations of the Prefect Petronius. It is equally remarkable, that he has not taken any notice of the assemblies

Part I. with the Imperial purple by the "Honorati" of Arles, and Rome
Ch. X. and Italy submitted to the sway of the Emperor of Gaul^a.

Councils of the Seven Provinces, not suppressed after their separation from the Empire.

Alaric II. convenes the Bishops and "Electi" of Septimania (a Kingdom formed out of the Seven Provinces), at Toulouse, in which Assembly the laws by which Romans were thenceforth to be governed, were revised, glossed and re-enacted.

Draft of the Code (commonly called the Anian Breviary) prepared by a committee or council of Jurists, both clerks and laymen, presided over by the Chancellor Goaric; and then propounded to the Assembly of the States.

Plenitude of legislative prerogative vested in the Emperor, notwithstanding any power of legislation permitted to the Councils, so that in relation to the Sovereign, the ordinary duty of the Councils consisted in the presentation of petitions to the throne,

Nor did the importance of this Senate diminish with the revolutions which detached the Seven Provinces from the falling Empire. In an Assembly held at Toulouse¹ by the command of Alaric, the Bishops and "Electi" of Septimania, then ruled by the Gothic King, ratified that digest and interpretation of the Civil law, usually, though erroneously, known by the name of the Anian Breviary². The draft had been first prepared by a committee or council of the most learned Jurists, both clerks and laymen, over whom the Chancellor Goaric was appointed President. The Code was then laid before the States, and having been discussed, examined, and ultimately adopted by them, it was transmitted to the various Cities and Tribunals, in which the revised jurisprudence was to be observed^b. The importance and consideration of the Consilium may be estimated by this proceeding. Alaric was the conqueror of Roman Gaul, and the privileges of the vanquished could scarcely have been amplified by the Barbarian, who thus considered the Assembly as the legitimate Legislature of the people over whom he was called to rule, and whom he wished to govern according to their own law.

But whatever powers belonged to the Provincial States of the Roman Empire, they were subservient and subordinate to the Imperial prerogative. Admitting the "Lex Regia" to be the fiction of the obsequious jurist, it is, nevertheless, certain, that the Constitution vested the plenitude of legislative authority in the "Prince." When exercised by the Roman Senate, the power resulted only from his tacit permission: considered, therefore, in their dependent capacity, and in their relation towards

of the Provinces, though the laws relating to them fill an entire title in the Theodosian Code. No writer ever examined his authorities or investigated his sources of information with more care than Gibbon; and I only mention these omissions, in order that they may excuse the errors of those who possess less diligence and reputation.

^a Sidon. Apoll., Paneg. Aviti. Marii Aventicensis Chron. ad An. 455. Idatii Chron. Dubos, vol. ii. ch. 20. Gibbon, vol. vi. ch. 36.

^b Commonitorium Alarici ad Cod. Theod. Gothofr., Prol. c. 7. [Letter of Instructions of Alaric for the Theodosian code.] The "Electi" were the secular deputies of the Provinces. Hist. de Languedoc, vol. i. p. 241.

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according to the regular course of the government, many of the rescripts concerning the Provinces were issued as answers to the addresses of the people^a; and the law was called forth by the opinion of the Councils, who expressed the wishes of the Provinces, though this participation may be concealed by the authoritative language and imperial tone of the legislator. The Legates had also the power of impeachment. They carried up the complaints of the Provincials against a guilty or an obnoxious Governor, and if the accusation was admitted by the Emperor or the Senate^b, the delinquent was tried upon their denunciation.

Much anxiety is ostensibly displayed in the laws, for insuring the honest and unbiassed deliberations of the Council, and for promoting its political independence and welfare. It was to be held in the most opulent and central town of the province, and in

^a As may be instanced by the following quotations:—Dig., lib. xlvii. tit. 14, l. 1, de Abigeis. Divus Hadrianus ad consilium Beticæ rescripsit, &c. [Of Cattle-stealers. The divine Hadrian wrote to the council of Bætica, &c.] Cod. Theod., lib. xi. tit. 30, l. 15, de recipiendis appellationibus, &c. Notandum id primo, latam hanc legem a Constantino Magno, ad querelam seu querimoniam Africanorum qui pro more in concilium coacti, decretis conditis, legatisque ad Constantinum missis, et hoc querelarum caput suarum esse voluerunt. Ideo hæc lex inscribitur *ad concilium provinciæ Africæ*. Ideo rursum in subscriptione dicitur, hæc lex, *proposita Carthagine*, quæ metropolis Africæ fuit. [Concerning the reception of appeals. It must be noted, first, that this law was made by Constantine the Great, at the complaint of the Africans, who, according to their custom, collected in council, and having made decrees, and sent legates to Constantine, wished this to be the chief of their complaints. Therefore this law is addressed *to the council of the province of Africa*. So again, in the subscription, it is said that this law was made *on the proposition of Carthage*, which is the Metropolis of Africa.] For the legation of the Argives, see Julian, Ep. 35. Cod. Theod., lib. xii. tit. 1, l. 96, de plebeiis idoneis ad Curiam in Mysia vocandis [for summoning suitable plebeians to the Council in Mysia]; being a rescript issued by Gratian, Valentinian and Theodosius, in answer to the “Desiderium” of the province of Mysia. Cod. Theod., lib. xi. tit. 7, l. 17, Honorius and Theodosius, acting upon the legation of the Achæans, as mentioned in the revocation of the rescript (l. 18.), though not in the rescript itself (see p. 284, note a).

^b Sidon. Apoll., lib. i. Ep. 7.

Rescripts issued upon their petitions, though such petitions are not always set forth or stated in the law which was grounded upon them.

Power of impeachment possessed by the representatives of the Councils.

Regulations for insuring the unbiassed deliberations of the Councils.

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a public building, or in the Forum, to which all could resort; and these precautions were adopted lest any manœuvre or intrigue might enable a few individuals to usurp the privileges which belonged to the entire body^a. Freedom of debate was secured or promised to the Council; and the Magistrate who presumed to oppose or influence the deliberations of the Assembly, incurred a severe censure or reprimand. After the close of the sitting, the petition was in no wise to be altered or abridged; the sentiments of the people were to be conveyed in their own language; and the instrument which testified the wishes of the Provincials was to be faithfully transmitted, in its original state, to the Prefect, with whom it continued in deposit until the Legates proceeded to the Emperor^b. Lastly, that full attendance so indispensably necessary to bestow importance upon a national assembly, is strictly enjoined; and the heavy fine of five pounds of gold, imposed upon the member of the Council of Arles who neglected to appear in his place, may be considered as a specimen of the special regulations which were grounded upon the general law.

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Freedom of debate.

Petition not to be altered, but to be delivered in its original state to the Prefect, with whom it was deposited until the Legates proceeded to the Emperor.

Fines for non-attendance.

Under the Roman Constitution, the Provincial Councils were composed of Notables, and of virtual, if not of actual, representatives of the people. But if the Legates, who might be deputed not only by a Diocese¹ or by a Province, but by any one single city, or single Corporation or College of Operatives^c, had repaired simultaneously to the capital, these representatives of the communities would soon have become the States General of the Roman Empire. The revolutions of the Middle Ages would have been anticipated; and the uncontrolled autocracy of the Emperor would have been transformed into a limited monarchy. This tendency, indeed, seems to have become manifest; and the instructions addressed by Theodosius and his colleagues to the Prefect of the East, evidently betray an uneasy suspicion of the consequences likely to ensue from the growth and consolidation of institutions, which it was expedient to check, whilst they were

Councils composed of Notables, and of virtual representatives of the people.

Tendency of the Provincial Legations to coalesce into a representative assembly, which might have become the States General of the Roman Empire, and by which the Empire would have been converted into a limited monarchy, like the Kingdoms of the Middle Ages.

Such tendency foreseen by Theodosius, who makes laws for diminishing the number of the Provincial Representatives.

^a Cod. Theod., lib. xii. tit. 12, l. 1: lib. x. tit. 12, l. 13.

^b Cod. Theod., lib. xii. tit. 12, l. 4.

^c Cod. Theod., lib. xiii. tit. 6, l. 1, Constantius ad decretum Naviculariorum. [Constantius on the decree concerning the Boatmen.] Cod. Theod., lib. x. tit. 10, l. 19, Valentinianus, Theod. et Arcad. ad legationem Senatus Alexandrini. [Valentinian, Theodosius and Arcadius to the legation of the Senate of Alexandria.]

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yet unable to dispute the mandates of the Sovereign. The cities are enjoined to desist from sending their peculiar Legates, and they are directed to assemble or hold their "Conventus," and to despatch their petitions by two or three Legates for the entire Province^a. But this precaution was not sufficient to allay the apprehensions which were felt in the Imperial consistory; and from another rescript, dated two years afterwards, we collect that one or two Legates on behalf of the entire Diocese would be more welcome to the Emperor than the two or three Legates from each of the several Provinces of which it was composed^b.

The object of these regulations cannot be mistaken; and the secret sentiments of the monarch may be discovered beneath the veil of the law. By reducing the number of the Legates, the Imperial court diminished the chances of their aggregating, either by accident or design, into a known and visible body. Popular rights can never be asserted with success, otherwise than by the recognized union of those in whom the privileges are vested. And the dutiful request, which no wearer of the purple could have refused to the loud-voiced multitude of humble petitioners convened in the Basilica or the Hippodrome, might be easily eluded or denied when it emanated from the deputations of submissive courtiers, scarcely discernible amidst the thronged halls of the sacred palace.

Causes
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of the
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Councils.

In the Provinces, other restraints existed, by which their privileges were prevented from expanding into any form inconsistent with the principles of a government, founded upon the theory that all the powers of the State were concentrated in the person of the Sovereign. Respectable as the Provincial Councils may appear, their efficacy was grievously diminished by the veto of the Prætorian Prefect. This high officer was charged to

^a Cod. Theod., lib. xii. tit. 12, l. 7, Grat. Valentin. et Theod. de numero legatorum, dat. ix. cal. Aug. Constp. Grat. V. et Theod. I., A.A. Conss. (A.D. 380.) [Gratian, Valentinian and Theodosius concerning the number of legates, given at Constantinople the 24th July, in the fifth consulship of Gratian and the first of Theodosius. A.D. 380.]

^b Cod. Theod., lib. xii. tit. 12, l. 9, Grat. Val. et Theod. ad Provinciales, dat. vi. id. Maii, Brixiaë, Antonio et Syagriio Conss. (A.D. 382.) [Gratian, Valentinian and Theodosius to the Provincials; given the 10th May, at Brescia, in the consulship of Antonius and Syagrius. A.D. 382.]

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hastened the downfall of the Roman authority. Nor could their legislative powers protect them in the slightest degree against the despotism of the monarch or the monarch's officers or ministers; since the law enacted upon the petition of the Council might be rescinded at any time, by the advice of the Counts of the Imperial consistory, or by the absolute will of the Sovereign^a.

The Constitution of the Provinces appears, in many cases, to have been ingrafted upon older institutions. Rome endeavoured, and with success, to break down and crush any internal forms of government militating against her supremacy. But her early policy induced her to disguise the yoke which she imposed. It was a generous, and therefore a wise maxim of the Romans, to allow their subjects to retain their national laws and customs, so far as was consistent with their subordinate station; and, unless when resistance or rebellion drew down punishment, it does not appear that the original constitutions were obliterated or destroyed, whatever modifications they may have received or adopted from the ruling power.

Subjugated by the Generals of the Republic, the federative governments of the Hellenic nations were respected or restored by the Cæsars. Their political power was certainly lost. Neither peace nor war could be offered or declared by them; their attributes of sovereignty had disappeared; yet they did not exist merely in name. Lycia and Lycaonia, electing their governors and commanders, were perhaps, more free than Rome, who accepted her Consuls from the nomination of the Emperor. The Galatian confederacy subsisted, though incorporated in the Empire. Cæsar presided in the conventions of Gaul; and Augustus summoned the Assembly at Narbonne, in which regulations were enacted for the purpose of restoring good order in the country, so long desolated by war^b. These Senates replaced the older national councils, performing such functions as could be retained by a dependent legislature. They held the same situation in the State; and we may, without difficulty, assent to

^a Cod. Theod., lib. xi. tit. 7, l. 18, revoking the preceding law, therein stated to have been issued, "intempestiva admonitione legatorum Achivorum" [on the untimely advice of the legates of the Greeks].

^b Strabo, vii.–xiv. Pausan., lib. vii. Dion., lib. liv. Liv., epit., lib. cxxxiv. Gibbon, vol. i. c. 2. St. Foix, p. 158, &c. Sigonius, de Ant. Jure Provinc., lib. ii. c. 10.

Laws enacted upon the petitions of the Provincials could be repealed at any time by the mere motion of the Emperor, whose power of legislation was undiminished and uncontrolled.

Provincial Assemblies, in many instances, to be considered as the ancient national governments which had been partly remodelled by the Romans.

Federative governments of the Greeks continued or revived by the Romans.

(See above, pp. 87, 88.)

Conventions or General Assembly of the Gauls held by Augustus. Council of Arles, formed by the continuance of these assemblies, and not by the gift or creation of Honorius.

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the theories of those historians^a who assume, that the edict of Honorius was grounded upon the original constitution of Roman Gaul.

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Against this supposition, which has been discountenanced by later writers, the main, if not the only difficulties which can be raised, arise from the silence of historians, and from the expressions employed by Honorius, implying that this constitution emanated from his mere motion and imperial authority. But we may attempt to answer these objections without having recourse to any extravagant conjectures. Deprived of political power, the transactions of the Provincial Assemblies did not offer any subject for the general historian. Even if we possessed the complete annals of the Empire, instead of a few scattered fragments, we could scarcely expect more than incidental notices of their proceedings; and at a period, and in countries where they existed in full vigour, we only ascertain their existence from the letter casually addressed to a friend, or from the descriptions of the topographer^b. The language of the Emperor is equally inconclusive. The Assemblies had been interrupted, and it might appear advisable to place the Consilium of Arles upon a new basis. Unquestionably, great changes had taken place; and the innovations which arose at Rome or Constantinople would necessarily produce a corresponding aspect in the provinces. Not amongst the least important of the circumstances which occasioned an alteration in the forms of the Councils, were the relations resulting from the establishment of Christianity. The introduction of the Bishops into the Assembly would impart a new character to the Senate, in which they constituted a new order, distinguished by personal privileges separating them from the other members. Any variation in the time, the place, or the mode of the meeting would be sufficient, according to the style of the imperial chancery, to satisfy the phrases which appear to describe the Council as the invention of the Prefect or the gift of the Emperor, even if we could not adduce many parallel examples in which the confirmation of an established privilege, already possessed by the people, is described as the grant of a franchise, proceeding solely from the monarch's authority.

Objections to this assertion, considered and answered.

Alterations produced by the establishment of Christianity, and the introduction of the Prelates into the Secular Councils.

^a Dubos, vol. i. c. 4. Hist. de Languedoc, vol. i. p. 175.

^b As in Asia Minor, from the Epistles of Cicero ad Attic., lib. v. 1, 20, 21; Pliny, lib. v. c. 29; Strabo and Pausanias as before quoted; and in Spain, from Pliny, lib. iii. c. 1 and 3.

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Where any regular municipal or federative government had existed, as in Greece or in Gaul, it seems to have been Romanized, and considered, in constitutional language, as the Consilium of the City, the Province, or the Diocese. If no such Senates were found, it is evident that the Emperors created similar assemblies; otherwise, we have no mode of accounting for their appearance in provinces the most distant from each other, and amongst nations the least connected by origin or policy; in Spain and in Mysia; at Arles and at Alexandria; at Tripoli and at Carthage; diversified no doubt, by customs and usages, by manners and religion, by the vestiges of ancient institutions which they had retained, and by the alterations resulting from the rescripts or decrees issued upon sudden emergencies or occasions; yet all so treated by the supreme legislature, as to shew that none of these minor shades of difference were sufficient to destroy the general conformity which prevailed throughout the Empire.

Differences arising from local customs not sufficiently extensive to disturb the general scheme or platform of the Roman Provincial Constitution.

Britain: Provinces into which the Diocese was divided.

Paucity of information relating to the Roman administration in Britain, the

When we arrive at the Diocese of Britain, our sources of information become more scanty and obscure. The names of the five or the six provinces into which it was divided, Maxima Cæsariensis and Valentia, Britannia Prima, Britannia Secunda, and Flavia Cæsariensis, have been transmitted to us, and perhaps the dubious Vespasiana ought to be added to their number^a.

^a The boundaries of the Roman provinces are open to some discussion. According to the most probable hypothesis, Britannia Prima comprehended the district south of Thames and Severn; or Kent, and the kingdoms of Wessex and the South Saxons. Britannia Secunda included Gwynedd, Deheubarth, and Powys, or modern Wales and the Marches. Flavia Cæsariensis extended from the Thames to the Humber; Maxima Cæsariensis, from the Humber to the Wall of Severus; and Valentia from thence to the Firths of Forth and Clyde. These five Provinces are represented by five castles placed upon the island, in the insignia of the Vicar of Britain. Maxima Cæsariensis and Valentia were governed by "Consulares," and the others by "Præsides." (Notitia, c. lxix. Horsley, p. 475.) The existence of Vespasiana, the sixth province, rests upon the authority of Richard of Cirencester¹; and if we could rely upon the authenticity of the treatise ascribed to him, we should gladly adopt the information connected with the topography of Roman Britain, which cannot now be found in any other work. Whether this production, however, is to be considered as an ingenious forgery, or as a genuine production of antiquity, is a question which is yet *sub judice*. A work, of which no manuscript is known, transmitted in parcel-transcripts by an obscure

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We cannot add to these slight, though distinct notices of the municipal governments and general assemblies of Britain: we cannot determine their plan of meeting, enumerate their members, or define their privileges. Yet, as the fragments of the capital and the mutilated cornice enable us to judge that the Forum of "Aquæ Solis"¹ was surrounded by edifices, erected according to the rules which were exemplified at Trèves or Arles; so, with an equal degree of moral certainty, we are enabled to reconstruct the fabric of the state from the vestiges of institutions which formed part of a consistent and uniform plan. And we have no reason to doubt but that the conventions of the British States, whether of the Provinces or of the Diocese, agreed, in all material points, with the other Councils of the Prefecture of the Gauls, and that they possessed the same conformation and the same franchises.

Councils of Roman Britain analogous to the other Councils of the Prefecture of the Gauls (see above, pp. 276, 277).

Military government of the Provinces. "Estate" of the soldiery, holding lands upon condition of performing military service.

This practice reduced into a system by Sylla, and much extended under the Triumvirate.

Such were the Roman Provinces in relation to their civil government. Coeval with this scheme of administration was the full development of the system which created a distinct "Estate," composed of a population separated from their fellow-citizens by their duties no less than by their immunities, and holding their lands by military tenure. Territorial grants made to the Roman warriors in consideration of the services which they had performed^a, are not strictly comprehended in this description, though they may have contributed to suggest the policy of rewarding the soldier by assigning to him the property of the soil which his sword had conquered. Sylla² practised this mode of remuneration^b; and the lands of the "Civitates" whose inhabitants had adhered to

under the authority of Tiberius Claudius, of King Cogidubnus], published by Horsley, and which has been the subject of a learned and ample commentary. (Brit. Rom. p. 337.) The altars at Middleby also notice a "Collegium Ligniferorum" [College of Wood Carriers]. (Brit. Rom. p. 342.) If any reasonable care were exerted for the preservation of the Roman monuments of Britain, it is probable that many important facts would be ascertained. Yet, with the honourable exception of one provincial Society (the Antiquaries of Newcastle), none of our museums will house them. I have heard it observed, that they are rude, and of no value as "works of art." Be it so. But every inscription is to be considered the leaf of a book, which, if it records only a single name, affords information which may be of the greatest use to the historical inquirer.

^a Liv., lib. xxx. c. 4 and 49.

^b Dolabella, de Limitibus, p. 297.

Marius, became the endowment of the victors in the unnatural conflict between Roman and Roman^a. Under the Triumvirate¹ the policy which purchased military support at the expense of an opponent, who was thereby impoverished and despoiled, received a still wider application. Eighteen of the most flourishing colonies of Italy were included in the proscription. Their lands were distributed to the "Veterans who revenged the death of Cæsar, and oppressed the liberty of their country^b"; and the decree which compelled the Mantuan Bard to abandon the farms of his ancestor, and to surrender his little field to the insulting stranger, was deplored by him in strains which might have been echoed in the complaints of an Anglo-Saxon, yielding possession to the followers of the Conqueror. Augustus is particularly noticed as having made similar dotations in the Provinces^c. And since such rigour was practised by the Romans towards their fellow-citizens, it can scarcely excite surprise that the same harsh measures were adopted towards a barbarian enemy. The grant of Camulodunum to the veterans who were to awe the turbulent Trinobantes² and Icenid^d is, in comparison, an act of mild and justifiable policy; and if only nine of these Military Settlements were created in Britain, the natives might feel grateful for the clemency which they experienced from their new masters.

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Lands of the inhabitants of the Italian cities confiscated, and re-granted to the veteran soldiery.

British territories granted in the same manner to the Roman soldiery (see above, p. 262).

In settling upon the soil, the military bodies were at first unbroken. The troops marched in with their standards, and the soldiers of the legion became the inhabitants of the city^e. But

^a Liv., Epit., lib. lxxxix. Sallust., Catil., c. 11. Beaufort, vol. ii. p. 243.

^b Gibbon, vol. v. c. 31. Virg., Ecl. 9. Comm. of Servius.

^c Divus Augustus in assignata orbi terrarum pace, exercitus qui sub Antonio aut Lepido militaverat pariter et suarum legionum milites colonos fecit, alios in Italia, alios in Provinciis, Hyginus, de Limitibus, p. 160. [The late Augustus, in establishing peace throughout the whole world, made colonists alike of the soldiers of the army which served under Antonius or Lepidus and of those of his own legions, some in Italy, and others in the Provinces, Hyginus, Concerning Boundary-lines.]

^d Tacitus, Agricola, c. 15, 16: Annales, lib. xiv. c. 31.

^e Hyginus, de Castrametatione. [Hyginus, Concerning laying out a camp.] Tacitus, Annales, lib. xiv. c. 27. Tacitus, after describing the ancient custom, describes the failure of some colonies which were founded by a mixed multitude of soldiery, taken indiscriminately from various bodies. Beaufort and others, following him, suppose,

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Feudal tenures, their origin to be traced to the grants made to the Limitanean or Riparian soldiery.

Alexander Severus (A.D. 222) and Probus (A.D. 276) adopt the system upon an extended scale; lands so granted descendible to male heirs only, and not alienable.

Fortified posts and stations of the Limitanean countries; "Castella" and "Burgi."

the foundation of these colonies was gradually discontinued. The interior of the subjugated Provinces no longer required to be awed by the fear of military execution; yet the danger was not lessened, though its scene was removed. The borders were threatened by the Barbarians, the destined successors of the Cæsars; and to repress their incursions, the March lands which were gained from the enemy were granted by Alexander Severus, and afterwards by Probus, to the Limitanean¹ or Riparian² soldiery^a, upon conditions, well described as containing the germ of the feudal tenures of the middle ages^b, and which appear to have been adopted as the basis of the defensive system of the Empire. The valleys and passes of the mountains were peopled by the soldiery, who raised the leader to the Imperial dignity, or deprived him of power and life; whilst the fertile banks of the great frontier rivers were tilled by the martial husbandmen, who could only secure their harvests by warding off the incursions of the enemy. To the barriers formed by rock or flood, were added the artificial fortifications afforded by long practised skill

from this passage, that the older practice was entirely discontinued; but Tacitus only speaks of particular instances, and not of a general usage.

^a *Sola quæ de hostibus capta sunt limitaneis ducibus et militibus donavit: ita ut eorum ita essent, si hæredes illorum militarent, nec unquam ad privatos pertinerent, dicens, attentius eos militaturos si etiam sua rura defenderent. Addidit sanè his et animalia et servos, ut possent colere quod acceperant, Lamprid., Alex. Sev., 58. [The lands, which were taken from the enemy, he gave to the officers and soldiers of the marches as their own property, only on condition that their heirs should do military service, and that the lands should never belong to civilians, as he said, that they would pay more heed to their military duties if they were actually defending their own lands. Moreover, he added to the lands animals and slaves, so that they could till what they had received, Lampridius, Life of Alexander Severus.] Barbarorum qui apud Isauras sunt, vel per terrorem vel per voluntatem loca ingressus est...Veteranis omnia illa quæ angustè adeuntur loca privata donavit, addens ut eorum filii ab anno octavodecimo, mares duntaxat ad militiam mitterentur, Vopiscus, Probus, c. 16. [He entered upon the territory of the Barbarians in Isauria, with the acquiescence of some and terrorizing the others. To his veterans he granted for their own all the districts of the mountain passes, on condition that their male children should be put to military service from their eighteenth year, Vopiscus, Life of Probus.]*

^b Gibbon, vol. iii. c. 17.

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Part I. nations who spoke the Latin tongue. To each "Burgus" or
Ch. X. "Castellum" a territory was annexed, shared, like other portions
of the adjoining country, amongst the military, but who, in this
case, were distinguished either as "Milites Castellani," or as
"Burarii," in consequence of their peculiar tenure.

"Milites
Castellani," and
"Burarii"
("Burware," or
Burgesses), the
soldiers stationed
in the Castles and
Burghs, and
holding the
adjoining lands.
Lands granted by
the Romans to
the Barbarian
Læti (i.e. Leute,
or Leod, see
above, p. 82)
upon condition of
performing
military service.

A.D. 241-276.
Franks, their first
invasion of Gaul
under Aurelian
and Tacitus.

A.D. 291.
Territories ceded
to the Franks,
which they accept
as Læti, or
feudatories of
the Empire,

Long before the outward decline of their power, the Romans adopted the dubious policy of assigning land to the Barbarians, who received the gift upon condition of performing military duties as the auxiliaries of the legions. At first, these donations were made at the expense of other Barbarians; but in the reign of Diocletian, the "Leod^a" or People, as they were emphatically called, both by themselves and the Romans, were domiciled in the heart of the Empire, upon the "Lætic" lands, of which, according to law, they received possession by the writ or rescript of the Emperor. The fairest provinces were interspersed with these Lætic Colonies. The first invasions of Gaul by the Franks and their confederates, in the reigns of Aurelian and of Tacitus, were thus speedily followed by the establishment of the enemy in the dominions which they ravaged. Seventy States had been occupied by them; and the florid phrases of the panegyrist disclose the humiliating fact, that, after an obstinate struggle, these formidable Vassals accepted the fertile territories surrounding the cities of Amiens, Beauvais, Cambray, Trèves, Langres and Troyes, as the price of their dangerous aid and precarious fidelity^b. There, the "Guests" of the Romans lived

^a Cod. Theod., lib. xiii. tit. 11, c. 3. Cum quidam e gentibus Barbaris sponte Romanum in solum transibant, terræ eis eorumque progeniei desertæ excolendæ dabantur; et ut illi coloni Læti, sic terræ quas colerent Lætici dicebantur. . . . Et ea tamen conditione terras illas excolendas Læti consequerentur, ut delectibus quoque obnoxii essent et legionibus insererentur, Gothof. ad Cod. Theod., lib. vii. tit. 20, l. 12. [When some of the Barbarians crossed of their own free will into Roman soil, deserted lands were given to them and their children to be cultivated; and as those settlers were called Læti, so the lands which they cultivated were called Lætic. . . . And moreover the Læti obtained those lands for their cultivation on this condition that they should be liable to the levy and should serve in the legions.] A portion of the lands so granted may have been really wasted by war; but the common lands of the Celtic tribes furnished material for these Barbarian settlements, as well as for the dotations of the Veterans.

^b Vopiscus, Probus, c. 13. Itaque sicut pridem tuo, Diocletiane Auguste, jussu, deserta Thraciæ translatis incolis Asia complevit sicut,

apart from the other inhabitants in distinct communities, owing obedience to their own Chieftains, who themselves were mesne-lords, subordinate to the general military administration of the Empire.

The term "Læti" appears most generally and most properly applied to the nations of Teutonic race. In Britain there is no official document which shews that the various Barbarian Auxiliaries were expressly designated by this word; but they were comprehended under the equivalent name of "Gentiles," and the same system had been pursued without interruption. A large body of Vandals obtained a settlement here, after their defeat by Probus. The Quadi and the Marcomanni, whose runes are amongst the earliest which are known, were rewarded by the grant of lands in Britain. Under Arcadius and Honorius, upwards of forty cohorts, of Barbarian lineage, some deriving their remote ancestry from the most distant parts of the Roman world, were

Part I.
Ch. X.

where they lived apart from the other inhabitants, under their own Chiefs.

Vandals, Marcomanni, and Quadi settled in Britain.

Upwards of forty cohorts of Barbarian Auxiliaries in the northern districts, principally near the Roman walls.

postea tuo, Maximiane Auguste, nutu, Nerviorum et Treverorum arva jacentia Lætus postliminio restitutus, et receptus in leges Francus excoluit; ita nunc per victorias tuas, Constanti, Cæsar invicte, quiquid infrequens Ambiano et Bellovaco et Tricassino solo Lingonicoque restabat, Barbaro cultore revirescit, Eumen. Panegyri., Constant., iv. 21. [And so, as formerly, at thy order, O Diocletian Augustus, Asia filled up the deserted lands of Thrace by transferring its inhabitants, as afterwards, at thy will, O Maximianus Augustus, the Læt, restored (to citizenship) by his return, and the Frank, received into our laws, cultivated the vacant lands of the Nervii and Treveri, so now by thy victories, O Constantius, thou unconquered Cæsar, whatever remained deserted at Amiens and Beauvais and Troyes and on the soil of Langres, blooms again under the Barbarian cultivator, Eumenius, Panegyrist, Constantius.] The reading of the original text was "Baro" or "Barro cultore";—"Barbaro" is the emendation of Gruter. I have not been able to discover the authority upon which Gibbon (vol. ii. c. 13), in his interpretation of this passage, has made the strange assertion, that the Franks exchanged death for *slavery*. But it may be observed, that amidst the vast multiplicity of subjects embraced by his history, Gibbon has lost sight of the true position of the Barbarians in the Roman Provinces and amongst the Roman people. There was a settlement of the Frankish Læti at Rennes (Præfectus Lætorum Francorum Redonas, Lugdunensis tertiae, Notit. Imp., c. 90) [the Prefect of the Frankish Læti at Rennes, in the third province of Lyons]; but all the Teutonic Læti, who peopled the northern provinces of Gaul, might be comprehended in the collective name of Franks.

Part I.

Ch. X.

Tungrians brought in by Agricola to carry on the war against Galgacus: their descendants continue stationed at or near Castle Cary, Cramond, &c.

Conditions of the Limitanean feuds.

Oath of fidelity exacted from the soldiers.

naturalized in the northern provinces of the island^a; and the progeny of the Tungrians, who warred against Galgacus^{b1}, became the guardians as well as the cultivators of the Caledonian wilds. Three mighty bulwarks, extending from sea to sea, connected the "Burgi," in which were stationed the garrisons composed of the colonists; and the inscriptions which are daily turned up by the plough of the husbandman in the vicinity of the Walls of Septimius Severus², of Hadrian, and of Lollius Urbicus, attest the density and industry of the population, who were mingled with the Romanized Britons, and held the border as their inheritance and patrimony. The eastern coasts were guarded in like manner; though it is probable that in some of these last-mentioned districts a partial colonization had already been effected by the Saxon enemy.

According to the imperial constitutions, the Limitanean dotations were strictly entailed. The feud descended only to the male heirs of the donee; and the lands owned by the "Castellani" could never be alienated to a non-military Tenant^c. The duty of bearing arms was inseparably connected with the property; and the oath of fidelity imposed upon the soldier sanctified his engagements, and ratified the possession of the land

^a The stations of the Auxiliary Cohorts have been learnedly and laboriously illustrated by Horsley (p. 88, &c.), who, taking the Notitia as his groundwork, has enlarged the list from the information furnished by inscriptions, and to which additions may be made from later discoveries. Some very curious specimens of the "Tabulæ honestæ missionis" [the certificates of honourable discharge], or the discharges given to the Veterans upon completing their stated term of service, which have been brought to light since his time (Lysons, *Rel. Brit. Rom.*, vol. i. p. 4, plates I. and II.), furnish the names of the Barbarian colonists settled in Britain under Trajan; and by the help of monuments and the Notitia, they may be continued until the extinction of the Roman dominion.

^b Tacitus, Agricola, c. 36.: The first Cohort of Tungrians, who are mentioned in the Tabulæ honestæ missionis, dedicated an altar to Antoninus Pius, found near Castle Cary (Roy, p. 100). They were also stationed at Cramond, at Castlesteads (Cumberland), and at Housesteads (Northumberland), where we have inscriptions relating to them, under four or five different commanders. (Horsley, p. 89.)

^c Ainsi c'étoit quelque chose de semblable à ce qu'on a depuis appelé des fiefs nobles, Tillemont, *Hist. des Emp.*, iii. 201. [Thus it was somewhat like what has since been styled fees noble.]

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Part I.**Ch. X.**

Sons of the Veterans, &c. compelled to join the army.

No exemptions allowed.

Nor could any alienation defeat the condition upon which the land was held.

"Magistri Militum," or supreme commanders of the army.

Provinces entrusted to the Military, "Comites" and "Duces."

In return for these and other immunities, the most imperative obligation was imposed upon the son of the Roman Veteran, and of the Barbarian Lætus; and all individuals of military race were liable to the same duties and obligations^a. When the edict was promulgated, the youth was compelled to resort to the standard which his father obeyed^b. Even if he took holy orders, he was not exempted from the call of arms; and the Prelate was compelled to employ the most earnest entreaties to obtain the discharge of the servant of the altar, and to protect him from the punishment denounced against the deserter by the severity of military discipline^c. As in the "Colleges" of operatives, the duty was both personal and real, inherent in the blood, and resulting from the land; and by the general tenour of the law, as well as by the particular rescripts which have been preserved, we are enabled to ascertain that no alienation could defeat or evade the original condition upon which the demesne was held.

The "Magistri Militum,"¹ first appointed by Constantine, and of whom eight were ultimately created, possessed the supreme government of the soldiery throughout the Empire. But the authority of these high Officers, except in their own immediate districts, was merely nominal, and their Lieutenants or Delegates were the real and efficient Chieftains of the military^d. The General deputed to take the command of a Diocese for the purpose of defending the country against the enemy, was usually a Count of the highest class^e, and entrusted with the most extensive powers. Beneath him were the Counts and Dukes of the Provinces, or rather of the military districts, as their boundaries did not always coincide with the civil governments. It is possible that, according to the original distribution of the military hierarchy, the "Duces" or leaders had some special duties to perform,

Gratianus, ad Jovinum Magistrum Militum, A.D. 368, vel 370 [Valentinianus, Valens and Gratian to Jovinus, the Master of the Soldiers].

^a Cod. Theod., lib. vii. tit. 20, l. 12; lib. vii. tit. 22, ll. 7, 9.

^b Sulpicius Severus, Vita Sancti Martini, c. 4.

^c Greg. Nazianzen, Epist. 123, ad Ellebichum Magistrum Militum [Gregory Nazianzen, Epistle 123, to Ellebichus, the Master of the Soldiers].

^d So that Pancirollus doubts the supreme authority of the Magistri, and considers the Counts of the Dioceses as possessing the same powers, or as being Magistri under another name. (Notit. Imp., c. 28.)

^e Cod. Theod., lib. vi. tit. 14, ll. 1, 3.

particularly in the regions immediately exposed to the attacks of the Barbarian enemy. Tautomede, the Duke of Dacia Ripensis, is thus directed to repair and build the castles and towers whose battlements were to awe the predatory hordes of Sarmatia^a; and the selection of the sons of the Veterans for military service appears to have been confided to their care^b. But the distinctions, whatever they may originally have been, were gradually disregarded. The Comes had, perhaps, a higher title, but an equal office; and the powers exercised by the Counts of Provinces and by the Dukes were assimilated by the practice of the government^c.

Part I.
Ch. X.

Tautomede,
Duke of
Dacia
Ripensis.

It would be an interesting but difficult task to pursue the investigation of the military establishments throughout the Empire. The "Magistri," in whose precinct Britain was included, first held their station at Trèves, the capital of the Prefecture of the Gauls, but afterwards at Arles. In the island itself, the Count of Britain had the southern and western parts under his especial command; and it has been conjectured that he was supreme commander of the Diocese. Another Count ruled the "Saxon Shore," which extended from Brancaster¹, in modern Norfolk, to the "Portus Adurni"² in Sussex; whilst the Duke of Britain governed the remainder of Roman Britain^d, including the Northern Marches, settled and defended by the Limitanean soldiery.

Britain
subject to
the Magistri
Militum of
the Prefec-
ture of the
Gauls, who
resided at
Arles or
Trèves.

Divided into
three
Military
Provinces,
respectively
governed by
the "Comes
Britanniæ,"
the "Comes
litoris
Saxonici per
Britan-
nias," and
the "Dux
Britanni-
arum."

Military
Counts and
Dukes, the
Magistrates
as well as
the Com-
manders of
the soldiery.

The leaders named by the Emperor were the magistrates as well as the commanders of the military. A jurisdiction derogating so largely from the power of the provincial governors, began, as

^a Cod. Theod., lib. xv. tit. 1, l. 13. De turribus limitaneis per Daciam Ripensem partim reficiendis, partim novis excitandis. Valentiniani Sen. lex, A.D. 361. [Concerning the border towers throughout Dacia bordering on the Danube, those which were to be restored, and new constructions.] It is the conjecture of Gothofredus, that instead of Tautomede, we should read Tautomer or Teutomer, and that the Duke of Dacia was the Frankish Chieftain, the "Protector Domesticus," mentioned by Marcellinus, lib. xv. c. 3.

^b Cod. Theod., lib. vii. tit. 22, de Filiis Milit. l. 5.

^c Cod. Theod., lib. vii. tit. 1, de Re Militari, l. 5.

^d Notit. Imp., 72, 89. The stations emblazoned on the Banner of the Dux Britanniae are only in Yorkshire and the four northern counties (Horsley, p. 187); but his authority must have extended to the uttermost verge of the Roman dominions.

Part I.
Ch. X.

Military constituted a distinct and ruling "Estate," in consequence, as well of their privileges, as of the right which they assumed of electing an Emperor.

Barbarian nations, their policy greatly influenced by the Roman institutions. Reasons for doubting the accuracy of Dr. Robertson's opinions respecting the changes consequent upon the downfall of the Roman Empire.

Founders of the Barbarian dynasties endeavour to govern as Roman Emperors.

may be readily conceived, with criminal judicature, but it was afterwards extended to civil authority^a; and in some Provinces, though these are to be considered as exceptions from the general rule, the military and civil authorities were conjoined in the person of the Duke or Military Governor. But in every case, the soldiery constituted an Estate distinct from the rest of the people; and the privilege or licence, however abusive, so often exercised by the provincial military of electing a Chieftain, who, whether called Emperor or Tyrant, claimed the supreme dignity, gave them the appearance of a predominant community.

When the Barbarian kingdoms were established within the Empire, the most important of the Roman maxims and modes of government were adopted, though certainly not without considerable modifications, by the founders of the dynasties who despoiled the Romans of their sovereignty. It has been supposed, that a universal change took place in Europe about the sixth century, and that the laws and policy now established must be traced entirely to the chaos occasioned by the general wreck of nations^b; but these opinions cannot be easily reconciled to familiar facts. Whether we consult the chronicle or the charter, whether we inspect the seal or the coin, we shall find the Goth, and the Frank and the Lombard, copying the state and assuming the dignity of the former masters of the world. The Barbarian Chieftain sought to identify himself with the monarch to whom he succeeded. Clovis received the consular diploma and the purple robe from the Emperor of the East, and derived the title of Augustus from the acclamations of his people^c. Theodoric¹

^a Cod. Theod., lib. ii. tit. 1, l. 2. Maffei, Verona Illustrata, t. i. l. 8, pp. 340, 343. Ammian. Marcell., lib. xxvi. c. 1. Cassiodor., Variæ, lib. vi. 12, 21. Savigny, vol. i. c. 2.

^b Robertson, View, p. 10, &c.

^c Igitur Chlodoveus ab Anastasio Imperatore Codicillos de Consulatu accepit, et in Basilica beati Martini tunica blatea indutus est et chlamyde, imponens vertici diadema. Tunc ascenso equo, aurum argentumque in itinere illo, quod inter portam atrii Basilicæ beati Martini et Ecclesiam Civitatis est, præsentibus populis manu propria spargens, voluntate benignissima erogavit, et ab ea die tanquam Consul et Augustus est vocitatus, Greg. Tur. Hist., lib. ii. cap. 38. [Clovis, therefore, received the Diploma of his appointment as Consul from the Emperor Anastasius, and in the Church of St. Martin was clad in a purple tunic and mantle, and placed the crown on his own head. Then, mounting his horse, he scattered gold and silver with his own

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Part I. rather as an associate than as an invader. The Romans retained
Ch. X. their own laws; their municipal administration was not abrogated
 or subverted; and wherever a Roman population subsisted, the
 Barbarian King was entitled to command them with the pre-
 rogatives which had belonged to the Roman Emperor. In the
 character of Sovereign of the Romans, the patriarchal ruler of
 a half-civilized horde became master of a numerous and opulent
 people. The military leader, who could hitherto scarcely obtain
 more than the voluntary submission of his fellow-soldiers,
 acquired the authority which had been planned and matured by
 the policy of the Prince and the subtle wisdom of the jurist.
 And instead of appealing to the terse apophthegms of the bard,
 or the simple traditions of the old time, as the pure and perennial
 fountains of legislation, he was armed with the principles deduced
 from the decrees of those, who, whilst they yet lived, were saluted
 as deities; and from the solemn lore of the willing oracles of the
 law, who declared that the entire might of the Commonwealth
 had been surrendered to the Imperial Majesty.

to govern
 according to
 the forms
 and maxims
 of the
 Imperial law,

and which
 species of
 domination
 they gradu-
 ally imposed,
 to a con-
 siderable
 extent, upon
 their own
 people.

By the accession of the Teutonic King to this new, unwonted
 and despotic dignity, it was not intended by his people, or perhaps
 contemplated by himself, that he should become entitled to impose
 a yoke upon his compeers who had assisted him in the enterprise,
 nor did they ever surrender their rights; and the higher estimation
 of the honour and the life of the Barbarians is a sufficient testi-
 mony of their superiority. But the nations who were unequal
 before the law, soon became equal before the Sovereign, if not in
 theory, yet in practice; and the children of the companions of
 Clovis were subjected, with few and not very material exceptions,
 to the same positive dominion as the descendants of the Proconsul
 or the Senator.

Causes
 which
 facilitated
 this exten-
 sion of the
 royal power.
 Barbarians,
 few in
 number
 when com-
 pared to the
 Romanized
 population.

It is not difficult to form plausible conjectures concerning the
 causes of this equalization, nor are the means by which it was
 effected entirely concealed. Considered in relation to the Romans,
 the Franks, for we will continue to instance them, constituted
 a distinct state, but, compared to the Romans, a very small one;
 and the individuals composing it, dispersed over Gaul, were almost
 lost amongst the tributaries. Experience has shewn, that when-
 ever a lesser or poorer dominion is conjoined, in the person of
 the same Sovereign, to a greater or more opulent one, the minuter
 mass is always in the end subjugated by the larger; and the claims
 of the honoured patrimony of the King are postponed to the laws
 and maxims of the territory which has obtained the ascendancy

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by its influence and importance. And though the were-gild was assessed in the folkmoot, according to the declarations of Arbogast and Salogast¹, yet the transgression towards the Sovereign was punished according to the spirit of the Imperial consistory; and the King, whose great ancestor could not claim a silver chalice as his own, from amongst the booty which his army had won, became the irresponsible master of the lives of his proudest nobility.

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Ch. X.

Absolute authority possessed by the Frankish sovereigns over their subjects, though Clovis himself was not able to claim the vase of Soissons² from the soldiers.

The general forms of Roman administration were retained in effect, though in a more simple form. The government of a province was usually entrusted to a "Comes," a "Dux," or a "Patricius"; the titles appearing to be used without any distinction; and he was appointed to govern "the Franks, the Romans, the Burgundians, and all other nations" within his district, according to their laws. He was the common Judge of the different races, who, though retaining their own peculiar jurisprudence, were nevertheless the subjects of one King; the revenues were collected by his hands; and the union of the civil and military authority, according to some of the Roman precedents, which the Franks seem to have extended to all cases, completed his authority as the representative of the Sovereign^a. The powers thus exercised, resulted from the royal diploma; the King is acknowledged as the fountain of the honour, and passages can be quoted which seem to shew that the office which he bestowed could be resumed at his will. Yet the charter itself refers to the ancestor of the grantee. Hereditary right is ascribed to the Dukes by the earliest Germanic codes; and as high as we can ascend in the genealogies of particular families, we can discover that the dignity, if not strictly descendible from father to son, was at least continued in the same blood and lineage.

Provinces governed by Counts, who, as the delegates of the imperial power of the King, were the judges of all the inhabitants.

Contradictions such as these are best reconciled by the theory, that the King's authority was imparted to the nobles, who were the natural leaders of the tribes of the ruling nation, and that the office of Count was attracted by the patrimonial jurisdiction. By accepting the royal commission, the Senior or Ealdorman accumulated the vicarial jurisdiction upon his own, and they became inseparably blended, when, in process of time, the distinctions between his rights as Chieftain of the Clan, and his duties as the King's minister, were neglected and forgotten.

Reasons for supposing that this office was usually bestowed upon the hereditary leaders of the Barbarian population, and that the two kinds of authority, the vicarial or delegated, and the hereditary or patrimonial, coalesced, the former being attracted by the latter.

To this cause we may ascribe the great uniformity of character

^a Marculfi Formulæ, lib. i. form. 8.

Part I.
Ch. X.

European States of the Middle Ages, all agreed in the theory, that the King was the maker of the law of the State,

apparent amongst all these functionaries in the dismemberments of the Empire; and with respect to the power of legislation, as exercised in the States of the Middle Ages, we shall find reason to suppose that it was greatly influenced by the Roman principles. Limitations may have been imposed upon the royal authority, and the nation may have guarded against its abuse with wise or vigilant jealousy; but every monarchy of Europe agrees in the theory which assumes, that the People are petitioners in the supreme political and legislative assemblies of the whole Kingdom, that the Judges or Peers are the councillors, and that the King is the maker of the law. This was not the original constitution. Assembled on the moot-hill, the Doomsmen of the Franks declare the Salic code; but in the constitutions of Childebert¹ and Clothaire, the Monarch commands his subjects, and requires their obedience to his decree. And, wherever we turn, the modes of legislation which secure legislative privileges to the aristocracy or the people, always appear struggling against the doctrine that they are only the advisers or suppliants of the Sovereign, who may dispense with their opinion, or issue his ordinances without waiting for their request. But, in descending in the political scale, more autonomy is discernible; and within the limited spheres of the territorial jurisdictions which form the component parts of the Monarchy, there are many possessing an evident degree of self-government, not derived from the Sovereign, and not necessarily controlled by his authority.

whilst, in the component parts of the State, powers of legislation may be discerned which are not dependent upon the Monarch. The State, as a whole, being governed by an authority analogous to the Imperial authority, though each Teutonic population, taken distinctly, was governed by the King with an authority analogous to that of the older Teutonic Chieftains.

The existence of these concurrent, and, in some measure, conflicting powers, will be at once explained and understood by considering that the King originally governed by two distinct titles, and that a double authority was united in his person. Over each particular Teutonic commonwealth he presided with the ancient rights of the Teutonic Chieftain; and, during the transition period of their history, the popular representatives, in and within the Gau, the Centena, the Pagus, or the Township, had lost only a portion of their primitive jurisdiction. But the relation existing between the same district and the Chief of the whole political commonwealth of that Kingdom, which he ruled with Imperial authority, was of a far different nature. The Echevins, who might have the power to make a by-law for their own clan, could only solicit or accept the Capitular which the Monarch, the successor of the Cæsars, promulgated for his entire Empire. Unquestionably, the laws and customs retained by the Teutons greatly assisted in the formation of the Parliaments,

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CHAPTER XI.

Provincial Emperors—Improperly considered as Tyrants or Usurpers—Revolutions of the Provinces under these Rulers, the remote causes of the establishment of the Kingdoms of Modern Europe—Emperors of the Gauls—Emperors of Britain—Carausius—Growth of the Saxon power in Britain—Allectus—Constantius—Magentius and his adventures—Maximus or Maxim Wledig—Colonizations of Armorica—Descent of British Princes from Maximus—Continued invasions of the Saxons—Rapid succession of British Emperors—Britain finally separated from the Empire.

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“Tyrants”
of the
Empire.

Impropriety
of this
designation,
if intended
to designate
an illegal
usurpation
of power,
the succes-
sion to the
Empire not
being guided
by any fixed
principles, so
as to furnish
any con-
sistent
definition of
a legitimate
Emperor.

THE annals of the Roman Empire contain the names of numerous individuals, who, invested with the purple in the different Provinces, maintained their station with more or less energy and success. These Sovereigns are usually designated as “Tyrants,” because they were opposed or subdued by competitors, who have obtained from historians and posterity the more grateful title of “Emperors.” Yet this distinction, however sanctioned by usage, cannot be established by any correct or consistent reasoning. It is hardly necessary to observe, that the term “Tyrant,” according to the diplomacy of the ancients, was applied technically, to denote a usurper; but usurpation can only exist in opposition to established law; and in attempting to define the Tyrant, the basis of the proposition is wanting. Where can we discover the canons which determined the Imperial succession? and from what record can the inquirer collect the principles which may enable him to distinguish between the intrusive occupant and the legal representative of the Cæsars? The Imperial dignity was created by the sword; and the nomination of the legions preceded the authority imparted by the decree of the conscript fathers^a, who, with smiling cheer, and arrayed

^a Tacitus, Annal. lib. xiii. c. 4. Gibbon, vol. i. c. 3. Dubos, vol. i. p. 58.

in festive garments, hailed the pious and victorious master given by the armed electors to the Roman world. Had the Prætorian bands alone possessed the power which compelled the Senate to bestow the title of Augustus, and to confer the magistracy of the Republic upon the favourite chieftain or the successful general, the mode of appointment, however abusive in its origin, would at least have been certain and ascertainable; there would have been a settled rule, though grounded upon a privilege which had been tortiously acquired. But the legality of the choice depended upon the chances of war. Success was the real standard of legitimacy. Thus, when Aurelian prevailed against Quintilius¹, it was only the valour of that sturdy Peasant, who owed his fortune to the warriors on the shores of the Danube, which decided that he had a better claim to the sovereignty than the sage, who derived his elevation from the voice and suffrage of the Legions of Rome and the approbation of all Italy. Such contests, repeated in province after province, and year after year, characterize the memorable era when the Roman world witnessed the accession of those rulers, who, rising against Valerian² and Gallienus, the Gothic Claudius and Aurelian, are represented as "shining models of virtue" by the writer who stigmatizes them as pretenders to the throne. But let an example be selected, and the justice of the language thus employed will become more than dubious. Gaul and Spain and Britain had been erected at this period into a flourishing Empire, denying obedience to the Roman Emperor. Posthumus³, the ruler of these countries, had been called to the sovereignty by the affection of the people, weary of the government of the weak and cruel Gallienus, the disgrace and terror of Italy; and if the palsied Senate, assembled on the Capitol, branded this change of dominion as a rebellion, the Court of Trèves might reasonably question the nature of the rights devolving upon a son, who enjoyed his dignity because he permitted his father to languish in hopeless captivity; or, ascending a degree higher in the pedigree, they might inquire by what means the legions of Rhætia acquired the authority of imposing Valerian himself upon the Dioceses of the East, or the Prefectures of the West? If the safety of the Republic was to be considered as the supreme law, Posthumus had a still fairer claim. The "Restorer of the Gauls" expelled the Barbarians who had crossed the Rhine; his ability retarded the sway of the Frankish Chieftains; and the Provinces ruled by the "Tyrant" became the bulwarks of the other portions of the Empire.

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Success, the real standard of legitimacy, as instanced in the case of Aurelian.

The "Thirty Tyrants." (See Gibbon, vol. i. c. 10.)

Empire of the Gauls, (which included Gaul and Spain) under Posthumus and his successors, A.D. 261-268.

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A.D. 271–
274. Em-
perors of the
Gauls:
Lollianus,
Valerianus,
Marius,
Tetricus.

Lollianus, Valerianus and Marius, the successors of Posthumus, all perished by the seditions of their soldiers; but the fate which befel them, in common with Probus and with Tacitus, was no impeachment of their right; nor can the violent deposition of these Emperors be therefore admitted as any proof of the illegality of their authority; and the influence exercised by Victorina¹, who, assuming the style of Augusta, participated in the government of those whom she had protected, was at least as constitutional as the power which Mamæa² had possessed. Tetricus obtained a tacit acknowledgment from Claudius, his contemporary, whose Empire was confined to Italy, Africa, Thrace and Illyria^a; and when at length he was driven from Gaul, the government of Italy, and perhaps the title of Augustus bestowed upon him by Aurelian, may more properly be considered as compensations for territories unjustly usurped, than as the tokens of the clemency or regard of his triumphant conqueror.

Tendency of
the Roman
Provinces to
separate
themselves
from the
Empire, and
to constitute
themselves
into distinct
States.

These revolutions, and very many of the same kind will be recollected by the reader, if they were symptoms of the decline of the Empire, were also occasioned by its conformation. Like the later realm of Charlemagne, the Roman dominion was an heterogeneous assemblage of communities, whose nature was such as to give them a constant tendency to sever themselves from each other, and to break the chains by which they were connected. Possessing the various characters of colonies, of conquests, and of allies, the Provinces were not united by any political bond of union. Viewed collectively, they bore the appearance of a great nation, but they were destitute of the reality; they were not one, but many; each portion and member contained a centre of repulsion; and the prevailing form of government, however calculated for the purpose of enforcing obedience to the Sovereign, was ill adapted to insure the integrity and stability of the Empire. A territorial establishment estranged the soldiery from Italy; and the home of the legionary was the city or station where he enjoyed the inheritance of his fathers. The Provincial Councils sustained the national feeling, and encouraged the secret yearnings of the people towards national independence.

Roman
Emperors:
their
government
not sup-
ported by
opinion or
feeling.

To these causes of separation must be added others, resulting from the personal origin of the Rulers who acquired the imperial authority. The Roman Emperor was not the representative of a long and honoured ancestry. Flattery might raise the altar to

^a Gibbon, vol. ii. c. 2.

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Part I.
Ch. XI.

described as rebellious peasants, and designated as robbers, but probably the inhabitants of the open country, or Romanized Gauls, who were endeavouring to render themselves independent, without uniting to the aristocracy of the "Civitates" or to the soldiery.

A.D. 285.
Ælianus and Amandus, leaders of the Bagaudi, assume the Imperial title.

A.D. 407–441.
Bagaudi still continue as a very powerful party in Gaul and Spain.

oath of fidelity from the soldier, binding him to oppose them^a, must have had stronger claims to favour than could have been possessed merely by the servile villeins. Robbers, as they are called, this epithet seems rather to have resulted from the fear or animosity which they excited, than to have been earned by their misdeeds^b. Their Celtic appellation merely describes them as a multitude^c; and even if it had warranted the epithet bestowed on them by the Latin writers, it may be easily understood from our own annals, and from those names which are as current as household words, how little relation there may exist between the etymology of the designation originally appropriated to a political faction, either by the sport of its friends or the spite of its enemies, and the character which the party afterwards really deserved or assumed. From the very scanty memorials of those civil wars, we may pronounce that the Bagaudi were the inhabitants of the open country, who, irritated by evil government and oppression^d, were attempting to render themselves independent of Rome, but without the concurrence of the aristocracy of the "Civitates," and in opposition both to the legions and the Provincial Assemblies; and their leaders, Aulus Pomponius Ælianus and Cnæius Salvius Amandus, therefore assumed the Imperial title and insignia. How widely they extended their dominions, we are not informed; but the castle of the Bagaudi^e, near Paris, marks one of their frontiers; and it is here, according to tradition, that they defended themselves against the forces of Maximian¹, who was compelled to win the share of the Empire to which he had been associated.

The defeat, which for a time, effaces the Bagaudi from history, did not suppress their resistance; in the fifth century

^a Vita S. Mauricii, Acta Sanct. Septembris xxii.

^b Aurelius Victor, p. 207. Eutropius, lib. ix. c. 13, § 4.

^c *Bagad*, a troop, a multitude. (Owen Pughe.) The same word bears a similar meaning in the Celtic dialect of Armorica. (Du Cange.)

^d Paneg. Vet., i. 4, 3; iii. 4, 1.

^e Now St. Maur. This fortress was situated on a peninsula formed by the sinuous course of the Marne; and the ramparts which protected it on the north may be yet traced in the Park of Vincennes (see plan in Stukeley's *Carausius*, vol. ii. p. 109). According to the traditions of the country, the castle had been built by Julius Cæsar. (Vita S. Baboleni, apud Duchesne, vol. i. pp. 661, 662.) Medals of the Emperors of the Bagaudi are extant; and are described in the works of Goltzius and Banduri. They are extremely rare.

they were in great force, not only in Gaul but in Spain^a. During the long interval which had elapsed since the reign of Diocletian, the Bagaudi had been strengthened and united by inflexible resistance and by stubborn tyranny; by the bonds of misery and the fellowship of crime. So direfully had they been oppressed that the Bishop of Marseilles could not refrain from bestowing all his pity upon the sufferers, and all his indignation upon those whose tyranny had goaded them to despair^b. About this period, the cities of Armorica, imitating the example of Britain, in which a similar event had taken place, and aided perhaps by the Frankish Læti settled in the capital of modern Brittany, expelled the Roman Magistrates^c, and constituted themselves into an independent Commonwealth, of which some portion was already governed by a British Prince. This revolution was followed, or perhaps accompanied, by a general and simultaneous insurrection of the Bagaudi throughout the north of Gaul; and though we cannot assert that they actually invited the Barbarians, yet as they anxiously sought to place themselves under the more tolerable yoke of the enemies of Rome, there is little reason for doubting but that the civil war greatly assisted the victorious establishment of the Frankish monarchy; whilst the alliance of Clovis with the Armoricans, and with the Frankish subjects of the Armorican sovereigns^d, was one of the firmest supports which his authority received^e. Unconscious of the ends which they were destined to accomplish, the Provincial Emperors were the precursors of the Barbarian dynasties, and the revolutions which the Provinces sustained under their government gave the impulse which ultimately facilitated the conquests of the Barbarians, and detached the Kingdoms of modern Christendom from the Empire.

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A.D. 409.
Assist the
Armorican
Provinces in
rendering
themselves
independent,
and in the
establish-
ment of the
Frankish
monarchy.

^a Idatii Chron., ad ann. 407, 441.

^b Salvianus, de Gubern. Dei, p. 105.

^c Zosimus, lib. iv. c. 5.

^d Procopius, de Bello Gothico, lib. i. c. 12. Dubos, vol. iv. pp. 5, 8.

^e Grallent or Grallonus takes the title of "Rex Britonum necnon ex parte Francorum" [King of the Britons and also of some of the French], in the charters which he granted to the Abbey of Landevenec. (Lobineau, vol. ii. p. 17.) There is some difficulty in ascertaining the exact era in which Grallent reigned. Gallet supposes between 434 and 445; though, according to some ancient authorities, he made his first donation to Saint Winwaloc of a very large number of *Treus* and townships, before the year 400. (Vita S. Winwaloci, Acta Sanct. Martii iii.)

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The first
"Tyrant"
of Britain
in the reign
of Probus.

A.D. 288.
Carausius,
the Menapian.

Opposed to
the Franks
and Saxons.

If we apply this hypothesis to Britain, we must seek for the events which conduced to the dominion of the Anglo-Saxons, long before the arrival of those sons of Woden, whom our monkish chroniclers teach us to consider as the first founders of the Heptarchy. And as far as the chain of causation can be traced, the series should commence with the accession of the general or leader, whose name has not been preserved by historians, and who, after a very short reign, was slain by the artifice or treachery of Probus, his competitor^a.

Carausius obtained a more durable ascendancy. This Sovereign was a "Menapian" by birth. The nation whence he originated had been divided by its migrations into several colonies; one was settled in Erin^b, another was founded in the islands of the Rhine; and the Menapia of Britain, now St. David's, seems also to have belonged to these tribes. Carausius was born in Britain, according to an authority^c which we are at present compelled to receive with hesitation, and which is opposed to the Roman writers, who call him the "foster-son of Batavia." Yet, for the credit of Richard of Cirencester, it may be remarked, that the same uncertainty prevails with respect to many of the Emperors and most of the "Tyrants." The contradictory statements of contemporary writers were evidently occasioned, not so much from inaccurate information as from the difficulty of finding accurate language. In one narrative, perhaps, the individual is described according to his race; in another, according to his local birth-place; in a third, according to the domicile of his immediate ancestry; thus the son of a companion of Strongbow might be considered, with equal truth, as a Norman, an Irishman, or an Englishman^d. Carausius, perhaps himself a pirate, had been accustomed to the sea from his earliest youth; and he was raised by his valour and talent to the command of the navy destined to repress the incursions of the Saxons and the Franks, who ravaged the shores of Britain and of Gaul with

^a Zosimus, lib. i. c. 66.

^b In Wexford and the adjoining counties.

^c Ric. Cir., de Situ Britanniaë, lib. i. c. 8, § 14.

^d Bonosus, who included Britain in his transitory empire, affords a curious example of the complicated and Barbarian relationships of the Roman Sovereigns; he was born in Spain, but he was the son of a British father by a Gaulish mother, and he was married to Hunila, a Gothic princess. (Vopiscus, Bonosus, c. 14.)

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“Arthur’s
Oven,” on
the banks of
the Carron,
supposed to
have been
built by
Carausius.

A.D. 293.
Carausius
slain at York
by Allectus,
who suc-
ceeds to the
Empire of
Britain.

of Severus. Moreover the circular temple on the banks of the river Carron, which appears to have been always viewed as a relic of great singularity, and whose destruction was reserved for modern ignorance and rapacity, was, in the age of Nennius^a, deemed to be a memorial erected by Carausius; though it was afterwards bestowed upon the fabled Arthur, who, in popular tradition, appears to have inherited the fame of the earlier warrior.

When Constantius was associated to the purple, he prepared to dispossess Carausius of his dominions; and, by a bold and fortunate enterprise, the British fleet stationed at Boulogne was compelled to surrender. Constantius then prepared for the invasion of Britain; but, in the mean while, domestic conspiracies had arisen, and Carausius was slain at York by the dagger of Allectus, his friend and minister, who succeeded to the Imperial dignity^b. Carausius, amongst his other allies, had settled large

^a Hist. Brit. c. 20. The very ancient and curious collection of popular traditions, entitled “De mirabilibus Britanniae” [Concerning the wonders of Britain] (Robert of Gloucester, ed. Hearne, p. 576), adds an additional marvel. Est furnus Arthuri, qui factus est ad modum thalami rotundi sine tegmine, et tamen nunquam intus pluvia cadit, nec nix, nec grando. [There is also Arthur’s Oven, which is made like a round bed without a roof, and yet, there never falls within it either rain or snow or hail.] From the descriptions, as well as from the coarse engravings given by Camden and Gordon, it appears that the dome was not a real vault, but composed, like the roofs of the passages of the Pyramids, of stones overlapping each other, each lower range being kept in its place by the superincumbent mass. That the building was not Roman is sufficiently evident; and from its similarity to the “Nuraggi” of Sardinia, which are engraved in Captain Smyth’s interesting description of that island, we may perhaps be inclined to indulge in the dream that it was of much more remote origin. Other buildings of the same description are said to exist in Ireland. According to Fordun (ii. 16), the edifice was constructed by Cæsar; and in Camden’s time, it was still called Julius’ *Hoff*, or the Court of Julius, as well as Arthur’s Oven. Gavin Douglas places *Arthur’s Hufe* amongst the constellations. The appropriation of the structure to Julius Cæsar or to Arthur, only shews that its origin was unknown; and it was bestowed upon these Heroes as well as upon Carausius, because they were all equally magnified by the traditions of the people.

^b Eutropius, lib. ix. c. 13, 14, 21, &c. Mamertinus, Paneg. Vet., i. 12, 1. Eumen., Paneg. Vet., iv. 11, 12–15, 5. Orosius, lib. vii. Bede, lib. i. c. 6.

bodies of Franks in Britain. Under this name the Saxons were also understood; and the support which he obtained from his former enemies may be considered as a ground for admitting, that the surmises of his secret alliances with the Barbarians were not entirely unfounded. But these inconstant mercenaries bore no affection to his memory: they might not have been able to prevent his death, but they did not seek to avenge it; and they transferred their allegiance to Allectus without delay or difficulty. Other bodies of the soldiery, on the contrary, seem to have been opposed to him. Three years, however, elapsed before Constantius could venture to attack him in his island fastness; but the superior forces of the Romans prevailed, and Allectus fell in an obstinate conflict with the invaders.

By this victory, Constantius Chlorus became master of Britain. Italy, Africa, Spain, Gaul, and the Island, were assigned to him, upon the abdication of Diocletian and Maximian; but he abandoned all dominion beyond the Pyrenees and the Alps; and, contented with Gaul and Britain, his Empire might have derived its peculiar denomination from the country where he most frequently sojourned^a. Constantius had been long connected with Britain. Though divorced by the command of Maximian, to whom he owed the Empire, Constantius had first married a British wife; and if the critic hesitates to acknowledge that Helena¹ was the daughter of Cœlius or Coel, a British Prince, or to believe the traditions of the Britons relating to the adventures of Trahern² and Marius and Leoline, her brothers, yet no one has ever doubted that she was of British lineage; and, amidst conflicting authorities, the ancient writers who represent Britain as the birth-place of Constantine the Great, are, on the whole, nearly as weighty as those which, contradicting each other, testify in favour of Naïssus or Drepanum^b.

If the reign of Constantius had been prolonged, he would have established the seat of his Empire in the Island where he had passed many years of his life, and which he had won after so long a contest; but he expired at York, having nominated Constantine

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Franks (under which name the Saxons were anciently comprehended) settled in Britain by Carausius.

A.D. 297. Allectus defeated and killed.

Constantius Chlorus becomes master of Britain, which, upon the abdication of Diocletian, A.D. 305, is assigned to him, together with Gaul, Italy, Africa, and Spain; but he resigns the three last-mentioned realms.

Constantius married to Helena, said to be the daughter of a British Prince.

Britain said to be the birth-place of Constantine the Great.

Constantine the Great proclaimed Emperor at York, upon the death of Constantius his father, A.D. 306.

^a Zosimus, lib. ii. c. 5.

^b Gibbon (vol. ii. p. 191) decides, in his text, in favour of Naïssus; but his summary of the evidence in the accompanying note, shews how nearly the authorities balance each other. A full view of the controversy may be found in the apparatus to the Panegyrist, and in Alford's useful history.

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as his successor; and the unanimous voice of the British legions and auxiliaries, amongst whom Crocus¹ or Erocus, a Teutonic king or chieftain, is remarkable both for his rank and his nation, confirmed him as the lawful master of the Provinces previously held by his father, and which, if he had not afterwards acquired the fairer realms of the East, would probably have continued without interruption as a separate Empire^a.

A.D. 350.
Magnentius,
perhaps a
Briton,

This Empire was revived, in some respects, by Magnentius², the Count of the "Jovians" and "Herculians," or the Illyrian soldiery who had replaced the Prætorian bands as the guards of the person of the Emperor^b. Distinguished by his personal prowess, his eloquence, and even his learning, this Chieftain, who was raised to the purple at Autun by the legions and auxiliaries, had been domiciled amongst the "Læti" or "Leod" settled in Gaul. From the diversity of the races who had been thus established, we can understand that he may have been either a Briton or a Teuton^c; and without attempting to determine his lineage, it will be recollected that either statement may have been consistent with the facts of his nativity. Had his adventures been preserved by the lays of the Bards, they would have become a tale of magic and witchcraft; for the prophecies of his mother first guided his steps, but could not avert his destiny; and the sacrifice of the virgin, whose blood, mingled with wine, was quaffed by his soldiers, had been dictated by the Sorceress whose counsel he implored. Gaul and Britain submitted to his authority; and his alliance with the Barbarians, amongst whom the Saxons are particularly mentioned, tended to fortify his power. But his empire was weakened by its extent; and, after a disturbed though not inglorious reign, he gave way to the better fortune of Constantius^d.

Emperor
of Britain
and Gaul;
allied with
the Saxons.

^a Eusebius, Vita Const. Paneg. Vet., v. 4, 1.

^b Gibbon, vol. ii. p. 161.

^c Μαγνέντιος ὃς ἐκ πατρὸς μὲν γεγένητο Βρεταννοῦ, Zonaras, lib. 11, c. 10. [Magnentius, who was born of a British father.] ἀπὸ Γερμανῶν, Juliani Or. i. [(Sprung) from the Germans.] Γένος μὲν ἔλκων ἀπὸ βαρβάρων, μετοικήσας δὲ εἰς Λέτους, ἔθνος Γαλατικόν, Zosimus, lib. ii. c. 54. [Drawing his descent from barbarians, but a settler among the Læti, a Gaulish people.] The error of Zosimus, who has considered the Læti as a specific nation, is easily understood. Tillemont conjectures, that Magnentius may have been the son of a Teuton born in Britain. The converse of the supposition is equally probable.

^d Zosimus, lib. ii. c. 46–52. Juliani Or. i. p. 62. Socrates, lib. ii. c. 28.

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A British Colony established by Maximus in Armorica, in which country earlier settlements of Britons had already taken place. Maximus grants a part of the country to Conan Meriadoc.

Constant intercourse between the insular Britons and the Britons of Armorica,

exclaims against him as an exile; but whatever may have been his origin, he had long resided in Britain, where he had repelled the Picts and Scots^a; and the Britons believed that he was married to Helen, a princess of Celtic race, the daughter of Eudaff or Octavius, Prince of Ewyas and Urchenfield^b, who is said to have obtained an extensive dominion after a long and valiant conflict. Maximus, however, did not continue in Britain after his accession. Ambitious and enterprising, he contemplated the conquest of that portion of the Empire which remained to Gratian¹; and, mustering all the soldiery whom he could persuade or command to accompany him, so many of the Britons followed his standard, that the island was deprived of the flower of its youth and nobility, and a colonization of Armorica is sometimes thought to have been the consequence of his enterprises. Various tribes of insular Britons had perhaps been settled upon the common lands of the Curiosoliti and the Veneti by the Emperor Constans: Maximus granted a larger portion of the country to Conan Meriadoc^c, to be held by him and his people as a military feud or donation, in the nature of the assignments made to the Limitanean soldiery. The conformity of language between the Armoricans and the Britons leaves little doubt of the affinity of the inhabitants of either shore of the channel; and the similarity of the names of the Provinces of Armorica and of "West Wales" is perhaps a stronger proof that one—but which one?—of these countries was the metropolis, and that the other was the colony. There

c. 3. [Moreover, his father was a Briton, because he was the son of Leolinus, the maternal uncle of Constantine, but he was a Roman by his mother, and on both sides he was of royal birth.] Maximus iste ex Imperatorio genere descenderat, et Magni Constantini consanguineus fuit, unde et partem Imperii sibi competere calumpniabat, Sig. Gembl. ad an. 583. [That Maximus descended from a race of Emperors, and was a relative of Constantine the Great, and for this cause, he claimed that a share in the Empire belonged to him.] Socrates, lib. v. c. 2, and Zosimus, lib. iv. c. 35, call him an Iberian.

^a Prosper Aquit.

^b British Pedigrees, Bib. Harl. 4181. I quote this volume with confidence, because it professes to be compiled from British manuscripts; but I do not pretend to any knowledge of the original sources. The publication of the Welsh genealogies, accompanied by maps adapted to the ancient topography of the country, would throw great light upon British history.

^c Morice, Hist. de Bretagne, vol. i. p. 6. See also Matt. West.

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appears, indeed, to have been a constant flux and reflux of Part I. population. The Briton of the Cornwall or the Devon of our Ch. XI. island, found a home in the Cornwall or the Devon of Gaul; and the flight of the parents of St. Patrick from the remotest parts of Albania, shews that Armorica was the safe and familiar place of refuge^a. Nor did the Cymri forget that they and their Armorican brethren constituted but one nation of kinsmen and of friends^b.

the latter country being a place of refuge to which the inhabitants of Great Britain fled from their enemies.

From Gaul, as well as in Germany and the adjoining countries, Maximus was also enabled to collect a numerous army. Gratian fled at his approach; but, hotly pursued by Andragathias, he was slain by the inexorable adherent of Maximus. This victory gave him Gratian's empire. Fixing the seat of his dominion at Trèves, he "stretched out his wings," according to the simile of Gildas, to Spain and to Italy^c, levying taxes on the barbarous nations by the mere terror of his name; and the moderation of the government of the Usurper, during whose reign not a single enemy or rebel perished, otherwise than in fair and open warfare, forcibly demonstrates the willing allegiance of the nations over whom he ruled.

The further details of the exploits of Maximus belong to the general history of the Roman Empire: it is sufficient to observe, that, after his death at Aquileia, Theodosius re-annexed the Province to his dominions, which he transmitted to his son

Maximus defeated and slain at Aquileia by Theodosius, A.D. 388; but his

^a The example of St. Patrick is important in shewing the early connexion between the Insular Britons and the Armoricans. For the facts relating to the emigration of his parents, see Colgan, pp. 7, 169, 481. Gildas, p. 4, Bede, Hist., i. 12, and Nennius, cap. 23, are the older vouchers for the withdrawing of the insular population into Armorica; and to these may be added the more questionable authority of the Triads. The last immigration is placed by the Chronicle of Mount St. Michael in 513, about the time of the full establishment of the kingdom of Wessex, and corresponds with the statement in the Saxon Chronicle. It can hardly be doubted, however, that the Celtic Gauls were Cymry, and therefore the settlers came amongst a kindred race. The historians of Brittany suppose that the name of "Cornu Gallia" was given to all or the greater part of Armorica, before the arrival of the insular Britons, and that a portion assumed the name of "Damnonia," after the last colonization. (Galland, Mémoires sur l'Origine des Bretons, and Morice, Hist. de Bretagne, vol. i. pp. 551, 580, 583, 852, &c.)

^b Liber Landavensis. Dugdale, Mon., vol. iii. p. 201.

^c Gildas, cap. 10.

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Ch. XL

descendants
continue to
reign in
Britain as
the Princes
of Reged,
Strath
Clyde, &c.

Honorius, his successor in the Empire of the West. But the dominion acquired by the "Robber of Richborough" was not entirely lost to his posterity; and the Princes who reigned in Reged¹ and Strath Clyde—in Gwent and Powys—long after the extinction of the Roman power, traced their descent from "Maxim Wledig,"² and were honoured by his ancestry^a. The British accounts are often disfigured by evident inaccuracies; and the fables of the Welsh, which provoked the censure of the Anglo-Norman Critic in the twelfth century, have not acquired more credibility or earned more respect by lapse of time. But history cannot be written unless we assign due bounds to our scepticism as well as to our credulity. I shall not attempt to sift the particular details which are afforded by the genealogies and hagiology of the Britons; but in this instance they are not accompanied by any improbability. There is nothing marvellous in supposing that an individual allied to the British Reguli should have obtained the sovereignty of the island, or that he should have transmitted a portion of his authority to his progeny.

Saxons :
reasons for
supposing
that they had
established
themselves
in Britain
before the
arrival of
Hengist and
Horsa.

We must now pause, and advert to that new national power which was arising in Britain. Carausius had repressed the incursions of the Saxons; but the successes of the commander had only a transient effect upon the power of these unwearied enemies; and when that commander became the Emperor, he seems to have introduced a portion of the host as colonists, whom he had combated as enemies in his earlier career. After his death, Britain continued to be the constant object of the "Archpirates," the host of Lochlin³; and the victories extolled by the Roman writers are the best memorials of the growing ascendancy of their adversaries. If they mowed them down, a new harvest of spears immediately arose; and no one of these triumphs was adequate to prevent the next invasion. The name of the Saxon Shore^b is, in itself, a sufficient proof of the ascendancy which they had obtained. It has been conjectured that this extensive

The "Saxon
Shore."

^a Constantine, his eldest son, became the Prince of almost all the land between the Wye and Severn; his dominion is thought to have included Gloucester, so that it appears to have comprehended the *Hwiccas* of the Anglo-Saxons. Owen ap-Maxen, as we are told, was the ancestor of the Reguli of Gwent, or Monmouth. The same ancestry is also given to Rhydderch-Hael of Cumbria (see chap. xiv.). *Ætæ Cambrobrittanicæ*, p. 142. *British Pedigrees*, Bib. Harl. 4181.

^b *Notit. Imp.*, cap. 72, and see above, p. 297.

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Part I.
Ch. XI.

Me quoque vicinis pereuntem gentibus, inquit,
Munivit Stilichon, totam cum Scotus Iernen
Movit, et infesto spumavit remige Tethys;
Illius effectum curis, ne tela timerem
Scotica, ne Pictum tremere, ne littore toto
Prospicerem dubiis venturum Saxona ventis.

[Me also, when I was perishing from the assaults of the neighbouring races, says Britain, did Stilicho protect, when the Scot roused all Ierne to arms, and Ocean foamed with hostile oar; by his cares it results that I fear not the darts of the Scots, nor do I tremble at the Picts, and from no part of my shore do I descry the Saxon coming on unfavourable winds.]

But the verses of a poet, addressed to a patron, are not to be construed strictly; and this tranquillity, if it ever existed, was of short duration. The island sustained further vexations from the emboldened enemy; and the Suevi, the Vandals and the Alani joined in the ranks of the invaders.

But the attacks of the Barbarians continue; and the Romanized Britons elect Marcus as their Emperor, A.D. 407, who is succeeded by Gratian and Constantine.

Whilst these events took place in Britain, Gaul and Italy were overwhelmed by the hordes of Barbarians. Honorius, unable to afford any aid, was compelled to abandon this distant province to its fate. Excited by their tendency towards independence, and urged by the necessity of a common leader, the Estate of the Soldiery raised Marcus to the purple, and saluted him as Emperor of Britain, a Province whose fertility in Tyrants had become so proverbial^a as to lead to the supposition, that the historians now extant only record a small portion of the revolutions which it sustained. His speedy fall betrays the factions which prevailed; and Gratian, his successor, was as speedily deposed by the turbulent community whose voice bestowed the imperial authority^b. Constantine was then placed upon the throne of Britain; a fortune which he owed in the first instance to his well-omened name. His military prowess justified the election which had exalted him above his compeers. The Emperor of Britain rapidly extended his dominion over Gaul; and after having been acknowledged by the Concilium of the Seven Provinces, he crossed the Pyrenees. Spain was assigned

^a Hieron., in Ctesiam.

^b Zosimus, lib. vi. c. 2, 34. Bede, lib. i. c. 11. Orosius, lib. vii. c. 40, 42. Olympiodorus, apud Phot. Sozomen, lib. ix. c. 11-13. Greg. Tur., lib. i. c. 9. Sidon. Apoll., lib. iii. ep. 12; lib. v. ep. 9.

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to Constans, his son, who exchanged the seclusion of the cloister for the title of Augustus and a transient and anxious sovereignty.

Part I.
Ch. XI.

Had Constantine, following the example of Carausius, continued in this island, he might have defied the open power, if not the wiles of Honorius, and whilst his navy collected his tribute from the provinces of the South, the British Emperor would have been safe from any steel, except that which was guided by the hands of the domestic traitor. But with the fate of Maximus before his eyes, he followed in the same dangerous path of continental warfare. When at the height of his fortunes, he sent an embassy to Honorius, excusing his proceedings; and the Emperor of the East was compelled to acknowledge the sovereignty which he had assumed. The revolt of Gerontius, a Briton by birth, and whose name is often found in the genealogies of the Kings of Damnonia, suddenly checked the career of Constantine. This defection, which deprived him of Spain and Gaul, was followed by an unavailing contest with the forces of Honorius, who, contrary to his concession, attacked Constantine as an usurper; and with equal infidelity, afterwards caused him to die by the hands of the executioner, in violation of the treaty by which he had surrendered. Constantine had formed many alliances with the Teutonic nations. Edobincus, a Frankish King, was one of his most powerful and faithful auxiliaries. Gerontius, on his part, cultivated the same connexions; and at his instigation, the Barbarians from beyond the Rhine, by whom we are to understand the Saxons, continued to invade Britain. The inhabitants, however, roused themselves; they regained some of the districts which the enemy had occupied, and the Common Councils of Britain, each under their own Sovereigns, assumed the semblance of a national confederacy^a.

(See below,
p. 331.)

The Britons,
after the
death of
Constantine,
defeat the
Saxons, and
become
independent
of Rome.

It has been supposed that Honorius released them from their allegiance. His recognition was of little importance; for after the accession of Marcus, all political union with the Empire was virtually dissolved, though some of the States or Potentates may have acknowledged a nominal obedience, in the expectation of deriving assistance against their enemies. This hope was vain.

^a The expressions of Zosimus imply the existence of the Councils; but the whole tenour of the history of Britain, in which the British Princes act such a prominent part, contradicts the supposition of a pure republican government.

322 *The Rise and Progress of the English Commonwealth*

Part I. The Saxons, in conjunction with the Picts and the Scots, still
Ch. XI. pursued their predatory warfare. And the "Hallelujah victory,"¹
gained by the Britons under the guidance of St. Germanus,
afforded only a transient respite to the island, and failed to expel
the hostile colonists from its shores^a.

Saxons
continue to
carry on the
war in
Britain.
Hallelujah
victory,
A.D. 430.

^a Bede, lib. i. c. 21. Usher, p. 179.

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Part I. song; and a proverbial distich indicates the alliteration of the
Ch. XII. ballad^a. Some relics have survived in their original text, and
 enable us to pronounce that the historical poetry of the Anglo-Saxons embraced every possible variety. The tales of the heathen age have perished, but the metrical narratives of a later era are still replete with allusions to the fictions derived from the mythology of Valhalla. The "barbarous and most ancient strains" which, as we are told by Eginhard, delighted the ear of Charlemagne, formed a part of a great cycle of heroic poems, grounded upon the achievements of the Gothic heroes of the earliest age, and which had been appropriated by every branch of the race. Of those remote and mysterious strains the Anglo-Saxons possessed most ample store. They listened to the song in which the giant forms of the Kings and Chieftains of the Goths, the sons of Woden, the forefathers of their own monarchs, and the Huns, and the Burgundians, were portrayed with more than mortal power, and more than human energy. In the lays of Attila¹ and Havelok², and Maiden Rinnild³, existing in versions comparatively of recent date, we can almost recognize the personages or identify the scene, though the "geste" itself owes its shape to the inventive talent of the minstrel. In a third class, the facts are to be read in an authentic guise, excepting so far as they are glossed by praise, or adorned by description.

Poetry was not, however, the exclusive source of the primitive Anglo-Saxon history; and the deficiency of the metrical narratives has been partly supplied by their genealogies, which, indeed, are in many respects closely connected with their verse. We know how they were rehearsed by the Sennachies of the Gael⁴. The "Duan" of Albania⁵ declared the descents of the Scottish monarchs, and yet enables us to connect the fragments of their dubious history^b. Amongst the Northmen the same practice prevailed, perhaps even to a greater extent, and those portions of the genealogies of the Anglo-Saxon kings which ascend into the heroic

Metrical
Genealogies
of the Gael.

^a This is peculiarly the case with the history compiled by Henry of Huntingdon. The chronicle ascribed to Brompton also contains many tales founded upon metrical legends.

^b This most singular poem may be found in the Prolegomena to O'Connor's *Scriptores Rerum Hibernicarum*; a work which, whether we consider the learning of the Editor, the value of the materials, or the princely munificence of the Duke of Buckingham, at whose expense it was produced, is without a parallel in modern literature.

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age, seem to be excerpted from similar memorial lines. But **Part I.**
they must have possessed others in a more strict and historical **Ch. XII.**
form. The constitution being grounded upon the privileges of
Castes and Tribes, the preservation of these pedigrees must have
been an object of importance, and demanding great attention
and care.

In most instances, the names of the Anglo-Saxon race are emphatically significant: and those whose roots cannot be traced to the Anglo-Saxon dialect, are probably derived from the nations amongst whom the invaders were commingled. They are often grounded upon that mythology, which had become a poetical language, and which, after the introduction of Christianity, was still so familiar as to be intelligible, though at the same time it had so little hold upon their minds, that the priest could allow it to be employed without creating any profane idea. The alliteration which marked the measure and constituted the harmony of their verse, guided them also in the selection of the appellations of their progeny. In the "kin" of Cerdic, the same initial letter was retained for seven descents, and nearly to the same extent in a collateral branch, which sprang from the main line^a.

In the Anglo-Saxon Chronicles, a Chieftain is always introduced by the deduction of his genealogy. These particulars of ancestry are evidently quoted for the purpose of establishing the truth and genuineness of the narrative. And the brief notices attached to the name of the Anglo-Saxon "Ealdorman" on the runic staff or tablet, preserved in his hall, may often have afforded all the authentic knowledge which the monk afterwards possessed of his mighty deeds.

Aided by general traditions, these materials constituted the basis of the chronicles for the period anterior to the arrival of Augustine and his companions; though not reduced into any regular chronology until after that era. And these memorials are so scanty, that we have only the indication of the events relating to the leaders whose descendants acquired a supremacy over their compeers. It is extremely difficult to form an accurate estimate of the real magnitude of the facts thus imperfectly disclosed. Victories are recorded, but defeats are untold. And in attempting to indicate the course of events during which the

^a In the genealogy inserted in the Saxon Chronicle, the descent of the line of Cerdic is thus given:—Cerdic, Creoda, Cynric, Celm, or Ceawlin, Cuthwine, Cuthwulf, Ceolwald, Cenred.

Part I.

Ch. XII.

Britons were absorbed by the Anglo-Saxon States and Commonwealths, and either incorporated amongst the invaders or placed under their supremacy, we must be often guided, not only by the language, but by the silence of Anglo-Saxon history.

After many years had been consumed in the calamitous warfare between the Britons and their invaders, Eric, surnamed Æsc, either from the spear which he wielded, or from the vessel which bore him over the waves^a, succeeded in acquiring the dominion of Kent, a territory wrested from the possession of Gwrtheyrn or Vortigern. Eric appears in the chronicles as an Ealdorman of a Clan of the Jutes, one of the Belgic tribes settled in the Cimbric Chersonesus: Claudian¹ and Marcellinus² probably describe them by the collective denomination of Saxons; and their own descendants, the English, subsequently included them amongst the pagan Danes. Aided by the valour of his sturdy and ferocious followers, the power of Eric was so firmly established in the fertile though narrow Province, which he and his people had occupied, that he was styled King of the "Cantware," and universally acknowledged as the founder of the dynasty by whom the country was afterwards ruled.

The ancestor of the "Oiscingas" or "Uscingas," for such was the patronymic given to the Kentish monarchs^b, was not, however, the first invader. The father and the uncle of Eric had obtained a grant of the island of "Ruim" or Thanet, from Vortigern, who bestowed this tract upon the Jutes, as the price of the services which they were to render against the Picts and Scots. Vortigern at this time was also engaged in warfare with a formidable rival. Aurelian, or Aurelius Ambrosius, the descendant of one of the Emperors who had reigned in Britain, and whose origin, valour, and virtues are recorded by the faithful testimony of Bede^c,

^a Æsc or Ash-tree, in its secondary sense, bears either of these meanings; and Ihre and Lye have amply illustrated its various applications and derivatives. Æscmenn, a term which Adam of Bremen uses in the form Ascomanni, was the name given to the Pirates or Sea Rovers of Scandinavia. Æsc is sometimes used absolutely to designate *Man* or *Mankind*.

^b Bede, lib. ii. c. 5.

^c Gildas, c. 25. Bede, lib. ii. c. 16. By Geoffrey of Monmouth this Hero is called Aurelius Ambrosius; by Gildas, Ambrosius Aurelianus. The variation is of little importance; but slight as it is, Ritson (*Life of Arthur*, p. 50) makes it the subject of a cavil. It has

Eric, surnamed Æsc (i.e. Ash-tree), the son of Hengist, an Ealdorman of the Jutes, acquires the dominion of Kent about 488.

(See above, p. 33.)

Oiscingas or Uscingas, Kings of Kent.

449. Isle of Thanet or "Ruim" granted by Vortigern to the sons of Wihtgils, Hengist (i.e. War-horse) and Horsa (i.e. Horse), Ealdormen of the Jutes, upon condition of performing military service, in same manner as the Romans were accustomed to make similar donations to the Barbarian Læti. (See above, p. 292.)

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Continue

Part I.
Ch. XII

their names
only poetical
epithets.

sanctioned by the authority of Bede himself, has only the appearance of an ancient lay. Rowena's fatal kiss and the device of the bull's hide, which gained the site of "Thong-Castle,"¹ a legend which has flown from clime to clime, may be almost as readily admitted to be true, as that part of the tale—less romantic indeed, but scarcely less incredible—which tells how the British Vortigern despatched an embassy to Germany, inviting the assistance of those confederates, speaking a strange tongue, and whom he only knew from their inveterate enmity. Nor can we neglect the circumstance that the names bestowed upon the sons of Wihtgils seem to be poetical epithets, rather than real denominations^a; both have the same meaning, and both only designate the snow-white steed, from whom their ancestors sought the omen before they entered the conflict, and whose form, still constituting the heraldry of Kent, adorned the standard which led them forth to victory^b.

Somewhat more plausibility might be conceded to the narrative which represents these Chieftains as exiles from their own country^c, were it not that this mode of accounting for the northern emigrations seems to have been a favourite tradition or hypothesis, usually applied by popular belief to any expeditions effected by the same race; and considered as a ready mode of explaining their ceaseless inroads^d. The question, however, may appear of little

^a The words are synonymous, and both *hengest* and *hors* were employed in Anglo-Saxon to designate the same animal. (Lye.) Usage distinguished them in later dialects; the German *Hengst* is a stallion; the Danish *Hors* is a mare.

^b *Proprium gentis equorum quoque præsentia ac monitus experiri: publice aluntur isdem nemoribus ac lucis, candidi et nullo mortali opere contacti; quos pressos sacro curru, sacerdos ac rex vel princeps civitatis comitantur hinnitusque ac fremitus observant, nec ulli auspicio major fides, Tacitus, Germ. c. 10.* [It is peculiar to this people to seek omens and monitions from horses. White horses are kept at the public expense in those groves and woods, and are defiled by no mortal work; but harnessed to the sacred chariot they are attended by the priest and the king or the chief of the state, who observe their neighings and snortings, nor is there greater confidence in any augury.] The White Horse, as is well known, yet constitutes the insignia of the modern County of Kent; and this example affords a strong support to the opinion that the armorial bearings of modern nations are derived from their primitive emblems.

^c Nennius, c. 28.

^d Guil. Gemeticensis, lib. ii. c. 1, &c.

consequence, nor indeed would it have deserved much investigation, if the personal adventures ascribed to the fabled heroes of Gothic song had not been rendered so prominent in our monkish chronicles as to interrupt the continuity of history, and to conceal the true nature of the transactions between the British sovereign and the Teutonic barbarians.

Part I.
Ch. XII.

Hengist and Horsa, if thus we are to call them, when their achievements are deprived of these romantic adornments, resume their real station as successors of the many Saxon warriors by whom Britain had been attacked since the reign of Carausius, but whose deeds are only shadowed by the Roman historians, and whose lineages are forgotten.

The cession of the isle of Thanet, a Lætic or feudal grant, according to the Roman policy, adopted by the Romanized Britons of Lloegria, afforded a firmer basis for their power; yet the conquests effected by the original Commanders of this Lætic colony, who never extended their kingdom beyond the boundary of the modern Shire, are of less importance in the general series of events than the achievements of Ella and Cerdic, the Leaders by whom the Saxons were established in the South and West, or of those who laid the foundations of the Anglian States, of Mercia, and of Northumbria.

Settlements of the "Three tribes of Germany" on the shores of Britain; distinct enterprises of independent adventurers.

Each band was headed by its own Chieftains; and each Chieftain, accompanied by his kinsmen, conquered for himself, his brethren, and his children, without aid from the other Adventurers, owing no gratitude, acknowledging no supremacy. Even as they began, when the host of Woden first advanced against the power of Rome, so they continued when the Empire had fallen; and so their course was resumed, upon the selfsame shores, when the difference of religion, and the alterations produced by habitation amongst another race, taught the Jutes and the Angles of Holstein and Jutland to consider their English kindred as strangers and enemies.

These early inroads affected the general policy, or rather misrule, of the Britons as little as the first conquests of the Anglo-Normans amongst the Gael of Erin. Absorbed in their mutual dissensions, they never recollected the existence of the enemy, except when they felt his sword. The moral insanity destined to work the downfall of nations works according to the degree of civilization which they have obtained. The factions of the jarring Senate accomplish the ends of fate as speedily as the severance of the army under the banners of civil war. Provinces may be

Britons: their general policy not affected by the early settlements of the German tribes.

Part I.
Ch. XII.

lost with more safety than principles; and the partizan who labours to defeat the measures best calculated to avert a public calamity in which he himself will be involved, because they proceed from a political opponent; or to vilify and destroy the character of the statesman whose wisdom is excited in rescuing the institutions which he himself most prizes, enacts the character which, in a more barbarous age, belongs to the recreant prince or the faithless general.

Aurelius Ambrosius seems, after the death of Vortigern, to have obtained the predominance for which he contended; and it has been supposed, by writers of no mean authority, that the sovereign who reigned in this remote portion of the Roman world, continued the legitimate succession of the Empire of the West^a. Defending his country with obstinate valour, the Britons acquired an unwonted confidence; and the memorable battle of the "Mons Badonicus,"^{b1} checked the progress of the enemy, and delayed the subjugation of the West. Yet the pernicious feuds between him and the other British Chieftains had continued for twelve years after the death of Vortigern^c; and about the time when Eric began to reign, another small kingdom had been formed out of the dominions appendant to Andredes Ceastre², a Roman colony which had reverted to the British power. When taken by storm, all the inhabitants were put to the sword, the edifices were razed to the ground, and so completely was this ill-fated city demolished, that even the keen eye and searching enthusiasm of the antiquarian topographer is unable to detect its ruins^d. Saxon England offers few examples of a similar vengeance; and we must discover the provocation in the valiant resistance of the Britons, who withstood the invaders with such determined bravery, that Ella³, and Cissa, his son, were compelled to obtain fresh reinforcements from their native country, before they could obtain the victory.

Ella never annexed any other territories to his kingdom of the South Saxons; yet favoured perhaps by the jealousies and

^a This is the opinion of Baronius⁴ (ad an. 477), which I quote, without venturing to maintain.

^b Gildas, c. 26. Bede, lib. i. c. 16. The former of these writers places the Mons Badonicus near the Mouth of the Severn; and in the loose language of early writers, this is surely sufficient to identify it with the heights above "Caer Badon" or Bath.

^c Nennius, p. 118.

^d Sax. Chron., ad an. 491. Hen. Hunt., lib. ii. Dallaway's Sussex.

Aurelian, or Aurelius Ambrosius, supposed to be the individual in whose person the succession of the Western Empire was continued.

Defeats the Saxons at Bath, A.D. 520.

South Saxons: their kingdom founded by Ella, 477-490.

Ella, the first English "Bretwalda," or Emperor of Britain.

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Part I.
Ch. XII.

The Hampshire Avon, the original boundary between the Saxons and the Britons of the West.

country. But the Celtic name of the Hampshire Avon, marks the original frontier between the Saxons and the Britons; and its stream was the boundary which divided the dominions ruled by Constantine, the "Tyrant of Damnonia^a," from the dominions of his enemies. The notices of the cities taken by the Saxons, and the rare allusions to the monarchs whom they encountered, afford only a slight indication of the direction in which their empire was extended. The Britons continued in a state of extreme disunion, as portrayed in the Epistle of the "querulous" Gildas¹, according to whom the sins of the people, both clergy and laity, scarcely received an adequate punishment from the oppressions of their rulers; and the kings themselves, stained with every vice, are represented as the worst calamities of the afflicted country.

Arthur not named by Gildas,

although there is no reason to doubt his existence, the scenes of the battles ascribed to him by Nennius, being, in many instances, identified.

Maglocunus², who is the subject of the most laboured and violent invective, had at this period been exalted to the dignity of supreme monarch. But amidst the sovereigns who are noticed by the coeval historian, we seek in vain for Arthur, who holds so conspicuous a station in the historical legends of the Britons. In parts of the island the most remote from each other, the traditions of the people have given to Arthur a local habitation and a name; and even in the distant Sicily^{b3} the wanderer in the forests of Etna was awe-struck by the visionary palace, in which the enchanted and entranced monarch, yet bleeding from the wounds received in the disastrous conflict with the Saxon "Childeric,"⁴ awaited the appointed day and the fatal hour, when he was to be restored to his crown and countrymen. Twelve great conflicts are briefly noticed by the British historians. They ascribe to Arthur the battle in which, as we know from better authority, Aurelius Ambrosius⁵ was the victor. Others are

^a Gildas, p. 10. Constantine is a name often occurring in the British royal families. Another Constantine, King of Cornwall, who abdicated his throne, and afterwards preached the Gospel to the Picts and Scots, has been supposed to be the Constantine of Gildas. His life is only known from his legend, as given in that most rare and valuable monument of ecclesiastical antiquity, the Aberdeen Breviary, from whence it is reprinted in the Acta Sanctorum (March, vol ii. p. 64). The Irish Annals notice the "Conversio Constantini ad Dominum, A.D. 588," which may mean either his death or his reclusion.

^b We owe this tale to the industry of Gervasius Tilburiensis (Otia Imper., p. 921).

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placed in the North^{a1}; and the scenes of those which took place on the banks of the Glen and the Douglas², the black water of Deira, at Wedale near Melrose, beneath the walls of the "City of Legions,"³ and near the Coit Caledon, or Caledonian forest⁴, can be identified with more certainty than usually belongs to narratives of equal antiquity. Part I.
Ch. XII.

We can neither doubt the existence of this Chieftain, nor believe in the achievements which have been ascribed to him; yet any attempt to introduce the fantastic monarch of the Round Table into the pages of authentic history, is as fruitless a task, as if we were to delineate Charlemagne from the geste of the veracious Turpin; and it is a singular, and perhaps not altogether an un instructive coincidence, that the same bright Arctic constellation was viewed both by Celts and Teutons as Arthur's Plough and Charles's Wain. Without pursuing an inquiry interminable as the chase of the visionary hunters in the forest of Broceliande⁵ it will be sufficient to observe that the confusion of personages—the common practice of ascribing to one individual the exploits of many of the same name—and the reminiscences of mythological traditions, were probably the concurrent causes which contributed to create the Arthur of historical romance.

When these legends were first promulgated by Geoffrey of Monmouth⁶ in their new form—for all the evidences which destroy the textual authenticity of the "Gesta Britonum" confirm the supposition that the work is really founded on British traditions.—they alarmed the learning of the cloister; and even the indulgent credulity of the Monk^b refused to admit the existence of a potentate,

^a By Nennius.

^b Higden thus inquires, Cæterum de isto Arthuro, quem inter omnes Chronographos solus Gaufredus sic extollit, mirantur multi quomodo veritatem sapere possint, quæ de eo prædicantur; pro eo quod si Arthurus, sicut scribit Gaufridus, terdena Regna adquisivit, si Regem Francorum subjugavit, si Lucium procuratorem reipublicæ apud Italiam interfecit, cur omnes Historici Romani, Franci, Saxonici, Britonici, tot insignia de tanto viro omiserunt, qui de minoribus viris tot minora retulerunt. p. 225. [But, concerning that Arthur, whom Geoffrey alone among all historians thus extols, many wonder how they can accept as true those things which are told of him. For if Arthur, as Geoffrey records, acquired thirteen kingdoms, conquered the King of the Franks, and slew Lucius the procurator of the republic in Italy, why have all the historians, Roman, French, Saxon and

Part I. whom no Fasti acknowledged, and no chronicler had known.
Ch. XII. Yet within a very short time afterwards, they were universally accredited throughout Europe, and received without hesitation. And during the civil wars and dissensions of England, even almost unto our times, the feigned and fallacious prophecies of the British Merlin were consulted with respect; and employed to rouse the hopes and encourage the zeal of the secret confederates and active partizans, who supported a popular pretender or an exiled king.

Returning from these pleasing yet unsatisfactory visions, to the real transactions of humankind, it appears that the victory which Cynric, the son and successor of Cerdic, obtained over the Lloegrians at Old Sarum, was followed by the subjugation of the adjoining territory. Cuthwulf is stated more explicitly to have established himself in the country beyond the Thames; and four towns or cities, then of considerable importance, together with their adjacent dependencies, were all occupied during one campaign^a. In these districts, the conquerors, from their relative position towards the "Middle Saxons," acquired their geographical designation of West Saxons, a name which they ever afterwards retained; though the subsequent annexation of these territories to the kingdom of Mercia deprived the appellation of its original propriety. Soon afterwards Commail, Condidan, and Farinmail^b fell in battle; Chieftains of the west, from whom the "Frank could "hear no word of peace," and who had been roused to more than common unanimity by the sense of more than common danger.

But they could not avert the adverse fortune of Britain. Gloucester, Cirencester, and Bath, all of which had been castellated by the Romans, passed beneath the dominion of Cuthwine and British, omitted all the distinguished deeds of so great a man, seeing they have reported so many lesser deeds of lesser men?]

^a After a battle at Bedford, he took the towns of Lygeanburg (Lenbury), Ægelesburg (Aylesbury), Bænesingtun (Bensington), and Egonesham (Eynsham). Sax. Chron., Flor. Wigorn., &c.

^b Farinmail, or Fernvail, appears to have been a King of Gwent or Monmouth. (Langhorne, p. 115.) The valour and the death of Cyn-dyllan (Condidan), King of Pengwern, or Shrewsbury, form the subjects of one of the Elegies of Llywarch Hên. Caranmail (Commail) is noticed in the same poem (p. 99). These coincidences, which afford satisfactory proof of the authenticity of the poems ascribed to the Bard, were first pointed out by Mr. Turner. It is remarkable, that in this poem the Saxons are called *Franks*.

552. Cynric conquers Sarum.

571. Cuthwulf establishes himself north of the Thames,

from which establishment this Saxon kingdom acquired the name of Wessex, i.e., in relation to Middlesex.

577. Gloucester, Cirencester, and Bath taken by Cuthwine

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Part I. joined his forces to this confederacy^a; and Ceawlin, unable to
Ch. XII. contend with the united armies of his kinsmen and his enemies,
 abandoned his crown, and died a fugitive and an exile.

Ceawlin
 expelled
 from his
 kingdom.

This remarkable conflict took place at Wodnesbeorg, or Wodensdike, an ancient rampart¹, similar in construction to the Giant's Dike of East Anglia. Many other similar fortifications, of less extent, are also found in Wiltshire; and the antiquary is uncertain whether to refer them to the Anglo-Saxon era or to the primeval population of the country.

Roman
 tactics and
 modes of
 warfare
 retained by
 the Brit^{ons}.

In all these wars the Britons availed themselves to the utmost of the lessons learned from their ancient masters; and though their ranks, skilfully arranged according to the tactics of old Rome, were broken by the impetuous and irregular attacks of the Saxons, yet the frequent and obstinate conflicts were almost as fatal to the victors as to the vanquished^b.

^a Fordun, lib. iii. c. 29, is the voucher for the aid afforded by Aidan. It may be objected against the authority of the Scottish chronicler, that he confounds the battle of "Wodnesbeorg" with the "Bellum Miathrorum," related by Adamnan in his Life of St. Columba (lib. i. c. 8). Pinkerton and Usher have failed to ascertain the real seat of war; and from the obscurity of the subject, Fordun's error probably arose. But the very important fact, that the Picts and Scots were brought in contact with the men of Wessex, is singularly established by what is told of Ceolwulf, the successor of Ceolric (A.D. 597): *Ceolwulfus sceptrum regni Occidentalium Saxonum suscipiens, quatuordecim annos tenuit, et vel Anglis aut Britonibus vel Pictis aut Scotis bellum semper intulit*, Flor. Wigorn., who, as usual, translates the Saxon Chronicle. [Ceolwulf obtained the sceptre of the kingdom of the West Saxons and held it fourteen years, and was always waging war either against the Angles or the Britons or the *Picts* or *Scots*.] Though I follow the respected opinion of Camden and Sharon Turner, I will not maintain that Wodnesbeorg is really to be placed in Wiltshire. Did the Kings of Wessex penetrate to the north, and subdue or occupy a part of Northumbria? or was the battle fought in Wales? Some manuscripts read *Woddesbeorge*—Wat's-dike?—an entrenchment running parallel to Offa's Dike.

^b Thus Huntingdon, in narrating the battle of Wodnesbeorg, *Cum autem Britones more Romanorum acies distincte admoverent, Saxones vero audacter et confuse irruerent*, p. 181. [But while the Britons in Roman fashion advanced their line of battle in regular order and the Saxons charged intrepidly without formation.] In the battle of Beranbyrig the British army was divided into nine

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A great battle between the men of Wessex and the Britons, was fought not long afterwards, in which the latter were defeated with great slaughter. Like many other of their sanguinary conflicts, the invasion passed away like a summer storm. No territory was gained; and nearly half a century elapsed without any further hostilities against the Britons. The power of the West Saxons indeed was much depressed. Penda, the pagan King of the Mercian Angles, and perhaps himself allied to the Cymri, was their implacable and uncompromising enemy. As the country had been won from the Britons, it had been formed into distinct principalities, whose Ealdormen or rulers often claimed or obtained the royal title, and who were only imperfectly restrained by the allegiance which was claimed by the nominal sovereign. They had also been compelled to submit to the supremacy of Edwin and of Oswald; and five "Kings" of Wessex had fallen in one battle-strife with the Angles of Northumbria, an event which at once displays their weakness and its cause^a.

Part I.
Ch. XII.

614. Battle of Beandune; Britons defeated.
625-656. Depression of the power of Wessex; harassed by Penda, King of the Mercian Angles (probably allied to the Britons), and also compelled to submit to the supremacy of Edwin and Oswald, of Northumbria (see Chap. XIII.)
Wessex, contained many states whose rulers assumed the royal title; five slain in battle with Edwin. 626.

Coerced by the Saxons, the Britons were yet unbroken as a population; and when Cenwealh recovered his kingdom, whence he had been expelled by Penda, the "Waters" of either Avon seem still to have constituted the boundaries of the tributary kingdoms of the Western "Wealh." The recent reverses which Cenwealh had sustained, gave to the Britons the hope, in the words of Malmesbury^b, of recovering their pristine liberty. Assembling all their forces, they encountered the English, and they repelled the first impetuous attack of their enemies. But Cenwealh collected his forces, and the "progeny of Brutus" sustained an incurable wound^c.

658. Britons, tributary or subjugated by the Saxons, make a great effort to recover their liberty; defeated by Cenwealh in the great battle at Penn (Devonshire), by which their power was entirely broken.

"acies": Virisque sagittariis et telorum jaculatoribus equitibusque, jure Romanorum depositis, p. 180. [With archers, and slingers, and horsemen, drawn up in the fashion of the Romans.] In these and many other descriptions of battles, Huntingdon had better and more ample Anglo-Saxon chronicles than those which now exist. Huntingdon has been much decried. It is contrary to all rules of criticism to deny the authenticity of an ancient compiler, because he quotes authorities who are lost to us, or because he relates facts which do not suit our theories.

^a Bede, lib. ii. c. 9. Sax. Chron., ad an. 626. See Part II., *Proofs and Illustrations*, p. 333.

^b De Gestis Regum, p. 6.

^c Et facta est super progeniem Bruti plaga insanabilis in die illa,

Part I.
Ch. XII.

By this victory, the state of the Durgwyr, the Durotriges of the Romans, yielded to the supremacy of Wessex. The poetical language of the historian implies, that the subjugation was consequent upon the total extinction of the ancient national rulers; and the British inhabitants, no longer governed by their own Princes, passed beneath the sway of the English Ealdormen and the sovereignty of the Saxon Kings.

Hitherto there had always been some one Monarch amongst the Britons of the west, who had claimed the supremacy of Britain. They had seen kingdom after kingdom yielding to the stranger, but still the successors of Aurelius Ambrosius asserted the right to an Empire, which had now shrunk into the shattered Provinces of the west. But their spirit was conquered. The Lloegrians are accused by the bards of union with the Saxons. It is probable they consisted, in this part of the island, of a Belgic race governed or oppressed by a Celtic nobility, or soldier-caste, and who therefore cared but little for the calamities of their superiors. And about this time, as far as can be ascertained from the vague chronology of the Welsh chronicles, Cadwalader Bhendyghed, or the Blessed, the last "crowned monarch" of the Cymri, borne down by calamities, influenced by the prophecies of the fabled Merlin, or perhaps yielding to a better feeling, abdicated his uneasy throne, and retired to Rome, where he died in monastic penitence^a.

Damnonia, however, whose sovereigns had been so long predominant among their compeers, was not yet entirely subdued; and the reinforcements which arrived from the kindred Armorica, under the Princes whom the Welsh annals name Ivor and Ynyr, emboldened them to attack the forces of Wessex.

The Princes of Gwent and Morganwy, on the northern shore of the estuary of the Severn, had become the vassals of the Kings of Wessex, to whom they rendered tribute and service. The yoke was tolerable, but it was borne with impatience. A new national war began. The whole forces of the Britons were raised against the Kings of Wessex; and they "rebelled," but with ill-omened valour, against the authority which they had hitherto

Hen. Hunt., p. 182. [And on that day an incurable wound was inflicted on the progeny of Brutus.] The battle took place at Penn, in Devonshire. The "Brytwealas" were driven as far as the river Pedrida, or Parret.

^a Caradoc of Llancarvan, ed. Wynne, p. 11.

676-680.
Cadwalader
Bhendyghed,
the last of
the British
Sovereigns who
claimed the title
of supreme
Monarch of
Britain, resigns
his crown.

681, 682.
Confederacy of
the Britons
against Centwine;
he defeats them
totally; a part of
the Population
(or more
probably of
the nobility)
takes refuge
in Armorica.

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Part I.
Ch. XII.

827. Egbert
subdues all
Britain south
of the
Humber;
overruns the
whole of the
British
territories.

Notwithstanding their reverses, the Britons of the West repelled the encroachments of the Saxons with so much vigour, that the vexations which Cynewulf suffered from their hostilities, were felt as national misfortunes, to be expiated or averted by devout liberality^a. Egbert, the eighth Bretwalda, who acquired a firmer dominion than any of his predecessors, pursued the Britons with inveterate hostility. He "herried" the land—these are the words of the Chronicle—from east to west^b. Yet his devastations made no lasting impression beyond the Tamar; and as the victors, who record the conflict, are silent with respect to its issue, it is probable that Wessex did not gain any further

the advice of Cenred, his father. But Malmesbury (*de Gestis Pontificum*, lib. ii.) describes Ina as the son of Cissa, the founder of the Abbey of Abingdon. Nor do we stop here in our difficulties. Ceadwalla of Wessex was the son of Coenbyrht, or Kenbert (*Sax. Chron.*, ad an. 685, and *Florence*). And the chronicles add that Mul, or Mollo, also called *Wolf* (*Brompton*, p. 741), and *Mulus* (*Thorn*, p. 1770), burnt by the Kentish men, was the brother of Ceadwalla of Wessex, the immediate predecessor of Ina; and yet, a short time afterwards (*Sax. Chron.* and *Florence*, ad an. 694), we find that the men of Kent paid a large sum of money to Ina as the were or blood-fine for "Mul," *his* brother. The amount of this blood-fine is stated with singular variations in the different authorities; 30,000, 4000, 3750 pounds [of silver], 30,000 marks of gold. Did the three names of Cenred, Coenbyrht, and Cissa belong to one person; or was there more than one Ina? This is a question which cannot be easily answered. Cadwalader himself is confounded by the Cymri with the Saxon Ceadwalla. The British narratives are wholly irreconcilable to the Saxon chronicles; yet it cannot escape notice, that Ceadwalla is a name often repeated in the British genealogies, and never again appropriated by a Saxon. These coincidences seem to be more than accidental: but the only use to which they can be applied is to fortify the conjecture, that in the earlier periods the Britons and Saxons were much more closely connected than their respective descendants have been willing to believe; and, as appears from the statements of the blood-fine, the ancient Anglo-Saxon chroniclers differed widely amongst themselves.

^a We ascertain this fact from the Charter by which "Cynewulphus Geuissorum Rex, A.D. 766," grants the holdings of twelve Bondes or "Manentes" to the Church of Wells; of which an extract is given in Part II., *Proofs and Illustrations*, p. 341.

^b *Sax. Chron.*, ad an. 813. The conquest of Cornwall is particularly asserted by Malmesbury.

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advantage in the dubious conflict^a; the British Princes, though still the vassals of the Bretwalda, retaining their ancient territories. All these details of indecisive and repeated struggles attest the important fact, which would otherwise be concealed, of the strength and compactness of the British population. Had they not been nearly equal to the English, such a stubborn resistance could never have been maintained.

Emboldened, if not by success, yet by the absence of any decisive reverse, the Britons found allies in the Northmen. A mighty fleet sailed to the west, and the Cymri and the Danes united their forces against Egbert. But the union of civil and military talent which distinguished the Bretwalda, did not forsake him in this emergency; and the last years of his reign and life were attended by the same good fortune which had crowned his earliest career. The "hard battles" with the "Wealas" disappear from the chronicles of the Saxon Kings. The pause, thus ensuing, is the surest evidence of the supremacy which Egbert obtained. This subjugation, however, which may have been effected by the expulsion or slaughter of the principal Chieftains, did not greatly affect the common people. Even in those districts, constituting the Shires held by the Ealdormen, the feudatories of the Kings of Wessex, the progress of conquest had been so slow, that the shires had scarcely lost their character of March-lands and Border countries. Dorset and Somerset, and Wilts and Devon, were all considered as the "Wealhcygn,"^b a designation which emphatically shews, that though the Thaness of Wessex may have enjoyed a principal share of authority, the Britons peopled the soil. Aggregated to the Anglo-Saxon political commonwealth, these territories continued to be British in kindred and in language. Even the opulent city of Exeter, which had been the capital of

Part I.
Ch. XII.

835. Danes, land in "West Wales"; are joined by the Britons; defeated by Egbert.

900. Britons of the West wholly subdued, but continue to form the great mass of the population of the Shires of Dorset, Somerset, Wilts and Devon, which were therefore known by the collective name of the "Wealhcygn," i.e. the Welsh kind, or Wallishry.

Caer Isk, or Exeter,

^a Coaptatum est bellum adversus Britannos in provincia Defna, Ethelwerd, lib. iii. c. 2. [War was waged against the Britons in the province of Devon.] Florence, following the Saxon Chronicle, also speaks of a battle with the Devonians: Britones in loco qui dicitur Gafulford a Domnaniensibus cæsi sunt. [The Britons were slain by the Devonians in the place which is called Galford.] Huntingdon agrees with him: Eodem anno maximum prælium fuerat inter Britones et gentem Devenescire, apud Gavelford, ubi multa millia utrinque corruerunt [In the same year there was a very great fight between the Britons and the people of Devonshire at Galford, where many thousands were slain on both sides.]

^b Will of King Alfred, p. 16.

Part I. Damnonia before the Roman conquest, was still inhabited by the
Ch. XII. Britons, though conjointly with an Anglo-Saxon Colony^a. Athel-
 stane sought more. Leading all his forces against the Britons,
 he expelled them from their portions of Caer Isk; the domain
 of Wessex extended completely to the Tamar, and left the
 promontory of Kernau alone, in the possession of the Britons of
 the West. Here they continued to reside as a community; and,
 as is familiarly known, retaining their national Celtic language
 almost until our own days.

inhabited
 jointly by the
 Britons and
 Saxons until
 the days of
 Athelstane;
 he expels the
 former, 926.

Kernau, or
 Cornwall;
 its aris-
 tocracy at the
 time of the
 Conquest,
 English,
 the people,
 British.

Their line of Princes cannot be traced beyond the reign of
 Athelstane^b; and their aristocracy either became extinct, or
 perhaps had assimilated themselves to the Anglo-Saxon Thaners.
 Amongst the numerous Lords of Townships recorded in Domesday,
 there are scarcely any whose proper names are British; and at
 the same time it is certain, that the English speech was still
 unknown to the main body of the people. But the last vestige
 of the political power of the Britons had been effaced. The
 English law had become common to all. A uniform scheme of
 government prevailed. The Ealdormen of the Shires included
 in the realm of Wessex met as peers and compeers in one paramount
 Senate or Assembly; and the union of these provinces, beneath
 one common Monarch, was so far advanced, that in the century
 anterior to the Conquest, we may view the whole country of
 Wessex as constituting one Kingdom, and as the paramount state
 in the Empire of Britain.

^a Malmesbury is not entirely in unison with himself. In one passage
 he says, that the Britons and Saxons already inhabited Exeter “æquo
 jure” (de Gestis Regum, lib. ii. 6); but in another place (de Gestis
 Pontificum, lib. de Episcopis Cridiensibus, &c.) it is described as being
 then reduced into the *power* of the English by Athelstane. Hanc urbem
primus Rex Ethelstanus in *potestatem* Anglorum, effugatis Brittonibus,
 redactam, munivit. [King Athelstan was the *first* to fortify this town
 brought into the *power* of the English, after the Britons had been
 expelled.] Is it to be supposed (and the supposition has great prob-
 ability) that the Anglo-Saxon colonists did not originally consider
 themselves as subjects of the King of Wessex, but that Exeter con-
 stituted a kind of free city, though rendering “gafol” to the king, and
 acknowledging his supreme authority? Marseilles continued in a
 similar state of dependent freedom until the reign of Louis XIII.

^b The last of these princes seems to have been Howel, who became
 the vassal of Athelstane. For their succession, as far as it can be made
 out, see Part II., *Proofs and Illustrations*, pp. 443–447.

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Part I. settlements spread the way for additional colonies, who occupied
Ch. XIII. the country without further struggle or conflict; for it is very remarkable, that the Britons have not even preserved a tradition respecting this country.

The Saxon history of East Angha has also been almost wholly lost. The romances and romantic lays^a commemorating the achievements of its early monarchs, Atla, King of the Northfolk, and founder of Attleburgh, and Roud, King of Theodford, or Thetford, cannot supply the place of annals; and we only possess a vague and uncertain indication of the existence of Offa, or Uffa, called the first King of the East Angles^b, and from whom the dynasty which he founded acquired the name of Uffingas. Two great tribes, denominated the North and South Folk, divided the country between them, nearly in equal shares. Art and cultivation have contributed to diminish, and, in some places, to obliterate the dreary marshes which formed the boundary, and constituted the defence of East Anglia. A great retrocession of the waters has taken place within the time of historical memory. The tokens of the change are visible and distinct. Venta Icenorum¹, whose walls were anciently washed by the waters of the Wensum, now stands in the midst of a fertile pasturage. The same causes which filled up the bay of the Yare have probably equally contributed to shallow the sluggish streams of the Nen and the Ouse. And, in the present state of the country, the traveller can scarcely recognize the features which, in the ninth century, gave East Angha the appearance of being separated from the rest of Britain, save only on that frontier, where it was

Uffa, the first King of East Anglia, from whom the monarchs of that country acquired the patronymic of Uffingas. (See II., p. 538.)

East Anglia colored by two great tribes, the North Folk and the South Folk. Ancient aspect of the country; divided from the rest of Britain by marsh-lands, rivers, and the Devil's dyke. (See II., pp. 553-555.)

Venta Icenorum, now Caister, near Norwich.

^a I allude to the Romances, unquestionably of remote Anglo-Saxon origin, translated into prose by John Bramis, the monk of Thetford, and also by an Anglo-Norman Trouveur, who has expanded them into a very spirited poem, containing upwards of 12,000 verses: both these most singular works should be published, and I venture to entertain the hope, that Mr Madden, whose edition of Havelok entitles him to take the highest rank amongst the editors of ancient Anglo-Norman poetry, may be called upon to perform this task.

^b Bede, lib. ii. c. 15. Hen. Hunt., pp. 1, 81. Higden, p. 224.

According to the genealogies appended to Nennius (p. 116), the first King of the East Angles was *Guercha*: a distortion of the name of Uffa, or Wuffa, arising, in the first instance, from the pronunciation of the British writer, and, in the next place, from the error of the transcriber.

defended by the mighty rampart¹, ascribed by tradition to the giant or to the fiend^a.

In tracing the decline of the British power, it would afford a land-mark, if we could ascertain when London, which always preponderated above the other cities of the island, was lost to the Britons². We only know that it was not conquered by Hengist, or ever incorporated in the kingdom of Kent. It was afterwards locally included in the kingdom which, stretching onwards from the west, became the dominion of the "East Saxons"; and the monarchs of Kent and of Essex exercised certain powers of sovereignty in the city: but, strictly speaking, we have no proof that London ever formed part of the early Anglo-Saxon kingdoms. With respect to the other important cities included in Essex, Verulamium, the earliest seat of Christianity in Britain, Camulodunum³ near Colchester, history is equally silent as to the time of their acquisition by the East Saxons; and the fragments of the chronicles which assert, that Ercenwine, the son of another Uffa, or Offa, was the first King of Essex, afford but an uncertain indication of the period when the Saxon power effected this conquest. Uffa was descended from Saxnot, a deity whom the Old Saxons worshipped with peculiar honour; but the state never acquired any strength, and, at every period of its history, Essex appears subjected to the supremacy of some Bretwalda or foreign King.

Both in Essex and in East Anglia, the Teutonic population became dense and numerous. The Saxons and Angles rested, as it were, upon the kingdom of Kent, and, possessed of the shore, they could constantly receive fresh reinforcements from their allies beyond the sea. Lloegria was rapidly yielding to the "Dragons of Germany," and the Britons were now so much surrounded by the Saxon colonies, that even if they had been inclined to unity and friendship amongst themselves, it would have been scarcely possible for them to adopt any scheme of government, or any plan of defence, which could have availed them against their enemies.

In Albania, or Britain north of the Humber, their subjugation, though not entirely averted, was long retarded and delayed. Valentia, which had been so thickly settled with military colonies, appears, after the extinction of the Roman dominion, to have been ruled by many princes, collectively designated as the

Part I.
Ch. XIII.

Kingdom of Essex. London, the era of its conquest by the Anglo-Saxons entirely unknown. No evidence that it was ever incorporated in any of the ancient Anglo-Saxon kingdoms. It probably continued, like Exeter, as a kind of dependent state, beneath the supremacy of the kings in whose dominions it was included.

^{527.} Ercenwine, the son of Uffa or Offa, supposed to be the first King of the East Saxons. (See II., p. 555.) (See above, p. 8.)

^a Will. Malm., de Gestis Regum, lib. ii. c. 13.

Part I.
Ch. XIII.

British
sovereigns
of the North,
or Teyrnedd-
y-Gwgledd,
many of
whom
traced their
descent from
Maximus, or
"Maxim
Wledig."
(See above,
p. 318.)

Teyrnedd-y-Gwgledd, the Lords, or, if we choose to adopt the Pelasgic term, which has equally passed into all the Celtic dialects, the "Tyrants of the North."^a Teyrn is employed, according to its real and genuine application, to designate any possessor of sovereign authority. The Britons considered the word also as indicating an hereditary dignity; and the Kings of those districts who were most feared or respected for their power, traced their lineage, as has been before observed, to Maximus, or "Maxim Wledig,"^b the Emperor of Roman Britain. A considerable degree of doubt, if not of discredit, is sometimes supposed to attach to these pretensions. And a Welsh pedigree does not command much respect in the opinion of the "Sassenach" reader. From the frequent recurrence of the same names in the same families, and the total absence of any well authenticated dates, in the earlier periods, it must be admitted, that these British genealogies are confused, and sometimes contradictory. They are also imperfect; the links of the pedigree are not infrequently deficient, and, occasionally, supplied by conjecture. But such are the records of all ancient lineages; and admitting that the British pedigrees must be employed with caution, they may yet be received as historical testimony. Had mere vanity taught the Cumbrians to bestow a Roman origin upon their monarchs, they would surely have chosen a greater progenitor than the comparatively obscure, and more than obscure, the deposed, Tyrant of the West. If the difficulties attending the elucidation of the ancestry of an old family were conclusive evidence against the alleged descent, many of our noble houses must be deprived of all their heraldic honours. But the candid inquirer will allow for error, and still more for the attempts injudiciously made to confirm a genuine tradition by fictitious documentary evidence.

^a Tiarna or Tighearna (Irish), and Teyrn (Welsh). In Armorica we find the titles of "Tyrannus" and of "Mactiern" assumed by the Breton chieftains. (Lobineau, vol. i. p. 68.) The latter were the inferior chiefs of the tribes, and in Welsh, *Mechdeyrn* properly signifies a tributary prince. In the very ancient and original oath taken by the Dukes of Brittany, the Mactierns are named after the Comites. The name of Kentigern is explained in his life to signify Cean-teyrn, or chief lord. For the Teyrnedd-y-Gwgledd, see *Æræ Cambro-britannicæ*.

^b *Gwledig* is not strictly equivalent to Emperor, but is employed to denote supreme power. (Owen Pughe.)

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Part I.
Ch. XIII.

The Picts, probably Britons, who, having been subjected by the Romans, became so much estranged from the Romanized Britons as to appear a distinct nation.

Picts said to have fought in the Scottish Host in the battles of Clitheroe and of the Standard, 1138.

the hostility of the Picts. Originally, the main body of this nation dwelt entirely out of the boundaries of the Roman provinces; but towards the decline of the empire, some detachments passed the frontier, and settled themselves in the modern Lothian and the modern Galloway. Whence the denomination of Pict arose is of little consequence, and I shall not present the reader with any part of the formidable array of etymologies, ransacked from Gothic and Celtic roots, which have been seized upon as weapons by the belligerent parties in the "Pictish Question."¹ It is sufficient to observe, that we may agree with those who ascribe the origin of the name to the Romans, and who seek its derivation in the pigments with which the Britons anciently dyed their bodies, for the purpose of rendering themselves more formidable to their enemies. The interest excited by the history of the Picts is much increased by their mysterious disappearance, and even by their strange and uncouth names; Drust, Talorg, Nectan, Morhet are beings who seem to have no affinity to any people inhabiting beneath the moon^a. In the ninth century, their monarchy is absorbed, as it were, amongst the Gael. Many tribes or clans, however, were still considered as Picts. Obeying the Scoto-Saxon King, they invaded the South; and, in the great battles of Clitheroe and of the Standard, they swelled the barbarous host opposed to the army of Stephen^b, but in the next age they

^a Chalmers, however, has shewn, with great success, that they may be generally traced to British roots. It may be added, that they seem to betray an affinity to the Armorican, or, in fact, that they agree with the more ancient dialect. "Bili," a Pictish name, often occurs in the Armorican or Breton charters (Lobineau and Morice, Preuves). Wrad (Pictish) and Frad Leoc (Armorican) seem to be in connexion.

^b They are mentioned repeatedly in the narratives of these transactions, by the two Priors of Hexham, and by Ailred, Abbot of Rievaulx, contemporaries, and living in the country which had been the seat of war. Under these circumstances, it is scarcely possible that they could have erred in giving the name of Picts to the clans, who were then yet known as a distinct race, though dwelling amongst the Scots of Galloway. (Picti, qui vulgò Galweienses dicuntur.) [The Picts, who are commonly called the men of Galloway.] From the manner in which they are noticed by John of Hexham, they seem to have formed as prominent a part of the army as the Scots themselves. Hoc bellum factum est inter Anglos, Pictos et Scotos, apud Clitherou &c....Scotti itaque et Picti vix a prima hora initi conflictûs usque ad tertiam perstiterunt, &c., Johannes Hagustaldensis, p. 261. [This

were swept away. Blotted out from the face of the world, their singular fate pointed the moral of the chronicler, reminding him of the instability of human affairs, and the vanity of human glory^a.

Part I.
Ch. XIII.

After which
they
suddenly
disappear.

In the country wherein they dwelt, their deserted strengths and habitations seem as ghostly and paradoxical as their history. No traditions connect them with any existing race. They stand aloof and apart from the rest of mankind. Nought has survived, except the tales of their ferocity, and the legends which indicate the "giant's grave" as the resting-place of the Pictish warrior. After weighing and comparing the arguments which have been adduced by the disputants who have mooted this inquiry, there can, however, be little hesitation in adopting the opinion, that the Picts were not originally distinct from the other British inhabitants of this island^b; but whilst the tribes to the south of the Forth became Romanized, the Picts, whatever may have been their ancient name, Caledonians or Vecturiones, retained

battle was fought at Clitheroe between the English and the Picts *and* Scots... So the Scots *and* Picts, with difficulty maintained their resistance from the first hour of the beginning of the conflict to the third]. And so he continues throughout his narrative.

^a These are the remarks of Huntingdon. *Quamvis Picti jam videantur deleti, et lingua eorum ita omnino destructa, ut jam fabula videatur quod in veterum scriptis eorum mentio invenitur. Cui autem non comparet amorem celestium et horrorem terrestium, si cogitet non solum reges eorum et principes et populum deperiisse, verum etiam stirpem omnem et linguam et mentionem simul defecisse? Et si de aliis mirum non esset, de lingua tamen, quam unam inter cæteras Deus ab exordio linguarum instituit, mirandum videtur, lib. i. [Yet the Picts at the present day appear to be extinct and their language so utterly destroyed that the mention of them found in the writings of the ancients seems to us a fable. In whom does it not induce a desire for the eternal and a dislike of the temporal, when he reflects that not only their kings and princes and their people have perished but that their very race, their language and their memory have disappeared with them? And even if it were not wonderful in the case of the other things, yet it seems a matter for wonder as regards their language, which, one among others, God appointed when diversity of tongues first arose.]*

^b There are certainly some perplexing appearances against this hypothesis, which will always afford arguments to those who maintain that the Picts were a *Scythian* or Teutonic tribe. Bede's authority will be appealed to by those who maintain the latter opinion.

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Part I. their primitive rudeness. The one nation adopted new customs
Ch. XIII. and new laws; the others, perhaps, degenerated and retrograded
 in civilization, until, like the Ceylonese and the Cingalese, each
 received a new stamp, and the peaceful citizens and the laborious
 cultivators became wholly estranged from their savage kinsmen.

Picts and Romanized Britons to be compared to the Ceylonese and Cingalese.

Often incited by the desire of plunder—for the two communities of Picts and Romanized Britons stood nearly in the same relative situation of wealth and poverty as their local successors, the Highlanders and Lowlanders of modern Scotland—the Picts were also stimulated by that antipathy which invariably exists between the more savage and the more civilized branches of the same nation. Tamed animals are always persecuted by the wild deer of their own species; and the warlike and energetic barbarian hates his brother with the greater intensity, on account of his consanguinity. Other feelings, probably, also contributed, in some degree, to increase this ferocity of the Picts; for, as we may judge from the history of St. Patrick¹ and of Gildas, the higher classes of the Romanized Britons, in the cities and colonies, had generally embraced Christianity.

We must now advert to another people, who, like the Anglo-Saxons, were also destined to become the Lords of the Britons, and the founders of a new and enduring sovereignty. In the earliest historical monuments which we possess, the Picts are mentioned in conjunction with the “Scots,” who, having their chief seat in the peninsula of Cantyre and in Argyle, seem also to have been scattered on many other parts of the north-western coasts of the island. With respect to the stock and stem of this nation there is no perplexity. There is not the slightest difficulty in pronouncing, that they were no other than the Gael of the present age, being the same race as the inhabitants of “Scotia,” now called Ireland^a. It is the unlucky characteristic of Scottish history, that every era has its own literary war; and Mary’s frail beauty has scarcely provoked more ardour and severity, than the most abstruse points of the most arid archæology. An angry and very fruitless controversy has been carried on concerning the

The Scots, first mentioned in conjunction with the Picts.

Scots settled in Erin, or Hibernia, the same race as the Gael of the present day.

^a The authorities which shew that “Scotia” was an island distinct from Britain, and the same as “Hibernia,” or “Erin,” have been collected by Camden (Epist. p. 369), and afford the fullest proof of his proposition. When settled in Britain, the Gael took the name of “*Albanaich*,” from the British appellation of the northern part of the island.

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Early inter-
mixture of
the Scots and
Picts.

Traditions
concerning
the early
history of
the Picts and
Scots, as
preserved by
Bede (lib.
i. c. 1.)

In speaking of the Scots as a distinct people, it must, however, be recollected, that they did not constitute a nation inhabiting a territory accurately divided by metes and bounds from the Pictish or British inhabitants of the same regions. Cantyre and Argyle^a, and some of the islets, may have been exclusively peopled by them, and many a mountain strath became the sole haunt and dwelling-place of a clan of the Gael. But they were scattered amongst the Roman Britons, and also amongst the Picts, and, in some cases, had evidently intermingled with them. Of these early intermixtures, the legendary compact related by Bede affords sufficient proof, though, as is often the case, a fictitious cause is assigned, in order to explain an existing fact^b; for

^a According to Innes (p. 647), upon the authority of Kennedy, Niel, King of Scotland, obliged the Picts to evacuate these provinces as early as the year 386 A.D.

^b Sailing from Scythia, the Picts first touched upon the northern shores of Ireland, where they requested the Scots to grant them a settlement and habitation. The Scots replied, that the island would not contain two nations; and they advised the strangers to proceed to the neighbouring land, towards the rising sun. The Picts adopted this counsel, and, passing over to Britain, they occupied the northern parts, the southern being peopled by the Britons. *Cumque uxores Picti non habentes peterunt a Scotis, ea solum conditione dare consenserunt, ut ubi res perveniret in dubium, magis de feminea regum prosapia, quam de masculina regem sibi eligerent; quod usque hodie apud Pictos constat esse servatum.* [And when the Picts, who had no wives, sought them from the Scots, the latter agreed to give them only on condition that whenever there was doubt on the matter, they would elect their king from the female royal race in preference to the male, a custom which it is well known is observed among the Picts to this day.] In the course of time, Bede continues, a colony from Ireland passed over to the country of the Picts. These were the Dalreudini. *Procedente autem tempore, Brittania post Britones et Pictos tertiam Scottorum nationem in Pictorum parte recepit; qui duce Reuda de Hibernia progressi, vel amicitia, vel ferro sibimet inter eos sedes, quas hactenus habent, vindicarunt; a quo videlicet duce usque hodie Dalreudini vocantur, nam lingua eorum daal partem significat.* [But in course of time, Britain, after the Britons and Picts, received a third nation, that of the Scots, in the part of the country inhabited by the Picts, who came from Ireland, under the leadership of Reuda, and obtained for themselves settlements among the Picts, either by friendly arrangement or by the sword, which settlements they have to

the story could not have gained ground, had not the tribes been visibly united and conjoined. They were strewed and interspersed amongst each other; perhaps not infrequently subjected to the rule of one predominant monarch. But here, again, we must attend to the involutions of authority. A government founded upon race or caste, has within it a principle of vitality by which it is kept in vigour, notwithstanding the whole nation may pass beneath another dominion; and if a Scottish king obtained the sovereignty of a Pictish tribe, his authority was entirely compatible with the continued existence of the subordinate power of the mediatized chieftain. Eclipsed by the superior fame of his lord, he may disappear, for a time, from the annals of history, though still retaining the authority which had devolved to him from his ancestors. These circumstances, applicable to all the clan governments of Britain, are very intelligible when once pointed out, and can be surmised and admitted without any difficulty; and they will enable us to reconcile many discordant narratives, to bestow credit upon the perplexed and obscure annals of a barbarous age, and to point out their contradictions, without always impugning the veracity of the relaters. Affected by prejudice, and coloured by passion, the involuntary errors of a contemporary chronicler have often received a further distortion by the ignorance of a subsequent compiler. Yet history, abounding as it does in palpable errors, exhibits, comparatively, but a small proportion of wilful misrepresentations or intentional falsehoods.

All the nations before mentioned, Britons, Picts and Scots, became, at various intervals, subjected to the supremacy of the Anglo-Saxons; and the accidental preservation of a few details relating to their history will enable us to obtain an intelligible, though not a perfect view of the policy of the ancient English empire. Our constitution, as I have more than once observed, is the result of the union and amalgamation of divers communities, which have grown together. The dominions of one monarch, though governed by him with different rights, they ultimately became parts of one commonwealth, subjected to one legislature, and obeying one law.

this day: and from their leader they are still called Dalreadings, for in their language *daal* signifies part.] In Irish the word "*Dail*" retains that signification, but the term, or rather the root of it, is common to the Teutonic or Gothic, as well as the Celtic dialects.

Part I.
Ch. XIII.

Probability, that many tribes of the Picts were occasionally subjected to the Scots.

Partial subjection of the chieftains, quite compatible with the continued existence of the clan governments.

Britons, Picts and Scots all subjected, at various intervals, to the English or Anglo-Saxon empire. (See II., pp. 331-428 and 614-629.)

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North
Britain much
harassed by
the Saxons
from the time
of Carausius.
Octa and
Ebusa said to
have settled
beyond the
Humber,
about the
time of the
conquest of
Kent.

(See above,
p. 319.)

But the
Saxons are
resolutely
opposed by
the Britons,
and only
form
isolated
settlements.

Whilst the south of Britain was the constant scene of the conflicts, and occasionally of the triumphs, of the Saxons, the north, since the days of Carausius, had been equally exposed to their predatory invasions; but these inroads continued until the beginning of the sixth century, before they led to the establishment of any state, which, in the usual language of historians, could be considered as a kingdom. Octa and Ebusa, the uncle and cousin of Eric, King of Kent, are said to have directed their attacks beyond the Humber, and even to have ravaged the Orcades, where their Saxon kinsmen had been defeated by the generalship of Stilicho; but they succeeded rather by compromise than by force, and their establishment was due rather to their policy than their power. The little that is told concerning these early transactions is corroborated by the general aspect of Northumbrian history. If we must discard the minute accounts of the signal defeats sustained by the sons of Hengist at York, during their balanced conflicts^a with Uther Pendragon, the slowness of the progress of the invaders proves that they could not have landed in great numbers, and that they encountered a strenuous and not unsuccessful opposition from the Britons. Retaining the numerous "Burgi" which defended the Northern Marches, the Britons kept possession of the most defensible points, whilst the

^a The Saxon chronicles, as they now exist, do not contain any notices of Northumbria, anterior to the accession of Ida. Malm., de Gestis Regum, lib. i. c. 3, has derived his information from sources which are now lost. *Sæpe numero cum provincialibus congressi, profugatisque qui resistendum putaverant, reliquos in fidem acceptos placidæ quietis gratia mulcebant. Ita cum et suis artibus et subjectorum favore nonnihil potestatis corrasissent, nunquam tamen regium nomen temerare meditati, ejusdem mediocritatis formam in proximos posteros declinaverunt. Annis enim uno minus centum, Northanhimbri Duces communi habitu contenti, sub imperio Cantuaritarum privatos agebant. [Having often come into conflict with the men of that province, and put to flight those who thought fit to resist, they received the others in subjection and conciliated them by the boon of an unbroken peace. So, when by their address and the goodwill of their subjects they had attained no little power, yet they never thought of infringing the royal title, and passed on the example of a similar moderation to their nearest descendants. For, for a hundred years less one, the Northumbrian Dukes were content with their ordinary condition, and acted as subjects under the rule of Kent.]*

Galf. Mon., lib. ix. Florilegus, ad an. 498.

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many states, such as Gododin, afterwards Lothian, &c., and in which Ida establishes himself about 547. Ida is considered as the first King of the Northumbrian Angles. (See II., p. 563.)

to the Frith of Forth, contained, like the other parts of Britain, many states, which, about this period, acknowledged Urien as their Pendragon, or supreme ruler. Gododin, probably the modern Lothian, a province in which the Romanized Otadeni were partly intermingled with their less civilized kindred, the Picts, was lost, after a very obstinate conflict, in the great battle of Catterath. Other hard and stubborn conflicts took place, in which Urien bravely defended his country against Ida, "Flamddwynn," the "Flame Bearer,"¹ who landed from Germany, at the promontory, which is still denominated from the epithet bestowed by the Britons upon the English invader^a. Ida, however, the father of twelve valiant sons, maintained his supremacy. The lofty tower which Ida erected, became his palace and his fortress; the Britons confessed and mourned the disgrace inflicted upon them: and the successful warrior^b established himself as King among the English Chieftains, who ruled from the Tyne to the Scottish Sea, but whose states were intersected by tracts governed by the British chieftains.

Deur, or Deira, from the Tyne to the Humber.

500. York taken about this time. Archbishop Samson takes refuge in Armorica, where he founds the see of Dol.

In Deur, or Deira, the province between the Tyne, or perhaps the Tees, and the Humber, the progress of the English was slower than in the north. York, it is true, had been attacked and plundered before the establishment of Ida. But the flight of Archbishop Samson to Armorica, where he founded the see of very distinctly marked. The southern boundary is most probably found in the limits of the province of York; the northern frontier is to be ascertained by the repeated notices of the Forth, as the boundary between the English and the Picts.

^a Ida venit cum quadraginta navibus ad Flamburgh, juxta Scarborough, Flores Hist.; Wallingford. [Ida came with forty ships to Flamborough, near Scarborough.] Such compilations, though not of very early date, often preserve important local traditions, and popular anecdotes of history. Knighton belongs to this class. The fullest account of the family of Ida is found in the Genealogies appended to Nennius. These, which are extant only in one recension, are certainly written by a Briton, and probably by a Cumbrian Briton. The value of this relic is not to be estimated by its bulk. Short as it is, it affords the most important confirmation of the general truth of the British histories and traditions. Bede has no mention of Ida.

^b Ida struxit Dyngwayth Guarth Berneich, Nennius, Gen. p. 116. [Ida built Dyngwayrth Guurth Berneich.] Gwair, *the disgrace of Bernicia*, was afterwards given by Ida to his queen, Bebbu, from whom it derived its present name of Bamborough.

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Dol^{a1}, may have been occasioned by a predatory incursion. **Part I.**
 The prevalence of the Druidic belief amongst the Britons of the north might hasten the expulsion of the British pastor; and though the Angles obtained possession of the shore of the German Ocean, open to the reinforcements which poured in from the Cimbric Chersonesus, yet, on the whole of the western coast, the Britons continued in full strength. Cumbria, of which I shall speak more fully hereafter, was an unbroken British Commonwealth, full of strong positions, and the power of this state supported the minor British principalities, which checkered the English territory, all, or most of them, being dependencies of the Cumbrian Crown. **Ch. XIII.**

(See above, p. 125.)

About the middle of the sixth century Ella appears to have been paramount sovereign of the Angles of Deira, and also of Bernicia; he succeeded, or rather obtained this authority upon the death of Ida: but between his family and the sovereigns of Bernicia there prevailed a fierce competition for supremacy. Hence, as in the south, the British states and tribes were often spared by the dissensions of their enemies. During the reign of Ella, the sons of Ida appear to have continued to govern the country as his vassals, and, upon his death, one of them, Æthelric, regained the superiority of which his dynasty had been deprived.

Ella, son of Yffi or Uffi, King of Deira, obtains the supremacy of Bernicia also. 559, 560. (See II., p. 563.)

Edwin, the son of Ella, at various periods of his life, sustained great reverses of fortune, and his personal adventures had a more than ordinary influence on the affairs of the English nation. Ethelfrith, the son of Æthelric, King of Bernicia, declared war against Deira, and compelled Edwin, then of tender age, to take refuge with Redwald, King of the East Angles, who received him with great hospitality. Ethelfrith had married Acca, the daughter of Ella, and he now united in his person the supremacy of the two kingdoms of Bernicia and Deira, and became the most powerful, as he was the most ambitious, of the kings who had hitherto ruled in Northumbria. None of his predecessors, in either realm, had gained so much territory from the Britons, or given such extent to the English colonies. Probably the intercourse with Jutland still continued, and the country was occupied, not only by the increasing population, but by the emigrants who sailed from the opposite shore.

Edwin, son of Ella, expelled by Ethelfrith, son of Æthelric; takes refuge with Redwald, King of the East Angles. (Bede, and see II., p. 563.)

592-616. Ethelfrith married to Acca, the daughter of Ella, and sister of Edwin. (Bede, lib. I. c. 34, and see II., p. 564.)

As yet, no national feeling or kindness existed amongst the English and Saxon tribes. Ceolwulf, of Wessex, fought against

Wars between the West Saxons under Ceolwulf and the Angles.

^a Usher, Primordia, p. 278. Vita Sampsonis, Bibl. Floriac., c. 5. See Part II., *Proofs and Illustrations*, p. 562.

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the "Angle Cynn" with as much pertinacity as against the Britons, the Picts, or the Scots. And there was as little amity amongst the English tribes themselves. Ethelfrith becoming apprehensive of the claims of Edwin, who had now attained man's estate, applied to Redwald to surrender the fugitive. But the Bretwalda—for Redwald, whose history is enveloped in the greatest obscurity, had attained the contested dignity—not only refused to grant the request, but raised a mighty army with the intent of compelling the Northumbrians to acknowledge his supremacy. On the banks of the River Idle, the contending armies, or rather nations, met in battle. Rægenhere, the son of Redwald, fell in the conflict, but Ethelfrith was also slain; his followers were dispersed; and Edwin became the undisputed sovereign of both the kingdoms of Northumbria^a. Thence he expelled the sons of Ethelfrith. They were his nephews, the children of Acca, his own sister; but this relationship, perhaps, increased his enmity, from his apprehensions of their claims to the succession. And Eanfrid, together with his brethren, Oswald, Oswio, Oslac, Oswin, and Offa, fled to the Scots and the Picts, by whom they were received with the honour deserved by their rank, and the kindness due to their misfortunes; Eanfrid, in particular, became the husband of a Pictish princess, and the father of a Pictish king.

617. Battle of the Idle (Bede, lib. ii. c. 12). Ethelfrith killed. Edwin succeeds to the whole of Northumbria. Expels the Athelings, the sons of Ethelfrith, who take refuge amongst the Picts and the Scots. Eanfrid, one of them, becomes the father of Talorgan, King of the Picts. (See II., pp. 565, 568.)

617-633. Edwin, Bretwalda. All the Saxon kingdoms (except Kent) subjected to him. He rules over the Scots and Picts.

Elfet, or Elmet (in modern Yorkshire), a British principality, conquered by Edwin.

Government of Edwin. His conversion (see above, p. 125). He adopts the "Tufa," or Roman ensign of dignity.

Edwin, in consequence of these successes, acquired great power. Wessex, and all the other kingdoms of Britain, Kent alone excepted, were exposed to his hostility, or acknowledged his supremacy. The Scots, the Picts and the inhabitants of the distant Orcades became his vassals; he extended his sway to the Menavian Islands. And, in his own immediate vicinity, he reduced the principality of Elmet, or Elfet, and expelled the unfortunate Certic, the British sovereign^b.

Edwin governed the country with wisdom and firmness. Adopting the precepts of Christianity, not merely as the canon of his faith, but as the rule and foundation of his civil policy, his empire became a favoured region of peace and justice. Whether suggested by Paulinus, the Roman missionary, or

^a The use of this name is probably an anachronism. The boundary of the kingdom of Deira seems rather to have been the Trent; and it probably acquired the name of Northumbria, after the separation of South Humberia, subsequently considered as part of Mercia.

^b Bede. Will. Malm., lib. i. c. 3. See Part II., *Proofs*, p. 565.

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all the calamities of the country were aggravated by the weakness or wickedness of these sovereigns. Ceadwalla continued his warfare without intermission; and such were his successes, that the Britons expected, and the hope was neither wild nor extravagant, that he was destined to restore the monarchy of Britain. York he gained after a fierce and desperate attack. Osric, with his harassed and divided forces, rashly attempted to besiege him in this fortified city; but Ceadwalla, sallying forth, defeated and slew him, and Eanfrid, venturing to approach the British King with twelve chosen soldiers, encountered the same destiny. A quick reverse of fortune, however, was at hand. Oswald, the son of Ethelfrith, the nephew of Edwin, and who represented the royal families both of Bernicia and of Deira, gathered his forces, and giving battle to the Britons at Denisesburn¹, Ceadwalla was slain, and his opponents obtained an entire and decisive victory^a.

^a Bede, lib. ii. c. 5, 9, 10, 12, 14, 16, 17, 20; lib. iii. c. 24. Will. Malm., Sax. Chron. and Flor. Wigorn. concur as to the principal events. Huntingdon and Malmesbury, though the latter chiefly follows Bede, have some passages not found in the other chroniclers. For the British accounts of Ceadwalla's victories, see Llywarch Hên, as quoted in Mr. Turner's last edition of his most valuable history, i. 367.

634, 635.
Successes of
Ceadwalla, who
occupies York,
and probably the
whole of the
kingdoms of
Northumbria.
The Britons view
him as the
destined restorer
of their
monarchy, but
he is killed by
Oswald, the son
of Ethelfrith, at
"Denisesburn."

Cont'

CHAPTER XIV.

Continuation and conclusion of the History of the Britons of the North—Oswald gains upon the Britons—becomes Bretwalda—the four Nations of Britain, Angles, Britons, Scots, and Picts, acknowledge his supremacy—Oswio, his brother, succeeds to his authority and power—the great British Kingdom of Cumbria, or Strath Clyde—its sovereigns and extent—British Population of the western coast of Britain from the Clyde to the Land's End—Conquests of British territory by Ecgfrid—Carlisle granted by him to St. Cuthbert—English continue to gain upon the Cumbrian Britons—capture and destruction of Alclud—many of the Britons of Strath Clyde emigrate to Wales—Strath Clyde and Cumbria become subject to a line of Scottish Princes—they join the great confederacy against Athelstane—Dumnhail, or Donald, conquered by Edmund, who grants Cumbria to Malcolm of Scotland, who holds the same as a fief or benefice—agreement or settlement that Cumbria should be held as an apanage by the Tanaist of the Scots—Indulf, Duff, Malcolm II.—Homages rendered by these Princes to the Anglo-Saxon Crown—Edgar, his triumph on the Dee—Eight Kings perform homage to Edgar, Malcolm, the King of Cumbria, being one of them—Malcolm III. performs homage to Ethelred, but refuses to contribute to the payment of the Danegeld—Duncan, Regulus of Cumbria—refuses his allegiance to Canute—Duncan compelled to perform homage to the Dane—Malcolm Canmore succeeds to the Scottish crown, and also to Cumbria—Cumbria after the Norman Conquest—North Cumbria, now the shires of Lanark, Renfrew, &c., retained by the Scots—Notices concerning its continued existence—its British Population—the Britons gradually lose their Celtic language—Laws of the Brets, or Britons, abolished by Edward I.—English Cumbria.

THE victories gained by Ceadwalla indicate the power which the Britons might have exerted, had they combated under better auspices. Their numerical force, as well as the advantages derived from the natural bulwarks which encircled their territories,

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Ch. XIV.

Part I.
Ch. XIV.

Oswald of Northumbria regains all the authority of his predecessor. The "four nations" of the island acknowledge him as Bretwalda or Emperor. (See II., p. 568.)

(Nennius, p. 117.)

642. Oswald defeated and slain by Penda, at Maserfelth. Oswio, his brother, succeeds to Bernicia, and afterwards to Deira, obtains the authority of Bretwalda, subdues the Picts and the Scots.

Cumbrian kingdoms; the British states on the north-western side of Britain, including Strath Clyde, Reged and Southern Cumbria. Sometimes called the kingdom of Strath Clyde, this being the predominant state.

Alclud (afterwards Dunbreton or Dumbarton), capital of the Cumbrian kingdoms. Eneon Urdd, King of Cambria and Cumbria.

might have insured a more permanent success, but their opponents were their superiors in unity and in plan; and, perhaps, in steady and determined valour. Oswald regained all that Edwin had lost. Angles, Britons, Scots and Picts, the four predominant nations of the island, were compelled or induced to acknowledge the Northumbrian as Bretwalda. Oswald was brave and prudent, and his virtues assisted in extending his empire. Humble, lowly-minded, and pious, the qualities which caused him to be canonized after his death, were rewarded by the love of his subjects during his lifetime; and the epithet of "*Llanigwin*" the "Fair," or, perhaps, the "Bounteous hand," bestowed upon him by the Britons, is, perhaps, the only token of affection ever displayed by the Cymri towards a Saxon sovereign.

Like Edwin, however, Oswald was the object of the most inveterate hostility of the "rebel" Penda, by whom he was slain in the battle of Maserfelth¹. Oswio, the brother of Oswald, succeeded to his kingdom. This monarch did not at first enjoy the full supremacy possessed by his predecessor. Deira was for some time divided from Bernicia, under Oswin, a dependent sovereign, descended from the same stock as Edwin, and Alchfrid, the son of Oswio, disturbed and contested his father's authority. Yet the dominion of Oswio extended even to the Pictish provinces; and the jurisdiction of the Metropolitan of York expanded to the fullest bounds of the power possessed by the sovereign. The Scots, also, submitted to his rule: he cast them down, coerced them, and compelled them to become his tributaries. And although the subjection of the Britons to his crown is not specifically stated, still the title of Bretwalda implies in itself, and from the very force of the term, that they were subjected to his imperial authority.

Whilst the tide of conquest was absorbing the British power and the British race, on the eastern side of that range, sometimes termed the British Apennines, the Cumbrian kingdoms maintained their nationality with more success; and continued, for a much longer time, to sustain the honour, or, at least, the existence, of the British name. Alclud itself, their capital, might defy hostility; and the rocks, the hills, the lakes and forests, which formed their boundary, separated and protected them from their Saxon enemies. Soon after the extinction of the Roman power, the Cumbrians, together with the Western Britons, were united for a time under the dominion of Eneon Urdd, and constituted the most influential amongst the British

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Part I. the suzerainty of Northumbria. "Loidis," or Leeds, was
Ch. XIV. described as the frontier town between the Britons and Danish
 Northumbria^a; one important point of the boundary dividing the
 nations can thus be ascertained; and one "Commot" obtains
 the praises of the British bards, because its inhabitants had
 refused to mix with the Saxons when all the others had lost their
 language^b, and become entirely estranged from their Cymric
 countrymen. The Cumbrian Britons thus retained possession of
 the land from the Clyde to the Dee. Not existing entirely as an
 unmixed people, for the Picts as well as the Scots had insinuated
 themselves within the British boundary; nor in the character of
 independent communities, for they were always subjected, more
 or less, to the English kings. Yet the homage which they paid,
 and the tribute which was exacted, often relieved both nations
 from the misery of protracted warfare. Tranquillity ensued, and
 there is no notice of any further loss of territory by the Britons,
 until the reign of Ecgfrid of Northumbria.

Leeds, the
 frontier town
 between the
 Britons and
 Anglo-
 Danes.

Ecgfrid was extensively engaged in hostilities, from the begin-
 ning of his reign. When young, both in age and in government,
 the "bestial Picts," scornfully termed thus by Saxon arrogance,
 then governed by a chieftain or Regulus, named Bernhaeth,
 became impatient of their dependence upon the Saxons^c, and
 endeavoured to throw off the yoke of servitude. But Ecgfrid,
 mild and beneficent to his own subjects, was terrible to his enemies,
 and collecting his army, he wholly defeated the Picts, and reduced

671. Picts
 under
 Bernhaeth
 rebel against
 Ecgfrid, and
 are totally
 defeated by
 him.
 (See II.,
 p. 571.)

^a As appears from the Life of St. Cadrœ, Acta Sanct. Martii i. p. 477. He was conducted by Douenald, King of Cumbria, usque Loidam civitatem, quæ est in confinio Normannorum atque Cumbrorum, a quo perducitur ad Regem Erichium in Evoracum urbem. [As far as the city of Leeds, which is on the borders of the Northmen and the Cumbrians, from whence he was led to King Eric in the City of York.] Leeds was therefore close upon Donald's kingdom, perhaps included in it.

^b The commot of Carnoban, in Deira. (Triads, p. 376.) Perhaps Craven.

^c Eddius, Vita Sancti Wilfridi, c. 18. Subjectionem Saxonum despiciebant. [They despised the rule of the Saxons.] Although the Northumbrians were probably Angles, still they were commonly called *Saxons*, a name which the Gael continue to apply to them to the present day. Eddius wrote about the year 720; it is evident, therefore, that the designation was not bestowed in consequence of any supremacy of the West Saxons.

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them to their "pristine subjection." The language employed by the contemporary writer implies, that the other nations of the north confederated with the Picts. The Britons were unquestionably amongst them. Ecgfrid, therefore, used the rights of a conqueror, and, in the great council, or synod, held at Twyford, upon the borders of the Alne, he bestowed the Roman city of Carlisle, or Lugubalia, and a territory of fifteen miles round about the same, upon St. Cuthbert; or, in other words, he annexed the dominion of the soil to the temporal possessions of the see of Lindisfarne. Another donation, by which "Cartmel" was given to St. Cuthbert, "with the Britons belonging to the same," affords a proof, that the district now called Lancashire continued still inhabited by the primeval race, though belonging to the Northumbrian sovereign. The victories of Ecgfrid, which may be traced by these donations, disjoined the kingdoms of Strath Clyde and Cumbria. He boasts that the British Clergy fled before his sword. Their churches were granted to the English priesthood, and the proscription of the clergy was probably accompanied by the expulsion of the people at large^a. By the occupation of the Roman city of Carlisle and its surrounding district, a territory was interposed which could at any time be used as a point of attack by the English. The Cumbrian Britons were, in like manner, menaced on the south by the positions taken on their shores. This conquest had, probably, been made by maritime invasion; for, like their ancestors of old, the Saxon Kings were still the monarchs of the sea. In an unsuccessful invasion of the Pictish territory, Ecgfrid was slain, and the Britons of Strath Clyde, obtaining a temporary relief from the Saxon power, were enabled to reassert their ancient freedom^b. But this transient gleam of prosperity soon passed away; never yet did a Celtic people maintain their ground against a Teutonic enemy.

We may discern the rapid decline of British ascendancy in the victories of Eadbert of Northumbria, who, penetrating across Strath Clyde, deprived the Cymri of the plains of "Cyil,"^c in which they were mingled with the Scots. A still greater blow was given to the Britons by the capture of Alclud, after which their kingdom never recovered its consequence. Eadbert, ruler of all the "English," the Scots, the Britons, and equally so of

Part I.
Ch. XIV.

685.
Carlisle bestowed by Ecgfrid upon St. Cuthbert; Cartmel, in Furness, with the Britons belonging to the same, also granted by him to the Bishops of Lindisfarne. (See II., p. 573.)

Kyle (A.D. 750) and Alclud (A.D. 756), conquered by Eadbert, King of Northumbria, with the aid of Unnust, King of the Picts. (See II., pp. 575, 617.)

^a See Part II., *Proofs and Illustrations*, p. 572, note a.

^b Bede, lib. iv. c. 26.

^c Kyle in Ayrshire, chronicle appended to Bede, p. 224.

Part I. the Picts^a, with his vassal, Unnust, King of the last mentioned
Ch. XIV. nation, led his forces against the British capital, which was sur-
 rendered by treaty to the besiegers^b. The day, the month, and
 the year of this event are stated with a degree of precision seldom
 found in the ancient chroniclers; but if we possessed a fuller
 account of this event, we should, perhaps, find that the ancient
 dynasty was extinguished, and that the Britons received a new
 sovereign from their conquerors.

The Britons still existed as a race; they were still settled in
 Albion, as one of the Four Nations of the Isles. Alcluid, though
 not exempted from the calamities of war, continued to be the
 seat of a British monarchy until the repeated incursions of the
 Dane involved the Northern Cymri in the same misfortunes as
 were experienced by their enemies. Alcluid was wholly razed
 to the ground. The "Black Strangers" were resistless, and the
 Britons, the Saxons, Angles, and Picts were mingled in captivity
 beneath the yoke of Olave and Ingwar^c.

When Halfdane settled and divided Northumbria, he renewed
 the invasion: Picts and Britons were alike the objects of the
 fury of the Northmen^d. Harassed by these ceaseless ravages,
 many of the Britons abandoned the country which they had so
 long defended, and sought refuge with their kindred in Gwynedd,
 where, as it is said, their descendants can yet be distinguished
 by their peculiar features, and by the tones or inflections of their
 dialect. Yet subsequent events must convince us that this
 emigration only affected a part of the British territories; and it
 is probable that the inhabitants of Annandale and Teviotdale
 alone gave way to the invaders.

In consequence of the demolition of Alcluid, the government,
 or rather the residence of the sovereign who ruled the Britons,
 was now transferred to Southern Cumbria, which still formed one

^a Sim. Dunelm., *Historia de Dunelmensi Eccl.*, lib. ii. c. 3.

^b Ann. Ulton., ad an. 756. Sim. Dunelm. (p. 105), ad an. 756. Eadberht Rex octodecimo anno regni sui, et Unnust, Rex Pictorum, duxerunt exercitum ad urbem Alcwith. Ibi que Brittones inde conditionem receperunt, prima die mensis Augusti. [King Eadbert, in the eighteenth year of his reign, and Unnust, King of the Picts, led an army to the city of Alclyde, and there the Britons received conditions of peace on the first day of the month of August.]

^c Ann. Ulton., ad an. 870.

^d Asser, p. 27 Sax. Chron., ad an. 875. Wynne's *Caradoc*. Llwyd, p. 41.

869, 870.
 Alcluid
 destroyed by
 the Danes.
 (See II.,
 p. 617.)

(See above,
 p. 39.)

Inhabitants
 of part of
 Strath Clyde
 emigrate to
 North Wales.
 (See II.,
 p. 617.)

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Part I. obtained the supremacy of the Britons. And though it is absolutely impossible to arrive at any positive conclusion, yet it must be admitted that the hypothesis may be consistent with the truth, even if his authority had been founded upon force or conquest, still more so, if any succession through the female line imparted to him a title of hereditary sovereignty.

Bile, the son of Elphin, King of Alclud, probably of Pictish race. (See II., pp. 616, 617.)

Daughter of Kenneth Mac Alpin married to Run, King of Strath Clyde. (See II., pp. 617, 626.)

908. Donald, brother of Constantine, the son of Aedh, King of the Scots and Picts, chosen or appointed King of Strath Clyde.

Upon his death it is granted to his son, Owen or Eugenius, to be held as an apanage by the Tanaist or heir apparent of the Scottish monarchy, until he should obtain the crown. (See II., p. 618.) An analogous mode of succession prevailed in the Anglo-Saxon monarchies, Kent being anciently held in this manner by an Atheling of Wessex. (See II., pp. 464-467.)

Before the capture of Alclud we obtain a transient notice of a sovereign, who, from his name, appears to belong to the enigmatical Pictish race, and he was, perhaps, the son of a Pictish King. Further indications of these alliances increase as we advance. The daughter of Kenneth Mac Alpin was espoused to the British King of Strath Clyde, and their son, Eocha, became the ruler of the Scots. From him, no British ruler can be traced; but immediately after the homage had been rendered to Edward by the Britons, Donald, the brother of Constantine, who is indifferently designated as the King of the Picts and of the Scots, was "elected," in the language of the chronicle, to be King of Strath Clyde, or Cumbria, by the influence of his kinsman; an act exercised, if we may judge from the transactions of subsequent periods, with the assent of Edward, the common superior of the Britons as well as of the Scots.

Constantine, who had thus obtained the British kingdom for his brother, succeeded, about the same time, in creating a more permanent connexion between Cumbria and the Scottish line; and it was then established as the canon of inheritance, that as soon as he should obtain the crown, Cumbria should pass to the next heir; so that the dominion of the Scots and of the Cumbrians would be never united in the same person, although the kingdoms would always remain in the same family^a.

^a Fordun, lib. iv. c. 21. This *shifting use* of the kingdom of Cumbria is as well authenticated as any other portion of early Scottish history. Fordun is unduly depreciated: he committed many errors, and adopted many fables, but he used materials which are now lost. Higden, also, contains much curious matter, not now extant in its original shape. It is evident, that though Strath Clyde and Cumbria were sometimes noticed separately, yet they constituted but one state, being the "*Cumbria inter Angliam et Scotiam sita*," the "*Parochia Cumbrensis*," the "*Regio Cumbrensis*," of which the Scots had possession. It was treated as a principality, and governed according to its peculiar usages and laws; and this appears clearly by the evidence of the *Inquisitio Davidis*. After the Conquest, the name was more generally applied to English Cumberland. Upon the government of Cumbria by the

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Eocha, whose name is softened and fashioned by the chroniclers into "Eugenius," or "Owen," soon afterwards appears, together with Constantine, in the most memorable battle of Brunnaburgh, when the Reguli of the north endeavoured to cast off their dependence upon the Anglo-Saxon monarch^a. Athelstane triumphed in this great conflict; yet, instigated by the Danes, the Scoto-Cumbrian kings continued their struggles, and laboured to release themselves from the Saxons, being assisted in this attempt by the Danes, with whom they appear to have been closely allied. Indeed, the Celtic nations of North Britain, amongst whom the Scandinavians were implanted, were almost amalgamated into one people with the invaders^b.

Donald, the son of Eugenius, rebelled, like his father, but he sustained a more signal punishment. The victory gained by Edmund placed the country, which he had wasted and depopulated, entirely in his power. In this expedition the King of Wessex was aided by the forces of Llewellyn of Demetia. And though the sword of a vassal, like Llewellyn, was to be unsheathed at the behest of his superior, without any restraint of feeling, even if he had been called upon to attack a prince of his own race, yet as the Cumbrian monarch was of Scottish blood, and not a Briton, this circumstance diminishes one of the harsh features of a war conducted with more than usual ferocity. The young sons of Donald were blinded, a savage punishment inflicted upon them for the contumacy of their father. The "perfidy of the Cumbrians," by which we can only understand the violation

Scottish kings, Macpherson (*Inquiry*) may be consulted; and although critical accuracy is not to be expected from the editor of *Ossian*, still his work may be perused with advantage.

^a Sim. Dunelm., *Hist. Eccl. Dunelm.*, c. 25.

^b Fordun, lib. iv. c. 22. Northumbriæ quidem gentes et Cumbriæ, Scotis et Danis jamdiu fideliter tanquam una gens conglutinatæ, libentius sibi quam Anglis subjici curabant. [Indeed, the races of Northumbria and Cumbria, who were already faithfully united with the Scots and Danes, as if they were one people, were more willing to be subject to them (i.e. the Scots and Danes), than to the English.] Eric, the Danish King of Deira (see Part II., *Proofs and Illustrations*, p. 592), was married to the kinswoman of St Cadrœe, and St Cadrœe was a kinsman of Donald (*Vita S. Cadrœe, ut supra*). We cannot collect the exact degree of affinity between the Danish queen and the Scoto-British prince, but it shews the alliance between the families. Aulaf the Dane was the son-in-law of Constantine.

Part I.
Ch. XIV.

937, 938.
Eocha, or Eugenius, with Constantine, and other kings of the North, in the great battle of Brunnaburgh, in which they are defeated by Athelstane. (See II., pp. 375, 619, 626.)

945.
Donald, son of Eugenius, rebels against Edmund, is defeated, his sons are blinded by the victor, he escapes, and dies a pilgrim at Rome.

Part I.
Ch. XIV.(See II., pp.
358-361.)

of their oaths of fealty, or such oaths as King and People had rendered to Edward when they chose him for their "Lord and Father," and became his vassals, was the cause of the hostility. Donald himself escaped the vengeance of the conqueror. That he was present in person in the fatal battle, is rendered highly probable, from the rude monument which yet bears his name^a. But Donald's life would scarcely have been spared by that hand which inflicted so severe a punishment upon his progeny, had he fallen into the victor's power; and accident, or good fortune, if good fortune it can be called, enabled him to reach the threshold of the apostle, where he died a penitent and a pilgrim.

The transactions which ensued, afford a most important insight into the policy of the Anglo-Saxon empire. Edmund was now master of the vacant throne, and he might have retained possession; but it was more politic to restore the crown to the Scottish family or line. The monarch of Britain acted as a Roman emperor might have done; the "Limitanean land" was to be received as the price of defence against a neighbouring enemy. Cumbria was regranted to Malcolm of Scotland, as a Benefice; upon condition that he should co-operate with the King of Wessex by sea and by land, and most particularly against the Danes. This engagement, as usual, was ratified by the oath of fealty. The Scottish chroniclers add, that the rule of succession established by Constantine, received a new sanction from the compact of the monarchs. Indulf, the son of Constantine, and the designated successor of Malcolm, was appointed King of Cumbria; Malcolm, however, continued as the mesne lord of the country; and the homage and fealty which Indulf also performed, and which were to be repeated upon each change of Lord and Vassal, were to be considered as the means of ensuring his aid against the Danes,

Cumbria granted by Edmund to Malcolm, King of Scots, upon condition of military service. Malcolm transfers the kingdom to Indulf (afterwards King of Scots), the Tanaist, according to the rule of succession established as before-mentioned. (See II., pp. 378-381.)

^a *Dumnail-raise*, a cairn by the side of the highway, leading from Keswick to Ambleside, and standing on the boundary between the modern Cumberland and Westmorland (Nicholson, vol. i. p. 149). The English authorities all speak of the grant to Malcolm. From Fordun (see Part II., *Proofs and Illustrations*, pp. 381, 384) we become acquainted with the cession to Indulf, who seems also to have repeated the oath which had been taken by his father, a statement which is not in the slightest degree inconsistent with the brightest narratives. Donald is also called Dumnail, Dunvallo, Dunwallon, and Dunail. The punishment inflicted upon the sons of Donald is mentioned only by Florilegus, as quoted in the *Proofs*.

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Part I.
Ch. XIV.

Malcolm III. of Cumbria surrenders the kingdom to his grandson, Duncan, but without withdrawing his due fealty to Ethelred. (See II., p. 408.)

Duncan, Regulus or King of Cumbria, refuses allegiance to Canute, whom he considers as a usurper of the English crown. (See II., p. 417.)
1032. Canute marches against the Cumbrians and Scots, and reduces them to obedience. (See II., p. 417.)

Duncan submits to perform homage to Canute.

Upon the accession of Duncan, as King of Scots, Cumbria passes to Malcolm Canmore (see II., p. 417), his son, and heir apparent, according to the rules of lineal succession which now began to obtain amongst the Scots.

1056. Malcolm Canmore, after having been expelled by Macbeth, restored to the possession of Lothian and his rights as King of Scots, by Edward the Confessor (see II., p. 424), retains Cumbria in his own

and, construing the refusal as an infraction of the oath of fealty, he wreaked his vengeance by wasting the country possessed by the contumacious and disobedient vassal. Notwithstanding this hostility, Malcolm did not consider that the ties between Cumbria and its paramount sovereign were dissolved. When he surrendered the kingdom of Cumbria to his grandson "the gracious Duncan," without soliciting the previous consent of Ethelred, he did not contend that he was exonerated from the necessity of obtaining the sanction of his superior; circumstances alone excused him; and it was alleged, that he was withheld merely by the difficulty of traversing the territories occupied by the Danes, or peopled by the revolted subjects of Ethelred, who, to the faithlessness of the rebel, added the ferocity of an enemy^a.

Duncan refused to Canute the homage which he would have rendered to Ethelred. Summoned to acknowledge himself the vassal of the Dane, he is said, by the Scottish chroniclers, to have denied that the intrusive monarch had any right to the supremacy, which was to be claimed only by a king of English blood. Canute asserted his legitimacy by the last argument of kings. Returning from his pilgrimage to Rome, he led a most powerful army against the Cumbrians and the Scots. Malcolm, espousing the cause of his relative, came forth to meet the invader. Canute obtained the advantage in the war; the country was ravaged, but a pacification ensued, and his success did not impose any additional burden upon Duncan, who agreed, for himself and his successors, to yield to the Dane, and the future Danish kings, the fealty which hitherto had belonged to the line of Cerdic, and to perform the conditions by which the kingdom had been hitherto held: consequently, when Duncan acquired the Crown of Scotland, the Benefice, or *Læn*, of Cumbria was bestowed upon Malcolm Canmore, his son, who was recognized as the heir to the crown, not, indeed, according to the ancient custom, but pursuant to the doctrine of lineal succession, which was now beginning to be adopted in the Celtic communities.

When Malcolm, by the aid of his superior, Edward the Confessor, was restored to the possession of Lothian, and to his rights as King of the Scots, it appears that he retained Cumbria in his own possession. This was entirely in consistency with the new theory of royal succession. The claim of a Celtic Tanaist

^a Fordun, *ut supra*.

was no longer acknowledged, and Malcolm himself had, as yet, no child, to whom the Benefice could descend.

Upon the Conquest of England, Malcolm, imitating the example of his father, refused to acknowledge the title of a strange king. Malcolm, betrothed or married to the Princess who represented the family of Cerdic, and the protector of the Anglo-Saxon exiles, at last declared war against the Norman. Hostilities were carried on with vigour and ferocity; but after a long and protracted conflict, the forces of William overcame his adversary. Homage was performed by Malcolm at Abernethy, and this act must be construed with relation to the other territories held by him, and which had been included in the ancient kingdom of Bernicia, for the Scottish vassal did not obtain a restitution of Southern Cumberland, which the policy of William intended to convert into the boundary and defence of his newly-acquired realm.

Strath Clyde and the dependencies of Strath Clyde beyond the Solway and the Kershope, which divided the country now usually called Scotland from England, continued to be held by the Scottish kings. Whether they were or were not in possession of Cumberland in England, this portion was still nominally considered as the Cumbrian kingdom. The state policy of this conduct is obvious. The right was asserted to the whole, just as the valleys of Navarre, beyond the Pyrenees, continued to be viewed as the ancient realm by Henri Quatre and his successors, though they were despoiled of the larger portion of their inheritance; and when the Scottish monarchs performed homage to the Kings of England, in those general terms which afforded a temporary satisfaction to the contending parties, the submission was sufficient to cover their claim for the whole kingdom or principality.

I shall not attempt to investigate the steps by which the districts included in Strath Clyde gradually lost their identity and peculiar government, and merged into the Scottish lowlands. It is sufficient to observe, that Cumbria^a, when held by David,

^a David was styled "Cumbrensis Regionis princeps" [prince of the Cumbrian region]. In this capacity he caused (about 1116) an "inquest," or inquisition, to be taken concerning the possessions of the bishopric of Glasgow, many of which had been usurped. This proceeding, according to the ancient usages, was made in a great assembly of those persons who constituted the supreme court of legislature,

Part I.
Ch. XIV.

hands, he having no children at that time, and the law of Tanistry being disused.

Refuses to acknowledge William the Conqueror.

1072. Malcolm performs homage to William the Conqueror at Abernethy (see II., p. 629), but does not obtain a restitution of Cumberland or Southern Cumbria.

Strath Clyde, and those portions of Cumbria beyond the modern boundary of Scotland, i.e., the shires of Dumbarton, Renfrew, Lanark, &c., in possession of the Scottish monarchs, considered as the Cumbrian kingdom, and generally bestowed upon the heir apparent, or upon some younger branch of the royal family.

1118. North or Scottish Cumbria, or Strath Clyde, &c., still considered as a distinct state, when

Part I. the son of Malcolm Canmore, was still, in all respects, a distinct
Ch. XIV. commonwealth. The Cumbrian Judges and "wise men" were
 convened before their "Prince," and the boundaries of the ancient
 kingdom are faintly traced on the last authentic record of its
 history.

held by
 David, son
 of Malcolm
 Canmore,
 and brother
 of Alexander,
 then King
 of Scots.
 (See II.,
 p. 622.)

1152-1165.
 "Wallen-
 ses" a
 distinct race
 in the reigns
 of Malcolm
 the Maiden
 and William
 the Lion.

Wallenses of
 Strath Clyde
 a barbarous
 race. John,
 Bishop of
 Glasgow,
 afraid to
 accept his
 charge, on
 account of
 the ferocity
 of his flock.

The foundation or re-establishment of a cathedral at Glasgow was accompanied by an influx of Saxon inhabitants from the neighbouring Lothian. Yet the Britons, though pressed on every side, and slowly commingling with other tribes, continued to inhabit the land of their forefathers. In the charters of the Scoto-Saxon kings, the "Wallenses" are addressed as a distinct race^a, and are enumerated amongst the five nations who dwelt in the Cumbrian diocese. Governed in a manner analogous to the other clans of the north, we may conclude that they retained their "heads of lineages" until these chieftains were gradually confounded with the feudal nobility of the predominant state and people. Civilization, however, made but slow progress in Strath Clyde. John the Monk, when nominated to the see of Glasgow, attempted to fly to Jerusalem, to escape his preferment, so much was the pastor appalled by the ferocity of his flock; and loth and unwilling, he was compelled to accept the dangerous charge^b. Great and inordinate vices are said to have prevailed amongst them. The promiscuous intercourse between the sexes had not been corrected by the introduction of Christianity. In this respect the Scoto-Pictish inhabitants of Galloway were not less culpable,

such as it was, of the country. In this document the bishopric of Glasgow is described as the bishopric of Cumbria, but the inquiry was confined to those provinces of which David was in possession; *terras ecclesiæ Glasguensi pertinentes, singulis Cumbriæ provinciis, quæ sub dominio et potestate ejus erant, inquirere fecit, non enim toti Cumbrensi regioni dominabatur.* [He caused inquiry to be made concerning the lands belonging to the church of Glasgow in every province of Cumbria which was under his dominion and power, for he did not rule over the whole region of Cumbria.] The *Inquisitio Davidis*, is contained in the Cartulary of Glasgow, and has been published several times, but its topography yet needs much illustration.

^a The charters of Malcolm IV., and William the Lion, his successor, concerning the payment of tithes in the bishopric of Glasgow, are thus addressed; *Francis et Anglis, Scottis, Wallensibus et Galweiensibus*, *Cart. Glasg.* pp. 203, 205. Gibson, p. 226. [To French, and English, Scots, *Welsh*, and men of Galloway.]

^b *Inquisitio Davidis*; Pinkerton, vol. i. p. 517.

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Continue

Part I.**Ch. XIV.**

As such, it was frequently held by the Scoto-Saxon monarchs. They never surrendered their rights, or, in other words, their duties, as liegemen of England, for these and other domains; and Cumberland was from time to time restored to them by the justice or policy of the English sovereigns, until the reign of Alexander, after which it never was severed from the English crown.

With the exception of Carlisle.

Carlisle was always excepted from these grants. The city and the territory of fifteen miles in circuit had become English by Ecgfrid's donation, and probably was always held, either by the Kings or Earls of Bernicia, or of Northumbria. Little further is known concerning "merry Carlisle," the seat of Arthur's chivalry. Until the reign of William Rufus, this city, desolated by the Danes, was almost void of inhabitants. William completed the restoration of its walls and towers, which his father had begun. The Burgh was garrisoned by the vassals whom the king introduced, and the surrounding country, which had relapsed into waste, was settled by the peasantry, who, with their families and stock, were removed from the south, for the purpose of tilling the deserted, though not ungrateful, soil.

William Rufus plants a colony of 'Ceorls' from the South, in and near Carlisle. Reasons for supposing that they were the inhabitants of the townships thrown into the New Forest. (Sax. Chron.)

The practice, so common in Asia, of removing whole communities of cultivators to gratify the cupidity, or serve the policy of the sovereign, was not infrequent in Europe during the middle ages. In this instance it was, perhaps, the consequence of another act of despotic power. From what source was this population supplied? Whence were they expelled? William would have ill consulted his own interests, if he had withdrawn the villeinage from the royal demesnes which supplied the consumption of his Court, and increased the revenues of his Exchequer. Even the "Red King" would not have dared to rob his Barons of the tenantry annexed by law and custom to the glebe which they held as their inheritance; and I suspect that the original domicile of the "churls," whom he thus transplanted from the south, is discovered in the tracts, from whence they had been expelled by his father, to afford free range for the wild deer of the forest: and where Tyrrel's glancing arrow transfixed the heart of the hated tyrant.

Memorials of the existence of the ancient British population of Cumbria,

In those portions of ancient Cumbria which were detached from the main kingdom, such as the land beyond the Ribble, and the shire of Westmorland, it is probable that most of the superior landholders were of Anglo-Saxon or Danish race, mixed, perhaps, with the Britons, but reckoning themselves as

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Englishmen. And it seems, also, that the Danes had partly blended themselves with the ancient population. The topography of Cumberland, and the adjoining districts^a, still affords many reminiscences of the Celtic age. British traditions yet linger in the land. Pendragon Castle reminds the traveller of the fabled Uther. The lakes and streams and mountains retain some of their pristine appellations; and Helvellyn and Skiddaw rise as the sepulchral monuments of an entire nation which has passed away.

Part I.
Ch. XIV.
names of
mountains
and
rivers, and
traditions.

^a Gibson's Camden, p. 1002. It has been remarked by Thoresby (Ducatus Leodensis, vol. i. p. 212), that in Yorkshire the names of towns and villages are generally Saxon; the rivers, and the woods into which the natives retired, retain the British names, though mostly compounded with a Saxon word or name, as *Coit Berton*. Sometimes the Saxon is only a translation from the Celtic, e.g. *Dour-water*. In Cumberland and Westmorland some of the Cumbrian mountains have a double name, one of Celtic, and the other of English origin.

CHAPTER XV.

Britons of Cambria, or Modern Wales and the Marches—Nature of the Country—its early subjection to the Saxons—British Bishops convened by the authority of Ethelbert, the Bretwalda—gradual retrocession of the Britons—Kingdoms of Gwent, Brecheiniog, &c.—Conquests of Edwin, and of Offa—great part of Powys subdued by the latter—Offa's Dyke—Egbert reduces the Britons—Roderick the Great divides Cambria between his sons—explanation of this division—Welsh Kings, the Vassals of Alfred, of Edward the Elder and of Egbert—Tribute rendered by the Welsh—other obligations of the Welsh Princes—they appear at the Court of the Bretwalda, and submit to its jurisdiction—oaths of fealty taken by them, involving the performance of military service—State of the British Population subject to the Anglo-Saxon supremacy—its density—Britons of the Marches—Hereford considered to be in Wales—Exeter, how occupied by the Britons, or Welsh, and the English—Britons of the West—compact between the English and British inhabitants of Damnonia, or Devonshire.

Part I.
Ch. XV.

Cambria or Wales. Country of the "North Welsh," or "Mediterranean Britons." Nature and boundaries of the country.

ABOUT the ninth century we begin to obtain a more distinct view of the "Mediterranean Britons," whom the Saxons usually called the "North Welsh,"^a or the inhabitants of modern Wales, and the adjoining Marches. *Cambria*, according to the traditional geography of the Britons, comprehended the country beyond the Severn and the Dee^b, by whose streams this portion of Britain was separated from *Lloegria*, the name which the Cymri now usually apply to England. Climate has been supposed to possess much influence upon forms of government. Possibly, this opinion may be fanciful or erroneous; but it is certain that the physical conformation of a country affects its early policy. In those rude ages, when the road cannot be carried up the mountain steep,

^a See above, p. 339.

^b Llwyd may be consulted for the authorities relating to the division of the island into *Cambria*, *Albania* and *Lloegria*.

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Part I.
Ch. XV.

bore his name; and hence it appears, that the Cymri still possessed a considerable extent of territory in the west. Yet who called the Prelates together? did they not obey a Saxon king? and if we give credit to Bede, we must admit that they were subjected to Ethelbert of Kent, the Bretwalda, by whose authority the synod was convened.

Some few stages of the retrocession of the Britons may be indicated. Farinmail, King of *Gwent*, is enumerated amongst the sovereigns who yielded to the power of Cuthwulf and Cuthwine. Contracted, in later times, to the modern shire of Monmouth, the kingdom of *Gwent* appears originally to have included a considerable portion of the *Hwiccian* territory, also called *Magesetania*. Conquered by the English, some time before the reign of Offa, this state, almost unknown to the chroniclers, became a kingdom held under the supremacy of Mercia by princes of the Mercian line, and who, bearing the title, sometimes of Kings, but more generally of "Subreguli," attained a considerable degree of pre-eminence and power^a. Other parts of *Gwent*, however, continued in the possession of the Britons. The donations made to St. Oudoceus, or to the church of Llandaff, have preserved the memory of many sovereigns of *Gwent* and the adjoining regions, such as Brecheiniog, or Brecknock; and the recurrence of the names of "Augustus" and "Constantine," indicates the reminiscences of the empire.

appellatur, Bede, lib. ii. c. 2. [Augustine, using the aid of King Ethelbert, called to his conference all the bishops and teachers of the nearest British province, to the place, which, to this day, is called in the English tongue *Augustinaes Ac*, that is, Augustine's oak, on the border of the *Hwiccas* and the West Saxons.] Supposed to be the prelates of Llandaff, St. Asaph, or Llan Elwy, St. Padarn (afterwards annexed to St. David's), Bangor, Chester, Hereford or Fferegs, and Worcester. The Archbishop of Caerleon upon Usk is thought to have absented himself, lest he should prejudice his metropolitan privileges. This enumeration, however, is somewhat hypothetical.

^a For the succession of these princes, see Part II., *Proofs and Illustrations*, pp. 512-518. I extend *Gwent* to the Severn, upon the authority of Carte (vol. i. p. 202), but the ancient geography of Cambria can only be satisfactorily elucidated by those who are acquainted with the British genealogies, and who are able to locate the different sovereigns. Many of the Llandaff charters have been printed by Dugdale. Their authenticity is unquestionable. Their agreement in language and form with the Breton charters is very remarkable.

(See above, p. 334.) Kingdom of *Gwent* first conquered by the Mercians, in which they establish the kingdom or state of the *Hwiccas*, or *Magesetania*. (See II., p. 512.)

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Whilst Northumbria prospered, the Cumbrians suffered greatly from the hostility of the Anglian monarchs. After the victories which Ethelfrith obtained over the Northern Britons, their kinsmen in Cambria felt the keenness of his sword. The capture of the "City of Legions," was long lamented by the Britons; and amongst the kings of English race, no one, as we are told by Bede, gave equal extent to the English power. Edwin was equally successful; every British state acknowledged his empire; the Menavian Islands, the Northern and the Southern Mona were subdued by him. From the colonies which were transplanted into "Mon Môn Cymri," the isle acquired the name which it still bears amongst us, of Angles-ey, though the English themselves afterwards disappeared again amongst the original Celtic tribes.

Part I.
Ch. XV.

(See II.,
p. 564.)
Chester
taken by
Ethelfrith.

Conquests of
Edwin.

Mercia rose to power upon the decline of Northumbria, and the Mercian Angles emulated the enterprises of the Northumbrian kings. The states collectively entitled *Mercia*, or the *Marches*, appear, from circumstances which will be afterwards noticed, to have always contained a very considerable admixture of British population. The Mercian kings were, perhaps, connected with the British race—at least the British names appearing in their genealogies^a afford ground for this presumption—and Penda, in alliance with the British Ceadwalla, had defeated the Northumbrian king. These circumstances might tend to facilitate the conquests of the descendants of Creoda. Offa, the "terrible Offa," as he was denominated by the Britons, brought all his forces against the inhabitants of the kingdom, which, according to a nomenclature perhaps of later origin, we must denominate Powys. The greater part of the fertile territory between the Severn and the Wye was subdued by Offa. The Britons bear testimony to victories untold by the Saxon chronicler; and the British harp yet resounds with the sweet and plaintive melody^b, which laments the slaughter of their ancestors, who fell beneath his glaive. The royal seat of the Princes of Powys, who, like their kinsmen in the north, asserted their descent from the Roman Maximus, was removed from Pengwern, now Shrewsbury, to the Halls of Mathraual. A rampart, extending from Chester to the Wye, became at once the boundary and defence of the conquests, and

Formation
of the king-
dom of
Mercia, or
the Marches.

(See below,
pp. 386, 387.)

Offa; his
victories
over the
Britons.
Conquers the
greater part
of Powys;
casts up a
great
fortification
(Offa's Dyke,
or *Clawdh
Offa*) which
separated his
acquisitions
from the
British
territories.

^a *Mervin*, for instance.

^b The well-known air of "*Morva Rhuddlan*." Caradoc, King of Gwynedd, was slain in this battle, fought about 792. (See Part II., *Proofs and Illustrations*, p. 486.)

Part I.
Ch. XV.

the name of "Clawdh Offa," given to this fortification in common speech, by the Cymri at the present day, comes in aid of the evidence, almost contemporary, by which it is assigned to the Mercian king^a.

The attempts made by the Britons to deliver themselves from the empire of Egbert contributed to accelerate their subjugation. His armies advanced as far as the fastnesses of Snowdon. The Welsh chroniclers inform us that he possessed himself of an important territory in the vicinity^b, and the final reduction of Chester, the "City of Legions," which, at an early period, had been already occupied by the English, completely separated the Britons of Gwynedd from the Cumbrian realm^c.

The sovereigns of the Cymri continued to reign in Cambria; and, whatever irregularities may have taken place in the succession, the primeval families retained their sovereignty. Yet it cannot be asserted that the British princes were ever really independent of the Saxon crowns. That, in the days of Ethelbert, they were subjected to the Bretwalda, has been shewn. The terms employed by Bede, in speaking of the empires of Ethelfrith and of Edwin, imply the most absolute dominion; and though the latter lost his life in conflict with the Britons, the war arose from the "rebellion" of the stubborn Ceadwalla, who sought to restore the independence of his nation, but who ultimately succumbed to the power of the Saxon enemy. And Egbert, though they resisted bravely against his power, compelled the unwilling Britons of the north to submit to his supremacy.

During the reign of Egbert, an important alteration took place in the British government; the Cambrian kingdom was severed into the sovereignties of Gwynedd, Deheubarth, and Powys, in pursuance, as it is said, of the division made by Roderick the Great amongst his three sons, Anarawd, Cadel, and Mervyn, who respectively took these principalities. With the title of "*Brenyn Cymry Oll*," or King of all the Cymri, the first, Anarawd,

^a See Asser, as quoted in Part II., *Proofs and Illustrations*, p. 486, and Giraldus Cambrensis, de Illaudabilibus Walliæ, c. 7.

^b The Commot of Rhyvonioc, in Denbigh. (Wynne, p. 24.)

^c Egbert, according to Wynne's Caradoc (p. 26), laid siege to "Caer Lleon âr Dhyffrydwy," or Chester, which had *hitherto* remained in the hands of the Welsh; as I have before observed, Ethelfrith (Bede) seems to have occupied Chester in 613, yet the Britons probably recovered the city again.

800-809-811.
Egbert; his
armies advance
as far as
Snowdon, he
conquers the
commot of
Rhyvonioc in
Denbigh, and
ultimately
reduces the whole
of the country.
(See above,
p. 381.)

Subjection of
the British
princes to the
Anglo-Saxon
kings. (See
above, p. 380.)
(See II., p. 565.)

809.
Subjugation of
the Britons of
the North (i.e. of
Wales), by
Egbert.
(See II., p. 344.)

Roderick the
Great, 843-
876,
divides the
superiority
of Cambria
between his
three sons.

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Part I. years of the reign of the last legitimate Anglo-Saxon king, the
Ch. XV. power of the liege lord placed his dependents upon the throne.

1063, 1064.
 Blethyn and
 Rhywallon
 appointed to
 be kings of
 the Welsh;
 became the
 vassals of
 Edward the
 Confessor.
 (See II.,
 p. 425.)
 Tributes
 rendered by
 the Welsh to
 Egbert and to
 Athelstane.
 (See II., pp.
 345, 366.)

From almost the earliest period that can be traced, such sub-
 jection was accompanied by the payment of tribute. It may,
 indeed, be inferred, that any prince who acknowledged the
 authority of a Bretwalda, contributed to supply his treasury;
 but with respect to the "Welsh" we possess decided evidence of
 this token of subjection. The tribute imposed by Egbert upon
 the "North Welsh"^a is stated in general terms. Athelstane
 increased this ancient burden to an amount which had hitherto
 been unexampled. Twenty pounds weight of gold^b, and three
 hundred pounds of silver, were to be transmitted yearly into
 the "hoard" of the Anglo-Saxon king. Twenty-five thousand
 beeves were to be driven annually into his pastures. And, in
 addition to these stores of wealth, the King was gratified by the
 fleetest hounds and the keenest hawks which a nation of hunters
 could present to their superior.

Amount of
 tribute as
 stated in the
 Welsh
 authorities
 (see II., pp.
 392, 427, and
 the text of
 the Laws of
 Hoel Dda,
 III. 2. § 1).

The tribute
 of wolves'
 heads.

According to the laws of Hoel Dda, the tribute which the
 "King of Aberffraw" was bound to yield to the "King of London"
 was fixed at sixty-three pounds, to which the whole territory of
 Cambria was assessed. This, though smaller in amount than
 under Athelstane, was still a sufficient proof of dependence; and
 we may praise the candour of the Cymri, who have not attempted
 to deny the incontestable truth—a truth which neither disgraces
 them nor their descendants—that, compared with the English,
 they were the weaker community. The war begun by Edgar
 for the purpose of enforcing the payment of this tribute is said,
 by the Welsh, to have been terminated by his acceptance of three
 hundred wolves' heads, which, in the course of three years,
 entirely cleared the country of these noxious animals^c. It is
 difficult to avoid the supposition, that such a payment partakes

^a i.e. the inhabitants of modern Wales (see above, p. 339).

^b According to Knighton (p. 2321), two hundred pounds of gold.
 This writer, though recent, and often fabulous, appears sometimes to
 have had authorities now lost.

^c Ludvalo, Regi Wallensium, edictum imposuit, ut sibi quotannis
 tributum trecentorum luporum pensitaret, quod cum tribus annis
 fecisset, quarto destitit, nullum se ulterius posse invenire professus,
 Malm. lib. ii. c. 8, and Wynne's Caradoc, p. 51. [On Ludval, King of
 the Welsh, he imposed an edict, that he should pay him every year a
 tribute of 300 wolves' heads, and, when he had done this for three
 years, he ceased in the fourth, saying that he could find no more.]

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more of the character of popular tradition than of historical fact. **Part I.**
 The English chroniclers represent the command as a newly invented **Ch. XV.**
 tax, an additional burden, and not a commutation. And, in
 fact, whether the tale of Edgar be true or not, the promise of
 rendering the "ancient and accustomed tribute" due to the
 English kings, was repeated by the Welsh princes, in the very
 last years of the Anglo-Saxon monarchy.

1064.
 Promise of
 the Welsh
 princes to
 pay the
 accustomed
 tribute.
 (See II., pp.
 426-428.)

A sum, equal in amount to one year's tribute, was exacted
 when the "King of Aberffraw" received possession or seisin of
 his kingdom from the hands of his superior; according to legal
 phraseology, we may fairly describe this as a relief^a; in the
 Cymric law it is denominated the payment made by the vassal
 or tributary prince, and the same payment which the King of
 Aberffraw thus rendered to the Sovereign of Britain, was demanded
 by him, from the princes amongst whom the Cambrian kingdom
 was divided.

The obligation of an "Under-King" of the Welsh was con-
 firmed by the usual oath of fealty. He would be faithful in all
 things to his superior, truly and without deceit; and aid or
 co-operation was to be rendered by sea and land. It is probable
 that the obligation of military service was not often enforced.
 Secret treachery is more perilous than open enmity, and the
 "King of London" might very willingly dispense with the military
 services of a nation, whose inborn hatred towards the Saxon was
 not to be quenched by treaties, or restrained by words or forms.
 Yet, on one important occasion, we know that Llewellyn fought
 in the ranks of Edmund, his lord and sovereign; and the con-
 quest of the Cumbrian Britons was effected by the aid of the
 Demetian king.

"Under-Kings"
 of the Welsh
 take the oaths of
 fealty, and engage
 to "aid" their
 Anglo-Saxon
 superior, i.e.
 to perform
 military service.
 (See II., pp. 425
 -428.)

Military service.
 Llewellyn, King
 of Demetia,
 performs military
 service in the host
 of Edmund,
 whom he assists
 against the
 Cumbrian
 Britons.
 (See above, p. 369,
 and II., p. 379.)

The Cymric "Under-Kings," as the vassals of the "Defender"
 Cymric or
 Welsh Reguli

^a *Mechdeyrn ddyled*, i.e. the *dyled*, the obligation or duty of the
 Mechdeyrn, or Mactiern (see above, p. 346). Dr. Owen Pughe explains
 it as the *tribute* due from an inferior prince to his sovereign. "Thus, ac-
 cording to the ancient constitution of Britain, we find, in a particular
 period, that the Kings of Scotland, Wales and Cornwall, paid such
 a tribute to the Crown of London; and they claimed the like homage
 from their respective tributaries." But Wotton, with more pre-
 cision, considers it as the *relief* or *single* payment, made upon obtaining
 seisin. *Summa pecuniæ summo Regi solvenda, ab illo cui provinciam
 tradiderit, Leges Wallicæ, p. 578.* [A sum of money to be paid to
 the chief king, by him to whom he had delivered the province.]

It is

times to

for three
 or more.]

Part I. of the Britons, the "Superior" of the British sceptres, performed
Ch. XV. suit and service in the supreme assemblies of the English legis-

lature. In the capacity of vassals, we find them sitting amongst the other peers of the empire; yet, in one instance, we observe a Witenagemot convened by Athelstane, and attended by no other laymen, except the British Subreguli, a circumstance which may induce the supposition, that, on some occasions, the temporal legislature, if assembled by the Sovereign in his character of the "Ruler of the Britons," might be composed merely of the subordinate chieftains of the Cymric tribes.

The vassals who thus appeared at the court of the Anglo-Saxon sovereign were liable to the jurisdiction of the tribunal. If a contest arose between them, concerning the right to the territories which they held, the dispute was decided by the judgment of the Witan of the King of Britain, and thus the "Full council" of Edward, King of all Britain, upon the demand of right made before them by Morgan, the Prince of Brecknock, compelled Howel the Good, the legislator of his own people, to surrender the lands which he had usurped contrary to law and justice.

The Triads^a accuse the treacherous Lloegrians, who are said to have confederated with the enemy; and in the earlier ages of the Anglo-Saxon conquests it is very probable, as is affirmed by these traditionary memorials, that the British population who continued to dwell beneath the enemy's sway acquired the language and manners of the prevailing race. In the latter periods, the Lloegrian Britons appear to have existed, either as distinct communities, intermixed in townships amongst the victors, or, as a distinct people in larger territories, divided from the tracts inhabited by their Saxon lords; and, in all cases, they were probably much more numerous than is usually supposed. Upon the inference to be drawn from the proportion of words common to the Anglo-Saxon and Cymric languages, I will not rely. At least one third of the roots of our English vocabulary may be found in the Welsh; but this agreement may have resulted from the earlier intermixture of the Belgic tribes; or it may be merely one of the vestiges, always becoming clearer as we ascend in history, of the primeval unity of the races of mankind. But we can produce other indications of the density of the British population. In the reign of Cenred, the hermit of Croyland might

attend the Witenagemots of the Basileus. (See II., pp. 372, 386.)

Athelstane holds a convention or Witenagemot attended by no other laymen except the British Subreguli. (See II., p. 375.)

Jurisdiction of the court of the English Kings over the British princes. Hoel Dda compelled to restore the commots of Ystradwy and Ewias to Morgan Hên, by the judgment of the court of Edward the Elder. (See II., pp. 363-365.)

Britons of Lloegria amalgamate with the Saxons.

Proofs of the density of British population.

^a Probert's Translation, p. 376.

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Part I. integral portion of an Anglo-Saxon realm, was still the dwelling-
Ch. XV. place of the primeval population of Britain.

When the "Wealh" were few in number, they may have been dispersed amongst their rulers: but the more numerous masses of Cymric population lived apart from the Saxon colonies. When we are told that the Britons and the Saxons divided Exeter between them, we are not to suppose that they lived in the same street, and that a Saxon townsman kept house by the side of a Cymric neighbour. Judging from invariable analogy, we cannot doubt but that the two races were severed from each other; each forming a distinct community, an English town and a Welsh town, English Exeter and Welsh Exeter; just as the Celtic population of the "Irish town" of Kilkenny constituted a corporation distinct from the "Sassenach" intruders^a; and, to return to England, in many of the townships of the Welsh Marches, analogous divisions continued almost within time of memory^b.

British population of Exeter. (See above, pp. 341-342.)

The compact between the English and Welsh *Deunetas*¹, or inhabitants of Devon.

The Cymric or Welsh inhabitants of "Deunan," probably of that part of Devon which lies beyond the Exe, enjoyed a considerable share of independence; and the compact between the "Witan" of the "Angle-cynn," and the "Rædboran" of the Welsh, was effected upon terms of reciprocal equality. Individuals of either race were prohibited from entering into the territory of the other, except under such warranty as insured the peaceful departure of the stranger. The legal rights of the two communities were strictly guarded; and disputes arising between the plaintiffs and defendants of the two nations were to be decided by a court of twelve "Lawmen," six English and six Welsh, the representatives of the respective communities^c. And it may be observed, that the principle which suggested this dimidiated tribunal, was generally adopted in our border law.

The tenour of the compact fully implies, that the Welsh were subject to the dominion of the crown of Wessex. They were bound to render tribute; and hostages also, when hostages were

^a See Ledwich, *Antiquities of Ireland*.

^b Thus the lordship of Talgarth, like many others under the Lords Marchers, was divided into English and Welsh, each division had a Court each for the respective nation. (Jones, *History of Brecknock*, vol. i. p. 124.) This example arose later than the Saxon times, but the principle is one of universal application.

^c See Part II., *Proofs and Illustrations*, pp. 330, 446, 447, and Wilkins, p. 125.

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required. It is probable that they retained many of their old laws and customs and tenures. But they had now no Ruler of their own, and they are directed to observe the enactments of Edgar, in the same manner as the English; whilst the Danes and East Anglians receive the law through the medium of the Earls, the chieftains of their communities. They had, therefore, no political existence apart from the general government of "Saxonia"; and the "Wealh Gerefafa" was most probably the officer, by whom the King's dues were collected, and his commands enforced, amongst the dependents of his crown.

Part I.
Ch. XV.

(See II.,
p. 408.)

The Wealh Gerefafa (see II., p. 445), the officer by whom the king's dues were collected from the Britons.

All these facts will afford much matter for reflection, and convince us of the great difficulty of penetrating into the real history of nations. Read the chroniclers, and it will appear as if the Britons had been entirely overwhelmed by the influx of Teutonic population: and it is only by painful and minute inquiry, that we ascertain the existence of the subjugated races, concealed amidst the invaders.

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CHAPTER XVI.

Scots and Picts—subdued by the Angles—Dominion of the Northumbrian Bretwaldas, Edwin, Oswald and Oswio—Pictish succession deduced through the female line—probable origin of this custom—Picts attempt to throw off the authority of Ecgfrid—are reduced by him—retrocession of the English power upon the death of Ecgfrid—Eadbert subdues the Picts and Scots—Kenneth Mac Alpin becomes King of both nations—the Picts are gradually extinguished and absorbed amongst the Scots—Edward the Elder—extent of his Empire—the Scots accept him as their “Father and Lord”—Athelstane—Constantine, King of the Scots, performs homage to him—attempts to throw off his allegiance—compelled to submit—Battle of Brunnburgh—grant of Cumbria to Malcolm—Oath of Fealty exacted by Edred—Transactions between Edgar and Kenneth—the latter obtains investiture of Lothian, to be held by Homage, Suit of Court, &c.—Kenneth attends the Witenagemot of Edgar—Kenneth repeats his homage to Edgar at Chester, together with the other Subreguli or Vassals of the Anglo-Saxon Crown—Canute enforces the Scottish homage—Malcolm Canmore restored to the Crown of Scotland by the aid and command of Edward the Confessor—Progress of the Scoto-Saxon Kingdom.

Part I.
Ch. XVI.

DURING the calamitous period when Britain was falling away from the Empire, the Saxons appear as the assailants of the Romans and Romanized population, in conjunction with the dreaded Picts and Scots of the north. A union so formed, cannot, however, be considered as a national compact. It was a temporary confederacy between the chieftains of ferocious tribes eager for rapine; and dissolved when the chance of plunder had ended. The alliance did not, in the slightest degree, restrain the Jutes from afterwards opposing an impenetrable obstacle to the savage inroads which had been so recently facilitated by their kinsmen. Of the warfare which took place between the Angles and the Picts, no memorials are preserved. But the rude valour of the uncivilized Britons was as little able to resist the invaders,

The Saxons, the allies of the Picts and Scots, when these nations invaded the South of Britain, A.D. 367, 430. (See above, pp. 319, 320, 322.)

Picts, Britons who had not become Romanized. (See above, pp. 349, 350.)

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Part I. a specification of her rights in case of divorce. The female was
Ch. XVI. literally bought of her relations, and marriages seldom or never
 took place until the intended husband had become fully secure
 of progeny^a. The Scots and Attacotti were condemned to a
 promiscuous intercourse which St. Jerome ennobles by viewing
 it as an imitation of the Utopian republic of the Grecian sage^b.
 In the Picto-Scottish kingdom or province of Galloway scarcely
 any sexual restraint was imposed upon the people, even after the
 introduction of Christianity^c. I do not wish to impugn the
 character of the more recent of the British princesses. But the
 Picts retained their canon of inheritance, after the original reason
 of its adoption became a matter of less frequent occurrence than
 in the elder day. Alliances with other nations, which we cannot
 positively affirm to have been matrimonial, were permitted,
 perhaps encouraged. Ethelfrith having been defeated and killed
 by Edwin of Deira, his son Eanfrid took refuge amongst the Scots
 and Picts. Amidst these nations did he and his brethren, and
 the many noble youths who accompanied the princes in their
 flight, reside, so long as Edwin continued to occupy the throne
 of Deira^d. During this exile, Eanfrid became the father of
 Talorgan, afterwards king of the Picts. Talorgan was, therefore,

Eanfrid, the son of Ethelfrith, takes refuge amongst the Scots and Picts. Becomes the father of Talorgan, King of the Picts. (See II., p. 626.)

^a Matrimoniorum autem onera, nisi expertis antea cohabitatione, commixtione, morum qualitate, et præcipue fœcunditate, subire non solent, Cambrensis, de Illaudabilibus Walliæ, p. 450. [But they are not accustomed to undergo the burdens of matrimony, unless beforehand they have tested their cohabitation, their intercourse, the quality of their manners, and especially their fecundity.]

^b Ep. 83.

^c Vita Sancti Alredi (the Abbot of Rievaulx), Capgrave, 12.

^d Tempore toto quo regnavit *Æduin*, filii præfati Regis *Ædilfridi*, qui ante illum regnaverant, cum magna nobilium juventute apud Scottos sive Pictos, exulabant. Qui ut, mortuo Rege inimico, patriam sunt redire permissi, accepit primus eorum, quem diximus, *Eanfrid*, regnum *Berniciorum*, Bede, lib. iii. c. 1. [The whole time that *Edwin* reigned, the sons of the aforesaid King *Ethelfrith*, who had reigned before him, were exiled among the Scots or Picts, with a great number of the youth of the nobility. Upon the death of the king, their enemy, they were permitted to return to their native country, and *Eanfrid*, the eldest of them, whom we have mentioned above, obtained the kingdom of the *Bernicians*.] Bede did not confound the Picts with the Scots, but they were so intermixed, that the *mass* of people might be called by either name.

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the nephew of Oswio; and it cannot be doubted, but that the relationship between the Picts and the Angles must have strengthened the authority of the Bretwalda. Other similar intermixtures with the Britons can be surmised.

Part I.
Ch. XVI.

(See above,
p. 391.)

We may speculate correctly upon the connexion between national morals and national prosperity, and the easy subjection of the early Celtic tribes may be traced to the degradation produced by such a state of society. The nation lost its coherence, and if, as is most probable, the vices of the Gallovingians prevailed to as great an extent amongst the Picts, their depravity would assist in breaking up the nation, and in preparing the way for the final extinction of their race and name.

In the reign of Ecgfrid, the Picts, impatient of the Anglian superiority, made a great effort to withdraw themselves from the dominion of the Northumbrian king; but Ecgfrid led his army against them; the rivers were filled with the dead; and we are told, that the servitude, under which the Picts were now placed, continued until his demise^a. Ecgfrid's death was occasioned by a rash invasion of the Pictish country. Advancing into "Pictland," he was defeated by the wily prudence of his enemies. They retreated before him until they had entangled him in the mountain passes of Drum-Alban, and he fell in the conflict. The Picts recovered a portion of their territory which had been occupied by the Angles and the Scots^b. The Bishop of the Picts, appointed by the authority of the Prelate of Canterbury, retired with his monks of the monastery of Abercorn, in the "vicinity of "the firth which divides the Picts from the Angles," and Alfred^c,

670.
Picts rebel
against
Ecgfrid (see
above, p.
364.)

Retrocession
of the power
of the Angles
after the
death of
Ecgfrid.

^a See Part II., *Proofs and Illustrations*, p. 571.

^b See Part II., *Proofs and Illustrations*, pp. 573, 626.

^c Bede, lib. iv. c. 26. Ex quo tempore spes cœpit et virtus regni *Anglorum* fluere ac retro sublapsa referri. Nam et *Picti* terram possessionis suæ quam tenuerunt *Angli*; et *Scotti* qui erant in *Brittannia*; *Brittonum* quoque pars nonnulla libertatem receperunt; quam et hactenus habent per annos circiter quadraginta sex; ubi inter plurimos gentis *Anglorum* vel interemptos gladio, vel servitio addictos, vel de terra *Pictorum* fuga lapsos, etiam reverentissimus vir Domini *Trumuini*, qui in eos episcopatum acceperat, recessit cum suis, qui erant in monasterio *Aebbercurnig*, posito quidem in regione *Anglorum*, sed in vicinia freti, quod *Anglorum* terras *Pictorumque* disternat. [From that time the hopes and strength of the *English* crown began to fluctuate and to retrograde. For the *Picts* recovered their own lands which had been held by the *Angles* and the *Scots* that were in *Britain*; and some of the

Part I. the brother of Egfrid, succeeded to a diminished, and, as it was
Ch. XVI. considered, an inglorious empire^a.

757-758.
 Picts and
 Scots, sub-
 jects of
 Eadbert.
 (See above,
 p. 365.)

(See above,
 p. 367.)

Eocha, King
 of the Scots,
 married to
 Urgusia, a
 Pictish
 princess by
 whom he has
 Alpin.

Kenneth,
 son of
 Alpin,
 subdues the
 Picts, who
 are united to
 the Scots.

Eadbert was enabled to raise again the standard of North-umbria. The Scots and Picts obeyed him as their Lord: and the latter as the allies, or rather the subjects, of the Northumbrians, assisted him in reducing the British kingdom of Strath Clyde or Cumbria; whose capital, Alclud, yielded to the united forces of Unnust and Eadbert: and, as has been before noticed, it is doubtful whether the Britons did not, for a time, become subjected or united to the Pictish kingdom. Eocha, King of the Scots, became the husband of the Pictish Princess, Urgusia, and her rights devolved upon her son, Alpin^b. Whether a nearer heir existed; or whether a more powerful competitor occupied the throne, the right of Alpin was not acknowledged by his mother's people: and his defeat and death in Galloway transferred the empire of the Scots to the Pictish nation. But the fatal term of the Picts was approaching; a speedy alteration of fortune was at hand; Kenneth, the son of Alpin, leading forth the Scots from Argyle, established himself as Monarch of both nations, and obtained an authority which he transmitted to his descendants. An expression^c implying a total defeat of the Picts

Britons recovered their liberty, which they have now enjoyed for about forty-six years. Among the many *Angles* who then either fell by the sword or were made slaves, or escaped by flight out of the country of the *Picts*, that most reverend man of God, *Trumwine*, who had been made bishop among them, withdrew with his people *who were in the monastery of Abercorn, which, indeed, is situate in the country of the Angles, but close by the strait which divides the lands of the Angles and those of the Picts.*] This very important passage leaves no doubt as to the boundary of the Pictish territory. For the appointment of *Trumwine*, see Bede, lib. iv. c. 12.

^a Will. Malm., lib. i. p. 21.

^b This opinion, maintained by Chalmers, vol. i. p. 332, seems to have been generally preferred by the Scottish antiquaries. Pinkerton (vol. ii. p. 133), however, suspects or supposes that Alpin was the son of Eogannan or Uwen, King of the Picts.

^c It occurs in the Pictish chronicle, *Pictavia autem a Pictis est nominata, quos ut diximus, Kinadius delevit.* [Pictavia, however, receives its name from the *Picts*, whom, as we have said, *Kenneth* destroyed.] The other scanty authorities indicate an occupation of the Pictish territory. He reigned, "expulsis *Pictis*," Chron. Eleg. *Hic mira calliditate duxit Scotos de Argadia in terram Pictorum,*

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Part I. established in Caithness and Sutherland; and, perhaps, these
Ch. XVI. Gothic invasions contributed to the downfall of the Pictish state.

But unsparing as the hostilities of the pirates may have been, the universal feeling of enmity towards the Anglo-Saxons contributed to reconcile the Scandinavians and the Gael. Their rulers intermarried. The Danish chieftains of York were at once the kinsmen of the Scottish sovereigns and of the British kings of Strath Clyde^a: so that all the people of the north were coalescing into one family.

Period during which the superiority of the Anglo-Saxons over the Scots was suspended.

We have seen that the dominion of the Northumbrian Bretwaldas comprised all the nations and languages of Britain. Eadbert possessed the same authority over the Scots as his predecessors; but when the Anglo-Saxons were struggling for their very existence against the Danes, could their supremacy be maintained? Alfred, if he did not abandon the pretensions of his predecessors to the sovereignty of the island, may have been unable to assert his full rights: and during his reign, no transactions, either of hostility or friendship, are recorded to have taken place between him and the monarchs of the Scots in Britain. After the renovation of the kingdom of Wessex, Alfred's son was more ambitious or more successful. Edward, without gaining the direct and absolute sovereignty of the territory inhabited by the Scottish tribes, reduced them to dependency. Like the Britons of Strath Clyde, the Scots—king and people—commended themselves to the “invincible Edward,” accepting him as their sovereign, their lord, and their father, and the homage which they performed to the king of Wessex rendered them the liege-men of his crown^b. The Scots renewed this compact with his successor, and Constantine was “ruled” by Athelstane, even as the other Kings of this island. But Athelstane's title was dubious. Born of an ignoble mother, his right had been disputed: a competitor had challenged the succession: Athelstane's wisdom might be famed, but his prowess was as yet untried, and all the kings and races who dwelt in Albania and the north—Britons and Danes—the Cymri and the Gael—united in attempting to cast off his authority. Raising all his forces, Athelstane attacked Constantine with a mighty army. By land he wasted the country as far as “Dunfoder” and “Wertermere.”^c His fleet sailed to

Edward the Elder, Lord and Superior of the Scots.

924. The King of the Scots accepts him as his “Father and Lord.”

Athelstane, Superior of the Scots, whose King, Constantine, is “ruled” by him. (See II., p. 366.)

Confederacy of the nations of the North against Athelstane.

934-Constantine defeated by Athelstane.

^a See above, p. 369.

^b See Part II., *Proofs*, pp. 358, 626.

^c Places unknown¹, perhaps Wertermere should be Westermere, the Western Sea, or Frith of Clyde. (Pinkerton.)

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the shores of Caithness. The territories peopled by the Scots and Picts were occupied by the English; and, if Athelstane's ambition had been equal to his power, he might have annexed the whole country to the dominions which he ruled. But the victor deemed it more glorious to respect a fallen monarch, than to occupy his throne. The desolated territory was restored to the Scottish King. For insuring the engagements of Constantine, his son accompanied Athelstane to Wessex as a hostage; gifts and tribute conciliated the conqueror or his counsellors; Constantine, the vassal or "subregulus" of Athelstane, resorted to his court; and the Scot, as a faithful liegeman of the empire, assented to the acts and legislation of the monarch of all Britain^a. Scarcely had the compact been completed, when the Scots rose against the Saxon king: but their "rebellion" only increased his triumph; and the great battle of Brunnaburgh reduced them again into subjection.

Part I.
Ch. XVI.

Submission of Constantine to Athelstane. Constantine attends the Court of Athelstane as a Subregulus. 937, 938. Battle of Brunnaburgh. (See above, p. 369.)

The bond which compelled the Scots to acknowledge the supremacy of the "Basileus" of Britain, insured his protection; and it is probable that the connexion thus formed was the cause which induced Edmund, when he had conquered the Cumbrian kingdom, to grant the territory to Malcolm, a successor of Constantine, upon condition of military "co-operation" or service. The oath of fidelity was again renewed by Malcolm^b to Edred. It may be contended that this engagement was merely contracted in respect of Cumbria. Malcolm, as it is said, invaded "Anglia" as far as the Tees^c, and such predatory incursions may be viewed as acts of hostility against the English crown, inconsistent with allegiance. But these districts were frequently held by Danish chieftains; and the Angles of Northumbria were constantly rising against the line of Cerdic. We can point out the country against which Malcolm directed his attacks, but we know not the parties whom he assisted, and we cannot decide whether these forays should be described as struggles *against* the paramount King of Wessex, or diversions in *favour* of his authority. Whoever might be the sufferer, "Saxony"—as Bernicia was called by

945. Cumbria granted by Edmund to Malcolm of Scotland, to be held upon condition of military service. (See above, p. 369.)

946. Oath of fealty from the Scots exacted by Edred.

^a See Part II., *Proofs and Illustrations*, pp. 366 et seq.

^b See Part II., *Proofs and Illustrations*, pp. 384 and 627.

^c Prædavit Anglicos ad amnem *Thesis*, Chron. Pict. [He raided the *Anglic territory* as far as the river *Tees*.] The chronicle adds, some say that Constantine, who had resigned the crown, asked for a week's foray. The whole story is of little importance, and it is only noticed in order to answer the difficulty which it may suggest.

Part I.

Ch. XVI.

953-961.

971.

971.
Lothian
granted to
Kenneth by
Edgar, to be
held by
Homage,
Suit of
Court, &c.
(See II., pp.
398, 399.)

(See above,
p. 394, note c
to p. 393.)

the Gael—continued exposed to the incessant ravages of the Scots; the reign of Indulf was signalized by the acquisition of Edinburgh, the city of Edwin, which, abandoned by the Saxons, was occupied by the Scots, and ever afterwards separated from the direct dominion of England^a; and Kenneth possessed some real or supposed claim to Lothian¹, or the northernmost portion of the English territory. The tie of feudal allegiance, when the system was fully matured, could not always deter a vassal from entering the field against his lord, and therefore we need not doubt the dependence of Kenneth upon the Saxon crown, because we find him engaged in a war against the chieftains of Northumbria. Kenneth was endued with great military prowess, and the success which enabled him to carry off a “Saxon” prince, perhaps the son of one of the Dano-Saxon earls, rewarded his intrepidity^b. But the force which sufficed to desolate, was inadequate to insure possession of the country; and the fame of Edgar’s generosity induced Kenneth to seek the protection and favour of the English king. Kenneth repaired to the presence of Edgar. According to the king’s command, he was honourably escorted to London, by Alfsi, the bishop, and by Oswulf and Eadulf, the earls of Northumbria^c. Edgar received his visitor with hospitality and honour. Kenneth now preferred a claim to Lothian. He prayed that the territory might be restored to him: for the kings of the Scots, as he asserted, were entitled to the same by hereditary right. This pretension has been considered by some writers, as founded upon an hypothetical occupation of the province by the Picts. But from the testimony of Bede we are assured that the Firth was the boundary which divided the English from the Pictish territory.

Edinburgh, as before mentioned, had been in the possession of the Scots since the reign of Indulf, who probably owed the acquisition to the depopulation effected by the Northmen. A further part of the Lowlands may have been gained at the same time by the Scots when they occupied the Burgh, and afterwards lost in the wars with the Danish rulers of Northumbria. But the source of this obscure claim is of little importance, since the main historical fact is sufficiently disclosed. Kenneth petitioned

^a See Part II., *Proofs and Illustrations*, p. 627. ^b Chron. Pict.

^c For the manner in which an equivalent escort or array was secured to Malcolm’s successor, William, see the charter of Richard I., Part II., *Proofs and Illustrations*, p. 656.

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Part I. was renewed when Edgar assembled the subregūli of the empire
Ch. XVI. at Chester, to grace his triumph on the Dee. Kenneth appears
 as the first of the train of vassal kings. He is followed by his
 nephew, Malcolm of Cumbria, and Maccus, the pirate king of
 Mona and the Isles; by the princes of Galloway, and of the
 Cymric tribes. They then took the oath of fealty, and entered
 into the obligation of military service, or of being the *co-operators*
 of their lord by sea and land: on the following morn, the eight
 vassals plied the oar, whilst Edgar steered the bark, upon the
 waters of the Dee^a; and though the homage may have been more
 specially rendered by Kenneth for Lothian, yet the dependence of the
Ceancinnith upon Edgar, extended the superiority of the Basileus
 over the whole race, whose chieftain bent before his throne^b.

974. Ken-
 neth repeats
 his homage
 to Edgar at
 Chester,
 with the
 other
 Vassals of
 the English
 Crown.

Kenneth, by
 the fore-
 going trans-
 actions,
 becomes
 Lord or Earl
 of Lothian.
 Further
 cession or
 confirmation
 made by
 Eadulf
 Cudel, Earl
 of North-
 umbria.
 1020.

1033. Canute
 subdues
 the Scots.
 Malcolm and
 the other
 Scottish
 Kings
 perform
 homage to
 him.

By virtue of these transactions with Edgar, Kenneth became
 the undisputed lord or earl of Lothian, now permanently dis-
 membered from the rest of Bernicia. A further grant of territory
 is said to have been made to his son Malcolm, by Eadulf, the
 cowardly earl of Northumbria^{c1}. But this cession possibly
 related to a border country, perhaps a portion of the Merse²,
 or some other districts of the Lowlands not included in the
 Lothian granted by the Anglo-Saxon sovereign; or it may have
 referred to some right or claim which the earl asserted over the
 dismemberment of the earldom, notwithstanding the investiture
 thus made by the king.

^d The rebellion of the Scots, as it is termed, and which drew
 down upon them the vengeance of Canute, was speedily followed
 by the submission of Malcolm, and of two other kings, who are
 described by the obscure, and perhaps corrupted, appellations of

see until 972." Surely this acute critic might have pardoned the loss
 of an iota, even if the constant variations as to the mode of reckoning
 the current year, did not excuse the discrepancy.

^a See Part II., *Proofs and Illustrations*, p. 399.

^b According to Flores Hist. the grant of Lothian was made after
 the homage at Chester; in this case Kenneth performed homage
 absolutely as King of the Scots.

^c See Part II., *Proofs and Illustrations*, p. 627.

^d In the reign of Ethelred the Scottish Prince refused to contribute
 to the Danegeld tribute (see Part II., *Proofs and Illustrations*, p. 407),
 but his homage was duly performed, and there is no reason for supposing
 that the theory of the Scottish dependence was disturbed. True it is
 that they refused to acknowledge the Danish conqueror; but he was
 not a legitimate king.

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Mælbæthe^a and Jehmarch. They performed homage, and became the men of the Dane, who effected a total subjugation of the Scottish race and country^b. Part I.
Ch. XVI.

The last transactions between an Anglo-Saxon monarch and the Scots, are those, perhaps, which display most clearly the relations between the two crowns. Edward the Confessor is celebrated, in the ode which laments his death, as the “exalted Ruler of Heroes, the Lord of the Britons, the Welsh, and the Scots,”^c and the authority of the most pacific of our English monarchs was never disputed by his vassals. The Scottish throne had been usurped by Macbeth, to the prejudice of Malcolm, the son of Duncan, the regulus of Cumbria. The obligations of lord and vassal were mutual; Malcolm was therefore fully entitled to claim the aid of Edward, nor was the claim denied. A fleet and army despatched by the Confessor, under the command of Siward, Malcolm’s uncle, advanced to the north, and the result of the expedition enabled the Earl of Northumbria to obey the behest of his sovereign. Malcolm was appointed king of the Scots, pursuant to the commands of Edward, and from his lord he received investiture of “Scotland,” to hold under the Anglo-Saxon crown^d.

Malcolm, by the aid of Edward the Confessor, is placed upon the Scottish throne. The kingdom of Scotland given by Edward to be held of him.

Malcolm, a wise and energetic prince, fully availed himself of the advantages which he possessed. By the acquisition of Lothian, the character of the dominion of the monarchs, whom we may now term Scoto-Saxon, sustained a total change. Malcolm governed this portion of English Bernicia according to the maxims of the Anglo-Saxon monarchy. He was lord of the soil, and was acknowledged as ruler of the Saxon people. The frequent changes of dominion which the Bernicians had sustained since the Danish invasions, probably rendered the

Progress of the Scoto-Saxon kingdom.

Malcolm Canmore entitled to govern Lothian as a feudal Lord, or territorial Sovereign,

^a Probably Macbeth.

^b See Part II., *Proofs and Illustrations*, pp. 415–417.

^c See Part II., *Proofs and Illustrations*, p. 628.

^d As a fief; the expressions of the original authorities (see Part II., *Proofs and Illustrations*, pp. 424–425) entirely warrant the assertion, *Siwardus Malcolmum, ut Rex jusserat, regem constituit. Rex Edwardus Regnum Scotiæ dedit Malcolmmo de se tenendum.* [*Siward appointed Malcolm as King, as the King (Edward) had determined. King Edward gave the Kingdom of Scotland to Malcolm, to be held of him.*]

Lothian is thus called in the Pictish chronicle (see Part II., *Proofs and Illustrations*, p. 614). It is hardly necessary to observe, that the Lowlanders are only known as “Sassenach” by the Gael.

Part I.
Ch. XVI.

while his authority over the Gael, his own people, was merely personal as a Ceanninnith, or Chieftain by blood or lineage (see above, p. 57), an authority which did not give him any right to be considered as a territorial sovereign.

inhabitants of Lothian indifferent to the lineage of their sovereign; and the preservation of their laws and customs reconciled them to Scottish authority. Beyond the boundaries of "Saxony" and Strath Clyde, and in relation to his own people, the patriarchal power of Malcolm had not received any augmentation. The Gael obeyed him as their chieftain by blood: he was their Ceanninnith, the head of their lineage, and they revered him for his ancestry, but they did not therefore recognize him as the supreme proprietor of the soil of the dales which depastured their cattle, or of the hills and streams which protected and surrounded them. Nor, indeed, was it until the latest periods of the Scottish monarchy that the king can be said to have acquired the entire territorial dominion of the Highlands and their dependencies. Hence, the separation of Scotia and Lothian, subjected it is true to one king, but separated in jurisdiction and laws^a; and still more dissevered by opinions, customs, manners and language^b. The Gael bore the most inveterate hatred towards their "Sassenach" fellow-subjects; and the Teutonic inhabitants of the coasts and plains, the descendants of the English Northumbrians, regarded their enemies with equal contempt and horror. They despised the rudeness of the Celts, and dreaded their ferocity^c.

^a The chief proofs of this assertion may be seen in Chalmers, vol. i. p. 258.

^b Thus, in the reign of Alexander II. there was a Justiciar of *Scotland*, and a Justiciar of *Lothian*. The boundary of Scotland in the twelfth century was still the Firths. "In Renfrewshire there is a proverb, *out of Scotland into Largs*, the Clyde being the southern boundary. In early ages, whoever crossed the Firth, and landed on the opposite shore, went *out of Scotland into Largs*." See Chalmers, vol. i. pp. 258, 368, 372. I apprehend that Lothian and the Lowlands first acquired the name of *Scotland* from the English, who, ignorant of the internal divisions of the country, would designate as *Scotland* all the territory appertaining to the Scottish king. Instances of this kind of inaccuracy, if, in strictness, it can be deemed inaccuracy—for it is nothing more than an ellipsis—are very common. An extreme case is found with respect to Gibraltar: the common people of the neighbouring parts of Spain give the name of *Inglatierra* to that garrison.

^c Scotichr., lib. ii. c. 9. Not contented with his own vituperations, the worthy chronicler adds as much evidence in aggravation as he can find in Isidorus and Solinus. He bears a very unwilling testimony to

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404 *The Rise and Progress of the English Commonwealth*

Part I. as the Scots themselves had been subjected to the Basileus or the
Ch. XVI. Bretwalda. In all these points of view, the ancient "kingdom
of Scotland" possesses great interest: and beyond the Tweed
we shall, perhaps, often find the most clear and instructive
vestiges of the policy once prevailing in Anglo-Saxon England.¹

&c. as the
Bretwaldas
had done.
(See Chap.
XX.)

CHAPTER XVII.

The Carlovingian Empire—Explanations of the ancient Anglo-Saxon Government afforded by the Carlovingian Institutions—Influence of Charlemagne on the affairs of Britain—His transactions with Offa—His interference in the affairs of Northumbria—Egbert takes refuge in Gaul before his accession to the Empire of Wessex—Opinion of the Chroniclers, that Egbert was instructed in the art of good government during his exile—Theory of the Empire—Imperial dignity bestowed upon Charlemagne, when the succession of the Empire failed in the person of Irene, upon the assumption that Christendom should always be united under one temporal Head against the Infidels, or Heathendom—Carlovingian Empire not created by an amalgamation of the States included therein—Each State retained its own Laws and Constitution—Feudality, formed by the union of the Roman Beneficiary System and the Teutonic usages of Antrustionship or Vassalage—Alterations sustained by the Roman system when adopted by the Barbarians—Homage and Fealty—Vassi—Chivalry, deduced from the ancient custom of Military Adoption—Examination of various Theories relating to the Origin and Progress of the Feudal System—Right of Inheritance in Benefices or Beneficiary Honours—not absolute, but dependent upon the condition that the homage or commendation should be renewed upon each change of Lord or of Vassal—Alienation of Benefices, effected by resignation into the hands of the Superior—Territorial dignities amongst the Franks—their compound character arising from the Patriarchal authority of the ancient ruling Castes or Families united to grants of delegated or official Dignities, and to the conversion of the Lands occupied by the Clans or Tribes into Benefices, held by the Chieftains as a Patrimony—Application of this Theory as a solution of the difficulties attending the hereditary quality of territorial dignities—Tassilo, Duke of the Bavarians—His History and Adventures—Elucidations afforded thereby—Establishment and Diffusion of the Principles of Feudality—

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Ch.
XVII.

and consequences of the extension of those Principles—General Assemblies of the Frankish Nation—the Champ de Mars, or Champ de Mai—their decline—Annual Gifts to the Sovereign, equivalent to a regular Taxation of the Vassi—General Placita—Their composition—The Clergy—Ecclesiastical Councils held concurrently with the Assemblies of the temporal Legislatures—Legislation upon Petition—Qualified concurrence of the People—Laws made by the Ordinance of the Sovereign and the consent of the People—Legislation of the dependent Nations exercised in the Mallum—Writs of Summons—Capitula transmitted to the subordinate Legislatures, in order that they might be adopted as Laws—Representation of the People—The Scabini—The Provinces of France not to be considered as dismemberments of the Monarchy, but as States which had retained their original Franchises—The Estates of the Provinces deduced from the Legislatures of such ancient States and Populations—Examples thereof—France under the Third Race aptly designated as a species of confederation.

Part I.**Ch.****XVII.**

Administra-
tion and
organization
of the Carlo-
vingian
Empire.

Explanations
of the ancient
Anglo-Saxon
Constitution
afforded
thereby.

ALTHOUGH the general government of the Anglo-Saxon empire has not passed unnoticed in the preceding pages, yet the investigations hitherto contained in this work have been principally directed to the administration of the laws, and to the particular history of the communities composing the Anglo-Saxon realm. On many points, the reader will already have begun to form his opinions; and the relations existing between the dependent sovereignties and the crown of the supreme sovereign, or "Basileus," have been presented with sufficient distinctness. But in order to obtain a more definite idea of the dominion possessed by the sons of Cerdic, it will be necessary that the inquirer should pause, until some consideration shall have been given to the coeval policy and organization subsisting in the most influential state of the middle ages, the Carlovingian empire.

Subsidiary as this essay may be to my main object, there are many reasons which render it the vestibule, if the term be allowed, of our Anglo-Saxon history. Evidence is wanting at home concerning institutions, whose principles, clearly displayed in the muniments of France and Gaul, afford the best commentary upon our own traditional usages and laws. Marculfus¹ can be employed to interpret a Manorial court roll, and the vassi who assemble round the throne of Charlemagne, at Aix-la-Chapelle or Ingelheim, will sometimes aid us in developing the station held

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Ch.
XVII.

fidelity which he bore to Charlemagne, the monarch whose protection replaced him on the throne; and although the expression

after explaining to him the business on which he came, set out for Rome; and on his return from Rome, he is taken back to his own kingdom by the legates of the Roman pontiff and of the emperor. The pope's Legate was *Adulphus*, a deacon from that same *Britain*, a *Saxon* by nation, and with him two abbots were sent by the emperor, *Ruotfridus* the notary and *Nantharius* of *Sithiu*.]

An epistle upon Anglo-Saxon affairs, addressed by Pope Leo III. to Charlemagne, is extant (Bouquet, vol. v. p. 602), in which the pope alludes to the restoration of Eardulf; and from the same document it appears, that the Missus of Charlemagne had been despatched for the purpose of conducting the Northumbrian to Nimeguen.

De autem omnibus bonis et prosperis, quæ circa Missum nostrum, quem in partibus *Britanniæ* ad *Anglorum* gentem direximus, omnia pro amore B. Petri Apostoli fautoris vestri operati estis, sicut solita est vestra Clementia, magnas gratias vestræ pietati exinde agimus: quia semper in solatio sanctæ Dei ecclesiæ, et adjutorio orthodoxæ fidei decertatis. Sed, sicut nobis per vestram honorabilem epistolam insinuastis, quod *Eardulphus* Rex de regno suo ejectus fuisset, jam hoc per *Saxones* agnoveramus: unde maximè ipsum Missum nostrum pro ipsa nequitia illic direximus. Magnum enim gaudium et magna lætitia in corde nostro ascendit pro eo quod vestra pietas misit Missos suos; et vivum eum ad vos usque perduxistis. Et valde de vita ejus delector, quia et *vester semper fidelis extitit*, et ad nos Missos suos dirigebat. Pro qua re vestra imperialis defensio ubique multipliciter resonat, Bouquet, vol. v. p. 602. [But for all the good and kind things you did for our Envoy, whom we sent into the parts of *Britain* to the race of the *English*, all of which were done by you for the love of your patron, Saint Peter the Apostle, as your Clemency is wont to do, we tender to your piety our great thanks, because you always strive to comfort the Holy Church of God, and to aid the orthodox faith. But, as you have informed us by your honourable epistle that King *Eardulf* had been expelled from his kingdom, we had already learnt this from the *Saxons*; and it was especially on account of this wickedness that we sent our Envoy thither. For great joy and great happiness arose in our heart because your piety sent your Envoys, and you brought him alive as far as yourself. And especially I rejoice for his life, because he has *always remained your faithful man*, and also sent his Envoys to us. And so because of this your action the whole world rings again with the protection afforded by your empire.]

I cannot discover the passage from which it has been inferred by

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by which Pope Leo designates Eardulf's allegiance may not fully establish that the Northumbrian had become the hegemon of Charlemagne, yet the transaction evinces the proud extent of the power, if not of the direct dominion, which the Frankish monarch had attained.

At an earlier period, Charlemagne sought to obtain the hand of Offa's daughter for his son Charles. A very friendly intercourse subsisting between the monarchs^a, might well warrant the request; but the Mercian refused, unless Bertha were bestowed upon his own son Ecgfrith, his appointed successor. The demand excited the anger of Charlemagne; and the Frank closed the ports of Gaul against the merchants of Anglo-Saxon Britain^b.

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Ch. XVII.
Charlemagne seeks to obtain a daughter of Offa in marriage for his son Charles. Offa refuses, unless Charlemagne will bestow his daughter Bertha upon Ecgfrith. Rupture between the two potentates.

a learned and acute contemporary, that the opponents of Eardulf consented "to submit the decision of their quarrel to the equity of the Pontiff, Leo III." On the contrary, the pontiff acknowledges, that the restoration was entirely due to the emperor; and Charlemagne was jealous of his authority. Adulph not having repaired to the presence of the emperor, the pope was compelled to apologize in the most submissive manner for the neglect of his representative, and to submit all the correspondence to the perusal of Charlemagne. Et quia propter hoc tam festinanter profecti sunt, ut *Eardulphi* Regis iter Romam prævenire potuissent, omnes epistolas, quæ de partibus illis nobis perlatae sunt, pro vestra satisfactione vobis emisimus legendas, Bouquet, vol. v. p. 603. [And that for that reason they set out so hurriedly in order to anticipate the journey of King *Eardulf* to Rome, we have sent to you all the letters which have been sent to us from those parts, to be read by you for your satisfaction.] In the succession of Northumbria (see Part II., *Proofs*, p. 579) I have said that Eardulf was "supported by Charlemagne, *perhaps* restored by him." The word *perhaps* was inserted in deference to the opinion of a friend, but, upon consideration, I am persuaded that it should be erased.

^a Charlemagne, in his first epistle, informs his *brother* Offa of the victories gained over the Saxons and Lombards. (Bouquet, vol. v. p. 620.) Another accompanies his gifts; silken palls are sent to the cathedral churches of Offa's dominions as an alms for the repose of Pope Hadrian's soul, . . . vestrae quoque dilectioni unum balteum et unum gladium Huniscum, et duo pallia serica. [And for your beloved self a belt and a Hunnish sword and two silken mantles.] Gifts of arms accompanied the ceremony of military adoption (Part II., *Proofs*, p. 782). Were they, in this instance, mere marks of friendship?

^b All this is told in detail in the chronicle of St. Vandrille, or Fontanelle (Bouquet, vol. v. p. 313), and upon the best authority. Gervaldus,

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XVII.

Apprehen-
sions enter-
tained by
Offa, in con-
sequence of
Charle-
magne's
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designs.

Alcuin¹, the Saxon, the friend and confidant of Charlemagne, was despatched^a, as an ambassador, to restore peace between the realms. The very imperfect memorials relating to these transactions display the reciprocal dissensions and jealousies of the two monarchs. Alcuin defends himself against the suspicions which he had incurred; and the earnest assertion that he had never been unfaithful to Offa and the English, indicates the nature of the charge^b. An Archbishop of Canterbury, as Offa

abbot of this monastery, by whom the demand of Offa's daughter was made, had been frequently despatched to the Mercian court by Charlemagne, *multis vicibus, jussione potentissimi Regis Caroli ad præfatum Regem Offam legationibus functus est* [many times he had served on embassies to the aforesaid King *Offa*, by the order of the most powerful King *Charles*]; and this is an important fact, inasmuch as it shews the closeness of the intercourse between the two empires. Perhaps the daughter of Offa was the hateful Eadburgha, who, after causing the death of her husband Beorhtric, proceeded to Gaul and offered herself to Charlemagne. (Asser, p. 11.)

^a This is the opinion of the Benedictine editors: but, perhaps, we should say "*employed*," as it is not entirely certain that he repaired to England in his diplomatic capacity. Alcuin's own expressions are the following: *Nescio quid de nobis venturum fiet. Aliquid enim dissentionis, diabolico fomento inflammante, nuper inter Regem Carolum et Regem Offam exortum est, ita ut utrinque navigatio interdicta negotiantibus cessat. Sunt qui dicunt nos pro pace esse in illas partes mittendos.* [I know not what will become of us. By the instigation of the devil, some dissension has lately arisen between King Charles and King Offa, so that on both sides navigation is forbidden to the merchants and has stopped. There are some who say that we are to be sent into those parts to obtain peace.] Usher places this letter in 795, Mabillon in 790; a portion of it is preserved by Malmesbury. According to the chronicle of St. Vandrille, the closing of the ports was prevented by the mediation of Abbot Gervald. He probably assisted in the negociations; and hence his chronicler gave him all the credit of the result.

^b *Offæ Regi et genti Anglorum nunquam infidelis fui* [I was never unfaithful to King *Offa* and the *English* race], is the expression employed by Alcuin in his epistle (7) to the priest Beornwine. In addressing Offa (Will. Malm. lib. i. c. 3), he takes great pains to impress him with an opinion of the friendly intentions of Charlemagne, *sciat veneranda dilectio vestra quod Dominus Rex Carolus amabiliter et fideliter sæpe locutus est mecum de vobis, et in eo habetis fidelissimum amicum.*

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Anglo-Saxon fugitive was accused of treason against King Offa. It is difficult to avoid looking with a considerable degree of distrust upon the *compassion* entertained by a powerful and ambitious Sovereign towards those who had found a shelter in his dominions, after conspiring against a neighbouring power, and more particularly so, at a period of mutual ill-will, if not of declared hostility. We cannot understand the details of these intrigues: but we must advert to the fact, that amongst the Anglo-Saxon outlaws and fugitives, there was *one*, destined to change the entire fortunes of Britain.

786.
Accession of
Beorhtric,
King of the
West Saxons.
Crown
claimed by
Egbert, who
takes refuge,
first in the
dominions of
Offa, and
afterwards
in Gaul.
(See II., pp.
342, 343.)

Upon the death of Cynewulf, the crown of Wessex was placed upon the head of Beorhtric. The succession was claimed by Egbert. King and pretender were both of Cerdic's race; and Egbert, unable to assert his rights, escaped into Mercia, for the purpose of avoiding the vengeance of his successful competitor. Offa refused to surrender the "rebel"; but Egbert was, nevertheless, compelled to depart from Britain. Gaul became his place of refuge. Here Egbert continued during years of adversity, but not of misfortune. The old chronicler dwells emphatically upon the events, by the course whereof, Egbert was taught and disciplined amongst a people, then excelling all other nations of the west in military policy, as well as in civilization. And thus the future "Bretwalda" "rubbed off the rust of "indolence, and adopted customs, far different from his own "native barbarity."

799-802.
Egbert con-
tinues in
Gaul until he
obtains the
Crown of
Wessex.
Egbert
instructed in
the art of
government
during his
residence in
Gaul, then
considered
as excelling
all other
regions of
Christendom
in
civilization.

There has always been so much sympathy in the political feelings of the European Commonwealth, that the example and pattern of Charlemagne and his Empire would, without doubt, have affected our Anglo-Saxon policy, although Egbert had never visited the dominions of the "Glorious Emperor," or been instructed in the civilization and policy of Gaul^a. The people

Offa for the fugitives, and it is evident that he was the "Dominus" against whom "Umhringsstan" had conspired.

^a *Egbertus transnavigato mari, Franciam venit; quod, Dei consilio, factum intelligo, ut vir ille, ad tantum regnum electus, regnandi disciplinam à Francis acciperet. Est enim gens illa et exercitatione virium et comitate morum cunctorum occidentalium facile princeps. Hac igitur contumelia Egbertus, ut cote, usus est, quæ detrita inertiae rubigine aciem mentis expediret, et mores longe a gentilitia barbariæ alienos indueret, Will. Malm. de Gestis Regum, lib. ii. c. 1. [Egbert, having crossed the sea, went to France; and this, as I take it, came about*

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might have demanded a portion of the care and vigilance which **Part I.** watched over the destiny of the Franks; and the sovereign, **Ch. XVII.** perhaps, even more readily, would have tried to introduce a part of the machinery, which tended to consolidate the royal power. But Egbert's accession seems to have produced a decided and immediate effect. Invested with a dominion equivalent in nature to the empire of Charlemagne, his vigorous mind was enabled to put his *kingcraft* into practice. Had a lesser degree of good fortune attended him, the example of Charlemagne would have been useless to the son of Alchmund. Untaught, he might have been unable to secure his authority. But all requisite conditions coincided in Egbert; and although the history of his reign is reduced to a brief and scanty notice of his victories, we may still, perhaps, discover that the important points of similarity to the Carolingian institutions, discernible in the Anglo-Saxon empire, resulted from the instruction which the royal exile had obtained.

Ambition is readily imputed to the warrior, and the pontiff is easily suspected of ministering to worldly pride, in the expectation of enhancing his spiritual supremacy. Yet it must be acknowledged that the theory, according to which the son of Pepin obtained the Empire, possessed an imposing character of expediency and grandeur. Bestowed for the benefit of the Christian world, the imperial dignity assumed a species of religious aspect. Raised to this high estate, the Emperor appeared as the protector and defender of Christendom. Formed out of the Fourth great monarchy, the states which had replaced the Roman Empire still regarded each other as members of the same community^a. Look to the chronological tables, those easy but delusive means of obtaining the *caput mortuum* of history, and we shall be informed that the Empire of the West was extinguished in the person of Augustulus. But the principle through the counsel of God, so that the man destined for so great a kingdom should learn the art of government from the *Franks*. For that race far excels all other western races in military policy and civilization. And so, *Egbert* used that ill-treatment as a whetstone to rub off the rust of indolence and sharpen the edge of his mind, and adopt customs far different from his native barbarism.]

^a L'ancien empire d'occident étoit toujours, malgré sa dissolution, regardé comme un seul corps politique [The early empire of the West was always, notwithstanding its disintegration, regarded politically as an unit], Sismondi, vol. iii. p. 358, speaking of the empire of Charlemagne: equally true of the Roman empire.

(See Chap. XXI.)

Carlovingian Empire. Imperial dignity bestowed upon Charlemagne, in order that Christendom might be united under one head against Heathendom.

Charlemagne not to be considered, according to the common theory, as the successor

Part I.
Ch.
XVII.

of Augustus, but as created Emperor to supply the failure of the succession in the person of Irene. The Empire, upon its so-called division, held by the Emperors of the East and West as joint tenants, so that upon the extinction of the Western tenancy in the person of Augustus, the entirety survived over to the East.

which had prevailed upon the first division of the imperial authority, still maintained its influence. The administration might be entrusted to many sovereigns as *joint tenants*, yet the Empire constituted only *one* body politic. And this *unity* was admitted even in those provinces where the throne of Constantinople did not possess any real political power. The nations were afraid to confess that the eternal dominion of the Mistress of the world was dissolved. In its decline, the imperial government had been unable to afford any protection to the subjects who were oppressed and ground down by fiscal tyranny: but association seems to impart strength to weakness. A common religion might supply the place of patriotism. An idea began to prevail, that those who were members of one Church, should also form but one civil commonwealth. The barbarians of Germany never persisted in enmity towards the religion of the Empire; but the Prophet of Mecca had raised up a dominion, of which the very essence was perpetual hostility towards the Christian faith. If the "pagan" followers of Mahomet were combined for evil under their Caliph, was it not equally incumbent upon the followers of the Cross to recognize one temporal head, whose mediation might prevent the shedding of Christian blood, and whose power could shield them against the common enemy? It is difficult to trace the progress of opinion, until it is evidenced by overt acts; but the circumstances accompanying Charlemagne's elevation to the throne of the Cæsars sufficiently manifest the existence of these political theories.

Byzantium was defended, not by her lofty ramparts, but by the memory of Constantine. Unworthy as the Greek emperors had been of their pre-eminence, their real insignificance was veiled by the uninterrupted homage rendered to their supremacy. And even the jealousy with which the imperial court watched its ancient titles, and retained its gorgeous pageantry, may have contributed to sustain the tottering throne. The female reign of Irene¹ afforded a plausible pretext for declaring that the imperial succession had wholly failed: an interregnum had occurred. Rome asserted her rights; and her senate, her prelates, and her nobles, acting as the virtual representatives of the Catholic Church, and of the whole Christian world, placed the imperial diadem upon the brows of the Frankish sovereign^a.

Imperial diadem bestowed by the virtual representatives of the Christian world.

^a 801. *Et quia jam tunc cessabat a parte Græcorum nomen imperatoris, et femineum imperium apud se abebant, tunc visum est et ipso*

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Part I. ornaments of Grecian pride. He, who listened with delight to
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Sacerdotum seu Abbatum, et Senatus *Francorum*, et omnes majores natu *Romanorum*, cum *reliquo Christiano populo* consilium habuerunt, ut ipsum *Carolus* Regem *Francorum* Imperatorem nominare deberent, qui *Romam* matrem imperii tenebat, ubi semper Cæsares et Imperatores sedere soliti fuerant; *et ne pagani insultarent Christianis, si imperatoris nomen apud Christianos cessasset.* Ideo justum visum est omnibus, ut prædictus Rex cum Dei adjutorio, *et universo Christiano populo petente*, ipsum nomen imperatoris haberet. Quorum petitionem ipse Rex *Carolus* negare noluit; sed cum omni humilitate subjectus Deo, et petitione sacerdotum universalique populo Christiano in ipsa Nativitate Domini nostri Jesu Christi cum consecratione Domni *Leonis* Papæ suscepit, sicut supra dictum est, Chron. Moissiac., Bouquet, vol. v. p. 79. [A.D. 801. On the most holy birthday of Our Lord, when, at mass before the Confession of the Blessed Peter the Apostle, the King arose from prayer, Pope *Leo*, by the counsel of all the Bishops and Priests, and the senate of the *Franks*, and also the senate of the *Romans*, placed a golden crown on his head, while all the *Roman* people stood by and shouted, “*Life and victory to Charles, the Augustus, the great and pacific Emperor of the Romans, crowned by God.*” And after praises had been sung by the people the Pope also did obeisance to him after the manner of ancient princes. For this also was done by the will of God, for while the aforesaid Emperor was tarrying at *Rome*, certain men gave him information. saying that among the *Greeks*, the title of *Emperor* had ceased, and that a woman held the Imperial title among them, *Herena* by name, who captured her son, the Emperor, by guile and put out his eyes, and usurped for herself the Imperial title, as *Athalia* is said to have done in the book of Kings. When they heard this, Pope *Leo* and all the assembly of the Bishops and Priests and Abbots, and the Senate of the *Franks* and all the elders of the *Romans*, with the rest of the *Christian* people, held a council and decided to nominate as Emperor, *Charles*, the King of the *Franks*, who held *Rome*, the mother of the Empire, where the Cæsars and Emperors had always been wont to dwell: *and so that the Pagans should not insult the Christians, if the title of Emperor should cease from among the Christians.* And so it seemed just to all, that the aforesaid King with the aid of God *and at the request of all Christian people*, should have that title of Emperor. And their petition King *Charles* refused to deny; but with all humility and subjection to God, and on the petition of the priests and the whole *Christian* people, he assumed the title on the very birthday of Our Lord Jesus Christ, with the consecration of *Leo* the Lord Pope as is aforesaid, Chronicle of Moissac.]

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those strains, which are now faintly echoed in the Book of Heroes

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XVII.

The Annales Laureshamenses, which conclude in 803, are contemporary with the events which they relate. It is greatly to be regretted that other chronicles have been so corrected as to deprive them, in part, of the venerable barbarity which best attests the truth of the text. The Chronicle of Moissac, however, is probably of equal antiquity. Let us now compare the originals with a modern version.

Ces acclamations et cette couronne furent considérées comme ayant *renouvelées* l'empire d'occident après une *interruption de trois cent vingt-quatre ans, depuis la déposition d'Augustule*. Si le nom d'empire Romain présentait encore aux habitans de l'Europe, après *une si longue interruption*, des idées de grandeur, et de puissance supérieure, ce n'étoit pas une vaine flatterie que celle qui faisoit renaître le titre d'empereur pour l'attribuer à Charlemagne. Charles, en recevant la couronne impériale, adoptoit en quelque sorte, les souvenirs de Rome, et de l'empire. Il se déclaroit le représentant de la civilisation antique, de l'ordre social, de l'autorité légitime, au lieu d'être plus long temps celui des conquérans barbares qui fondoient tous leurs droits sur l'épée¹, Sismondi, vol. ii. pp. 380, 382.

As it is of great importance to correct the propagation of an erroneous doctrine, sanctioned by illustrious names, I shall venture to remind M. Sismondi, that the common theory of the assumption of the imperial authority by Charlemagne, is entirely in contradiction to the original authorities above quoted, and, indeed, to the facts which he himself discloses. M. Sismondi has shewn that Rome was subjected to the direct dominion of the emperors, under the pontificate of Leo, and Charlemagne was hailed, *not as the remote successor of Augustulus*, but, *as the immediate successor of Constantine V*. No one supposed that the dormant empire was revived. It seemed to fail suddenly by the usurpation of a female; and, upon this emergency, Charlemagne was called to the imperial throne. After his elevation there was but one empire, though held by *joint tenants* as before. He was a rival Co-regent, who had been forced upon the Byzantine emperor, but not the head of a rival empire. The schism of the Greek and Latin churches finally destroyed this theoretical unity.

The form of the inauguration, indicated by the historians who relate the accession of Charlemagne, appears more clearly in the case of Charles le Chauve. Pope John VIII. thus relates the mode of his election or nomination: *Et quia pridem Apostolicæ memoriæ decessori nostro Papæ Nicolao idipsum jam inspiratione cælesti revelatum fuisse comperimus, elegimus hunc merito et approbavimus, unà cum annisu et voto omnium fratrum et co-episcoporum nostrorum atque aliorum Sanctæ Romanæ Ecclesiæ ministrorum, amplique senatûs,*

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Title of
Basileus (see
II., p. 664)
not expressly
assumed by
Charlemagne.

and the Nibelungen-lay^a, disdained to array himself in the effeminate garments of the east, and rarely did he even consent to assume the patrician robe. But in his titles, and still more by his acts, the "glorious Emperor" vindicated his lofty station. His successors took the insignia of the Byzantine court^b; yet, *totiusque Romani populi, gentisque togatæ et secundum priscam consuetudinem, solemniter ad imperii Romani sceptrum proveximus et Augustali nomine decoravimus*, Capitularia Caroli Calvi, VII. p. 695. [And because we have ascertained that that very thing was formerly revealed to our predecessor, Pope Nicholas, of apostolic memory, by the inspiration of heaven, we have elected him deservedly and approved him, along with the assent and vote of all our brethren and fellow bishops and the other ministers of Holy Roman Church, and of a full senate *and of all the Roman people and of all the toga-wearing race*, and, according to ancient custom, we solemnly exalted him to the sceptre of the Roman empire and distinguished him with the name of Augustus, Capitulars of Charles the Bald.]

^a Necnon quæ veterum depromunt prælia Regum,

Barbara mandavit carmina litterulis, Poeta Saxo, lib. v. l. 545.

[And also he committed to writing the barbarous songs which reveal the battles of ancient kings, The Saxon Poet.]

Barbara et antiquissima carmina, quibus veterum Regum actus ac bella canebantur, scripsit, memoriæque mandavit, Eginhard, p. 100. [He wrote and committed to memory the barbarous songs of days long past in which are sung the deeds and battles of kings of old.]

^b *Karolus Rex de Italia in Galliam rediens, novos et insolitos habitus assumpsisse perhibetur: nam talari dalmatica indutus, et baltheo desuper accinctus pendente usque ad pedes, necnon capite involuto serico velamine, ac diademate desuper imposito, Dominicis et festis diebus ad ecclesiam procedere solebat. Omnem enim consuetudinem Regum Francorum contemnens, Græcas glorias optimas arbitrabatur: et ut majorem suæ mentis elationem ostenderet, ablato Regis nomine, se Imperatorem et Augustum omnium Regum cis mare consistentium appellari præcepit*, Annales Fuldenses, Bouquet, vol. vii. p. 181. [When King Charles returned from Italy to Gaul, he is said to have assumed new and unwonted dresses: for clad in a dalmatic reaching to the ankles and girt over this with a belt hanging to the feet, with his head also wrapped in a silken veil, and a diadem placed over it, he was wont to go in procession to church on Sundays and feast days. For despising all the customs of the kings of the Franks, he thought the pomps and vanities of Greece were best, and to shew the excess of his vain-glorious thoughts, he forsook the title of king,

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If the Roman portions of the Carlovingian empire thus assert their national existence, the Teutonic members display still greater autonomy. Confirmed and republished by the Frankish kings, the laws of the Salians, the Ripuarians, the Frisons, the Bavarians, the Alemanni, the Saxons, the Werini, are to be viewed as so many charters, which insured to each of these nations their distinct and several governments beneath the imperial sceptre^a.

Many of these masses of population were ruled by their ancient dynasties; all still possessed those ancient modes of Teutonic government, according to which a substantial share of political power continued vested in the community. But these bodies gravitated towards a common centre, and many causes were in silent operation, tending to increase the power of the crown and to prepare the way for a political union: though centuries elapsed before such incorporation was accomplished and fulfilled.

The earlier annals of the Franks exhibit the sovereign as exerting great, though irregular, authority. However sturdy the subject may have been during peace, the king, as the military chieftain, had assuredly a most influential command during war: and this authority was now acquiring a more fixed and permanent existence by means of the institutions of feudality.

The feudal system was created by the union of Roman laws and barbarian usages. The heterogeneous nature of the elements is not immediately discernible. When we contemplate the venerable structure, we are, in some degree, deceived by the uniform tint which time has bestowed. But a closer examination of the parts will easily enable us to detect their origin, and to

^a The general revision of the Barbarian laws took place in the great Placitum or Council held at Aix-la-Chapelle, 802, concurrently with a synod of the clergy: *Et ipse Imperator, interim quod ipsa synodus facta est, congregavit Duces et Comites, et reliquum populum Christianum cum legislatoribus: et fecit omnes leges in suo regno legere, et tradere unicuique homini legem suam, et emendare ubicumque necesse fuit, et emendatam legem scribere*, Chron. Moissiac., vol. v. p. 80. [And the Emperor himself, at the same time as that synod was held, assembled the dukes and counts and the rest of the Christian people with the legislators: and caused that all the laws in his kingdom should be read, and that his own law should be delivered to each man, that it should be amended wherever it was necessary, and that the amended law should be written down, Chronicle of Moissac.]

Feudal system, founded upon the Roman military system of Benefices; Lætic and Limitanean grants (see above, pp. 292, 295) united to Teutonic usages and doctrines.

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point out how the fragments furnished by the Romans have been built up and cemented, so as to form the fabric of feudality.

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XVII.

Whatever the barbarians copied, whether in art or jurisprudence, they imitated rudely; they worked in coarser materials, and with inferior tools. Under the chisel of the Frank or the Goth, the pillar was deprived of its proportions, the acanthine capital lost its grace, and in all the details of his building the architect tried to be a copyist. But his mind was employed in raising an edifice on a vast and comprehensive plan. The parts adapted themselves into each other, column ranged with column, arch rose upon arch. The resemblance to the prototype becomes more and more indistinct; and the series which begins in the Atrium of Diocletian, or in the Basilica of Constantine, ends in the cloister of Salisbury, or the long-drawn aisles of Notre Dame.

If we assume that the personal relations of lord and vassal were founded upon the customs of the Teutons—not, perhaps, without some Celtic intermixture—but that the tenure of the Beneficiary land was adopted from the jurisprudence of the Lower Empire, we shall, perhaps, obtain a clue by which we may be guided through the labyrinth of inquiry. But in this investigation it is necessary, in the first place, to reject the very popular theory, that the feudal policy of those states, which were founded by the barbarians in the fifth and sixth centuries, resulted from a preconceived plan, or a systematic division of the lands of a conquered kingdom. We have been told^a, that “the king or “general who led the warlike people forth to conquest, and “continuing still to be the head of the colony, had of course the “largest portion allotted to him. Having thus acquired the means “of rewarding past services, as well as of gaining new adherents, “he parcelled out his lands with this view; binding those on

Feudal system.
Personal relation-
ship of Lord and
Vassal founded
upon the Teutonic
Antrustionship
or homage.
(See II., p. 738.)
But the tenure of
the Beneficiary
land borrowed
from the Roman
jurisprudence.

Feudal system ;
popular but
erroneous theory
of its origin
propagated by
Robertson,
Montesquieu, &c.

^a See Robertson's View. The great popularity of this writer renders it the more important to point out his errors. Let it not be supposed that I am writing in the spirit of criticism. His works, by their great merit as literary compositions, created that taste for historical reading which now prevails. But those who follow his footsteps are enabled to correct him, and without any attempt at detraction or rivalry. The theory of the systematic division has been so generally abandoned on the Continent, as well as by our soundest authorities at home, that some of my readers will perhaps think that I am killing the slain: but having been presented to the public in so many popular works, and even very recently, the refutation of this historical heresy becomes expedient.

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“whom they were bestowed to resort to his standard, with a number of men in proportion to the extent of the territory they received, and to bear arms in his defence. His chief officers imitated the example of their sovereign, and, in distributing portions of their lands amongst their dependents, annexed the same condition to the grant.”

Supported by many plausible arguments, and some incontrovertible facts, this opinion is recommended by its simplicity. But the main idea upon which the theory rests, viz. that a feudal state received its peculiar conformation from a regular partition of lands amongst the Teutonic conquerors, at the period when they gained the empire, involves a fallacy by which the whole course of history is subverted. If true, it is true only of Normandy, and of the Norman conquests in Britain and the south; and, perhaps, of those lands won from the infidel, after the system was fully matured^a. In those states which arose upon Roman ground, the process was directly the reverse, and we must consider the feudal form of the whole, as the aggregation of members beneath the protection of a common sovereign. In the same way as the oaths of *obedience* exacted from the bishops of the various Western Churches, gradually rendered these independent communities the subjects of the Roman pontiff, so did the acts of *homage* performed to the temporal sovereign end by combining the parts into one monarchy.

Feudal system could not have arisen amongst the Teutonic nations.

Germ of the feudal system found in the donations of the Lætic and Limitanean lands, and other military benefices of the Romans. (See above, pp. 288–296.)

If the essential character of a feudal Benefice be the possession of land for the life of the grantee—and I may here remark, that no Benefice was ever held for a shorter term—it is clear that the first idea of such endowments could not have arisen amongst the Teutonic nations, to whom any permanent occupation of land was originally unknown. But as the Limitanean and Lætic lands furnish an exact precedent for the system of military tenures, there cannot be any difficulty in admitting that the Franks and other Barbarians merely continued to follow the model which they saw before them: all that they did, was to continue the policy, by which their fathers had become settled within the limits of the empire^b. Can it excite any surprise

^a I allude more particularly to Valencia and Catalonia, and to the Latin kingdom of Jerusalem.

^b For the process by which the Benefice acquired the colloquial name of “Fevd,” see Part II., *Proofs and Illustrations*, pp. 286–288. Additional instances may be given to shew that the terms

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Provinces,
how occu-
pied by the
Barbarians.

Sortes or
allotments
of land to the
Barbarians,
under the
title of
Guests.

This mode
of providing
for the
military
apparently
suggested by
the Roman
law, accord-
ing to which

Empire? The earliest example recorded in history of a Benefice granted by a Barbarian is the donation made by the first Christian monarch of the Franks to a Roman who had passed under his authority^a. Who were the Ripuarian Franks? are there not good reasons for supposing that they were the Limitanean soldiery, who had united into one people with the Teutons, by whom they were surrounded^b?

Be it conceded that the Barbarians took possession of the best and largest portions of the estates of the Romans: yet these acquisitions were not the acts of the nation, but of the individual. The shaggy warrior stalked into the villa, brandishing his battle-axe, and the humbled and appalled patrician, happy to escape from the presence of the unwelcome "*Guest*,"^c vegetated in sullen silence upon the share of the farm, the third or the fourth which he was allowed to retain. But the invention of this mode of compelling the citizen to provide for the soldier, was not entirely due to the Barbarians: they were only able copyists; they

^a Melun, with the government of the adjoining country, was granted as a Benefice by Clovis to a Roman: *Clodoveus...Milidunum castrum eidem Aureliano, cum totius Ducatu regionis jure beneficii concessit, Aimoinus, de Gestis Francorum, Bouquet, vol. iii. p. 38.* [*Clovis... granted the castle of Melun with the Dukedom of the whole region to this same Aurelian, to be held as a benefice.*] Aimoinus lived in the eleventh century, and hence doubt has been cast upon this passage, merely because we cannot find it in some earlier authority. But in other passages it may be seen how literally Aimoinus transcribes from his predecessors. And there is no valid reason for supposing that in this instance he did otherwise than follow some earlier chronicle now lost. The Benedictine Editors of Du Cange consider also that the gift noticed in the following passage is an example of a Benefice: *Et Amo quidem Ebredunensem carpens viam usque Macho villam Avennici territorii, quam Mumolus munere meruerat regio, accessit, ibique fixit tentoria, Greg. Turon. lib. iv. c. 30.* [And *Amo* truly taking his journey towards *Embrun*, arrived at *Macho villa* in the territory of *Avignon*, which *Mumolus* had obtained by the bounty of the king, and there pitched his tent.]

^b Eccard, in his commentary upon the Ripuarian law, maintains this position, and with great plausibility.

^c It was by this epithet that the Burgundians designated the Barbarian who took possession of the allotment which he was said to hold "*jure hospitalitatis*." (LL. Burgund.) This subject has been ably treated by Savigny (vol. i. p. 255, &c.), and Allen (p. 25).

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borrowed the main idea from the Imperial government. When the military appeared in the Roman city, the legionary was thus placed in the dwelling, and one third of the premises was allotted to the *Hospes*, whom no one dared to turn away from his door^a.

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XVII.

one third of the house, &c. was allotted to the Legionary, under the denomination of *Hospes*.

^a The law is very curious on account of its despotic precision. It is one of the many proofs that the burdens of the Roman subjects under the imperial government were scarcely less vexatious than the exactions of the Barbarians.

In qualibet vel nos ipsi urbe fuerimus, vel hi qui nobis militant commorentur, omni tam mensorum quam etiam hospitem iniquitate summota, duas dominus propriæ domus, tertia hospiti deputata, eatenus intrepidus ac securus possideat portiones, ut in tres domo divisa partes, primam eligendi dominus habeat facultatem, secundam hospes quam voluerit exequatur: tertia domino relinquenda. Plenum enim æquitate atque justitia est, ut qui aut successione fruitur aut empto, vel exstructione gaudet, electam præcipue judicio suam rem teneat et relictam. Ergasteria vero, quæ mercimoniis deputantur ad prædictæ divisionis injuriam non vocentur, sed quieta sint et libera, et ab omni hospitantium injuria defensata, solis dominis conductoribusque deserviant. Sane si stabulum, ut adsolet, militari viro in tertia domus parte defuerit, ex ergasteriis, nisi id dominus qualibet occasione providerit, pro animalium numero vel domus qualitate deputabitur. Illustribus sane viris, non tertiam partem domus, sed mediam *hospitalitatis gratia* deputari decernimus: ea duntaxat conditione servata, ut alter ex his quilibet, quive maluerit, divisionem arbitrii æquitate faciat, alter eligendi habeat optionem, Cod. Theod., lib. vii., tit. 8, l. 5, de Metatis. [In every town where we ourselves may be or where those sojourn who fight for us, to remove all unfairness both on the part of the quarter-masters as well as the guests, the owner shall, without fear or anxiety, keep possession of two parts of his own house, the third part being assigned to his "guest," in such wise that in a house divided into three parts, the owner shall have the first liberty of choice, the "guest" shall occupy the second which he prefers, and the third part shall be left to the owner. For it is full of equity and justice that a man who enjoys a heritage or a purchase or a house should hold that part of his property which he had chosen and also the part that was left. But workshops, which are used for wares, shall not be liable to the burden of the aforesaid division, but shall be quit and free and preserved from every exaction on the part of the guests, and remain for the use of their owners and hirers alone. But if, as is often the case, a stable is wanting in the third part of the house allotted to the soldier, unless the owner provide it in some other way, it shall be provided out

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It is extremely probable that, in the first instance, the occupation of the Roman lands by the Barbarians was a temporary military arrangement—a Roman hospitation—but which would easily pass into a permanent right of property. That the Roman provinces were thus settled by the Barbarians is unquestionable; but the colonization is not such as in any degree to satisfy the ordinary feudal theory, since there is no evidence, nor, indeed, any presumption, that any compact was made with the Senior, that any military service was reserved to the state, or, lastly, that the possessor of the “Sors,” or “Lot,” was specially bound, in respect thereof, to render any homage to his superior. It is therefore not in these acquisitions, better considered as allodial lands, that we discover the “germ of feudality”; for the *last condition* is indispensable. There is no *Gothic* feudality unless the parties be connected by the mutual bond of vassalage and seignory.

Roman
beneficiary
policy takes
a new form
under the
Barbarians.

Since we can plainly arrive at the general plan of the feudal arrangement, by deducing it from the Roman system, it is difficult to understand why any other origin should have been sought. But, as I have before observed, the Roman principle consisted solely in the assignment of a particular portion of land as the price of military service. This is the dry outline of feudality. Institutions, however, take the most important part of their character, not from the technicality of the law, but from the mind and manners of the people. The spirit of Beneficiary tenure, when adopted by the Franks, would result from the character of the soldier. A “*Scara*” of Barbaric “*Leute*” planted in Armorica would perform their obligations in a manner widely different from a Latian cohort settled in the defiles of Cappadocia. A Celtic provincial would command and be commanded far otherwise than a citizen of mere Roman descent. A great proportion of the population continued undisplaced. The descendants of the chieftains who had warred against Cæsar were incorporated in the senatorial order of Roman Gaul. The peasantry, oppressed by exactions in the days of Divitiacus and

of the workshops, according to the number of the beasts, or the quality of the house. But for men of rank, we decree that, not the third part, but the half of the house shall be provided *by way of hospitality*; but only on this condition being observed, that one of the two, whoever prefers, shall make the division according to his judgment of what is fair, and the other shall have first choice, Theodosian Code, Concerning Billets.

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need not, like the old traveller, look upwards to the stars for the purpose of explaining this phenomenon. It has its source in the magical sympathy of human nature. Man takes his moral character from his moral atmosphere. Placed even amongst those we hate, contemn, or despise, we imperceptibly learn to imitate our neighbours. The English conquerors of Erin became more Irish than the Irishry. And the Latin or Teutonic settlers, inserted amongst the Gaulish population, would imbibe the feeling of the races by whom they were surrounded.

Held by a Barbarian, a Benefice laid out (if the term can be allowed) according to the Roman fashion, would thus soon assume a new and peculiar form. And the practice of the law would be entirely influenced by the character of the community. The personal privileges and duties of the Barbarians would also be commingled with the Roman Beneficiary law. No freeman amongst the Teutonic tribes could be exempted from the duty of co-operating in the defence of the community. But the summons to the conflict proceeded only from the assent of the chieftains and the voice of the assembly; they asked to go forth, and the king, if king he was, obeyed the sovereign will. Military command, when possessed by a ruler, was imparted to him for that special occasion: he directed and swayed the host as they marched from their forests, but they had not assembled at his command. The Roman policy, on the contrary, was a pure and unmixed autocracy. The emperor's edict emanated from his irresponsible authority, his mandate called forth the cohorts. No Teutonic king could have claimed such a power. His dignity was bestowed by the nation in order that he might lead them forth; he was only the first amongst his peers; he received the impulse from the nation, he was not the source of its energies. Such national principles, though greatly enfeebled, were not entirely obliterated. Thus, amongst the Franks this military authority was exercised with the concurrence of the warriors assembled in the Champ de Mars. In the military "placitum" they decided upon the expedition. The vassus had received his land from the king, but the king was, nevertheless, compelled to solicit the assent of the Beneficiary. And such a controlling power re-appears in every European monarchy. But, as in other branches of administration, the Teutonic governments affected

law cases tried in one year, than have been in England since the Conquest. (p. 46.)

Military policy of the Barbarians. Its effects upon beneficiary tenure.

Military placita, or conventions (see above, p. 90, and below, p. 454).

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the Roman form. And if the precept penned by Cassiodorus¹, **Part I.**
 is to be received as declaring the practice of the Gothic monarchy, **Ch.**
 we must admit that Theodoric of Verona endeavoured, though **XVII.**
 using the language of persuasion, to act as if he possessed all the
 power of the Cæsars².

* *Universis Gothis Theodoricus Rex. Innotescenda sunt magis Gothis, quàm suadenda certamina, quia bellicosæ stirpi est gaudium comprobare. Laborem quippe non refugit, qui virtutis gloriam concupiscit. Et ideò, juvante Deo, quo auctore omnia prosperantur, pro communi utilitate exercitum ad Gallias constituimus destinare; ut simul et vos provectûs occasionem habere possitis, et nos quæ præstitimus meritis contulisse videamur. Latet enim sub otio laudabilis fortitudo: et dum se probandi non habet spatium, occulta est lux tota meritorum. Atque ideò per Nandium Saionem nostrum admonendum curavimus, ut ad expeditionem, in Dei nomine, more solito, armis, equis rebusque omnibus necessariis sufficienter instructi, octavo die calend. Juliarum proximè veniente modis omnibus, Deo favente, moveatis: quatenus et parentum vestrorum in vobis ostendatis inesse virtutem, et nostram peragatis feliciter jussionem. Producite juvenes vestros in Martiam disciplinam. Sub vobis videant, quod posteris referre contendunt. Nam quod in juventute non discitur, in matura ætate nescitur. Accipitres ipsi, quorum victus semper ex præda est, foetus suos novitate marcentes, nidis proturbant ne molli otio consuescant: alis verberant immorantes: cogunt pullos teneros ad volatum, ut tales debeant existere, de quibus possit pietas materna præsumere. Vos autem, quos et natura exigit et amor opinionis exacuit, studete tales filios relinquere, quales vos patres vestros constat habuisse, Cassiod., Variæ, lib. i. p. 24. [King Theodoric to all the Goths. Intimation of a conflict is enough for the Goths, they need no exhortation to it, because it is a joy to a warlike race to win approval. Truly, he shuns not toil who desires the glory of valour. And so, by the aid of God, under whose auspices all things prosper, we have decided for the common weal to direct our army to Gaul; so that at the same time you may have opportunity of advancement, and that we may be seen to bestow what we have offered on those who deserve it. For under ease praiseworthy bravery lies concealed; and so long as there is no opportunity of approving oneself, the whole light of one's deserts is hidden. And so by Nandius our herald we have caused you to be warned to march on this expedition, in the name of God, in your wonted fashion, sufficiently provided in all manners with arms, horses and all necessary things, on the 24th of June next, with God's favour, that you may both shew that the valour of your fathers has descended to you, and happily accomplish our bidding. Lead forth your young men for martial exercise. Let*

Part I.
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XVII.

The Roman law bestowed the gift and imposed the duty, but the legislature did not contemplate the creation of any mutual bond between the subject and the sovereign. There was no them see under you, what they may be eager to tell to their descendants. For what is not learnt in youth, is unknown in mature age. The very hawks, whose living is always obtained from their booty, drive from their nests their offspring, while still feeble fledglings, lest they grow accustomed to soft ease; they beat the laggards with their wings; they force their tender chicks to flight, so that they may turn out such as a mother's fondness can imagine in anticipation for them. But you, whom nature compels, and the love of praise has rendered keen, study to leave such sons, as, it is agreed, your fathers left in your persons.]

For the sake of comparison, an English writ of general summons is added below. The ancient *clerks*, when employed as the secretaries of their sovereigns, took great pains to ornament the official instruments with the flowers of eloquence. Hence the collections of the so called Epistles of Cassiodorus, Eginhard, Fulbert, &c. are in great part composed of Precepts, Writs and other documents, drawn by them in their official capacities. In the Precept framed by Cassiodorus, it is not difficult to discern the set form of the lawyer, amidst the embellishments of the rhetorician; and the general similarity to the writ of King John is sufficiently evident. The *Saio* or *Sagio* was a species of apparitor: *Saiones* vel *Sagiones* apud *Gothos* et *Wisigothos* dicti apparitores, regii videlicet ac magistratus ministri, qui ad eorum jussa exequenda semper præsto erant, Du Cange. [Summoners among the *Goths* and *Visigoths* were called *Saiones* or *Sagiones*, to wit, attendants on kings and magistrates, who were always ready to execute their commands.] He performed the office of the sheriff's summoner in England.

Rex Vicecomiti *Lincolniæ*, &c. Præcipimus tibi quod summoneri facias per bonos summonitores omnes illos qui tenent de nobis per serjantiam in balliva tua, quorum nomina scripta alias tibi misimus, quod sint ad nos apud *Cestriam* die dominica proxima post Assumptionem Beatae Mariæ instantem, bene parati equis et armis, et præmuniti victualibus ad eundem nobiscum in servicium nostrum; et hanc summonitionem per testimonium talium fieri facias, quod non possint negare se summonitos fuisse, et habeas ibi hoc breve et aliud breve. Teste me ipso apud *Wudestok'*, xxi. die Julii. Eodem modo scribitur omnibus Vicecomitibus *Angliæ*, Rot. Claus. 14 Joh. [The King to the Sheriff of *Lincolnshire*, &c. We command you that you cause to be summoned by good summoners, all those who hold of us by serjeanty in your bailliwick, whose names we have sent to you in another

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Part I. *Leudes*, as these retainers were also called, would be among the first to profit from the opportunity which the Sovereign now possessed of rewarding them by grants of fiscal lands. The obligation of fealty has been deduced from the Roman military oath; but in all those formulæ which have been transmitted to us, we find more than the promise of obedience, *aid, counsel, and secrecy* are added. The terms of the oath apply themselves accurately to the character of the Antrustion; and we can scarcely hesitate to admit, but that the form was suggested by his engagement, and considered as supplementary to the act of homage. The engagement and the donation, the Teutonic homage and the Roman grant, would be so often united in the same person, that at last the one would seem to be the necessary consequence of the other. The relationship of vassalage, originally personal, became annexed to the tenure of land.

Ch. XVII.

Obedience, aid, counsel, and secrecy, implied by the engagement of the Homager or Vassal. Duty of military service resulting from these obligations.

Benefices. Theory that military service was not imposed as a duty upon the Tenant thereof until the age of Charles Martel. Reasons for doubting this supposition.

March Counties, or Marquisates, e.g. such as the territory held by William & Engelschalk in Pannonia, now Austria (see II., p. 755) entirely similar to the Limitanean territories held by the Roman Dukes and Milites (see above, p. 290).

Whilst we can adduce the most clear and positive evidence, that the possession of a Benefice, in the age of Charlemagne, drew with it the actual obligation of military service, I must not conceal that doubts have arisen as to the period when such a condition was imposed. Charles Martel has been considered as the founder of the system; and, anterior to his age, it has been conjectured that no specific duty of military service attached to Beneficiary land^a. But, as I have before observed, we cannot reasonably disconnect the institution from the Roman grants. Take any particular instance; see how the Pannonian March Counties—the modern Austria—were held by the condition of opposing the inroads of the Moravian Slavi; the same identical tenure as that of the Limitanean Dukes, who guarded the Isaurian defiles. We find an established form and precedent, “the germ of feudality,” existing at the very time, and in the countries occupied by the Barbarians. We find those same Barbarians, the *Leod*, or People, endowed, during the subsistence of the empire, with possessions given as the price of military service; and all legitimate modes of historical reasoning are set at nought, if we seek any other source than the institutions, which must have forced themselves upon the Barbarians as the model of their policy. The very absence of an explicit reservation of military service in the beneficiary grants, may be received as proof that the obligation resulted from a general law. It was due of common

^a Mably (vol. i. p. 203), who speaks with unusual decision. He is followed by Guizot.

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right, and therefore no particular stipulation became necessary^a: though, in some cases, the grantor might, for greater security, think fit to insert the condition in express terms. Yet, I admit that the system was modified from time to time, changing in details with the alterations in the general policy of the realm. Charlemagne *re-formed* his Empire in the best sense of the term; and we may ascribe a greater degree of regularity and consistency to the regulations which he framed. Possibly he may have derived many useful lessons from the military organization of the Provinces wrested from the Byzantine authority. Amongst the Greeks of the Lower Empire the Roman beneficiary system was preserved. The land paid and rewarded the soldiers; and though the cohorts of Constantinus Porphyrogenitus might be inefficient when mustered in the field, the Code which commanded their services was considered as a most useful precedent. Frederick Barbarossa, the greatest, after Charlemagne, of the Latin Emperors, amended the feudal jurisprudence of Lombardy, which as yet had not been reduced into writing, by consulting the Constitutions of the Eastern Empire; and he studied the military Code of the Greeks at the time when Western Europe was fully under the dominion of feudality^b.

Part I.
Ch. XVII.

Beneficiary system, existing amongst the Greeks of the Lower Empire.

Frederick Barbarossa (1152-1190) studies the Grecian or Byzantine law of Feuds, for the purpose of improving the laws of his own dominions.

^a Thus, in England, if a grant was made by the crown, to hold in capite, without declaring the tenure, the law supplied the deficiency, and declared that the land was held by knight's service, or military tenure. After the reign of Charlemagne, we find many grants in which the service of the vassal is expressed as the consideration for the grant (see Part II., *Proofs and Illustrations*, pp. 753, 754). Amongst the Anglo-Saxon grants, some are made upon condition of fealty (see *id.*, p. 302, no. 4), and of specific military services (see *id.*, p. 304, no. 5); the reservation was unnecessary, but it was expressed, out of caution.

^b For this assertion I must quote Senkenburgh, *Corpus Juris Feudalis Germanici*, Pref. p. xxxvii. The constitution of Constantine Porphyrogenitus *περὶ στρατιωτικῶν*, first published by Leunclavius and again by Cujacius and Senkenburgh, establishes the existence of military benefices in that part of the Roman empire which had not been occupied by the Barbarians. It is very singular that Gibbon should never have adverted to Greek feudality. It did not escape the notice of Craig; *Quinetiam Græci in Feudorum prima origine vendicanda postremi esse nolunt, ex Constantini Porphyrogeniti constitutione Græca, quæ etiam adhuc extat. In ea multa de prædiis militaribus traduntur, quod onus iis inhæreret, ut quandocunque*

Part I.
Ch. XVII.

Military adoption. Knighthood derived from the ancient German custom of investing the youth with arms upon his attaining his full age (see II., pp. 781-784).

Military adoption of the King of the Heruli, by Theodoric of Verona. (See II., p. 782.)

The engagements of the Antrustion were not merely confined to military service. The homager resorted to the court of the lord whom he had chosen as his superior, for the vassal had sworn to aid his senior with his counsel, and to obey all lawful commands. So long as the bond subsisted, it placed the parties nearly in the same relationship to each other as if belonging to the same natural family, as if they were united by consanguinity: and a further connexion, of a similar nature, was occasionally created by the ceremony of military adoption. This custom arose out of a most ancient usage amongst the Teutons. Tacitus tells us how the youth was invested with the arms of manhood in the solemn assembly of the people. And a series of illustrious examples will prove, that long after all memory of the original policy of the Germanic tribes was lost, the parent still continued to invest the child with those insignia which declared that he might take his seat in the council, and encounter his enemy in the field. But the chieftain might be childless, or his child unworthy of the honour; or policy might suggest the expedient of obtaining the friendship of a rising warrior, whose future power he might apprehend. Hence, the Barbaric nations allowed the superior to present the sword and the shield and the courser to a stranger in blood, whom he received as his offspring, his "son of arms." Theodoric thus adopted the king of the Heruli¹;

dominus ediceret, ad militiam possessores instructi compareant; aut si justam excusationem cur non possint habeant, veluti si valetudine detineantur, tantum tamen pecuniæ domino representent, quantum ad militem vicarium conducendum sufficeret, cujus opera in bello dominus uti possit, quæ omnium Feudorum natura est et conditio, Craig, *Jus Feudale*, p. 43. [Nay even the *Greeks* are determined not to be backward in claiming to be the originators of Feuds, relying on the evidence of the Greek constitution of *Constantinus Porphyrogenitus*, which is extant to this day. In it much is recounted touching estates held on military tenure as to the burden imposed on them that, whenever the superior orders, the occupiers must appear prepared for military service; or, if they have a valid excuse for their non-appearance, as for example, if they are detained by sickness, yet they must pay such a sum of money to their lords, as shall suffice to hire a substitute, whose help in the war the lord may use; and this is the nature and condition of all Feuds.] Craig objects to this opinion; and he opposes it by maintaining, that the constitution of Constantine is too modern to be assigned as the *origin* of Feuds; but the law is merely *declaratory*, and not the establishment of a new scheme.

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Part I.

Ch.

XVII.

which difficulties will be removed if it be recollected that the Benefice was held upon condition of fealty, or homage, and that the right of possession or inheritance was not absolute, but depended upon the performance of such condition.

Homage continued only

however, admitted that at a much earlier period there are specific examples of hereditary grants. And the treaty of Andelot¹ (587), and the edict of Clothaire (614), afford such strong indications of the hereditary principle, that the advocates of the non-hereditary nature of the original Benefices find themselves unable to extricate themselves from the difficulties which they themselves are compelled to raise. All these difficulties, however, will be removed, if we recollect that a Beneficiary or Feudal estate was held upon condition. The tenant had only the right of enjoying the *usufruct*; the *dominion*, or absolute property, belonged to the superior; and the Benefice was to be *taken up again*^a, if it lapsed into the possession of the lord. Death dissolved the bond of homage. When the ancestor died, an *absolute* inheritance was *not* cast upon the heir. Certainly he has an inchoate right of inheritance: but in order that the heir may avail himself of such right, it is incumbent upon him to enter into the engagements by which his father has been bound. The usufruct of the land was connected with an onerous duty. Perhaps the heir might not be able to perform the service demanded from an Antrustion: or, he might be disinclined to commend himself to the senior; therefore, he was not entitled to enter upon the land by his own act. He was kept out, until he obtained investiture from his lord. The land was received upon condition; it was not the land of the heir until such condition was performed: and then, but not before, a new grant was made to him, because the compact was fulfilled. Another contingency

^a The Feud or Benefice *fell* into the possession of the lord, and was to be *taken up again* by the vassal. *Relevare Feudum, Relever le Fief, est Feudum caducum vel possessoris morte in domini superioris jus delapsum, illius consensu et certa et definita exsoluta pecunia hæreditario jure adire, possidere: seu potius in feudi caduci possessionem a domino mitti. [Relevare Feudum, to take up the fee, is to enter on by right of inheritance, to get possession of a fee which has fallen or passed by the death of the tenant into the hands of the superior lord, by his consent and on the payment of a fixed and definite sum of money: or rather, to be sent into possession of a lapsed fee by the lord.] The law of Du Cange is taken from the later periods of Feudality: the expression, and the idea of the expression, are derived from the earliest. In our legal language, we speak of being *admitted* to a copyhold: but the countryman always uses the ancient phrase of *taking up* his holding.*

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might arise. The mutual *Trust* continued only during the joint lives of the parties. The vassal who had commended himself to the senior, might not be willing to bind himself to the senior's heir. Consequently, a renewal of the compact was necessary upon every change of the lord^a. The vassal had to repair to the superior, and to obtain a new investiture of the Benefice which he held. It may be said, that these are the doctrines of later times. But let us apply them to the era of Charlemagne. We possess evidence that we are justified in so doing; and we shall have a full solution of the presumed struggle between the right of inheritance and the prerogatives of the crown. The new grant of the Benefice did not proceed from the mere motion of the superior or sovereign. The land, it is true, had reverted to the senior. The inheritance was in his hands. The heir was compelled to pray that the loan might be renewed to him. If the senior died, the heir, now the tenant, again addressed the same supplication to the new superior. But the law dictated the answer: the superior was not a free agent; and the terms of the original grant bound the sovereign to his part of the contract, provided the vassal acceded to the condition which such contract had imposed^b.

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during the joint lives of Lord and Vassal, and was dissolved on the death of either. Therefore, if the Lord died, the Tenant was bound to repair to the new Lord, and to perform homage; and if the Tenant died, the Heir was bound to perform homage to the Lord: and, in either case, the Tenant obtained a new investiture. (See II., pp. 744, 748.)

The doctrines exemplified by the Precepts of Charlemagne¹ continued to be the maxim of the feudal law: homage was

This principle exemplified by the Precepts of Charlemagne (see II., p. 742, &c.)

^a Bracton lays down the law as a general principle, not admitting of exception; *Pluries successivè capi poterit homagium, quia cùm ab initio factum fuerit homagium à tenente, et captum à domino, semper tenet homagium, quousque uterque simul, vel alter eorum moriatur, et tunc per mortem decedentis solvitur sive dissolvitur, quia mors omnia solvit ex parte decedentis, sive dominus sive tenens fuerit, lib. ii. cap. 35, § 5.* [Homage can be received several times in succession because, while at the beginning homage was done by the tenant and received by the lord, the homage always remains until both together, or one of them dies, and then by the death of him who has died, it is released or dissolved, because *death releases all things on the part of the deceased*, whether he be tenant or lord]; and the homage of the peers at the coronation is evidently the result of this law. According to Littleton (ii. § 148), the tenant in such a case was bound to repeat his fealty, but not his homage; this distinction is of no importance as to the main argument. In several Northumbrian manors the tenants paid a fine to the lord upon his acquiring the seignory.

^b See, in particular, the grants made to the Spaniard "Johannes" and his children, see Part II., *Proofs and Illustrations*, p. 745.

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and his sons, by the new investitures made on the accession of an Earl of Flanders (see II., p. 775), and by the renewal of homage on the accession of a King of Neustria (id., p. 774), or of an English King (id., p. 778).

Alienation of a Frankish Benefice effected, as appears from the formulary of Marculfus, by surrendering the Benefice to the Lord, to the intent that he might regrant the same to the alienee. (See II., p. 749, &c.)

renewed upon each mutation of the lord. At the creation of the King of Neustria, the inauguration of a Count of Flanders, and the coronation of an English king the same ceremony is performed. The Flemish vassals receive a new investiture of their fiefs. And in England, the general renewal of charters, which anciently took place upon the accession of the sovereign, is to be considered as being in the nature of a restitution of the lands, which the tenants in capite held of the crown; and not merely as a confirmation or acknowledgment of the tenures^a.

Connected with the right of inheritance is the power of alienating the possession of the land. Charlemagne grants a *Mansus* to his faithful vassal, and the charter imports that the tenant may give and grant, and sell the property, at his free will and pleasure. But how was the transfer to be made? The vassal appeared before the sovereign, in the presence of the Proceres, his equals, bound by the same allegiance: and, casting the symbol into the lap or bosom of the superior, he surrendered up the land, which was immediately regranted to the person whom he wished to substitute in his stead. That such was the mode of alienating a tenure, in the times when the feudal law was in full vigour, is familiarly known^b: but it is singular, that the formula affording the most convincing proof that similar proceedings took place in the early ages of the Frankish monarchy, should have been long misinterpreted. Instead of considering the "Præceptum de Læsiwerpo"¹ in its true light, as relating to a transaction substantially the same with a surrender to the use of a grantee effected in an English Court Baron, it has been invariably viewed as a surrender of allodial land, made for the purpose of converting the property into a Beneficiary tenure^b.

^a Many other causes might have concurred in rendering such new charters desirable; a charter under the great seal of the reigning monarch was susceptible of easier proof than if it was produced under the seal of his predecessor. But the charter is in the form of a new grant; and although, even in the thirteenth century, the original principle may not have been always kept in sight, still such grant was a necessary consequence of the renewal of the homage upon the accession of the King (see Chap. XXI.).

^b As, anciently, the vassal of himself could not alienate, there was, besides the vassal's grant, further need, either of a confirmation by the superior, or of a surrender into his hand, if the fief was to remain with him, or of a surrender to, and new grant from, the superior, if it

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Part I. the supposition that the rulers of the states and communities
Ch. XVII. placed beneath the Frankish crown—the *Dukes*, and the *Counts*,
 or *Grafios*—were not hereditary, until so declared by a positive

Hereditary
 dignities,
 Dukes,
 Counts, &c.,

“to the person from whom he had received it, to be enjoyed by him
 “during his natural life.”

To these arguments, of which I feel the force, I shall endeavour
 to reply,—

1. The age of the composition of the formulæ of Marculfus is
 uncertain; but military tenure in the time of Charlemagne was due
 from a Benefice by the common law; and there is every reason to suppose
 that it was equally due at all periods. The charter, or rather certificate,
 of Hawise de Gurney, relates to a real transaction during a period
 when the practice of the law was settled and regular. The words
 “scilicet illam terram quam Robertus de Gurneio pater meus ei pro
 servicio suo dedit,” are mere surplusage, though inserted by the careful
 clerk for the purpose of better identifying the land. If we had an
 example of the *special* application of the Marculfian precedent to a
real transaction, we might possibly find the title deduced with equal
 exactness; but being only a *general precedent*, such particularizations
 are quite out of the question. That the lands conveyed by the “Præ-
 ceptum de Læsiwerpo” were of a beneficiary tenure, is only a matter
 of inference, but it is an inference most strongly supported by com-
 parison with an instrument which *certainly* relates to the land held by
 a beneficiary tenure; and by deductions from the known laws and
 doctrines of beneficiary tenure. Until the inference is defeated by
other evidence equally strong, it must stand as the most probable which
 can be afforded from existing evidence.

2. It cannot be said that the transactions are “totally different
 in nature.” Whether the transfer be made upon *sale* for a valuable
 consideration, or whether it be gratuitous, the point at issue remains
 the same. The Marculfian surrender is not made to the King for his
 own use, but in order that the land may become vested in the King
 and then pass out from him. The King acts merely in a ministerial
 capacity, and receives the land from Adalbert, only that it may
 become vested in Lanfrid.

3. It will appear from the documents (see Part II., *Proofs and
 Illustrations*, p. 746) that “fidelis” is employed in similar documents
 as equivalent to Vassus; and we must take the term with reference
 to the subject-matter of the instrument.

4. It is fully admitted that the same *form* of tradition by symbols
 might be employed for *different* purposes: but in this instance I contend
 that they are employed for the *same* purpose, namely; in surrendering

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law^a, enacted in the reign of Charles le Chauve, is contrary to the whole course and tenour of history. Are those who maintain this opinion ready to assert, that all the primeval chieftains of the various nations had been swept away? or, in sober earnest, to defend, by *historical proofs*, that most extraordinary theory, according to which the Franks knew no nobility, and recognized no hereditary authority save the throne^b? I do not doubt but that many of the ancient Lines had become extinct. Clovis secured his ascendancy by the destruction of the Frankish

Part I.
Ch.
XVII.

reasons for supposing that such dignities were composed of three elements of authority: or from a combination of three causes, the hereditary authority of the ancient ruling castes or families; the grants of delegated or official dignities to the reigning individuals of the families; and the conversion of the territory occupied by the people into a Benefice, held by the Senior as his patrimony.

the land to the Superior, to the intent that he might regrant it to a third person, as a new beneficiary tenant.

^a The Capitulary of Kiersi has been considered by Guizot, Mably, and Sismondi, as enacted for this purpose, but it only relates to the *custody of the County during a minority* (see Part II., *Proofs and Illustrations*, p. 742).

It is singular that the French constitutional writers should have overlooked the real import of the law. To understand the clause quoted in the *Proofs and Illustrations*, we need only connect it with the other provisions which the Capitulary contains; and which relate to the custody of bishoprics and abbeys during a vacancy. The Emperor asks his "fideles" to advise him how such "honours" shall be administered as may become *open*, or fall into the hands of his Crown during his absence. Si, antequam redeamus, aliqui honores interim *aperti* fuerint, considerandum quid exinde agatur. [If, before we return, any honours shall fall *vacant*, it must be considered what shall be done therewith.] An answer is given concerning the custody of ecclesiastical benefices, and the Capitulum, without strictly following the recommendation or advice of the fideles, is adapted to the cases *both* of *lay benefices* and of *ecclesiastical "honours."*

^b Such is the opinion of Sismondi (vol. ii. p. 87); and I hope that the candour and love of truth by which he is distinguished will induce him to reconsider the following passage, which, as far as I can judge, contains a theory wholly unsupported by ancient authority:—Les Francs n'avoient reconnu d'autre hérédité dans leur monarchie que celle du Trône. Ils avoient cru donner plus de stabilité à leurs institutions, en soustrayant la première dignité de l'état aux luttes de l'ambition et aux violences des partis; mais excepté les fonctions royales, *toutes les autres* devoient être réservées au plus digne. *Ils ne reconnoissent point de noblesse*; leurs Ducs et leurs Comtes étoient électifs, leurs généraux étoient choisis par les soldats, leurs grands juges ou maires par les hommes libres; *et aucun homme ne devoit tenir de ses pères aucun droit sur ses concitoyens.*¹

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“Kings” who had been his compeers; and the political morality of the Merovingian sovereigns would readily suggest the useful and praiseworthy duty of securing the tranquillity of the state, by sacrificing any dangerous Senior, whenever a fit and convenient opportunity arose. Still, after making every allowance for the casualties whereby the ancient families may have been extinguished, there must have been a numerous body of chieftains, entitled, by ancestral right, to the government of the nations and tribes constituting the Frankish empire. The privileges of such a chieftain, and his right to govern his own race, clan, or people, owed nought to the bounty of the king. Although the hereditary authority of those chieftains was permanently vested in their families, yet the ancient Teutonic policy modified and qualified all rights of inheritance; the authority was not absolutely fixed in the individual. No one except an “Agilolfing” could rule the Bavarian nation: but the duke was to be fit for the arduous task. He was required to judge the people in peace, march at the head of the army, spring on his steed, and brandish his lance. He was not to be blind, or deaf, or in anywise incapacitated from performing the behests of the Frankish king, his superior. And when the duke became incompetent to the discharge of his functions, he was relieved from a duty which he could no longer perform. The ducal authority was a trust. If the possessor could not act for the defence of his people, he was divested of his authority: but, though lost to the individual, the power still continued in the family. If the Bavarian duke could not exercise the powers of government, the son considered himself as the heir; and the law which prohibited such son from aspiring to the dignity so long as the father was able to rule^a, is a proof of his presumptive

^a Si quis filius ducis tam superbus vel stultus fuerit, ut patrem suum dehonore voluerit, per consilium malignorum vel per fortiam, et regnum ejus auferre ab eo; *dum adhuc pater ejus potest judicio contendere, in exercitu ambulare, populum judicare, equum viriliter ascendere, arma sua vivaciter bajulare*, non est surdus, nec cæcus, in omnibus jussionem Regis potest implere, sciat se ille filius contra legem fecisse, et de *hereditate* patris sui esse dejectum, et nihil amplius ad eum pertinere de facultatibus patris sui: et hoc in potestate Regis vel patris sui erit, ut exiliet eum si vult, Lex Bajuvariorum, II. x. § 1. [If any son of a duke shall be so arrogant or foolish, as to wish to degrade his father, either by intrigue with the disaffected

Hereditary authority, anciently vested in the ruling castes or families, though not absolutely inheritable. For instance, the Dux or King of the Bavarians was always of the family of the Agilolfings, but the individual was appointed by the Frankish King, with the approbation, or upon the nomination of the Bavarian nation.

The Duke was to reign if duly qualified; the son was prohibited from claiming the dignity so long as his father was thus qualified; thereby shewing that he could claim it when his father became incompetent to act. Compare with the appointment of Uchtred as Earl of Northumbria in the lifetime of his father, Waltheof.

Such authority and trust not to be withdrawn from the family; so that the children felt themselves aggrieved, if the honour was bestowed upon a stranger. (See II., p. 755.)

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Part I.
Ch.
XVII.

Mode of reconciling various passages apparently conflicting, respecting the succession of dignities, some of which seem to imply that the Dukes, &c. were elected by the people, others, that they were nominated by the Sovereign.

has made such little progress amongst the children of Adam, that, at this moment, we can find a place upon the geographical map, for every successive century. And by adverting to the current affairs of Turkey or Russia, we obtain a practical explanation of the policy of the Carlovingian empire. Adopting the theory which I have attempted to exemplify, we can have no difficulty in reconciling to each other the expressions, apparently contradictory, implying, or seeming to imply, that the duke was elected from the ducal race by the people, and also nominated by the Frankish king. Both modes concurred: there was an *election*, but not an uncontrolled election arising from the fluctuating opinion of the multitude. A *nomination*, but not an arbitrary nomination emanating, like the appointment of a viceroy, solely from the will of a monarch: The election was a deliberate proceeding, a power to be exercised when the ducal sceptre was forfeited by misconduct, or became vacant, either by infirmity or decease. In such case the people were called upon to judge the title of the heir; or they estimated his fitness to hold the station. The Frankish superior of the Agilolfings acted with the advice of the people, whose franchises had been protected; and the Bavarian people intimated their wishes in favour of one whom they apprehended would not be obnoxious to the Frankish king. Both parties, in short, exercised their rights by mutual understanding and compromise, without being bound by any strictly settled form.

Hereditary chieftains appointed to the Roman comitial or ducal dignity (see above, pp. 266, 267), by the Frankish Sovereigns, which delegated authority became at last united to their patriarchal authority.

Another source of authority increases the apparent incongruities which present themselves when we attempt to trace the history of territorial dignities. An hereditary chieftain, a *Ceanncinnith*, could only have authority over his own tribe or clan. His patriarchal authority, resulting from the tie of blood and kindred, was *personal*, not *real*; and he possessed no right to sit in judgment upon a stranger. But the Frankish empire was peopled by various races, mixed and interspersed amongst each other. Over the Roman provincials, the king exercised a prerogative jurisdiction. He was their emperor. He must have been equally considered as the sovereign of any broken clan separated from its main stock, and of every tribe which had lost its ancient ruling family. The main form of the Roman government had been retained, and the "Gau" or Pagus, inhabited by a Teutonic people, was a Province in the eye of the law. The districts more purely Roman were governed by functionaries bearing the ducal or comitial title, and possessing dignities with

which the Barbarians had been long familiarized, having often been invested with them, during the Roman empire. The administrative authority of duke or count^a was such as no one individual could derive from descent; for a Duke of the Alemanni could not be the born and natural ruler of Franks, Romans and Burgundians. His right to the third part of the fines payable to the sovereign, could only be deduced through the sovereign^b. All such powers were granted by the sovereign's will, and could be resumed at his pleasure. But, unrestricted as the royal or imperial prerogative might appear according to the theory of government, practice, as usual, would restrain its extent. Functions so influential could not be granted indiscriminately and arbitrarily. They could only be entrusted to individuals capable of exercising them efficiently. And if we assume that the office was usually conferred upon the hereditary chieftain of the nation which predominated in the "Comitatus," until an inheritance had been established in the dignity by usage and custom, we shall have a full solution of the occasional discrepancies between the letter and the spirit of the law; the letter often assuming that the appointment of duke or count proceeds wholly from the sovereign, whilst the spirit of the law always points at an hereditary and transmissible authority.

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Official dignities attract^d by the hereditary or patrimonial authority (see above, p. 301).

Oath of fealty exacted upon the appointment of a dependent sovereign (see II., p. 819).

In addition to the foregoing sources of dependent authority, a third and last remains to be mentioned. The Heretog^c, or

^a These titles appear to have been used without much distinction.

^b This right was the usual perquisite of the Comitial dignity. (Caroli M. Cap. II. A.D. 812, § 2.)

^c Præcipue regalis in hoc perfecta conlaudatur clemencia ut inter cunctum populum bonitas et vigilantia requiratur personarum. Nec facile cuilibet judicariam convenit committere dignitatem, nisi prius fides seu strenuitas videatur esse probata. Ergo dum et fidem et utilitatem tuam videmur habere compertam, ideo tibi actionem Comitatus, Ducatus, Patritiatûs in pago illo, quem *antecessor* tuus *ille* usque nunc visus est egisse, tibi ad agendum regendumque commisimus; *ita ut semper erga regimen nostrum fidem inlibatam custodias*, et omnes populi ibidem commanentes, tam *Franci, Romani, Burgundiones*, quàm reliquæ nationes sub tuo regimine et gubernatione degant, et moderentur, et eos recto tramite secundùm legem et consuetudinem eorum regas; viduis et pupillis maximus defensor appareas; latronum et malefactorum scelera a te severissimè reprimantur: ut populi bene viventes sub tuo regimine gaudentes debeant consistere quieti, et

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senior of the ancient race, called to the government by the power of the superior, was required to enter into the engagement of the Antrustion: the office of duke or count was granted upon condition of faith or fealty, and the territory of the clan might be received by the ducal or comital vassus in the new guise of a Benefice. He exchanged the rank of a patriarchal chieftain for the dependent relation of feudality, lord over the land of his own people, vassal in the court of his superior.

Of these transactions we possess an example, so clear, important and instructive, that there is no room for hypothesis or conjecture. Tassilo's history establishes every point required to elucidate the policy, which, in the age of Charlemagne, was

quicquid de ipsa actione in fisci ditionibus speratur, per vosmetipsos annis singulis nostris ærariis inferatur, Marculfi Formulæ, lib. i. cap. 8. [Especially in this is the clemency of Kings extolled as perfect, when among the whole people justice and vigilance is required of dignitaries. Nor is it fitting to commit judicial office to any man lightly, unless his fidelity and activity appear to be proved. Therefore, since we have proved your fidelity and usefulness, so we have committed to you the office of Duke or Count or Patron in that district, which *N.* your ancestor has hitherto performed, to be performed and regulated by you; provided that you always keep unblemished fealty to our rule, and that you govern in the right path according to their law and custom, all the peoples dwelling therein, both *Franks* and *Romans*, and *Burgundians*, and the other nations living and controlled under your rule and government; to widows and minors shew yourself a mighty defender: let the crimes of robbers and evil-doers be severely repressed by you; so that the peoples, living well and rejoicing under your rule, should remain in peace: and whatever from that government is anticipated for the riches of our treasury, shall be paid by yourself every year to our treasurers.]

Guizot says, l'amovibilité des Comtes est attesté par tous les monumens de la première race. La formule de Marculf pour la collation de ces emplois le prouve directement.¹ But with submission to this learned writer, the form proves no such thing. Without laying too much stress upon the word "antecessor," which implies predecessor as well as ancestor, it is obvious that nothing can be collected from the diploma, except that it is a new appointment *in form*; and that the question *how* such new appointment was granted or obtained is as open as before. No one, by reading a writ of summons to an English peer, could collect from the instrument itself that it was issued, not *ex gratiâ*, but of right, and that the Crown has no power of withholding it.

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Feudal or benefi-
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they (i.e. the
chieftains)
received back
as Benefices.

Tassilo III., Duke
of the Bavarians.
His history ex-
emplifies the
foregoing posi-
tion, or the
manner in which
the hereditary
chieftains became
feudal princes.

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763, 780.

Tassilo violates his oath, rebels. Papal mediation. Charlemagne leads his army against Tassilo. (See II., pp. 760, 762.)

Tassilo surrenders his Benefice by the delivery of the staff, being the tradition "per fustem et baculum" (see above, p. 113, and see II., p. 325), as still used in Scotland.

788.

Tassilo, pursuant to the command of Charlemagne, attends, like the other Vassi of the crown, in the general Placitum at Ingelheim: accused of various acts of treason; condemned to death by his Peers; pardoned by Charlemagne; surrenders his duchy by the ceremony of Guerpition (see II., p. 741), together with all the right which he, his sons, or his daughters, had or might have in the same. (id., p. 770.)

The authority of the Dukes and Counts of the Carolingian Empire, to be therefore considered as composed of the three elements before mentioned, an hereditary or patriarchal authority (i.e. that of the chieftain of a clan), an official authority (i.e. that of a governor or lord-lieutenant), and a feudal authority.

are given to secure his fealty. The promises thus again renewed, are again violated. The pope again attempts to mediate, and denounces his anathema against the perjured vassal. Charlemagne assembles his army, and surrounds the rebel, who has refused to obey the summons of his superior. Tassilo, deserted by his own subjects, who acknowledge the justice of the Frankish claims, humbly appears before the emperor. Surrendering his Benefice, by the delivery of the staff, he again becomes the vassal of Charlemagne, and twelve chosen hostages, besides his son Theodo, are delivered into the hands of the emperor as securities for his obedience.

Soon afterwards Tassilo is summoned, amongst the other vassals of Charlemagne, to the Placitum held in the palace of Ingelheim. The Bavarians, his subjects, accuse him of treason. Tassilo, who incited the Avars to invade the empire, has conspired against the life of his sovereign. The criminal thus arraigned made no defence. His peers condemned him to death: but the sagacious clemency of Charlemagne now interposed; and the emperor solicited and obtained the pardon of the offender. Tassilo appeared before the council, and, by the ordinary ceremony in such cases, surrendered up all the rights which he or his issue, *male or female*, had in the duchy of Bavaria. Withdrawn from the public gaze, Tassilo was allowed to end his life in monastic tranquillity; and the extinction of the political existence of the Agilolfings was insured by compelling his banished sons to retire in like manner from the dangers of the world.

Let us, therefore, consider the authority possessed by a dependent chieftain, whosoever he was, or however he may have been denominated, as composed of *three* concurrent elements. He was the *Ceancinnith* or *Pencenedyl* of his clan, the Comes of the Province, appointed by the precept or patent of the emperor, and the vassus, the "man" or homager of the superior, by whose grant he holds the Benefice upon which his subjects dwell. No one of these elements imparts an indefeasible and irresponsible authority to the possessor: no one is absolutely dependent upon the prerogative of the imperial sovereign. The chieftain's rank or dignity can never be confirmed without the intervention of some other party; and yet the source whence such confirmation is to be obtained, is always controlled by law, or by custom equivalent to law. The abuse of power, the passions of the people, or the state-policy of the lord paramount, might deprive an

inefficient or unfortunate ruler of his sway; but the right remained in all ordinary cases to his family: nor could it be lawfully extinguished otherwise than in legal form. The delegated functions, borrowed from the Roman administration, were granted or withheld by the successor of the Cæsars, but the emperor could rarely separate them from the patriarchal right. The territorial county, as a Benefice, reverted to the superior upon the death of the tenant, but the law^a insured that the Feud should be safely kept and guarded during the minority of the heir; and when he had attained the age enabling him to perform the duties and enter into the engagements of Antrustionship, it was deemed an act of most flagrant injustice to deny him the "Honour" which he claimed by reason of ancestry and lineage.

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(See II.,
p. 755.)

But there were counteracting conditions. Strong as the right of the chieftain might be according to law, and stronger still according to feeling, the confirmation of his authority could not be required as a matter of course. The emperor did always display his power. He was fairly authorized to pause before granting the investiture. Conditions or covenants might be imposed. The parties might treat and negociate on unequal terms. An absolute refusal to restore the Benefice would be in subversion of the policy prevailing in the realm: yet the wide margin of prerogative, and the pre-eminence of the throne, would afford scope and means for evading the fulfilment of the compact; or for defeating the pretensions of the vassal. And the monk, dazzled by the splendour of the crown, or the courtier, anxious to flatter his royal patron, might, without any direct violation of the truth, so represent the transaction, as to countenance the theory which I have attempted, and I hope successfully, to refute, that in the Frankish monarchy the king was the only hereditary functionary, and that no man possessed any ancestral right over his fellow-citizens.

Rights of the hereditary chieftains not so indefeasible or absolute as to render their accession to territorial dignities a mere matter of course.

(See Sismondi's opinion, above, p. 441.)

Although the parallel will not hold good in any of the minor details, a Carlovingian duke or count may be compared to an Earl of Argyle in the sixteenth century. The earl, according to the law of the state, holds his widely extended baronies by virtue of royal charters, and by the investiture received from his sovereign. His *Saxon* honour is founded upon his patent, and his seat in parliament is an obligation annexed to the dignity

The rank of the Dukes and Counts of the Carlovingian Empire elucidated by comparing them to an Earl of Argyle,

^a The Capitulary of Kiersi (see above, p. 441 and Part II., *Proofs and Illustrations*, p. 742).

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XVII.

whose con-
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arose from
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Earl by
patent, and
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exercising
the office of
Lord Justice-
General by
virtue of a
royal grant.

which compels him to obey the summons of the king. The earl's judicial functions, in like manner, are deduced from royal concession; and, in the lawful judgment of court and council, his lands, possessions, powers, rank and station are all derived from the crown, or created by the sovereign prerogative. But, follow M'Callum-mor into his own country, ask, when you are in the castle of Inverary, from whence the pride of the *Cean-cinnith* is derived? What cares the Sennachie for the waxen seal and the parchment scroll? Would the headsman be less ready to fulfil the mandate of his stern superior, if he were told that the commission of the Lord Justice-General had not been renewed? Or will the clans refuse their tribute of grain and cattle to the Son of Diarmid, until "Sir Colin Campbell" is served heir by a jury, and they have an office copy of the "retour of the Brieve" in the Lowland Chancery? All the rights of the Scottish peer are legal, strictly legal, yet they are the mere creatures and creations of the law. But the powers and prerogatives of the Gaelic chieftain may be subsisting in full force, though unrecognized by the Lords of Session, and perhaps exercised in open defiance of the law: and these are the real support and stay of his influence and dignity. It may be the province of the ethical philosopher to inquire whether a right sanctioned by the law, and unrecognized by the people, is better or worse according to the principles of natural equity, than a right, obeyed and acknowledged by the people, though unsanctioned by the law. But it is evident, that the same transaction which the opinion of the advocate condemns as an illegal intrusion, would be lauded by the bard as a brave and valiant assertion of ancestral right against usurpation and tyranny.

It is probable, that the usage of imparting the Comitial authorities by delegation was disused soon after the reign of Charlemagne. The various nations were becoming united into one populacy: and the powers which emanated from the imperial diploma, either became unnecessary, or were considered, by usage, as annexed to the territorial dignity, although no express concession had been made.

Effects of the
feudal
system in
increasing
the political
power of the
Sovereign-
Superior.

Introduced into the general policy of government, the Feudal principle, for so we must consent to call the system, gave a much greater degree of regularity to the sovereign power than it had hitherto possessed. The dominion of the Frankish King or Emperor was legalized. Mere political superiority is jealous and undefined. A specific relationship was now created between the

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Part I. might reconcile the Bavarians to the change; and the oaths given
Ch. XVII. by them to the suzerain rendered them parties to the contract,
 to the new compact upon which the social existence of their
 state was grounded.

If the vassus Tassilo, I continue to use his name, though of course the reasoning applies to any other "senior" under similar circumstances, was attacked by an enemy, he would claim the protection of the emperor as a right; he was entitled to this safeguard by virtue of their mutual bond. If the Bavarians opposed his authority, Tassilo would equally solicit the co-operation of the emperor to aid him in chastising the disobedience of their common subjects. These consequences must have been duly appreciated when he knelt and performed homage. But the Bavarians might equally discover the nature of their new position. The subject who conspired against Tassilo the duke, forfeited life and property; and any resistance to the duke's authority would easily involve the oppositionist in the guilt of rebellion. But whilst the person of *Tassilo the Agilolfing* was sacred, *Tassilo the Vassus* was liable to the judgment of Charlemagne and his compeers. And the faithful Bavarians, by standing forth as the accusers of Tassilo in the palace of Ingelheim, could insure his abdication with far more ease and certainty, than if the war-cry of rebellion had echoed from border unto border.

(See II., p. 772, no. 14.)

(See II., p. 769.)

Extension of the principles of Antrustionship and Beneficiary law. (See II., pp. 772-775.)

At the inauguration of the Emperor, the several nations composing his Empire accept him as their Protector and Defender. (Compare with the submission of the East Anglians, &c. to Egbert, see II., p. 346.)

In the earlier periods of Frankish history, the principles deduced from the combination of Antrustionship and the Roman Beneficiary law were applied only to the immediate retainers of the prince. By the means before noticed they extended rapidly, and became the maxims of the crown. On every occasion, oaths, equivalent in import to the engagement of the ancient Antrustion, were renewed. The Gascons and the Slavonians were compelled to acknowledge themselves the Fideles or the homagers of the Frankish kings. A personal homage, or the promise of subjection, as the man oweth of right to his lord, was exacted from the subjects of the emperor; and when fully inaugurated in his dominions, the several states composing the empire severally accepted him as their lord, protector, and defender^a. The Burgundian, the Aquitanian, and all the

^a For the oath of fealty and homage taken to Charlemagne, see Part II., *Proofs and Illustrations*, p. 776.

Charles le Chauve was first accepted as *Protector* by the Prelates,

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various races who submitted to his sway, entered into those engagements which placed the crown at the summit of the civil hierarchy. Part I.
Ch. XVII.

Earls, and Optimates of the kingdom of Italy, assembled in the palace of Pavia.

Gloriosissimo et a Deo coronato, magno et pacifico Imperatori, Domno nostro *Karolo* perpetuo Augusto, nos quidem omnes Episcopi, Abbates, Comites ac reliqui qui nobiscum convenerunt *Italici* regni Optimates, quorum nomina generaliter subter habentur inserta, perpetuam optant prosperitatem et pacem. Jam quia divina pietas vos beatorum principum Apostolorum Petri et Pauli interventione, per vicarium ipsorum, Dominum videlicet *Johannem* summum Pontificem et universalem Papam spiritualemque patrem vestrum ad profectum sanctæ Dei ecclesiæ nostrorumque omnium invitavit, et ad imperiale culmen Sancti Spiritûs judicio provexit, nos unanimiter vos *Protectorem*, Dominum ac *Defensorem* omnium nostrum eligimus. [To him who is most glorious and crowned by God, to the great and pacific Emperor, to our Lord *Charles*, for ever Augustus, we, all the Bishops, Abbots and Counts and the rest of the nobles of the *Italian* kingdom, who are assembled with us, whose names are written in full below, wish perpetual prosperity and peace. Because already the mercy of God, through the intervention of the Blessed Peter and Paul, princes of the Apostles, through their vicar, to wit, our Lord *John*, the sovereign Pontiff and the universal Pope, and your spiritual father, for the advancement of Holy Church and of us all, has called and raised you to the imperial throne by the judgment of the Holy Spirit, we do all unanimously choose you as the *Protector*, Lord and *Defender* of us all.]

The Cisalpine nations, the inhabitants of France (or Austrasia), Burgundy, Aquitaine, Septimania, Neustria, and of the Roman "province," then followed the example of the kingdom of Italy.

Confirmatio Cisalpinorum.

Sicut Domnus *Johannes* Apostolicus et universalis Papa primò *Romæ* elegit atque sacra unctione constituit, omnesque *Italici* regni Episcopi, Abbates, Comites et reliqui omnes qui cum illis convenerunt, Dominum nostrum gloriosum Imperatorem *Karolum* Augustum unanimi devotione elegerunt sibi *protectorem* ac *defensorem* esse: ita et nos, qui de *Francia* et *Burgundia*, *Acquitania*, *Septimania*, *Neustria* ac *Provincia*, pridie Kalendas Julii in loco qui dicitur *Pontigonis*, anno xxxii in *Francia*, ac Imperii primo, jussu ejusdem Domni et gloriosi Augusti convenimus, pari consensu ac concordia devotione eligimus et confirmamus, Baluze, vol. ii. p. 238. [The Confirmation by those who dwell on this side of the Alps. Even as Lord *John*, the Apostolic and

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XVII.

The *Champ de Mars*, afterwards the *Champ de Mai*, originally a military convention, similar to the armed council of the Gauls described by Cæsar. (See above, p. 90.)

An assembly of the Frankish warriors, originally convened on the first of March, and afterwards on the first of May^a, is familiarly known to have existed from the first establishment of the monarchy. These assemblies however declined in importance until the administration of the Mayors of the Palace, when they were revived, and with greater efficacy^b. In this "Weaponshaw" the sovereign marshalled and inspected his sturdy warriors. The

Universal Pope first at *Rome* chose and consecrated our glorious lord *Charles* to be Emperor and Augustus, and all the Bishops, Abbots and Counts and all the rest of the *Italian* kingdom who had assembled with them, with unanimous devotion, elected him to be their *protector* and *defender*, so we also, the people of *France* and *Burgundy*, of *Aquitaine* and *Septimania*, of *Neustria* and *Provence*, have assembled on the 30th day of June in his thirty-second year in *France*, and in the first year of his empire, at the place which is called *Ponthion*, by the order of the same lord and glorious Augustus, and with the like consent and agreement have chosen him and do hereby confirm him as our Lord.]

Who were the reliqui? possibly the Scabini, in the Teutonic communities, and the municipal magistrates of the cities of the other nations. Those who acknowledged the King as Protector and Defender became at once his Antrustions.

^a Mutaverunt Martis Campum in mense Madio, Ann. Petav. ad ann. 755, Bouquet, vol. v. p. 13. [They changed the camp of March to the month of May.]

^b Depuis le règne des petits-fils de *Clovis* la nation avoit laissé tomber en désuétude les conciles où elle avoit autrefois décidé de la paix, de la guerre, des lois et du gouvernement. Les assemblées nationales paroissent avoir été fort négligées sous les derniers Rois *Merovingiens*.... On ne peut pas affirmer que ces assemblées n'eussent plus lieu, mais pendant un long espace de temps il ne nous reste aucun monument de leur existence, Sismondi, vol. ii. pp. 97, 174.¹

This however is not correct, for Eginhard expressly states, that the Merovingian Kings attended the Conventus, qui annuatim ob Regni utilitatem celebrabatur, Bouquet, vol. v. p. 89 [which was held annually for the advantage of the Realm]; and it is difficult to distinguish the Conventus from the Champ de Mars. I must here observe, that Guizot (*Essais sur l'Histoire de France*) has been my constant guide in tracing the history of the political institutions of France, and though I differ from him on some important points, I trust that he will allow me to make this general acknowledgment of my obligations to him.

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after Clovis had been hailed as Augustus, the Champ de Mars seems to have been generally held only for the discussion of those affairs which were either purely military, or connected with military policy. But the King of the Franks established in Gaul, the Vicar of the Empire, ruling the Roman population with the rights of the Cæsars, would assert a prerogative over his followers unknown to Meroveus. Soon did the sovereign learn to render these assemblies the useful means of increasing not only the royal power, but the royal revenue. It was in the Champ de Mars that the Frank offered his gratuitous gift to the sovereign. A very slight acquaintance with the mysteries of finance will leave us little room to doubt, but that these tributes of respect were, in effect, a tax upon the members of the privileged order^a. On the Kalends of the month, in the spring season, the

Gifts
presented to
the Kings in
the Champ
de Mars.

Such gifts
equivalent to
a permanent
taxation of
the Vassi.

^a It was in the Champ de Mars that the long-haired kings were accustomed to receive these gifts (Ann. Fuld., Bouquet, vol. ii. p. 676, and Guizot, p. 320). Hincmar indicates that the amount of the gifts was settled in the select council by the Seniors and principal councillors.

Consuetudo autem tunc temporis talis erat, ut non sæpius, sed bis in anno placita duo tenerentur. Unum, quando ordinabatur status totius regni ad anni vertentis spacium, quod ordinatum nullus eventus rerum, nisi summa necessitas quæ similiter toto regno incumbibat, mutabatur. In quo placito generalitas universorum majorum tam clericorum quam laicorum conveniebat; seniores, propter consilium ordinandum; minores, propter idem consilium suscipiendum, et interdum pariter tractandum et non ex potestate, sed ex proprio mentis intellectu vel sententia confirmandum. Cæterum autem propter dona generaliter danda, aliud placitum cum senioribus tantum et præcipuis consiliariis habebatur: in quo jam futuri anni status tractari incipiebatur, si forte talia aliqua se præmonstrabant, pro quibus necesse erat præmeditando ordinare, si quid mox transacto anno priore incumberet, pro quo anticipando aliquid statuere aut providere necessitas esset: verbi gratia, si inter Marchisos in qualibet regni parte ad aliud tempus dextræ datæ fuissent, quid mox post dextras exactas agendum esset, utrum renovandæ, an finiendæ essent. Juxtà, cæterarum partium imminentibus rixa et pace, ut secundum id, quod tunc temporis ratio poscebat (si ex una parte hinc aut inde vel faciendæ vel tolerandæ inquietudine necessario incumbibat) ex aliis partibus tranquillitas ordinaretur, Bouquet, vol. ix. p. 769. [Now at that time, the custom was such that the assemblies were held twice in the year and not more frequently. One assembly met, when the administration of the kingdom was settled for the current year, and

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Lenten time, the assembly was held by usage. Every vassus appeared in his place, and the sovereign attended to receive the offering. The donation would find its way into the treasury with as much regularity, as if it had been imposed upon the head of each vassus; and when the Merovingian himself became a mere pageant or phantom of power, the inspection exercised by the Mayor of the Palace would ensure the punctual payment of the Benevolence due to the long-haired King. After the reign of Charlemagne, we find that special assemblies were summoned for the purpose of enabling the vassi to testify their *gratitude*. The same burden was imposed upon the clergy. The abbess despatched her messenger, bearing the voluntary offering of the convent; and the names of the monasteries, bound to render gifts and military service, gifts without military service, or prayers without either gifts or military service, enrolled in one and the same record^a, shew that, in every case, the right to the

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this, when settled, was modified for no subsequent occurrence, save such as weighed at the same time on the whole realm. And in this assembly there met all the great men, both cleric and lay; the elders, to give counsel; the younger men, to receive the same counsel, and occasionally to discuss it like the others, and to confirm it, not as of compulsion, but as the result of their own thought and opinion. But the other assembly was of the elders only and the chief councillors, for the receipt of gifts from everyone; and at this they held a preliminary discussion of the affairs of the coming year, if perchance, any such presented themselves for which it was necessary to take forethought, or if any matter from the year before, which was now drawing to a close, was pressing, for which it was necessary to make any decree or provision before the next assembly; for instance, if between the Marcher lords in any part of the kingdom truce had been made at any time, it was necessary to discuss what should be done after the truce had expired, whether it should be renewed or put an end to. Similarly, if strife or peace appeared in other parts, it was necessary to take steps so that tranquillity might be assured in other parts, according to what was required by reason at that time, if, either here or there it was necessary that unrest should be caused or tolerated.]

Numerous passages occur like the following: *mense Septembri ad indictum placitum, WORMATIAM venit, in quo cum dona annualia more solito reciperet, &c.*, Ann. Bertin. 836, Bouquet, vol. vi. p. 198. [In the month of September, he came to the appointed assembly at Worms, where, in the wonted manner, he received the annual gifts.]

^a The notice of the services due from the monasteries, as mentioned

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Constitu-
ency of the
legislative
assemblies
of the
Franks.

Aid had become a royal prerogative, against which no excuse could be allowed.

The few edicts promulgated anterior to the reign of Charlemagne do not enable us to decide with certainty as to the constituency of the legislative assembly. In the earliest muniments, the attendance of the clergy is not always mentioned; and it has been supposed by some distinguished writers, that the ecclesiastics did not enter into the *Conventus*, Diet, or General "Placitum," until the reign of Pepin^a.

in the text, was drawn up or recorded by command of Louis le Débonnaire, in the *Conventus* held at Aix-la-Chapelle, A.D. 817.

Anno Incarnationis Domini nostri Jesu Christi dcccxvii, *Hludovicus* Serenissimus *Augustus*, divinâ ordinante providentiâ, conventum fecit apud *Aquis* sedem regiam Episcoporum, Abbatum, seu totius *Senatus Francorum*: ubi inter cæteras dispositiones Imperii, statuit atque constitutum scribere fecit quæ monasteria in regno vel imperio suo dona et militiam facere possunt, quæ sola dona sine militia, quæ vero nec dona nec militiam, sed solas orationes pro salute Imperatoris vel filiorum ejus et stabilitate Imperii, Baluze, vol. i. p. 590. [In the year 817 from the Incarnation of our Lord Jesus Christ, *Louis*, the most serene *Augustus*, in the order of divine providence, held at *Aix*, the royal city, an assembly of Bishops and Abbots and of the whole of the Senate of the *Franks*; where, among other arrangements for the Empire, he determined, and ordered to be set down in writing, what monasteries in his realm or empire, can give gifts and perform military service, which gifts alone without military service, which neither gifts nor military service, but should only pray for the safety of the Emperor and his sons and the stability of the Empire.]

Fourteen monasteries rendered "dona et militia"; sixteen "dona sine militia"; and fifty-four "orationes." All the monasteries of Aquitaine, Septimania, Toulouse and Vasconia are in this last division.

^a *Pepin* et *Carloman* apelèrent les prélats à ces assemblées, et ceux-ci s'y trouvèrent bientôt les maîtres. La constitution de l'état fut changée en entier par cette seule innovation, à laquelle un peuple dévot ne vit aucune raison de se refuser, et les *Champs de Mars* des soldats devinrent de synodes d'évêques. Les prélats, en effet, introduisirent dans ces assemblées l'usage de la langue latine et celui des longs discours. Ils les soumirent toutes les questions de dogme, de discipline ecclésiastique et de controverse, auxquelles les soldats Francs ne pouvoient rien comprendre. Etrangers à la langue, à la science théologique, et aux formes de délibération usitées par les prélats, leur rôle devenoit absolument oisif. On ne contestoit point leurs droits,

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brought together generally (but not invariably) at the same time.

(Chap. X.)

The same kind of assembly might be described in different ways, according to the nature of the business which preponderated.

origin of these conventions. Probably they should be distinguished from the *Champ de Mai*, though the last-mentioned assembly was certainly a branch of the *Placita*. It should seem that the *Placita* were formed by a union of different courts, tribunals and legislative assemblies. The monarch summoned his great officers at the time when the *vassi* came together. The relics of the Roman Provincial Councils may have been convened when their fellow-subjects were congregated before the king. The manner in which a *Conventus* or General *Placitum* is represented by historians, would depend upon the predominant nature of the business transacted therein. If held preparatory to an expedition or *Herrbann*, against the Slavi or the Avars, we shall be told that it was a *Champ de Mai*, because the prelates dispersed after mass had been sung and the tumult of war imposed silence upon the lawgiver. A heresy is to be condemned, and in the censure passed upon the innovator, it is not at all necessary to disclose the fact, that whilst the Fathers sat in *Council* in the Basilica of Saint Martin, the sovereign was inspecting his cavalry without the walls of the city. And a decree might be enacted by the Frankish king, which, though promulgated in the military assembly, had been advised by the *vassi* in their character of counsellors of the throne. The *Placitum* was composed of different Houses, Orders and Branches; and if we suppose that in our English Parliament, the Judges, and the Lords Spiritual and the Lords Temporal, and the Commons are in great measure independent of each other, and not invariably summoned to meet at one time and place—and such was the course of parliament in the earlier ages of the constitution—we shall have a general idea of the conformation of the Legislature of the Frankish empire.

It is therefore impossible to pronounce authoritatively that any one particular Branch or Order was excluded from a General *Placitum* on any given occasion; because, if such Order was not required to act, or if that one House happened to be dissolved before the rest, the presence of the members would not be recorded. Most generally, however, the *Placitum* comprised the “universitas” as well of the clergy as of the laity, the great as well as the small; and the capitularies, the monuments of the care and wisdom of Charlemagne, are sanctioned by the advice and concurrence of the bishops, abbots, counts, dukes, judges and all others then and there convened; or sometimes, as the proceeding is more succinctly expressed, by “all the people.” But these

words are expounded by documents affording further details of **Part I.** the prevalent practice; and the real advisers of the sovereign **Ch.** were the wise and prudent members, selected by his prerogative, **XVII** and separated from the tumultuous crowd. Counsel was given only by the "seniors," and usually at a meeting held in contemplation of the General Assembly^a. The mere commonalty attended to receive the commands of their superiors, and they became instructed in the law which they were to execute or obey. Sometimes they were allowed to share in the discussions of the Diet, and to declare that the enactment was agreeable to them. Accepted by the inferior orders, the measure might be more grateful to the multitude, but we cannot find that such acquiescence was requisite for the legal validity of the capitulary.

Counsel, how given by the Proceres.

The people sometimes allowed to share in the discussion.

The direct influence exercised in the Diet by the people, or rather the superior class of the Commons, speaking by their Echevins or other representatives, was when, like the Roman Provincials, they addressed their solicitations to the emperor. In such a case, his answer to the request constituted the law. The same course might be pursued by the ecclesiastical branch, which could, in like manner, supplicate the sovereign and his council of "Proceres," for the confirmation of the canons which they had passed in their own House; and the enactment grounded upon petition was *one* of the constitutional modes of legislation adopted in the Carlovingian empire^b. According to *another* mode, more frequently practised, but not more constitutional, the sovereign sent down his rescript for the consideration of the assembly. Furthermore, it was in this general Placitum, Diet, or Conventus of the Empire, that all the principal affairs of state were discussed; and the court in which the sovereign was present and exercised his prerogative, extended its political jurisdiction over every part of his dominions. Yet this assembly, which holds so prominent a station in the pages of the ancient chronicler, and still more in those of modern inquirers, cannot be considered with propriety as the Legislature of the empire, or even of the Gauls; nor did the Diet possess a coercive authority over the different states and nations who acknowledged Charlemagne's paramount authority. The Frankish monarchy was an aggregate of members; all the more important communities retained their peculiar and national governments, though administered beneath the supremacy of the emperor, and in his name.

Legislation upon petition, a course imitated from the administration of the Lower Empire. (See above, p. 278, &c.)

Petitions presented in like manner by the Clergy, the answer of the Sovereign, in this case, becoming the "Capitulum," or ordinance. (See II., p. 789.)

General "Placita" of the Carlovingian Sovereigns not to be considered as the legislature of the empire: since the capitularies did not acquire the force of law until verified by the several nations in their own peculiar legislative assemblies.

^a See above, p. 456, note a.

^b See Part II., *Proofs and Illustrations*, pp. 784-800.

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Erroneous
opinions
concerning
the Carlo-
vingian
Empire.

Historians have pleased themselves by contemplating Charlemagne upon his throne. They have reasoned upon the supposition, that, as the executive power of the state was concentrated in the monarch, the legislature had acquired a corresponding unity. But the vigour of Charlemagne's government rather consisted in the diffusion of his authority. The "Missi," the lieutenants of the emperor, proceeded from the palace armed and invested with his delegated jurisdiction. They represented the person of Charlemagne, and acted in his name; but the several dependent states and vassal races always retained their separate existence, if not their independence; and some of the most important powers of the commonwealth continued vested in the subordinate or co-ordinate legislatures.

The Mallum,
or Legis-
lature of the
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nations.

The Mallum
under the
Carloving-
ians not to
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of the
Missus.
Members
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arms not to
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the assem-
bly, nor was
it to be held
in the open
air.
(See above,
p. III.)

The theory of the Constitution assumed, that in every leading^a state of the empire there existed a Mallum, Conventus, Colloquium, or Parliament^b. The Mallum was the original name given to the Folkmoots of the Teutonic nations, and it is recognized as such in the Salic law. So long as the tribes were uncombined into kingdoms, the seniors and people assembled without edict or summons, and the crescent of the rising moon warned the warriors to the national assembly. But the royal prerogative came in restraint of this liberty; and the Mallum of the Carlovingian age appears as it was modified and controlled by the sovereign. The Freeman was enjoined to lay down his shield and his spear, and to resign the arms of his ancestors^c. No meeting could be held in the open air. No "Conventus" was lawful without the mandate of the Missus; nor was the Missus to call the Convention unless by the sovereign's special command^d.

^a We may suppose that many of the thinly peopled, unimportant *Folks* were merged, wholly or partially, in the larger communities or districts, formed by use and custom, like *Picardy* in modern France. But, on the whole, it is probable that very few of the Grand Fiefs of the eleventh and twelfth centuries were destitute of that species of government which I have described. Generally speaking, those Fiefs had all been States, Tribes, or Nations.

^b *Mallum*, *Mallus*, *Mal* or *Mathl*, from *Mathlian* (Gothic), to speak, discourse, converse, or parley.

^c Ut nullus ad *Mallum*, vel ad *Placitum* infra patriam, arma—id est scutum et lanceam—portet, Cap. III. A.D. 806, § 1; Baluze, vol. i. p. 449. [That no one bear arms—that is, shield and lance—to the *Mallum* or to the *Assembly* within the country.]

^d Interdiximus ut omnes Saxones generaliter conventus publicos

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The injunction, that the members should exert themselves for the welfare of the community^a, contains within it the concession, that the same body possessed the power of enacting laws for the redress of abuses—otherwise the direction would have been nugatory—and in such a case the ordinance or by-law might be made at once in the Conventus, though afterwards requiring the confirmation of the sovereign. A considerable extent of discretionary authority, to be exercised upon any sudden emergency, would necessarily be vested in the Missi, the counts, and the vassi whom the emperor could trust: and the nobles who attended a Placitum were entitled to direct that a summons should be issued to a fellow vassal of their own rank and order, whose presence might be required^b for the despatch of public affairs.

A *Capitulary* framed by the emperor¹, by the advice of his council, and adopted in the Diet or Placitum of the empire, did not become a *Law*, until it had been accepted by the several subject nations. What difference subsisted in practice, between the force and efficacy of the *Ordinance* and of the *Law*, we cannot

^a In the Capitulary of Louis le Débonnaire, A.D. 823, § 28 (p. 802), particular and full directions are given for the convention of the *remedial* Mallum or Placitum, which, according to that law, was to be held in the middle of the month of May. Mably supposes that these Provincial States were invented by Charlemagne. Ce capitulaire est de Louis le Débonnaire; mais on peut, et on doit même, sans crainte de se tromper, attribuer à Charlemagne l'établissement des états provinciaux dont je parle. Je prie de faire attention qu'on ne peut rien inférer contre mon sentiment du silence des capitulaires de Charlemagne au sujet de ces états, puisqu'il s'en est perdu un assez grand nombre, et qu'il s'en faut beaucoup que nous ayons un corps complet de sa législation ou de son administration. En second lieu, il seroit difficile de croire que les états provinciaux fussent l'ouvrage de Louis le Débonnaire. Cet établissement, on le verra dans le quatrième chapitre de ce livre, n'a aucune analogie avec le reste de la conduite de ce prince, ou du moins avec la politique des personnes qui le gouvernoient, Mably, vol. i. p. 431.²

His reasoning against the presumption of the non-existence of an institution merely in consequence of the silence of written laws, is good and of universal application; but the hypothesis that Charlemagne invented these assemblies is a singular proof of Mably's want of reflection, a quality imperfectly supplied by his brilliant theories.

^b See Part II., *Proofs and Illustrations*, p. 815.

Distinction between the "Capitulum" and the "Lex." The Capitulum or Ordinance enacted by the Emperor in the general Placitum, Parliament, or Diet of the Empire, not considered as law until ratified by

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now determine^a. It is sufficient for our purpose to know, that the distinction is clearly enounced: though the exact boundary between the jurisdiction of the Imperial Diet and the rights of the community might be often ambiguous and confused. The more usual mode of obtaining the national sanction was by transmitting the capitulary to the Mallum in which it was to be ratified. Here the ordinance was read to the people; and the assent of those who constituted the court, and more particularly of the elected Echevins, gave to the ordinance the force and validity of a law. "Law results from the consent of the people and the decree of the King," was the emphatic declaration of the Frankish Emperor; and unless that consent was given, no Law was obtained.

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the acceptance of each nation in which it was to have such validity. (See II., pp. 800-803, and compare with the acceptance of the laws of Athelstane in the kingdom of Kent, id., p. 170.)

(See II., p. 800.)

With a close adherence to the *principle*, that the acceptance of the law was to be signified by each nation, there were considerable variations in the *form* of proceeding. Sometimes a Frankish Mallum seems to have been held in and concurrently with the Imperial Diet, and then no further sanction would be required. Sometimes, the Seniors from each Gau or Pagus appeared far beyond their confines; and sanctioned the enactment, when thus convened before their sovereign. Or the national delegates might proceed to the palace with the resolutions of the *Leod*; and, like the Roman Provincials, petition for the

Various modes by which the subject-nations concurred in legislation. Representatives from each Gau appearing before the Sovereign, as in the case of the Saxons (see II., p. 804). Petitions presented to the Sovereign in the name of the nation, containing the resolutions adopted in the popular assemblies, as in the case of the Frisians (see II., p. 805). These proceedings facilitated by the reminiscences or vestiges of their ancient duodenary courts and federative systems.

^a The distinction between the two classes of legislation will appear from the capitula added to the Salic law, 819. After they had been accepted in the general convention of the Franks, the emperor (Louis le Débonnaire) declared that they should no longer be called capitula; ulterius capitula appellanda esse prohibuit, sed ut lex tantum dicerentur voluit, Baluze, vol. ii. p. 598. [He forbade that they should be called ordinances in future, but willed that they should be called the law only.] One of the abuses against which Hincmar remonstrates, is the conduct of the Counts, who sometimes decided according to the *capitula*, sometimes according to the *law*; quando enim sperant aliquid lucrari, ad legem se convertunt; quando vero per legem non æstimant acquirere, ad capitula confugiunt; sicque interdum fit, ut nec capitula pleniter conserventur, sed pro nihilo habeantur, nec lex, Mably, vol. i. p. 427. [For when they hope to gain any profit, they betake themselves to the law; but, when they do not think that they can gain through the law, they flee to the ordinances; and so it happens that at times neither the ordinances are thoroughly kept, being accounted as of no force, nor the law.]

Part I. conservation of their franchises, and the amendment of the laws.
Ch. XVII. All these transactions would be facilitated by the ancient usages of the Teutons. A representative system was familiar to them. Their duodenary courts, and the federations formed from these primitive tribunals, all proceeded upon an acknowledged principle of representation: not of the people as individuals, but of the ranks, orders, and members of the community.

(See Chap. III.)

Occasional conventions of the different nations included in the empire, but which had rather the character of political congresses than of legislative assemblies.

At the inauguration of an emperor, he was recognized by the several nations subject to his crown^a; each realm concurred in hailing the accession of the sovereign raised to the imperial dignity: and, on some other occasions, there was a kind of convention or diet of the different nations^b. But these are rather to be considered as congresses, having a political object, than real legislative assemblies. There was no union of the parts composing the empire. The nations might be brought together, and placed side by side, the means of incorporation might exist, yet the fusion into one mass did not take place. Neither in fact nor in sentiment, did the members of the community lose their separate political existence; and if we may judge from the example of the Bavarians, the vassal princes freely exercised the right of convening their own legislative assemblies^c. But if the Diet of the Carolingian empire only possessed this imperfect dominion over the several states, it was equally incompetent to oppose any constitutional barrier to the power of the sovereign. He was the successor of the Cæsars, nor did any of these institutions deprive him of his Imperial authority. The emperor was still the supreme legislator. From him did all law proceed. The advice given by the Proceres of the palace, the assent of his subjects, appear, according to the theory of the government, only as the means of exercising his prerogative. He transmitted the Capitulum to his lieges for their examination; but his discretion might have withheld the law. A petition might be presented to him, but the prayer might be denied. In every case when the Capitula or the written laws were silent, the deficiencies or imperfections were supplied by his uncontrolled and irresponsible decision. And all those supreme powers of judicature, which the practice of the English constitution transferred to the "King in Parliament," the "King in Council," the

^a See above, pp. 452 ff.

^b See Part II., *Proofs and Illustrations*, p. 816, no. 4; p. 818, no. 5.

^c See Part II., *Proofs and Illustrations*, p. 806.

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Part I. formed out of great societies. Every count, and marquis, and
 Ch. duke is represented as an amovable governor, who has succeeded
 XVII. in rendering himself independent of his master. Every distinct

that the so called
 provincial or local
 jurisdictions, and

occurring occasionally in the Capitularies, refers to the dominion possessed by the Frankish King, not to territories peopled by the Frankish nation.

Il y a dans l'échelle de la civilisation des degrés, des époques où la société est incapable de s'élever à l'unité nationale, où elle ne possède ni les lumières, ni les intérêts, ni les principes d'action qui font, d'une multitude éparsée sur un vaste territoire, un seul peuple uni sous les mêmes lois, vivant de la même vie, et animé de la même impulsion....

Quelles idées, quelles relations, quels intérêts en seraient le lien et l'aliment? La seule société qui soit possible alors est une société étroite, locale, comme l'esprit et la vie de ses membres. Et si, par quelque puissant accident, par quelque cause passagère, une société plus vaste est un moment formée, on la voit bientôt *se dissoudre*; et à sa place *naissent une multitude de petites sociétés*, faites à la mesure du degré de développement des hommes, et qui bientôt produisent, chacune dans ses limites, un gouvernement de même dimension. Tel est le phénomène qui *commença à se développer en France après la mort de Charlemagne*, et dont le *dernier terme* fut l'établissement du régime féodal, Guizot, p. 82.¹

Charlemagne avait tenté de se faire le souverain d'un *grand peuple* et d'un grand empire; l'état du pays se refusait à cette entreprise, et nul de ses successeurs ne fut capable d'y songer. Sous leur règne, le gouvernement et le peuple allèrent *se démembrant, se dissolvant de plus en plus*. Bientôt il n'y eut plus ni roi, *ni nation*. Chaque propriétaire libre et fort *se fit souverain* dans ses domaines; chaque comte, chaque marquis, chaque duc, dans le district où il avait *représenté* le souverain. Si cela fut heureux ou malheureux, légitime ou illégitime, il est puéril de le rechercher; c'était la conséquence nécessaire de l'état des hommes et des choses; c'était partout le travail de la société *aspirant à se former, et incapable de s'étendre au-delà d'étroites limites*. Le pouvoir et la *nation démembrèrent* parce que l'unité du pouvoir et de la *nation* était impossible; tout devint local parce que rien ne pouvait être général, parce que toute généralité était bannie des intérêts, des existences, des esprits. Les lois, les jugemens, les moyens d'ordre, les guerres, les tyrannies, les libertés, *tout se resserra dans de petits territoires*, parce que rien ne pouvait se régler ni se maintenir dans un cercle plus étendu. Quand cette grande fermentation des diverses conditions sociales et des divers pouvoirs qui couvraient la France se fut accomplie, quand les *petites sociétés qui en devaient naître* eurent

territory is a *department*, cut out from a kingdom. Local govern-
ments are dismemberments of the general power of the nation. The smaller jurisdictions have acquired their political existence, because the energies of the people shrank within these narrow confines. All these assumptions will be refuted by simply advert-
ing to the fact, that the *Empire* of Charlemagne was not a *Nation*. "*Rex Francorum*" was not "*Rex Franciæ*." ^a [The King of the Franks was not King of France.] The last stage of *dissolution* was nothing else but the natural result of the ancient political existence of each community, exercised more freely and independently than in the Carlovingian age. When the circuits of the Missi were discontinued, the vassal states were remitted to their ancient rights: and if St. Louis declared ^b, that the king cannot legislate in the territory of a baron without his assent, there was no real alteration in the fundamental principles of the kingdom. "It is absolutely certain," Hallam continues, "that the States General of France had, in no period, and in no instance, a concurrent legislative authority with the crown, or even a controlling voice. Mably, Boulainvilliers¹ and Montlosier² are as conclusive on the subject as the most courtly writers of that country."^c And with Hallam, we must fully admit, that "the States General had no right of redressing abuses, except by petition, no share in the exercise of sovereignty which is inseparable from the legislative power."^d But does it follow as a just consequence that France, or rather the countries called France, "never possessed a constitution: nor had the monarch any limitations in enacting laws, save those which, until the reign of Philip the Fair, the feudal principles had imposed" ?

Part I.
Ch.
XVII.

smaller societies, resulted from the division and breaking up of larger societies,

whilst in fact such provincial institutions, &c. are only the vestiges of ancient independent organizations, reappearing when the superinduced authority, by which they had been kept down, became less efficient.

States General of France never possessing legislative authority.

pris une forme un peu régulière et déterminée, tant bien que mal, les relations hiérarchiques qui les unissaient, ce résultat de la conquête et de la civilisation renaissante, prit le nom de régime féodal, Guizot, pp. 83, 84.³

^a See above, note c on p. 467.

^b Ne li Roi ne puet mettre ban en la terre au Baron sans son assentement, ne li Bers ne puet mettre ban en la terre au vavassor.⁴ That the King was not empowered to legislate in the territory of a Vassal is indubitable; but I am not quite certain that this particular passage establishes the doctrine. It has, however, been so employed by Hallam and Mably.

^c Hallam, vol. i. p. 183.

^d Hallam, vol. i. p. 187, and see further remarks on this subject, Part II., *Proofs and Illustrations*, p. 808.

Part I.

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XVII.

Erroneous reasoning of those who suppose that the territories composing France never possessed any constitution except such as was founded upon feudality.

There were no Diets, no regularly appointed assemblies for the French nation^a, because, in a political sense, there was no French nation. The nations speaking the *Langue d'oïl*, might perhaps occasionally be termed *Franceiz*: but they had neither community of interest nor community of feeling. Gascons, Angevins, Bretons, Normans, Tolosans, acknowledged the supremacy of the king of the French; the Rex Francorum was their paramount sovereign, and public acts were dated in the year of his reign: but they lived on their own lands, and bore their own names; they would have spurned the idea of being governed as Frenchmen.

Discarding the consequences deduced from an erroneous theory, let us recollect that feudality, great as its influence may have been, was only superinduced upon the social system. In this "collection of states partially allied to each other,"^b the members had their proper legislative assemblies, in which the power had remained vested since the extinction of the Carlovingian empire. Such an authority as Tassilo possessed in the assembly of his Proceres, was exercised by a duke of Brittany or a countess of Champagne^c. During the period when no national assembly can be discovered in "France," and when a political congress alone declared the will of the different nations inhabiting the land of Gaul, and constituting the dependencies of the Capetian crown, we may discern, in every portion of the kingdom, the legislatures which replaced the Mallum of the Carlovingian age, modified by the alterations in the jurisprudence and policy of the state, yet all exhibiting a degree of uniformity, which could only arise from a common origin.

^a Pendant que la France fut confédérée sous le régime féodal le pouvoir législatif y fut suspendu. Hugues Capet et ses successeurs, jusqu'à l'avènement de Saint Louis, n'avoient point le droit de faire des lois, la nation n'avoit point de diète, point d'assemblées régulièrement constituées dont elle reconnût l'autorité. Le système féodal, tacitement adopté et développé par la coutume, étoit seul reconnu par les nombreux souverains, qui se partageoient les provinces. Il leur tenoit lieu de lien social, de monarque et de législateur, Sismondi, vol. iv. p. 2.¹

^b Hallam as above. And see a remarkable passage from Ivo Carnotensis (Part II., *Proofs and Illustrations*, p. 844).

^c See the enactment of Tassilo (Part II., *Proofs and Illustrations*, p. 806), and the assizes of Geoffrey Plantagenet (id. p. 824), and Blanche, Countess of Champagne and Brie (id. p. 827).

(See Tassilo's Decree, see above, p. 466 and II., p. 806.)

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Part I.
Ch.
XVII.

States com-
posing the
country
called
France,
incorrectly
denominated
Provinces
(see also
II., p. 824).
Legislatures
formed out
of the
Mallum or
Placitum of
the Carlo-
vingian age.

Take a comprehensive historical view of the territory now called France, and all these contradictions and difficulties will disappear. The various bodies incorrectly denominated Provincial States—incorrectly, because, in the ordinary acceptation of the term, a province is a part of an incorporated territory or empire, whilst the so-called provinces of France were co-dependents of one crown—are legislatures formed from the Mallum of the earlier age. The name may be forgotten; the Missi no longer represent the person of the emperor; and the territorial ruler, the count or the duke, may have been enabled to assert a greater degree of independence than his predecessors, who were subject to the commanding genius of a Charlemagne. But we find all the tokens which are sufficient to establish the main

manière précaire; parceque l'extrême ignorance et les vices des Français n'avoient pas permis à Charlemagne de se dessaisir de quelques parties de la puissance exécutive. Celles qu'il n'auroit pas retenues entre ses mains auroient été mal administrées, et seroient devenues un obstacle à ses desseins, Mably, vol. i. p. 252.¹

Une nouvelle cause de la décadence prochaine du gouvernement, c'est que l'assemblée du Champ de Mai n'étoit astreinte à aucune forme fixe et constante dans la manière de délibérer et procéder à l'établissement des lois. Autant qu'on peut le conjecturer à l'aide de nos anciens monumens, souvent elle prévenoit le prince, et le prioit de mettre le sceau royal aux réglemens qu'elle avoit dressés. Quelquefois le prince proposoit lui-même une loi, et requéroit la nation d'y donner son consentement. Tantôt les trois ordres de l'état dressoient leurs articles à part, et tantôt ils se réunissoient pour ne faire qu'une seule ordonnance. Il ne paroît pas qu'il y eût des termes prescrits pour délibérer à plusieurs reprises sur un même objet. Quelques lois ne furent portées qu'après plusieurs longs débats, et d'autres furent proposées, reçues et publiées sur le champ, par une espèce d'acclamation.

Charlemagne avoit laissé subsister cette manière indéterminée d'agir dans le Champ de Mai, parceque l'extrême ignorance des Français ne lui permettoit pas de les tenir assemblés, sans qu'il veillât par lui-même à leur conduite, et la dirigeât; et des formalités, en le gênant, auroient été un obstacle éternel au bien. D'ailleurs, la nécessité où il étoit de se transporter d'une frontière de son vaste empire à l'autre, ne lui laissant la liberté de convoquer la nation que pendant un temps très-court, il falloit se hâter de décider les affaires; et le génie de Charlemagne tranchoit en un moment les difficultés, que des formes auroient rendues plus épineuses, et que ses sujets n'auroient jamais pu résoudre, Mably, vol. i. p. 256.²

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position for which I contend, namely, that the legislative bodies existing in the Capetian dependencies were shaped out of earlier institutions and that they were not the result, either of *concession* from the monarch or of *usurpation* by the people. Consider those instances in which any evidence has been preserved or rendered accessible. The prelates retain the same station; the vassi have taken the name of the baronage: in the consuls of the towns, we easily discover the Judices of the Mallum; and probably these are only the "Curiales" of the Roman age under another appellation. They attend on behalf of the communities to which they belong; and their cities are not to be deemed mere associations of enfranchised villeins. They are not mean burghers, who have extorted their rights from the weakness of their lords, but members of a free and powerful class; and to whom the most distinguished honours of nobility could not be denied. In all the privileges of the "Estates," the derivation from the more ancient system is apparent^a. Precepts or writs are issued by the king's seneschal, who acts as if he were the Missus. The subjects petition, as of old, and all the main features of the Carlovingian empire are reproduced in the age of feudality.

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XVII.

The preceding position exemplified by the Estates of the Sénéchaussée of Carcassonne (see II., pp. 834-844). 1269, 1271. These assemblies summoned by writ, and containing a full representation of the Tiers Etat, who are usually considered as having been introduced into the States General of France by Philip le Bel, 1302 (see II., p. 812). Consuls attending in behalf of the cities, the Roman Curiales under another name (see above, p. 270).

Let us pursue the inquiry, and we shall find that from the union of the local assemblies, at a comparatively recent period, the states general of the *Langue d'oc* were formed^b. The legislature of the ancient kingdom of Septimania had, however, long obtained the character of "Estates General." The *Conventus*^c may be discovered from age to age; sometimes in the allusions of the chroniclers, sometimes in the acts of those assemblies called councils, but which, in fact, were the unions or concurrent sessions of the ecclesiastical and civil authorities. The "Parliament" held at Pamiers by Simon de Montfort is the first of these assemblies of which we possess any very distinct account; and it is singularly interesting to an English reader, to

States of the *Langue d'oc* formed by the union of the States of the Sénéchaussées, &c. Estates of the County of Toulouse (see II., pp. 807, 829, &c.).

1212. Parliament of Pamiers (see II., p. 829) convened by Simon de Montfort.

^a For their privileges, see Vaissète, vol. iii. p. 529. They had been accustomed, from time whereof the memory of man ran not to the contrary, to receive knighthood and to display all the insignia of chivalry. (Preuves, p. 607.)

^b Nos états, say the historians of Languedoc (vol. iii. p. 480), ne sont devenus généraux que par le concours des états particuliers de chaque sénéchaussée, qui s'assemblèrent d'abord séparément, et qui, s'étant réunis dans la suite, n'ont composé qu'un seul corps.¹

^c Vaissète, vol. ii. pp. 181, 182, 187, 195, 246, 294.

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Ch.
XVII.

1229.
Council or
Parliament
of Toulouse,
composed of
Prelates,
Counts,
Barons and
Magistracy.
(See II.,
p. 831.)

observe the "Tiers Etat" in an assembly convened by him, who is supposed to have first summoned the citizens and burgesses to appear in the parliament of England. When the tribunal of the Inquisition is established, the council is composed of the counts and barons of the county, and the magistracy appearing for the principal city. It is true that this assembly is held before the papal legate. Count Raymond¹ appears, not as the sovereign, but as one of the members; and the assembly, therefore, bears an extraordinary aspect. Raymond, however, could not take a higher station. The heretic was scarcely restored to the possession of those parts of his dominions which had not been seized by the pontiff and the French king; and yet, at the time when the power of the prince was thus broken down, the victors respected the privileges of the community, and acted in conformity to the national constitution.

It is not indeed to be supposed, that, in an empire embracing so many states, formed at different periods, and peopled by various races, there should have been an entire uniformity, either in the original elements of the local legislatures, or in the stages of their development or decay. The institutions of ancient Gaul were, as we know, characterized by great diversity. These, in some instances, were supplanted by Roman municipalities; in others, modified by the Roman government. The Saxons of Bayeux had traversed the territory of the Belgic tribes before the Frankish invasions; and the Franks, though powerful as conquerors, were few in number. Many fragments of early policy may have been retained. In the eleventh century, we find the people of Neustria establishing a representative legislature, for the purpose of resisting their Norman invaders^a. The

Attempt
of the
Neustrian
peasantry to

^a See above, pp. 102, 103. The passage of William of Jumièges, lib. v. c. 2, is very curious. The events happened in the beginning of the reign of Richard II., about 997.

Dum igitur tantæ probitatis exuberaret copiis, in initio suæ juventutis intra Normannicum Ducatum contigit quoddam pestiferi oriri seminarium dissidii. Nam *rustici unanimes* per diversos totius Normannicæ patriæ Comitatus, plurima agentes conventicula, juxta suos libitus vivere decernebant, quatenus tam in sylvarum compendiis, quàm in aquarum commerciis, nullo obsistente antè statuti juris obice, legibus uterentur suis. Quæ ut rata manerent, *ab unoquoque cœtu furentis vulgi duo eliguntur legati, qui decreta ad mediterraneum roboranda ferrent conventum.* Quod ut Dux agnovit, protinus *Radulphum*

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Part I. Imagine a tribe of Franks establishing themselves in a Roman
Ch. XVII. Municipium. They would exercise their national powers of
 government in the Mallum; the Roman population would retain
 their Curia, though perhaps deprived of much of its ancient
 jurisdiction, just as the Decurion would be compelled to yield
 precedence to the Teutonic "Senior." When the distinction of
 race was obliterated, and the population blended into one mass,
 both tribunals, or, at least, bodies formed out of both tribunals,
 would still continue to share the administration between them.
 The governing classes of the community would consist of two
 branches, a bench of Twelve Echevins, and a chamber of an
 Hundred Counsellors. This course of events, which I have
 attempted to portray by a single example, must have existed
 under an infinite variety of modifications. Sometimes one
interest would keep the ascendancy, sometimes another; and the
 multifarious influences of political events and local peculiarities
 would cause the elements to enter into very diversified com-
 binations. Allowing, however, for every deviation and exception,
 the general theory remains unaltered; and the uniformity in the
 constitution of the *Etats* and "*Landstände*" throughout the empire,
 and whether in Gaul or in Germany, cannot be otherwise explained.
 Sooner or later, the same features are always to be discovered.
 An assembly convened by the writ or mandate of the sovereign;
 three orders, namely, clergy, landholders, and the virtual or
 delegated representatives of the municipal communities, and
 lastly, the legislative power vested in the sovereign, though
 exercised by the advice, or upon the petition, of the subjects
 thus convened.

Reappear-
 ance of the
 Teutonic
 Courts, as in
 the case of
 the con-
 firmation of
 the ordin-
 ance of
 Chartres by
 the twelve
 Burgesses of
 Paris, &c.
 (see II., p. 807)
 representing
 the ancient
 Scabini (see
 II., p. 801).

When the Teutonic population preponderates, the duodenary
 courts or fragments of them will constantly reappear. Some-
 times they will seem to be isolated, or suddenly evolved; but,
 upon a deeper investigation, we shall be convinced that they are
 not new creations, and that they existed in connexion with the
 general system of jurisdiction, although perhaps their action may
 have been concealed.

Lastly, in the tendency, spirit, and form of government, we
 shall always trace the combined effect of Roman and Barbaric
 institutions: the former preponderating in the court of the
 sovereign, and the latter in the several members of which the

(See above,
 p. 302.)

yet elect a Roman Catholic sheriff and aldermen, for some purposes
 connected with ecclesiastical jurisdiction.

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state is composed. The history of the countries comprehended **Part I.** under the collective name of France, must be left to others^a; **Ch.** but the foregoing observations will convince the reader, that it **XVII.** is an error to seek the constitution of the "kingdom" in the states general, or to suppose that the Provincial Etats were merely a *succedaneum* for a universal legislative authority: on the contrary, the states general are to be considered merely as an accident, an imperfect attempt to supersede the Etats of the component parts of the realm: but never advancing beyond an outline, and without any definite organization or efficient power. England was enabled to proceed in a different course; and the Conquest, by breaking down the barriers between the ancient kingdoms, and eradicating all repulsive forces, facilitated the operation of the causes which ultimately consolidated our island into one monarchy^b.

^a Sismondi partly seizes this great truth in his observation, that l'histoire des grands feudataires, bien plus puissans que le Roi lui-même, serait la vraie histoire de la France si nous avions assez de documens pour l'écrire, vol. iii. p. 231¹. A full and detailed history may be impracticable; but a synopsis of the chronicles of each community would render the general history of the country called France more intelligible; and the valuable histories of Languedoc (Vaissète), and Brittany (Lobineau and Morice), shew that the outline, at least, of the constitutional history of the provinces may be traced. The custom of enrolment, by which our English Records have been preserved, never existed in France; and the proceedings of the Estates of the Provinces, the objects of jealousy to the government, were *not* the objects of curiosity to the historian: hence the scantiness of materials. Perhaps some gleanings may be found in the archives of the great towns; and the registers and lieger books of the cathedrals and monasteries may contain entries of writs of summons, and documents of the same description.

^b In the original composition of this work, I had not the advantage of being guided by Mr. Allen's "Enquiry," which has been justly characterized "as the most important book upon constitutional antiquities and law that has appeared for many years." (Edinb. Rev., vol. lii. p. 138.) The slow progress of these sheets through the press has enabled me to profit by Mr. Allen's researches; to refer my readers to the "Enquiry" for full explanations of subjects upon which I have treated in a cursory and imperfect manner; and I hope, to confirm the general theory of the derivation of royal prerogative from the Roman empire. But, agreeing with Mr. Allen in such general theory,

478 *The Rise and Progress of the English Commonwealth*

Part I. I have not seen reason to alter my opinion, that the assumption of
Ch. the imperial prerogatives by the Barbaric monarchs was the result of
XVII. an *actual succession* from the empire, either by direct concession, as
in the case of Clovis, or resulting from the feeling—sometimes expressed
more clearly, and sometimes more obscurely—that the Roman empire
subsisted as a body politic; and that whoever rose to authority within
its boundaries, was a Vicar of the empire. Mr. Allen supposes that
these prerogatives were cast upon the sovereign by the *fictions* of the
civilians and the clergy: whilst it appears to me that they are *realities*.
Such was the force of opinion, that a Barbarian, ruling on Roman
ground—an Odoacer, a Leuwigild, an Edwin, a Theodoric—had no
other means of legitimating his authority. The Diadem or the Tufa
(see above, p. 358 and below, p. 490) was his *warrant* for exacting
lawful obedience.

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Part I. of the German tribes; but it must not be supposed that these
 Ch. leaders possessed any of the exalted functions and complex
 XVIII.

Saxon Poet, describes the nation, in his metrical history of the Life and Conquests of Charlemagne.

...nec Rege fuit saltem sociata sub uno,
 Ut se militiæ pariter defenderet usu,
 Sed variis divisa modis plebs omnis habebat
 Quot pagos tot pene duces. (Bouquet, vol. v. p. 138.)

[Nor was the nation even united under one king, so that it might defend itself by joint military service; but the whole people was divided in many ways and had almost as many dukes as it had villages.]

The earlier authority of Bede, when describing the fate of the English missionaries, is equally conclusive;

...qui venientes in provinciam intraverunt hospitium cujusdam villici, petieruntque ab eo, ut transmitterentur ad satrapam qui super eum erat, eo quod haberent aliquid legationis et causæ utilis, quod deberent ad illum perferre. Non enim habent Regem iidem Antiqui *Saxones*, sed satrapas plurimos suæ genti præpositos, qui ingruente belli articulo mittunt æqualiter sortes et, quemcumque sors ostenderit, hunc tempore belli ducem omnes sequuntur, huic obtemperant; peracto autem bello, rursum æqualis potentiæ omnes fiunt satrapæ. Suscepit ergo eos villicus, et promittens se mittere eos ad satrapam qui super se erat, ut petebant, aliquot diebus secum retinuit.

Qui cum cogniti essent a Barbaris quod essent alterius religionis, nam et psalmis semper atque orationibus vacabant, et quotidie sacrificium Deo victimæ salutaris offerebant, habentes secum vascula sacra et tabulam altaris vice dedicatam, suspecti sunt habiti, quia si pervenirent ad satrapam et loquerentur cum illo, averterent illum a diis suis et ad novam Christianæ fidei religionem transferrent; sicque paulatim omnis eorum provincia veterem cogeretur nova mutare culturam. Itaque rapuerunt eos subito, et interemerunt. Hist. Eccles., lib. v. cap. 10.

[Coming to the province, they entered the guest-house of a certain steward, and requested of him that they might be sent to the lord who was over him, because they had a message and something to his advantage to communicate to him. For these same Old *Saxons* have no king, but several lords who rule that nation; and on occasion of impending war, they cast lots without distinction of persons, and whomsoever the lot indicates, him they all follow and obey as leader during the war; but when the war is over, all these lords again become equal in power. The steward received and kept them with him in his house some days, promising to send them to his lord, as they desired.

attributes, which, according to our ideas, constitute royal dignity. **Part I.**
 A king must be invested with permanent and paramount authority. **Ch. XVIII.**
 For the material points at issue are not affected by shewing }
 that one powerful chieftain might receive the complimentary
 title of *Rex* from a foreign power; or that another chieftain, (See above, p. 299.)
 with powers approaching to royalty, may not have been created
 occasionally, and during great emergencies. The real question
 is, whether the king had become the lord of the soil, or at least
 the greatest landed proprietor; and the first "Estate" of the
 commonwealth, endued with prerogatives which no other member
 of the community could claim or exercise. The disposal of the
 military force; the supreme administration of justice; the right
 of receiving taxes and tributes; and the character of supreme
 legislator and perpetual president of the councils of the realm;
 must all belong to the sovereign^a, if he is to be king in deed, as
 well as in name.

But the prerogatives of the king may exist concurrently
 with the franchises of the nation; and the main object of our
 inquiries must be, the development of the limited authority
 possessed by the Anglo-Saxon kings: and the relation which
 that authority bears to the constitution formed in England, after
 the Anglo-Saxon dominion had passed away. I have already Limited Monarchies of the Middle Ages, to be
 attempted to shew, that the principal states of the middle ages

Now when the barbarians knew that they were of another religion
 by their continual prayer and singing of psalms and hymns and by
 their daily offering of the saving victim—for they had with them
 sacred vessels and a consecrated table instead of an altar—they
 grew apprehensive, lest, if they should come into the presence of their
 chief and converse with him, they might turn him from his own
 gods, and convert him to the new religion of the Christian faith; and
 thus by degrees, all their province might be obliged to change its old
 worship for a new. And therefore they seized them suddenly and put
 them to death.]

Alfred, in his version (p. 624), renders the term "Satrapæ" by
 aldermen. It is said that there were twelve of these nobles, who, in
 the vernacular chronicle of the Old Saxons (Botho, apud Leibnitz,
 Script. Rerum Brunsvicensium, vol. iii. p. 292), are called Ethelings.
 These authorities testify as strongly in favour of the authority of the
 Ealdormen in their *particular* "Pagi," as they disprove the existence
 of any *general* authority.

^a See Allen, p. 11.

Part I.

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considered as arising out of the Roman Empire or Fourth monarchy (see above, pp. 259, 298, 299). Proofs of the position derived by contrasting the policy of those States which arose on Roman ground, with the Scandinavian kingdoms.

Scandinavian States: privileges of the people, the popular courts (see above, pp. 91-94, and 105-108), inadequate to secure the liberties of the people.

are to be considered as springing forth from the Roman empire. In addition to the affirmative proofs, we may give further support to this hypothesis, by contrasting the policy of the kingdoms so built upon Roman foundations, with those which originated beyond the verge of the empire, and out of its boundary. Let us contemplate the kinsmen of our Anglo-Saxon ancestors, who continued in their pristine settlements. Examine the policy prevailing in the dominions settled by those tribes, who did not migrate into the Roman provinces. View the Gothic nations on the shores of the Baltic, or on the banks of the Elbe. In the Scandinavian states, we shall find the elements of a government, apparently free. The ordinary administration of the law was vested in the virtual representatives of the people; they participated in the task of legislation; they raised the sovereign to the throne. The principles of jurisprudence displayed in the Norwegian Codes were not devoid of equity and justice. The Folkmoot of the "Hærred" assembled within the circle of judgment, and the Doomsmen were called together according to the ancient traditions of the Ases. The *Konung* did not claim to be above the law; and cases can be adduced in which the Norwegian monarchs were bound, or affected to be bound, by the judgment of the tribunal.

Thus far we have the *theory* of a limited monarchy. But what was the practice of Scandinavia? Take the answers given by the saga and the skald. In all matters of state and royalty, the "Konungs" of the Northmen had no acknowledged control. Considered individually, the "Bondes" appear as energetic freemen, fully capable of defending their rights, perhaps of abusing them. The sturdy owner of the Odal land treated with his sovereign sometimes upon equal terms, and often with defiance. Yet there was no real balance of authority, nor any Estate or Order by whom the sovereign's despotism could be resisted. Collectively, the people, in spite of all their privileges, had no weight against the king. The sovereign defied public opinion; he altered the religion of the state; he moulded the government at his will; he displaced the hereditary chieftains as liked him best; taxes and tributes were imposed at his bidding. The Britons, fleeing before the Saxon sword, took refuge in Armorica; and the Anglo-Saxons sought protection amongst the Scots against the exactions of the Norman Conqueror, but it was to escape from a sovereign of their own blood and lineage, that the subjects of Harold, vexed and ground down by his insupportable

Tyranny of the Norwegian monarch; Iceland settled by the Norwegians, who take refuge in that island to escape from the tyranny of Harold.

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state with safety to himself and advantage to the people? The cares of royalty required the active exertions of a matured intellect and a vigorous arm. If the empty name of "king" had been bestowed upon a child, the supreme authority must have been delegated to the kinsman, as regent; and the possession of power might tempt the tutor to conspire against his helpless ward. But by declaring that if the elder representative of the royal house had been once called to execute the royal office, he was to retain the sceptre during his own life, the temptation was removed, and a greater security was given to the person of the heir, and to the tranquillity of the kingdom.

Anglo-Saxon
monarchy,
not elective
in the
ordinary
sense of the
term; the
Royal
authority
being wh^{olly}
vested in the
Royal
families.

Using the term election according to the ordinary sense in which the word presents itself to men's minds, as denoting a free and unrestrained choice amongst many individuals, none of whom possess any presumptive right, I cannot assent to the doctrine that the Anglo-Saxon state was, either in spirit or in form, an elective monarchy. The very document^a which has been confidently adduced as the strongest evidence in favour of the proposition contains an express acknowledgment of hereditary right. Those who advocate the contrary opinion will quote the various instances in which we find the accession of the monarch accompanied by an act of the legislature. But Wessex is the only state from whose succession any principles can fairly be deduced; and in no one of these cases, excepting during the Danish invasions, was the line of Cerdic disinherited. The utmost extent of the *elective* power, consists in the preference given to one branch of the royal family over another. If occasional diversions from lineal succession prove the *freedom* of choice, we might almost assert that Russia is an elective empire. What is then the cause of this opinion? It arises from a misconception of the functions exercised by the Legislature. In the examples brought forward for the purpose of establishing the elective nature of the Anglo-Saxon crown, we shall easily perceive the Great Council of the nation, acting in a *judicial* capacity. The members are not national representatives, offering the empire to a candidate whom their voices have raised to authority, but they are the "Witan," the judges, whose wisdom is to satisfy the people that their allegiance is demanded by the lawful sovereign.

Many contingencies may be pointed out, in which such a judicial recognition was absolutely requisite, according to the

^a The Coronation Ritual. See Part II., *Proofs and Illustrations*, p. 670.

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policy which then prevailed. The adoption of the canon law called for the creation of such a tribunal. It is not certain that, during the earlier periods, illegitimacy was a bar to the succession. But the clergy introduced other doctrines; and the Church declared to the state, that the child of a union, illegal according to the dogmas of the ecclesiastical code, was incapable of succeeding to the throne. Now if the king appeared in the character of *heir*, the clergy and “ealdormen” of the nation were bound to satisfy themselves that he was born in lawful matrimony. They were to be assured that the marriage of his parents was not vitiated by adultery, or contracted within those prohibited degrees which annulled the bond^a. Further objections might be taken to the title of the lineal heir. An opinion prevailed that the *Atheling*—for thus did the Anglo-Saxons denominate their crown prince—was to be “porphyrogenitus”; and that if born before his father and his mother had been ordained to the royal dignity, the crown did not descend to the child of uncrowned ancestors^b. This principle may have been ultimately discarded;

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Cases in which such judicial recognitions might be required. The Heir was to be born in lawful matrimony, and after his parents had been called to the throne. And the judgment of the Witan would be required to shew that he was legitimate.

^a These are the cases particularly contemplated by the 12th canon of the Council of Cealchythe, A.D. 785. (Concilia, vol. i. p. 148.)

Duodecimo sermone sanximus, ut in ordinatione regum nullus permittat pravorum prævalere assensum; sed legitimi reges a sacerdotibus et senioribus populi eligantur, et non de adulterio vel incestu procreati: quia sicut nostris temporibus ad sacerdotium secundum canones adulter pervenire non potest; sic nec christus Domini esse valet, et rex totius regni, et hæres patriæ, qui ex legitimo non fuerit connubio generatus. [By the twelfth canon we have decreed, that in the appointment of kings none permit the vote of wicked men to prevail; but that the kings, legitimate and not born of adultery or incest, be chosen by the *priests* and *elders* of the people; because as in our times the canons forbid anyone born of adultery to enter the priesthood, so he cannot be the Lord’s anointed or the king of the whole realm or the heir of the country, who is not born in lawful wedlock.]

This is one of the authorities to which Mr. Turner appeals, as a proof that the Witenagemot elected the king.

^b This was one of the objections to the succession of Edward the Martyr.

...qui *Eadwardus* cum in Regem consecrari deberet, nonnulli de principibus terræ contraire ne Rex fieret nisi sunt; tum quia morum illius severitatem, qua in suorum excessus acriter sævire consueverat, suspectam habebant, tum quia matrem ejus, licet legaliter nuptam, in

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Anglo-Saxon
Kings exercised
the prerogative
of bequeathing
the Crown, or of
nominating a
successor, by
testamentary
disposition.

(See II., p. 695.)

but it subsisted to such an extent as to call for discussion and for judgment. A third case might require judicial investigation. The Atheling, one of many sons, might claim under his father's appointment or nomination. As amongst his children, the king was entitled to select his successor: this power was fully recognized, and viewed as a royal prerogative. But such a legal act might be merely oral; and the declaration, the "*Cwide*," would require the confirmation of those who heard the last words of the dying sovereign. If made by writing, proof that the *cross* or sign had been traced by the testator, could only be given by the high dignitaries who actually attested the act; and how was their testimony to be received except before the Legislature? The Royal Will was to be *proved in the Witenagemot*, and recorded by the Peers of the Empire. Force or faction might induce a party of "Optimates," as on the accession of Athelstane, to oppose the nomination made by the deceased monarch^a; but this opposition did not succeed, and the resistance to the Will must be considered as the exception to the rule. Yet the apprehension of such a contest, and possibly the ambiguous authority which the Witan may have assumed in judging of the competency of an heir, would suggest to an anxious and affectionate father the expedient or precaution of associating his son to himself in the royal dignity. Offa thus caused Ecgfrith to be crowned as co-regent; and, on the death of his father^b, the heir was in full possession of the royal authority.

regnum tamen non magis quam patrem ejus dum eum genuit, sacratam fuisse sciebant, Eadmerus, de Vita Sancti Dunstani, p. 220. [And although this *Edward* ought to have been consecrated as King, some of the chiefs of the land strove to prevent him from being King; both, because they mistrusted the severity of his morals, which had often caused him to inveigh against their excesses, and because they knew that his mother, though lawfully married, had not been ordained to the royal dignity, any more than his father, when he begat him.]

Henry I. was considered by the English as the more lawful heir to the crown, in consequence of his being the only one of the Conqueror's sons who was born in royalty. (Will. Malm., lib. v.) Rex natus de Rege et Regina, Guil. Gemet., lib. viii. c. 10. [King born of King and Queen.]

^a See Part II., *Proofs and Illustrations*, pp. 365 and 783.

^b Ecgfrith was nominated as successor in the Council at Cealchythe, A.D. 785. In illo quoque concilio, *Offa*, Rex *Merciorum* potentissimus,

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that the Anglo-Saxon empire was elective, we arrive, however, at the conclusion that it was governed by law. The Constitution required, that the right of the sovereign should be sanctioned by a competent tribunal.

Theory of royal succession amongst the Anglo-Saxons, that the Sovereign acquired an inchoate right, but was to receive investiture, or be confirmed by the national assent.

Form of the ancient election preserved in the recognition which takes place at a modern coronation.

The theory of government established the doctrine that the national assent confirmed the inchoate title of the sovereign. The fealty of the lieges was not a blind submission to the man, but an obedience to the law. His claim was to be recognized by the Legislature. In this sense, the king was said to be elected by the people. At the modern coronation, the prelate turns to the east, and the west, and the north, and the south, and demands the voices of the multitude; and this ceremony is a record of the old time, when the monarch was hailed, not in the choir of the abbey, but beneath the canopy of heaven. But with all these concessions and allowances, the indefeasible right of the royal families, the descendants of Woden, must be considered as the constitutional principle of Anglo-Saxon sovereignty.

This ancestral right was, however, only the nucleus, if such a term can be employed, of the sovereign authority possessed by the monarchs, who, under various titles, ruled the nations of Anglo-Saxon Britain, after the period usually, but incorrectly, considered as the final suppression of the "Anglo-Saxon Heptarchy." This authority was an accessory to their patrimonial right: for the principles of *imperial sovereignty* were not, in the first instance, connected with hereditary descent, although such sovereignty was never exercised but by a son of Woden.

Rise and progress of imperial sovereignty amongst the Anglo-Saxons. Defence of the application of the term.

By the term "imperial sovereignty," I mean that authority which a king possessed over other kings or potentates, or over the states composing the aggregate of his empire. I am fully sensible of the objection which has been forcibly presented to me, that there is an impropriety in employing a phrase, borrowed from the political nomenclature of a highly civilized society, when we are describing the constitution of a commonwealth so rude, in comparison, as that of the Anglo-Saxons: still I must use the phrase, until any better can be suggested. Such is the

debitum *Eadwardi* amplexi, pauci qui præter æquum et bonum restitere, et tunc *censoriè notati*, et postmodum ab *Anglia expulsi*, lib. ii. cap. 13. [Some bowed to his influence, some were persuaded by his gifts, some also embraced the rightful cause of *Edward*; a few there were who resisted him contrary to justice and right, and these, who were then noted down with displeasure, were afterwards banished from England.]

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infinite diversity of human institutions that, strictly speaking, there is no one *general* or *generic* term relating to government or policy, which is not, in some degree, incorrect, if applied to any *particular* form or species of government or policy. The dominion of the "Bretwalda" began by being an imitation of the imperial sovereignty of Rome. Accustomed to the presence of the provincial emperors, since the glorious reign of their own Carausius, the Britons still considered their country as an empire. The reminiscences of Carausius cast their gleam upon the fabled Arthur: and we discover Aurelius Ambrosius and Vortigern contending for the diadem which had so recently graced the brows of the British Constantine. Ella¹, the Saxon, acquired the prize^a: and we cannot give any explanation of Ella's elevation, unless by supposing that he was raised to the dignity by the assent of the British powers. It is not indeed expressly asserted that the British kings and princes assembled at Silchester, in the manner described in the British traditions^b; but we are compelled to adopt this hypothesis from the simple fact, that the title of *Bretwalda*^c, implying the sovereignty of the island, could not have resulted from any authority possessed by Ella over his Teutonic compeers, scarcely visible in the corner of the island which their settlements occupied. Is it possible to suppose that Ella was denominated the "ruler of all Britain," because the Jutes of Kent acknowledged his superiority? It is true that all the seven ancient Bretwaldas^d did not extend their supremacy throughout the whole of Britain. Various circumstances might prevent such sovereignty from attaining its full extent. The monarchs of the most civilized and flourishing realms are not infrequently compelled to protest, in vain, against the denial of an indubitable right, or the usurpation of a territory, to which they have the most valid claim. Some tribes might be protected by their distance, or the natural strength of their positions; others might be spared from subjection by the favour of the aspiring monarch^e:

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The Bretwaldas, their authority deduced from the Roman imperial authority, particularly as exercised by the Provincial Emperors, erroneously denominated Tyrants (see above, pp. 259, 260, 304, 307, 309, 310).

Aurelius Ambrosius (see above, p. 329), his Imperial authority perhaps transmitted to Ella, King of the South Saxons, the first Bretwalda of Saxon race, whose elevation to the Imperial authority cannot be accounted for, unless by supposing that it was conferred upon him by the Britons. (See II., pp. 469, 470.)

Nature and extent of the authority of the Bretwald^a or Emperor of Britain.

^a See Part II., *Proofs and Illustrations*, pp. 469, 470.

^b I allude to the narrative of Geoffrey of Monmouth.

^c *Bretwalda*. Qui toti Britanniae imperat, Lye. [*Bretwalda*. He who rules over the whole of Britain.]

^d Ella, Ceawlin, Ethelbert, Redwald, Edwin, Oswald, Oswio. (See Part II., *Proofs and Illustrations*, p. 565.)

^e Thus Edwin allowed Kent to continue exempted from his supremacy, out of favour towards his brother-in-law. (Bede, lib. ii. c. 5.)

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Imperial or
Roman sym-
bols assumed
by the
Bretwaldas.

but the theory of the government imported that the *Emperor of Britain*—for this title is specifically given^a—should possess the supremacy over all the “nations” and “languages” of the island. The symbol of imperial Rome, impressed upon the coin^b, the Roman standard borne before the sovereign^c, all indicated these pretensions. It must not be considered that these insignia were merely toys and baubles. Visible symbols of dignity possess considerable influence under all circumstances; and men who attempt to decry the importance of the outward tokens of political power, are often most influenced by the objects which they deride: they feel the effect of the emblazoned shield, the golden mace, or the silver wand; and if they ridicule the pageantry of the king and the bishop, it is in order to prepare the way for the downfall of the hierarchy and the monarchy. But in the ruder states of society, the insignia of authority are even still more important; they speak a language which cannot be misunderstood; they are the only means of declaring and notifying the station and rank of the sovereign: and the form of the crown, and the fashion of the robe, may be of the very essence of royalty.

477–488.
North-
umbrian
Bretwaldas,
Edwin,
Oswald, and
Oswio:
decline of
the power of
the Angles
of North-
umbria, and
rise of
Wessex. (See
II., pp. 575,
480–486.)
(See above,
p. 364 and
II., p. 574.)
(See above,
p. 365 and
II., pp. 575,
368.)

Three sovereigns of Northumbria, in succession, possessed imperial sway; Ecgfrid, the son of Oswio, failed to sustain the dignity. His conquests over the Britons have been noticed; but, slain in battle by the Picts, these tribes as well as the Britons gained more power. The glory of the “English” began to decline. The power of Northumbria obtained a transient revival under Eadburt: a period of anarchy then ensued. The throne was repeatedly occupied by kings of “dubious race”; the military institutions of the country decayed; the Scandinavians ravaged the land; and Wessex acquired the virtual supremacy of Britain^d.

^a To Oswald, Part II., *Proofs and Illustrations*, p. 568.

^b I allude to the coin of Ethelbert copied from the medal of Carausius; see above, p. 311, and Part II., *Proofs and Illustrations*, p. 454.

^c Edwin, see above, p. 358.

^d See the summary of Northumbrian history, from the resignation of Eadburt to the death of Osbert and Ella (Part II., *Proofs and Illustrations*, pp. 575–580). Alcuin, in addressing the Kentish men (Ep. 59), expatiates upon the misfortunes arising from the domination of the sovereign, who, not being of the royal lines, usurped the English throne; “*Illi ipsi populi Anglorum et Regna et Reges dissentiunt inter se, et vix aliquis, modo, ex antiqua Regum prosapia*

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Part I. that superiority, which was ultimately transferred to the Norman
Ch. Conqueror.

XVIII.

800, 828.
Imperial
supremacy
of Egbert.
He returns
from exile
(see above,
p. 412)
The Celtic,
Cymric and
Teutonic
nations of
Britain sub-
mit to him
(see II., pp.
344-351).

(See II., pp
347-348.)

Egbert, returning from Gaul, ascended the throne which had been withheld from him^a. The Britons were subdued by force. The men of Kent and of Surrey, and the South Saxons and the East Saxons^b, considered him as their deliverer from the unlawful power of the Mercians, and from the strange kings whom the Mercians had imposed upon them. The East Angles, and their king, accepted Egbert as their patron and their lord. The Mercians themselves next felt Egbert's might; and their king, Wiglaf, like another Tassilo, surrendering his crown to Egbert, received his realm as a vassal, and to be held in fealty and tributary subjection. And lastly, the Northumbrians, abandoning their ancient pride, humbly submitted to the dominion of the eighth Bretwalda, and acknowledged his supremacy.

The title of Bretwalda is ascribed to Egbert, but we must regard him as the founder of a new species of authority. Egbert had been the better enabled to assert his empire, in consequence of the internal dissensions prevailing amongst the Anglo-Saxon nations. Northumbria, in particular, had been a prey to civil war. King after king had been placed upon the throne, recalled, and expelled, and many of these sovereigns were not of the real royal lineage, but usurpers and intruders. I do not care to enter into any defence of the abstract principle of legitimacy: but the Anglo-Saxons supposed that no one but a son of Woden could be the lawful king. A king who wanted the sanction of birth was destitute of the sanction of public opinion: and, consequently, he was unable either to defend himself or the people over whom he attempted to rule. In the other states, the sovereigns did not possess any efficient means of directing and concentrating the resources of the different tribes or nations. The chieftains could wage a destructive warfare against each other: but the kingdoms were destitute of any institutions which would enable them to

^a See above, p. 413.

^b There is some confusion about the time of the submission of the men of Essex (Part II., *Proofs and Illustrations*, p. 559) which seems to have been in 823. In Florence of Worcester, the *Orientalis Angli* are twice mentioned, probably by mistake. Malmesbury (id., pp. 349, 350) places the submission of the East Saxons in the 24th year of Egbert's reign, by which Florence's statement is confirmed. The passage inserted in the *Proofs* under the years 828-830, would have been more in its place under 823 (id., p. 346).

North-
umbria. The
throne
frequently
usurped by
intruders,
not of the
right royal
line (see II.
pp. 575-
580).

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unite against a common enemy. Egbert's supremacy, had his reign continued undisturbed, might, perhaps, have enabled him to diminish these evils. But a fearful enemy was approaching, and the Danish invasions, which threatened the total conquest of the Anglo-Saxons, ultimately extinguished all the subordinate dynasties, and thus produced an entire alteration in the political state of Britain.

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The Northmen, whom our historians usually term "Danes," were Anglo-Saxons under another name. Ingwar and Hubba only repeated the expeditions of Hengist and Horsa. Some of the Danish chieftains were descended from the very same stock as the Mercian kings, and all were kinsmen; the pirate hosts were the relatives of the people whom they plundered. There is some difficulty in ascertaining when these hostile invasions began. The Saxon chroniclers represent the landing of the Northmen in Dorsetshire^a as the first arrival of these dreaded visitants. The sagas speak of earlier acquisitions. A "saga" is literally a tale or tradition; and if we could believe the Scandinavian "tale-tellers," the fifth part of Britain was conquered by the Jutish chieftains as early as the fifth century. In the more remote periods, the sagas are greatly deficient in the characteristics of authentic history, and their details cannot be reconciled to our chronicles^b. Yet, some of their apparent incongruities may be diminished by the supposition, that the exploits, thus commemorated, are traditionary accounts of the conquests really effected by the Angles on the eastern coast and in Northumbria, exaggerated and confused by the fancy or invention of the skalds.

Danish invasions to be considered only as the continuation of the Anglo-Saxon expeditions.

The Dynasties of East Anglia, Mercia, Northumbria, &c. extirpated or deprived of Royal power by the Danish invasions. The Kings of Wessex thereby enabled to establish an undisputed authority over the whole of Anglo-Saxon Britain.

Whatever may have been the original relationship between the Anglo-Saxons and the "pagans" of Scandinavia, the adoption of the Christian faith was in itself a reason for the inveterate hostility on the part of the invaders; and the fanaticism of the

^a In the year 787.

^b For the Scandinavian narratives I shall make a general reference to Suhm, Torfæus, and the *Gesta Danorum extra Daniam* [the deeds of the Danes outside Denmark]: I began by attempting to reconcile the Northern writers to our own chronicles; but, after employing much time upon the task, I was compelled to adopt the conclusion in the text. The works last quoted will either furnish or indicate the passages relating to the real or supposed conquests of the Northmen in Britain.

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XVIII.

The Dane-
lage (see
above, p. 38,
and below,
p. 497).

Empire of
Britain
attains its
most
splendid and
flourishing
state under
Edgar.
(See II., pp.
390-409.)

Smaller
distinctions
and
divisions
merged in
the Empire
of the Anglo-
Saxons,
North-
umbrians,
Pagans
(Danes), and
Britons, or
the superi-
ority of the
Sceptres of
the Scots,
the Cum-
brians, and
the Wealh.
(See II., pp.
384-386.)

worshippers of Odin was increased by their insatiate greediness for plunder. The wars and conquests which implanted a Danish population in that extensive division of England, known as the "Danelage," destroyed the royal authority of every ancient family, except the line of Cerdic; and gave to Alfred, and his descendants, the means of establishing a firmer and more ample sway than any Bretwalda had enjoyed. This title of "Bretwalda" went out of use; but Edward, the son of Alfred, claimed and asserted the dominion of Britain.

The empire founded by Egbert did not attain its height, until the triumphant Edgar became the "Basileus" of Albion. Edgar's virtues are displayed in the annals of the chroniclers; the epithet of the "pacific" is an honourable testimony to the character of the monarch, who was enabled to eclipse the delusive blaze of military renown, by the steadier glory of good government and legislation. And the Cyrus, the Romulus, and the Charlemagne of the English, was honoured as the restorer, almost as the founder of the state, which, beneath his sceptre, advanced to the greatest degree of external splendour and internal prosperity^a. Every nation and community acknowledged the supremacy of the British emperor: and the lesser political divisions, being lost in the broad and striking characteristics of race or language, a proud dominion was established, knowing no equal, acknowledging no superior, and described, as suited the pleasure or intentions of the monarch, either by the name of the Fourfold Empire of the Anglo-Saxons, the Northumbrians, the Pagans and the Britons; or, as the superiority of the Sceptres

^a Iste *Edgarus* cunctis prædecessoribus suis felicior, nulli sanctitate inferior, omnibus morum suavitate præstantior, quasi stella matutina in medio nebulæ, et quasi luna plena in diebus suis luxit. Iste *Anglis* non minus memorabilis quam *Cirus Persis*, *Karolus Francis*, *Romulusve Romanis*. Hic enim regnum *Anglorum* cœlesti quadam pace composuit, et multarum linguarum gentes unius fœdere legis conjunxit, Ethelredus, de Genealogia Regum, p. 359. [That *Edgar* was more fortunate than all his predecessors, and was inferior to none in holiness, but excelled all in the sweetness of his disposition, and shone in his days like the morning star in the midst of a mist and like the full moon. He was not less memorable for the *English*, than *Cyrus* for the *Persians*, or *Charles* for the *Franks*, or *Romulus* for the *Romans*. For he calmed the realm of the *English* with heavenly peace, and joined races of many languages by the bond of a single law, Ailred of Rievaulx, Genealogy of the Kings.]

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afford as much confirmation of the doctrine as could be expected, in such an unsettled community. After the reign of Alfred, we cease to obtain any proofs of this appropriation of the Eastern kingdoms. Kent, however, continued to possess the political rights of a self-existent State^a. Mercia was so far united to Wessex, that in a general description it might be considered as forming the proper Anglo-Saxon kingdom. But the dominions did not coalesce; and Mercia continued as a separate state. Recovered by Alfred from the Danes, Mercia was treated by him as a dependent realm. Ethelred, the husband of Alfred's daughter Ethelfleda, assuming the title of Ealdorman, exercised a royal power conjointly with the "Lady of Mercia," to whom the same authority devolved upon the demise of her husband. An hereditary right was transmitted to Elfwin, the child of Ethelred and of Ethelfleda; but she was deposed by the power of her uncle Edward, and, led as a captive into Wessex, she disappears from history.

Mercia, so far united to Wessex, as to be considered the proper Anglo-Saxon Kingdom.

Governed by the Ealdorman Ethelred as a kingdom in subordination to Wessex, the same having been granted to him by Alfred (see II., p. 500), held after Ethelred's death by Ethelfleda, the Lady of Mercia. (See II., pp. 500, 506-508.)

Dukedoms or Earldoms of Mercia governed by Ealdormen under the supremacy of Wessex. (See II., pp. 506-531.)

A division of the *Marches* now took place; and we find "Mercia," by which we must understand the ancient kingdom of Hwiccas^b, in the possession of the powerful Ælfere, the kinsman of Edgar, from whom it descended to his son Alfric, who holds a conspicuous though disgraceful station in the annals of England. His repeated acts of treason and cowardice greatly facilitated the progress of the Danes^c, and his banishment and his recall, equally prove the extent and the abuse of the power which he possessed. The northern part of Mercia, sometimes designated as the earldom of Chester or Coventry, was held by the powerful family of Leofric, in whose line the dominion continued in hereditary succession. Other Mercian "Duchies" or Earldoms^d are indicated [of less importance than the Eastern part], at once prove the dependency of the Eastern States, and that this part of the kingdom was usually separated from the Western.

^a See Part II., *Proofs and Illustrations*, pp. 170, note a, 467.

^b See Part II., *Proofs and Illustrations*, p. 511.

^c Sax. Chron. and Florence of Worcester, ad an. 992, 1003, and Part II., *Proofs and Illustrations*, pp. 179, 180.

^d I have attempted to collect the notices existing with respect to the Mercian Earldoms (Part II., *Proofs and Illustrations*, pp. 506-531). The more important of these States can be distinguished with a certain degree of precision. When Mr. Petrie shall have published his invaluable collection of Anglo-Saxon Charters, further light may perhaps be thrown upon this difficult subject.

by the casual notices of their rulers. But "*Myrcenlage*," though thus divided, continued to exist as a country and as a nation, distinguished both by its legislation and its political rights, from the other predominant states of the crown of Britain^a.

The boundary of the "*Danelage*" is indicated by the frontier line described in the treaties between Alfred and Guthrum. Northumbria was included by implication; and the "*Lage*" was sometimes extended to the Scandinavian settlements in the extreme north of the island^b. Deira and Bernicia were

^a Ordericus Vitalis is perhaps the latest writer by whom the name of Mercia is retained as a collective appellation for the shires which it included: he uses it upon all occasions.

^b Ad *Danelaghe bilimpeth*, quod latine dicitur incumbunt et pertinent, quinque provinciæ cum omnibus suis appendiciis; scilicet, (i.) *Deira* quæ modo vocatur *Northumberland*, scilicet tota terra quæ est inter magnum fluvium *Humbri* et *Tede* fluvium et ultra usque ad flumen *Forth*, scilicet *Loonia*, (ii.) et *Galweia*, (iii.) et *Albania* tota quæ modo *Scotia* vocatur, (iv.) et *Morouia* usque ad *Norwegiam*, et usque *Daciam*, scilicet *Kathenesia*, *Orkaneya*, *Enchegal*, et *Man*, et *Ordas*, et *Gurth*, et cæteræ insulæ occidentales oceani circa *Norwegiam* et *Daciam*, (v.) et *Fifton scire*, quod latine dicitur quindecim Comitatus, scilicet *Everwyckscire*, *Notinghamshire*, *Derbyschire*, *Leycestreshire*, *Lincolnshire*, *Hertfordshire*, *Bokynghamshire*, *Suffolkshire*, *Norfolkshire*, *Bedfordshire*, *Essexshire*, *Grantebreggeshire*, *Huntedoneshire*, *Northamptonshire*, *Middlesexshire*, MS. Cott. Claudius D ii, f. 1.¹ [To the *Danelaw* belong, that is, in Latin incumbunt et pertinent, five provinces with all their appurtenances, to wit (i.) *Deira*, which now is called *Northumberland*, that is, all the land between the great river of *Humber* and the *Tweed*, and beyond as far as the river *Forth*, to wit *Lothian*; (ii.) and *Galloway* (iii.) and all *Albania* which is now called *Scotland* (iv.) and *Moravia* as far as the country of the *Norwegians* and *Danes*, to wit, *Caithness*, *Orkney*, *Inch-Gal* and *Man* and *Lewis* and *Skye* and the other western isles of the ocean around the country of the *Norwegians* and *Danes*, (v.) and the *fifteen shires*, that is, in Latin quindecim Comitatus, to wit *Yorkshire*, *Nottinghamshire*, *Derbyshire*, *Leicestershire*, *Lincolnshire*, *Hertfordshire*, *Buckinghamshire*, *Suffolk*, *Norfolk*, *Bedfordshire*, *Essex*, *Cambridgeshire*, *Huntingdonshire*, *Northamptonshire*, *Middlesex*.]

This description of higher antiquity than that extracted from Simeon of Durham (p. 38), forms part of a most valuable manuscript collection of Anglo-Saxon laws and Anglo-Norman and English charters, connected by historical notices, and brought down to the famous ordinances,

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The "*Danelage*" (see above, pp. 38, &c.) or portion of England settled by the Danes. Boundaries thereof first defined by the treaty between Alfred and Guthrum (see II., p. 355).

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governed, until the reign of Edward the Elder, by sovereigns of Danish race, who, with their subjects, repeatedly performed homage to the crown of Wessex, accepting its monarch as their lord and father; and who, as repeatedly, violated the engagements contracted with the southron king.

Danish Kings of Northumbria. (See II., pp. 581, 592.)

Kingdoms of Northumbria converted into Earldoms (see II., pp. 594 and 387): compare with the account of the conversion of the Norwegian kingdom of Naumedale into a Jarldom (id., p. 690).

The names of "king" and "kingdom," tokens of ancient power and independence, were the incitements to rebellion. A prudent policy attempted to destroy the illusion which they produced: the *kingdoms* of Bernicia and Deira were declared to be *earldoms*; and the earls, girt with swords, were the homagers of the Basileus of Britain. Yet Northumbria was not united to the other Anglo-Saxon kingdoms. The title of "Patrician of Northumbria," assumed by Ethelred, is a proof of the continued constitutional existence of the state. Harold Harefoot reigned as king of the Northumbrians; and their submission to Sweyne, and their refusal to acknowledge the son of Godwin, are to be viewed as the efforts of a subjugated people striving to regain their independence; not as the efforts made by a province to detach itself from the rest of the community. When the Northumbrians attempted to liberate their country from the Norman yoke, we may discern the formal investiture of Edgar Atheling with the royal authority^a; and William himself, causing his crown and regalia to be conveyed to York, appears to have been inaugurated in Northumbria, as if it were still a distinct and separate kingdom^b.

Northumbria, a separate state (see II., pp. 595-610) strives to throw off the authority of Wessex.

Northumbrian Earldoms, Bernicia, to which the name of Northumberland was afterwards more peculiarly appropriated, vested in the family of Waltheof (see II., pp. 598 and 609). Lothian granted to the Kings of the Scots (see above, p. 400 and id., pp. 397-399, 596).

The narratives concerning the division of Northumbria into earldoms are extremely obscure. Bernicia, afterwards more particularly called Northumbria or Northumberland, appears to have been vested in the family of Waltheof, who, if the ancient genealogies can be trusted, derived his descent from the ancient kings. Deira or Yorkshire, sometimes separated from Bernicia, was at length vested in the same ducal dynasty. Lothian, or the country beyond the Tweed, had been severed in manner

5 Ed. II. The *Norwegia*, or *Dacia*, is evidently part of North Britain, then in possession of the Northmen. *Enchegal* seems to be *Ergatheyl*, or *Argyle*.

^a *Eadgarum ex Edwardi Regis nobilitate genus ducentem sibi regem præfecerunt*, Guil. Gemet., lib. vii. p. 40; and see Sax. Chron. ad an. 1068, p. 270. [They set over themselves as King, *Edgar*, who traced his descent from noble King *Edward*.]

^b Ord. Vital., p. 515.

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500 *The Rise and Progress of the English Commonwealth*

Part I. better observance of the faith which the Danes had adopted.
Ch. XVIII. At first, without doubt, the Northmen, as the prevailing class, retained their own laws; but the ancient jurisprudence of the Danes was founded upon the same principles as the Anglo-Saxon common law. The English were the more numerous and the more civilized, if not the more powerful community, and all essential differences were soon obliterated. Yet the *statute law* of the Kings of Wessex was received with more reluctance, and scarcely established to the north of the Humber, even in the last age of the empire.

CHAPTER XIX.

Anglo-Saxon Feudality—Difficulties attending the investigation of the history of ancient Tenures—Two principal Classes of Tenures—Land held by Common Right, and Land granted by Landboc or Charter—Thanes or Ministri—Early adoption of the Beneficiary System by the Anglo-Saxons—Oath of Fealty—Knights—Rights of inheritance how subsisting—Power of the Sovereign in granting or withholding Investiture—Discretionary Power of the Lord—Elucidations thereof—Causes by which such power was gradually restrained—Tenures of the immediate Occupants of the Land, not greatly affected by the Feudal System—Introduction of the Feudal System into the general Government of the Anglo-Saxon Empire—The principle not thus applied under the earlier Bretwaldas, but introduced by Egbert—Its full establishment under Edgar—Nature of the relations subsisting between the Basileus and the British Princes, and other great Vassals of his Crown—Objections to the foregoing Theory—Answers thereto—Earldoms—Investiture thereof by the Sword—Hereditary in Families—Innovations produced by the Danish Conquest—Canute's Earls—Earldoms held by Godwin and his Family—State of these Dignities in the concluding Era of the Anglo-Saxon Empire.

THE existence or non-existence of an Anglo-Saxon feudal system has been long one of the most perplexed questions in our constitutional history. And, whilst we are benefited by the investigations and researches of Selden¹, and Spelman², and Hallam, and Allen, we must confess that more doubts can be raised than it will be ever possible to solve. In these and all similar inquiries there are sources of constant error. Matters of form are liable to be considered as essential characteristics. Ignorant of the customs controlling the written instrument, and still more uninformed concerning the usages which subsisted wholly independent of writing, we give a literal construction to the charter, and thus perhaps wholly destroy its real import: for though we may truly read its phrases, yet, if we do not possess

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Question as to the existence of feudal tenures amongst the Anglo-Saxons.

Part I. the comment of practice, we shall probably interpret the words
Ch. XIX. in a manner wholly differing from the actual *business* of the age.

If we peruse a church-lease granted in the reign of James I., there is nothing whatever on the face of the demise, which can lead us to guess at the fact, that the "*tenant-right*" of renewal, upon payment of an inconsiderable fine, was so generally acknowledged, as to render the grant for three lives nearly equivalent to an indefeasible interest in the land. Suppose we are informed, that such an understanding did so prevail; and without receiving any further information, another church-lease, dated in the reign of George III., is presented to us. It is made between the same dean and chapter, as lessors, in favour of the representatives of the first lessee; it relates to the same premises; and contains exactly the same covenants and stipulations. But its nature has wholly changed. The "*tenant-right*" no longer exists; and if, upon the death of any of the *cestui-qui-vies*, a new lease is required, it must be purchased by the payment of a large sum of money. Similar examples will readily occur; and it is sufficient to have pointed out the preceding, as displaying the manner in which we may be baffled, when we attempt to penetrate into the real tendency and bearing of the transactions of distant times.

Judging from the positive evidence which does exist; and guiding ourselves by analogies when such evidence fails, we discern two principal species of Anglo-Saxon tenures: the one, nearly corresponding to the *Odal* of the Scandinavians, in which a right of inheritance had been acquired by use and occupation, and without any written grant; the other, resulting from the Landboc or Charter, and constituting the possessions of the numerous class, usually denominated the *Thanes* or *Ministers*^a. Within the English or Anglo-Saxon states, the system of bestowing military benefices appears to have been coeval with their political existence. The kingdom of Kent arose from a Lætic grant. Land was the recompense which the soldier expected for his toils. He obtained the glebe as the price of his exertions against the enemy. From the king, the *Minister*, the *Thane*, he who served the sovereign, received his territorial donation

^a See the observations and authorities, collected and arranged under the heads of "Tenures" (Part II., *Proofs and Illustrations*, p. 693), the "Fyrd or Expedition" (id., p. 707), and "Thanes and Thanage" (id., p. 719).

Folkland nearly corresponding to the Odal of the Scandinavians.

Land held by Landboc or Charter.

Military benefices granted by the Anglo-Saxons from the earliest period of their settlement in Britain.

Thanes, or Ministers, land granted to them upon condition of fealty and military service. (See II., p. 723, & c.)

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Summary of
the distin-
guishing
character-
istics of the
Beneficiary
lands,
Thane lands
and Læn
lands
amongst the
Anglo-
Saxon
(See II.,
p. 696, &c.)

Hereditary
succession in
lands held by
a beneficiary
tenure not
entirely
certain, inas-
much as the
land was to
be held in
connexion
with a duty
or trust. It
was *lent* (see
II., p. 283)
as the con-
dition for the
performance
of certain
duties which
the heir
might be
unwilling or
unable to
perform (see
II., p. 744
and compare
with pp. 517
-519 above).

land, involved as it is in great perplexity, from the ambiguous application of the term of *Bocland*, I shall content myself with referring to the examples establishing the general nature of the relations which existed between the thane or vassal, and the lord. Military service, or the obligation of following the superior to the wars, appears due as of common right. Fealty is implied. The property is in the lord, the usufruct in the tenant; he holds it only as a *Loan*. A relief is to be rendered upon the death of the tenant, as the consideration for renewal of the grant. But this token of dependence upon the superior is, at the same time, a proof of the acknowledged rights of the heir. Further burdens were imposed; and though the custom may not have prevailed universally, yet, in some districts or in some townships, the female tenant was in the wardship of the lord, who disposed, as he pleased, of her person and her land.

Such are the outlines; but the feudal system of the Anglo-Saxons was not a feudal law. The right of *inheritance* was only a *preference* given to the blood of the ancestor; and the same reasons which sanctioned the exclusion of a Bavarian duke from his territorial dignity, might often occasion the rejection of the incompetent thane. If the feeble or undisciplined heir attempted to obtain a grant of his father's Benefice, the lord might reasonably refuse the request of a petitioner who sought to enter into a contract which he could not fulfil. A younger son might be more eligible than his elder brother, or the *Loan* might be shared, if the joint representatives of the ancestor appeared equally worthy of the grant. As long as the original spirit of *antrustion-ship* subsisted, the rights of the different parties involved in the mutual bond, were never abstract rights of property, but rights resulting from a trust. A personal duty was annexing itself to the land; the possession of the Benefice was connected with an active employment. Any rights derived by an heir from his

knighthood might at that period be conferred by a prelate. Mr. Petrie informs me that he has discovered a Life of Hereward, written within half a century of the Conquest, containing the same incidents; and I shall avail myself of this information as an excuse for postponing the discussion of the question, until the appearance of the *Scriptores Rerum Anglicarum*. At common law, if an infant was knighted, he was forthwith entitled to the livery of his lands. This was a legitimate consequence of the old Teutonic custom: being invested with the arms of manhood, he was to be deemed of full age.

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ancestor, still continued subject to the implied conditions, that the vassal was *able* to execute such duty, and that he was also *willing* to assent to the obligation which the *Loan* imposed.

An Anglo-Saxon feudal lord, when an heir applied for a renewal of the *Loan*, was therefore entitled to pause, to judge, nay to raise difficulties; and in proportion as the possession of the land became more valuable, the son would be often led to consider whether any such difficulties might occur in the king's mind, and how they would be best removed. The relief was fixed by the law. If *Alfric* stands upon his legal right, it is sufficient for him to tender "four horses, two saddled and two unsaddled, two swords, four spears, four shields, a helmet, a coat of mail, and fifty mancusas¹ of gold." King Canute was a just king, and he could demand no more than had been fixed by his own statute. But the statute did not appoint any period for the livery of the land. When the thane, after a long and weary journey, had arrived at the gate of the palace of Winchester, he might be informed that the king was engaged in preparing for a pilgrimage to Rome, or for an expedition against the Vandals at the mouth of the Elbe: and days or weeks of anxious suspense might elapse, during which no answer could be obtained. An audience is at last conceded; but when the suitor is admitted into the "Husting,"² the Danish monarch might eye the fair English youth, and ask the Norwegian earl who stood by his side if it were possible that such a stripling could wield the battle-axe of his sire? *Alfric* dares not to hear the observation, but before the morrow, *eight* horses are perhaps entrusted to the care of the "Stallere."³ Instead of the weapons according to the regulation standard, a gold hilted sword with a silver sheath has been placed in the royal wardrobe; or, what is still more probable, the "Bower-thane," or Chamberlain^a, conveys a private message to *Alfric*, that if King Canute should be able, which he much doubts, to grant another interview before he quits England, he will not object to receive a hundred mancusas in the place of the steeds and armour, which will be so useful to the thane when he shall return to his own country. And it is perfectly easy to understand how very generally such *accommodations* would take place for the purpose of facilitating the despatch of matters of business, which depended entirely upon the leisure or the discretion of the sovereign.

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Relief due from the heirs of the Thane as fixed by the laws of Canute. (See II., p. 700.)

Course by which the relief, though fixed by the law, would probably be greatly increased by usage. The heir had no mode of making a legal demand for the livery of his inheritance, no regular Court or Board (like the Chancery in after times) having been established, consequently there was no mode of lawfully counteracting any impediment which the Sovereign might raise by affected delays, &c. and the heir would seek to bribe the King, by increasing the amount of his relief, or by proposing a commutation in money, exceeding the real value of the horses, or other specific articles, which he was bound to render.

^a See Part II., *Proofs and Illustrations*, pp. 678, 679.

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Difficulty of enforcing any right which was to be obtained by suit or application to the Sovereign in person.

Extinction of the discretionary power of the Lord.

So long as the administration of affairs was exercised by the sovereign in person, the subject, however strong his legal right, could only appear in the character of an humble petitioner. Even though the king may have abstained from any act of manifest injustice, the forms and ceremonies of the court, rude as it might be, could always interpose so many obstacles and hindrances to the claim of a suitor who was out of grace or out of favour, that no law, however emphatic or explicit, could possibly afford an adequate protection against an unconscientious exercise of the power which the chief magistrate possessed.

When the spirit of the original Beneficiary system began to decay, its forms became better defined; and the main difference between Anglo-Saxon feudality, and the laws of subsequent eras, consists in the establishment of a more certain canon of descent and inheritance. The claim of the heir became an absolute right, and the lord lost any discretionary power of denying the renewal of the grant.

Before the Conquest, the feudal lord may be compared to a bishop required to institute a clerk. The prelate is empowered to examine into the fitness of the presentee, and to refuse him if disqualified by heresy or immorality. And if we suppose that the advowson was the property of the last incumbent, and that the heir to whom the presentation devolves, nominates himself to the living, we shall have a still nearer similitude to feudality in its first stage. The right has devolved to the clerk by inheritance, but in order that he may avail himself of it, he must shew his willingness and ability to perform the duty annexed to the Benefice.

The feudal lord, after the Conquest, may be compared to a bishop, supposing that the canonical causes of refusal were annulled by usage or by law. In such a case, upon proof that the clerk had been duly presented, the prelate would be bound to institute, however unqualified the nominee might be to discharge the pastoral office; and in the case of the advowson descending to the clerk, the functions of the bishop would be so entirely reduced to a mere form, existing only in office-fees and legal instruments, that the clerical heir would appear to come into the possession of parsonage, glebe and tithes, just as into any other part of his patrimonial property.

At what period the lord lost his discretionary power, and the heir acquired the absolute right of inheritance, must be examined on a future occasion. But, in form, the livery granted to the

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Establishment of regular Boards or Courts for the transaction of feudal business: effects of these institutions.

Feudality, greatly

Consequent upon the extinction of the lord's discretionary right, was the erection of offices or tribunals, for the purpose of carrying into effect those customs which had acquired the validity of law. The sovereign was enabled to enforce his rights by a settled process, whilst the baron or vassal was equally put in the situation of preferring his claim by a regular course of law. Of such institutions anterior to the Conquest no trace can be found. All the various functionaries who, when the constitution was matured, became the officers of the *kingdom*, were then only the ministers of the *king*, acting ostensibly under the dictation of the sovereign. The creation of a body of legal functionaries or lawyers, who perhaps at first were hardly conscious of the character which they possessed, led to further consequences. Rules were established, doctrines expounded, the fictions of the

et teneant præfatam esneiam et medietatem suam, cum omnibus pertinenciis suis, bene et in pace, libere et quiete, integre et honorifice de nobis et hæredibus nostris in bosco et plano, &c. Ita quod tam libere et quiete et honorifice medietatem suam habeat Comes *Ricardus*, sicut Comes *Walterus Giffard* eam melius et liberius et integrius habuit et tenuit. Testibus *Hugo Dunelm'* Episcopo et pluribus aliis, Cartæ Antiquæ, S. 24.

[(2.) The Charter of *Richard*, Earl of *Clare*.

Richard, King of *England*, Duke of *Normandy* and *Aquitaine*, and Count of *Anjou*, to the Archbishops, Bishops, Abbots, Earls, &c., and all his lieges, greeting. Know ye that we have *delivered* and *granted*, and by this present charter, have *confirmed* to *Richard of Clare*, Earl of *Hereford*, and to *William the Marshall*, and *Isabel*, his wife, the daughter of the said Earl *Richard*, the whole of the land which belonged to Earl *Giffard* in *England* and in *Normandy*. In such wise that the first choice and head of the barony of *Richard of Clare*, Earl of *Hereford*, shall remain in *England* and the first choice and head of the barony of *William the Marshall* and *Isabel* his wife shall remain in *Normandy*, and they shall divide all the other land between them. Wherefore we will and firmly ordain that the aforesaid Earl *Richard* and his heirs, shall have and hold his aforesaid inheritance and moiety, with all its appurtenances, well and peaceably, freely and quietly, completely and honourably, of us and our heirs, in wood and plain, &c. Provided that Earl *Richard* shall have his moiety as freely and quietly and honourably as Earl *Walter Giffard* best and most freely and most fully had and held it. Witness, *Hugh*, Bishop of *Durham* and many others.]

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law employed to extend its empire; and the practical establishment of the theory, that the king is the original proprietor of all the lands in the kingdom, must be attributed to the constant working of the crown lawyers, who always presumed that the land was held by feudal tenure, until the contrary could be shewn.

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extended by the doctrines and fictions of the practising lawyers.

During all these changes, however, the earlier territorial institutions continued to exist, and to preserve much of their primitive aspect. When the superiority of a Celtic commot or a Teutonic township was granted to a Beneficiary tenant, whether he may have been a Roman legionary or a Norman baron, the situation of the lower *stratum* of cultivators was not greatly affected. Scarcely any alteration was made in the actual occupation of the soil, or in the customs by which such occupancy was regulated. The common lands continued common lands; the *coloni*, "manentes," or churls, retained their customary holdings, their *folk-lands* of an inferior degree¹; and the several communities who dwelt upon the beneficiary lands, retained their self-existence and identity.

But notwithstanding the extension of feudality, the customs of the inferior *stratum* of tenantry continued in great measure unaltered.

The inferior tenures, as well as the ancient popular courts, were certainly affected by the spirit, and still more by the forms, of the superior tribunals; but the institutions deeply impressed upon the minds of the people, though new-moulded and modified, could not be easily effaced. They were also much connected with the actual use and occupation of the soil. The "*Worklands*,"² the "*Swilling-lands*," the "*Ber-lands*," and the "*Bordlands*," would be held and transmitted as in the earliest time: and the habits of the cultivators enabled them to retain the primeval jurisprudence of the tribes from whom they were descended.

In the extreme succinctness of the ancient chronicles, we cannot discern the terms, the conditions, or the legal forms, by which the Bretwalda confirmed his paramount authority. The submission, however, seems always to have proceeded from the nation. The narrators speak of the people in the aggregate. We cannot, indeed, suppose that every individual Pict or Scot joined in the acknowledgment: yet we cannot doubt but that the act was ratified by all the chieftains, by all invested with authority and power, and whose concurrence bound their dependents as well as the other inferior branches of the community. If the *Ceancinnith* or the *Pencenedyl* confessed the supremacy of Egbert or Edwin, the clan or tribe would never

Chieftains and Leaders of the subject-nations concurred in the compact

Part I. hesitate to follow the Dragon of Wessex or the Tufa of North-
Ch. XIX. umbria. After the establishment of feudality, we frequently
 find the "primores" joining in the homage, and we may view
 this proceeding, not necessarily connected with the principles of
 beneficiary tenure, as arising out of the older usage^a. So far,
 however, as we are able to collect from the tenour of Anglo-Saxon
 history, such submission, in the period anterior to Egbert, was a
 mere political act: it gave no *jurisdiction* over the subject nation
 or the tributary king. Picts or Dalriads refuse obedience; the
 Bretwalda assembles his forces, enters their glens, drives their
 cattle, and carries off the few inhabitants who are spared, into
 captivity or servitude. Yet this punishment was inflicted
 according to the ordinary course of war. It was not the result
 of the *judgment* of a lawful superior, pronounced in a competent
 tribunal. The subjected people, or their representatives, were
 not bound by *antrustionship*. There was no mutual engagement.
 Compensation had not been afforded to them for their submission;
 and neither in express terms nor by implication had they derived
 any benefit from their connexion with their supreme lord.

Such sub-
 mission a
 political act,
 and not
 regulated
 by any
 definite
 principle of
 law.

Gradations
 of the
 Anglo-Saxon
 supremacy.
 Dependence
 of the
 Britons,
 Scots and
 Picts,
 relating
 more to the
 person than
 to the land;
 a nation
 subject to a
 nation, but
 without any
 express
 transfer of
 the sove-
 reignty of
 the
 territory.

The submission of the different races and nations—whether
 Britons, Picts, or Scots—to the seven ancient Bretwaldas; and
 all similar bonds existing with the other paramount sovereigns of
 the earlier ages, whether an Ethelbald or an Offa, related more
 to the person than to the soil. Tribute was paid by the conquered
 race. The son of the vassal king fought in the host of Redwald
 or Oswy. Yet these tokens of inferiority resulted rather from the
 subjection of one people to another people, than from the depend-
 ence of one country upon another country. If the Scots bowed
 before the throne of the "Imperator" of Britain, they promised
 obedience; but they certainly did not transfer their country to him.
 Authority had only begun to be territorial. The primeval feelings
 yet prevailed. Nations still considered themselves as encamped
 upon the land. And however much the dominion of the soil may
 have been ultimately affected by the transaction, the territory was
 not the subject of the compact between the contending parties.

Feudality
 introduced

The throne of each king was encircled with a band of

^a As when Tassilo and the Bavarians submitted to Pepin (Part II.,
Proofs and Illustrations, p. 759). If, in the precept of Antrustionship
 (id., p. 738) the reading "cum arimania sua" be preferred, we must
 infer that every chieftain was required to secure the fealty of his
 retainers or dependents.

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Part I. agreeable to the doctrines taught by Obertus¹ or expounded by
Ch. XIX. Bartholus² and Baldus³: but like the feudality of the Carlo-
 vingian empire, from whence it was modelled, it possessed a
 sufficient number of the main incidents of the system, to justify
 the employment of the term. In the relations existing between
 the Basileus on the one part, and the Scottish reguli or the
 under-kings of the Cymri on the other part, we may discover all
 the distinguishing features of feudality. No one is absent. The
 act of homage, the grant of the territory, the oath of fealty,
 the promise of military service, the attendance at the court of
 the suzerain, the submission to the jurisdiction of the tribunal,
 the aid given by the lord to the dependent, according to their
 mutual engagements and lastly, the punishment of the vassal
 who had violated the bond, all these are found in our Anglo-
 Saxon history^a. It may be readily admitted that the exact
 amount of the "co-operation" to be rendered by Kenneth for
 Lothian, or by Malcolm for Cumbria, was not exactly defined.
 There was no record or roll specifying the number of the clans-
 men who were to follow the King of Albania from their straths
 and hills. But this absence of definite proof does not make any
 material alteration in the case. Lord and vassal were continually
 disputing, even after the feudal system was established, con-
 cerning the *particular items* of the tenure. The contingent may
 have been settled at each renewal of the compact: and if we
 consider the existence of feudal principles as dubious, because the
 terms were disputed on one occasion, infringed in a second case,
 or refused in a third, we should be compelled to blot feudality
 altogether out of history. The frequent recurrence of hostilities
 between the Basileus and his vassals affords as little ground for
 doubting the existence of the feudal bond. It only amounts to
 the very intelligible circumstance, that Scots, Northumbrians,
 and Britons frequently strove, like Tassilo, to break their engage-
 ments. Such a dependence never could be grateful to the inferior
 sovereign; and an "under-king" of Wales would be actuated by
 the same feeling as a Duke of Normandy or of Guienne, in
 attempting to defy his superior.

Will it be said that the relation was merely political, and that
 when the Confessor sent his host against the contumacious Prince

^a See the various transactions with the Princes of Cambria and
 Cumbria, and with the Scottish Kings, Chapters XV. and XX., and
 Part II., *Proofs and Illustrations*, pp. 362, 424-428.

Feudal relations,
 subsisting
 between the
 Basileus and
 the Under-Kings,

though the
 services may
 have been un-
 certain and
 liable to variation
 at each renewal
 of the compact.

The foregoing
 position exempli-
 fied by the trans-
 actions between
 the Confessor
 and the Welsh
 Princes.

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of Gwynedd, this expedition was an ordinary operation of war^a? **Part I.**
 The objection would lead to no valid conclusion. If the **Ch. XIX.**
 Cymric ruler continued to insult his lord, Edward could not
 expect any redress until he unsheathed the sword. A monastic
 chronicle is not expressed in the precise language of a judicial
 record or a parliament roll. Griffith had "sworn oaths" to
 Edward the Confessor, that he would "behave as a true *Under-*
King, and without deceit." These oaths he broke; and the
 relative situation of the parties fully shews, that the war declared
 against the unfaithful vassal was an award of execution. Rhys,
 the brother of Griffith, had already been slain pursuant to the
 determination or judgment of the king and his Witan, the council
 of the empire^b. When the gory heads of the British Princes
 were presented to the Confessor, we find a precedent for the
 indignities inflicted upon the hapless Llewellyn; and when
 Griffith had fallen, what took place? King Edward, in the words
 of the coeval annalist, *bestowed* the land upon Griffith's two
 brothers, Blethyn and Rhywallon, and they "swore oaths" and

1056.
Oath of
fealty taken
by Griffith,
the "Under-
King" of
the Welsh.
(See II., p.
425.)

1063, 1064.
Wales
granted by
Edward the
Confessor to
Blethyn and
Rhywallon,
who take
the oath of
fealty, &c.
(See II., pp.
425, 426.)

^a 1063. *Strenuus Dux Westsaxonum Haroldus, jussu Regis Eadwardi, post Nativitatem Domini, equitatu non multo secum assumpto, de Glaworna, ubi Rex tunc morabatur, ad Rudelan multa cum festinatione profectus est, ut Regem Walanorum Griffinum, propter frequentes depopulationes, quas in Anglorum finibus agebat, ac verecundias, quas domino suo Regi Eadwardo sæpe faciebat, occideret, Flor. Wigorn. [A.D. 1063. After Christmas, Harold, the active Earl of Wessex, by King Edward's order, took with him a small troop of horse, and proceeded by rapid marches from Gloucester, where the King was then staying, to Rhuddlan, to slay Griffin, King of the Welsh, on account of his frequent forays on the English marches, and for his many insults to his lord, King Edward, Florence of Worcester.]*

^b 1053. *Griffini Regis Australium Walensium frater, Rhesus nomine, propter frequentes prædas quas agebat, in loco qui Bulendun dicitur, jussu Regis Eadwardi occiditur, et caput ejus ad Regem in vigilia Epiphaniæ Domini est allatum, Flor. Wigorn. [A.D. 1053. The brother of Griffin, King of the South Welsh, Rees by name, was put to death by the order of King Edward, at the place which is called Bulendun, on account of the many raids that he made, and his head was brought to the King on the vigil of Our Lord's Epiphany.]*

In this year *counsel was taken* that Rhys, the Welsh King's brother, should be slain [*Man rædde þat man sloh Hris, þæs Wyliscean Cynges broþer*] on account of the mischief which he did, and they brought his head to Gloucester on the eve of Twelfth day. (Sax. Chron.)

Part I. gave hostages to king and earl^a, that they would be faithful to
Ch. XIX. them in all things; every where they would be ready to afford
aid, by sea and by land; and they would perform such obligations
in respect of the country, as ever *was done before to other kings*.
In other words, they took the oath of fealty, the accompaniment
of homage, and received investiture of the principality. The
general tenour of the transactions between the Basileus of Britain
and the Cymri was unquestionably such as to furnish a foundation
for the claims of the English King. Edward I. may have urged
them in bad faith; he may have prosecuted his right with great
harshness, and with the intent perhaps of reducing the people
into ignominious thraldom. All this, and more, may be laid to
Edward's charge; it is in vain to justify his ambition or his
tyranny. Yet there was a valid ground for the pretension; and
admitting that the feudal compact could grow out of usage and
practice, it is scarcely possible to deny, but that the land of Wales
had been subjected to the ancient kings of England by feudal law^b.

As the circumstances most familiar to the chronicler were
those which were least interesting to him, and therefore neglected

^a To Harold, as Earl of Wessex (Part II., *Proofs and Illustrations*,
pp. 425, 426).

^b As asserted in the preamble of the statute of *Rhuddlan*, "...terra
Walliæ subjecta nobis jure feodali" [the land of *Wales* subjected to
us by feudal law]. The expedition against Llewellyn was undertaken
in pursuance of the judgment given against him in battle as a rebel
and disturber of the peace; Concordatum est, de communi consilio
Prelatorum, Comitum, Baronum et aliorum, quod Dominus Rex...eat
super ipsum *Llewelinum* tanquam super rebellem suum et pacis suæ
perturbatorem, et quod omnes illi qui tenent de Domino Regi in capite
et qui ei servitia debent, summoneantur quod sint apud *Wigorn'*,
&c. cum equis et armis et toto servitio suo, profecturi cum ipso Domino
Rege in *Walliam*, super prædictum *Llewelinum* et suos fautores,
Rot. Claus. 4 Ed. I., Parl. Writs, vol. i. p. 5. [It was agreed, by the
common counsel of the Bishops, Earls, Barons, and others that our Lord
the King should march against *Llewellyn* as a rebel against him, and a
disturber of his peace, and that all those who hold of our Lord the
King in chief, and who owe him service, shall be summoned to be at
Worcester, with their horses and arms, and the whole of their service,
ready to set out with our Lord the King into *Wales* against the aforesaid
Llewellyn and his supporters.] Edward the Confessor's various proceed-
ings against the Welsh princes contain all the substance of such a process,
as we here find recorded in form of law upon the Roll of Edward I.

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Part I. which supreme authority was ascribed^a. If any did not belong
Ch. XIX. to the Anglo-Saxon royal houses, it is most probable that they
 were the descendants of mediatized British princes, who had retained a subordinate authority beneath the Anglo-Saxon crown.

In these families of vassal dynasties, territorial dignities were hereditary, though not according to an undeviating canon of descent. The crown did not so descend, and the same uncertainty or irregularity subsisted in inferior dignities. As we have often observed^b, the right was vested in the blood; it belonged to kith and kin. The causes which gave to the lord the power of rejecting a thane, unable to perform the duties of his ancestor, would operate with still greater force when the *Læn* was a border country, and the safety of the empire might be endangered by the incompetence of the earl to whom the trust was confided. But a grant which disinherited the old line, and conferred the honour upon a stranger, was against the policy of the commonwealth. The absence of an hereditary claim is especially noticed as a defect of title^c. The course of descent might be regulated by special compact^d, it might be interrupted by violence, or entirely disregarded by an authority illegally usurped and illegally exercised; yet, whenever a series of earls or ealdormen can be fairly made out, we may discern, amidst all the uncertainties and errors of ancient pedigrees, that hereditary right prevailed: and that, generally speaking, there were few deviations from lineal

See the case of Waltheof (above, pp. 517-519).

Irregularities of descent not incompatible with the preceding position.

^a The Ealdormen of Lindesey or Lincoln were descended from Winta (Flor. Wigorn., p. 688), the youngest son of Odin. Ethelred, the "Comes Gainorum," was of the royal line of Mercia (Part II., *Proofs and Illustrations*, p. 529). Peada, the Ealdorman of the Middle Angles (id., p. 506), was the son of Penda of Mercia. Athelstane, the Earl of East Anglia, was descended from a royal family (id., p. 546) probably of Wessex. Oswio was the ancestor of the Earls of Bernicia (id., p. 611). The Subreguli of the "Hwiccas" and of "Hecana" were branches of the House of Mercia (id., pp. 327, 512, 522). When it is recollected that we only possess the most cursory and unsatisfactory notices of these dependent sovereigns, it will appear remarkable that the ancestry of so many of them can be traced.

^b See above, p. 368.

^c As in the case of Tostig (Part II., *Proofs and Illustrations*, p. 603, note b), whilst the ancestral right of Cospatric, in right of his mother, is particularly noticed (id., p. 609).

^d See above, p. 368.

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succession, the ancestor transmitting his authority to his descendant^a.

Some objections, however, may be raised, not destitute of plausibility, and requiring consideration. If we are asked to adduce the strongest case of an hereditary earldom, we must fix upon Northumbria. The earls traced their lineage to the Bretwalda, and the authority was even considered as deducible through a female heir. Yet in this family, the earldom was taken from the elder Waltheof during his lifetime, and bestowed upon his son Uchtred, when the old father was unable to bear the toils of war. Hence, it may be argued, the dignity was merely official, bestowed by royal favour, and recalled by the will or discretion of the sovereign. A comparison with the customs of other Teutonic nations, however, totally destroys the argument, by shewing that the *practice* of amoving an Heretoch, when incapable of performing his duty, was quite compatible with the *principle* of ancestral right. Waltheof, enfeebled by extreme old age, unable to mount his steed or wield his sword, retires to his castle of Bamburgh, whilst the country is exposed to the ravages of the Scottish enemy. Uchtred acts with the greatest promptitude and decision: he raises the forces of the earldom, and expels the invaders. Ethelred resumes the *Loan*, which the decrepit warrior is unable to defend, and grants it to the son; and the promotion of the heir is exactly the case contemplated by the Bavarian law. The right of the Agilolfing was dependent upon the execution of his trust: and such was the right of the Earl of Northumbria^b.

Part I.
Ch. XIX.

Objections to the foregoing theory, answers thereto.

The deprivation of the elder Waltheof, on the ground of his being incompetent to military service, not a sufficient ground for denying the right of inheritance, inasmuch as a Duke of the Bavarians (amongst whom the dignity was solely vested in the family of the Agilolfings) might be divested for similar reasons (see above, p. 442).

^a See, in particular, the succession of the Earls of Chester and Coventry (Part II., *Proofs and Illustrations*, p. 523) and of Northumbria (id., p. 611).

^b According to the *printed* text of Simeon of Durham (p. 80), these events took place A.D. 969, anterior to the usual date assigned to the accession of Malcolm, which induces Ritson, most unreasonably, to doubt the whole narrative. Supposing there be no error in the date, it is evident that Malcolm may have headed the invasion before his accession to the throne, and that the chronicler designates him by the title which afterwards belonged to him, and according to which he is best known in history. *Regnante Rege Anglorum Ethelredo, Malcolmus Rex Scottorum, filius Kynedi Regis, congregato totius Scotiæ exercitu, provinciam Northanimbrorum cædibus et incendiis devastans, Dunelm' obsidione circumdedit. Quo tempore Alduno episcopatum ibidem regente, Waltheof, qui Comes fuerat Northanimbrorum, sese in*

Part I.
Ch. XIX.

That, upon the first creation of a Beneficiary 'earldom, the dignity may be said to have emanated from the sovereign, is

Bebbanburc incluserat. Fuerat enim nimiae senectutis, ideoque in hostes nihil virtutis facere poterat. Cujus filio, scilicet *Uctredo*, magnae strenuitatis juveni et militiae aptissimo, filiam suam, nomine *Ecgfridam*, *Aldunus* episcopus dederat uxorem, et has villas de terris ecclesiae sancti Cuthberti, scilicet, *Bermetun*, *Skirningheim*, *Eltun*, *Carltun*, *Heaclif*, *Heseldene*, cum ea sub illa conditione donavit, ut ejus filiam quamdiu viveret in conjugio cum honore semper servaret. Videns juvenis praefatus terram ab hostibus devastatam, et *Dunelm'* obsidione circumdatam, et contra hoc patrem suum nihil agere, adunato exercitu *Northimbrorum* et *Eboracensium* non parva manu, *Scottorum* multitudinem pene totam interfecit, ipso Rege vix per fugam cum paucis evadente. Interfectorum vero capita elegantiora, crinibus, sicut tunc temporis mos erat, perplexis, fecit *Dunelm'* transportari, eaque a quatuor mulieribus perlota per circuitum murorum in stipitibus praefigi, mulieribus autem quae ea laverant mercedem dederat vaccas singulis singulas. His auditis, Rex *Ethelredus*, vocato ad se juvene praefato, vivente adhuc patre *Waltheof*, pro merito suae strenuitatis et bello quod tam viriliter peregerat, dedit ei comitatum patris sui. [During the reign of *Ethelred*, King of the English, *Malcolm*, King of the Scots, son of King *Kenneth*, collected an army from the whole of *Scotland*, and laid waste the province of the *Northumbrians* with sword and fire, and besieged *Durham*. At that time *Ealdhun* ruled the see there, and *Waltheof*, who was the Earl of the *Northumbrians*, had shut himself up in *Bamborough*; for he was of great age, and therefore could do nothing vigorous against the enemy. To his son, *Uchtred*, a youth of great bravery and skill in military affairs, Bishop *Ealdhun* had given his daughter, *Ecgfrida*, to wife, and with her he bestowed on him these villas of the Church of St. Cuthbert, to wit, *Barmton*, *Skerningham*, *Elton*, *Carleton*, *Aycliffe*, *Monk-Hesleden*, on this condition that he would always keep his daughter honourably in wedlock as long as he lived. Now when the aforesaid youth saw the land laid waste by the enemy and *Durham* besieged, and that his father could do nothing against this, he summoned the army of the *Northumbrians* and *Yorkshiremen* in large numbers and destroyed almost the whole multitude of the Scots, and the King himself with great difficulty escaped in flight with a few followers. But he caused to be brought to *Durham* the best-looking of the heads of the slain with their plaited hair, as was then the custom, and after they had been washed by four women, they were fixed on stakes all round the walls, and to the women who washed them, he gave a cow apiece as a wage. On hearing of

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Part I.

Ch. XIX.

Eadric
Streona
appointed by
Ethelred to
be *Dux*,
Præfectus,
or Ealdor-
man, over
the whole
kingdom of
Mercia. (See
II., p. 511.)

In the last age of the Anglo-Saxon empire, we may discern the creation of high functionaries, bearing the constitutional name of ealdormen or earls; but who were rather viceroys acting by direct delegation from the sovereign. Ethelred began this practice for the purpose of exalting his favourite, the traitor Eadric Streona; he who afterwards was the main agent in betraying the family of his benefactor, and in expelling them from

ye that I have made *Hugh Bigod* Earl of *Norfolk*, to wit, of the third penny of *Norwich* and of *Norfolk*. And I will and ordain that he and *his heirs* shall hold it of me and my heirs as freely and quietly and honourably as any Earl in England best and most freely holds his Earldom. And I *grant* to *him* his butlery to be held by him as freely and quietly as *Roger* his father best and most freely had it in the time of King *Henry* my grandfather.] *Ricardus* Rex Angliæ, &c. Sciatis nos *fecisse Rogerum Bigot* Comitem de *Norfolc'*, scilicet de tertio denario de *Norwic* et de *Norfolc'*, sicut Comes *Hugo* pater ejus melius unquam fuit, tempore Domini Regis *Henrici* patris nostri. Et volumus et præcipimus quod ipse et hæredes sui ita liberè et quietè et honorificè teneant de nobis et de hæredibus nostris, sicut aliquis Comes Angliæ melius vel liberius et honorabilius Comitatum suum tenet. Sciatis etiam nos reddidisse ei Senescalciam suam et hæredibus suis, ita liberè et quietè, integrè et honorificè habendam, sicut *Rogerus Bigot* avus suus et Comes *Hugo* pater suus melius et liberius vel integrius illam habuerunt tempore Domini Regis *Henrici* avi patris mei, vel tempore patris mei, Cart. Ant. S. 14. [*Richard*, King of England, &c. Know ye that we *have made Roger Bigod* Earl of *Norfolk*, to wit of the third penny of *Norwich* and *Norfolk* as Earl *Hugh* his father ever best had it, in the time of King *Henry* our father. And we will and ordain that he and his heirs shall hold it of us and our heirs as freely and quietly and honourably as any Earl in England best and most freely and most honourably holds his Earldom. Know also that we have restored the Stewartry to him and his heirs, to be held as freely and quietly and completely and honourably as *Roger Bigod* his grandfather and Earl *Hugh* his father best and most freely and most completely had it in the time of King *Henry*, my great-grandfather, or in the time of my father.] The Heir had a full right to the earldom, as well as to the office of steward; but both earldom and stewartry were to be obtained by the grant of the king. Roger, the heir of Earl Hugh, was entitled to ask for his appointment, but it was still to proceed from the king's gift; and if he had been infirm in body or in mind, or notoriously disaffected, the request would have been refused or evaded.

the throne. The earls whom Canute placed in East Anglia, Mercia, and Northumbria, were evidently officers coming within this description. Canute instituted a tetrarchy. Wessex he retained in his power: whilst he appointed a governor, denominated an earl, over each of the other three predominant kingdoms. This form of administration was convenient to a conqueror, compelled to coerce his newly acquired state, and at the same time anxious to conciliate those chieftains who might either disturb him in his acquisitions, or contest his authority.

Part I.
Ch. XIX.

Canute on his accession divides his dominions into four governments. Wessex he retains in his own hands, whilst he appoints Earls of Mercia, East Anglia and Northumbria, but these functionaries are to be considered as Viceroys, and not as hereditary Princes (see II., p. 415).
Earldoms of Godwin and his family. (See II., pp. 436, 530, 561, 562, 603.)

Whether the power of Godwin may not have been, in the first instance, founded upon such a viceroyalty, cannot be ascertained. The nephew of Eadric Streona could have no claim upon the earldom of Kent, unless by marriage with some noble lady to whom the inheritance belonged. "Cild" or "Child,"¹ the title given to Wulnoth, Godwin's father, was equivalent to Atheling; and here we are equally unable to discover the grounds upon which it was conceded or assumed. But before the accession of Hardicanute, the dominion of Godwin was evidently converted, either by usurpation or by grant, into a real territorial earldom. The earldoms created for Godwin's sons were of an anomalous description. During a weak, disturbed and factious reign, legal rights were violated with impunity; and the will of the prevailing party often appeared as the voice of the legislature. Yet even then no colourable pretence could exist for dispossessing these dignitaries, unless a forfeiture was incurred, known to the Anglo-Saxon Law, and punishable by the jurisprudence of the Anglo-Saxon Empire.

CHAPTER XX.

Anglo-Saxon Feudality—The Scottish subjection—Observations on the temper with which this question has been discussed by the Scottish writers—Uniform course and tenour of the Scottish Homages—Summary thereof—Objections raised by the Scottish writers—Examination of such objections, and answers thereto—Devolution of the rights of the Anglo-Saxon Kings to the descendants of Malcolm Canmore—The Kings of the Scoto-Saxon line considered as the legitimate Heirs to the English Crown—Treaty of Falaise—Construction of such Treaty—Effect of the release granted by Richard I.—Case of the English Kings weakened by the production of legendary evidence and forged charters, and by their extravagant pretensions—Arguments of the Scottish Advocates, destructive of the Feudal Sovereignty which the Scoto-Saxon Kings acquired over the component parts of the “Kingdom of Scotland”—Bearing and tendency of the question.

**Part I.
Ch. XX.¹**

The question of Scottish subjection, its importance as a portion of the general history of the Anglo-Saxon constitution. Formerly discussed by the Scottish writers with excusable warmth, inasmuch as it might have been so presented as to affect the political interests of the country. Unreasonableness of retaining such feelings in the present age.

(See above, p. 524.)

IN support of the proposition, “that those institutions, “ which, when regulated by custom and law, became the feudal “ system of dominion, existed amongst the Anglo-Saxons,” we must bestow a careful examination upon the case, once argued with so much passion, of Scottish subjection. It is no marvel that the theoretical independence, as well as the practical freedom, of the “Regnum Scotiæ” should have been resolutely maintained against an English king, attempting to impose a new and unwonted yoke upon a country whose inhabitants would scarcely obey their own immediate sovereigns. In more recent times, the Scots were equally justifiable in resisting the doctrine, if, when according to the guarded style employed beyond the Tweed, our good Queen Anne was Sovereign Lady of *Scotland, England, France, and Ireland*, the obsolete rights whilom possessed by Edgar or by Athelstane could be so represented as to deprive the people of any one privilege belonging to their constitutional monarchy. The Scottish parliament acted wisely in

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be assured that the Rampant Beast was a sentinel who assisted in guarding national liberty. But as all sources of mutual jealousy are now happily removed, it is to be hoped that the North Britons will at last be induced to investigate this portion of their history without prejudice or partiality. Abandoning the commonplaces of "Caledonia unsubdued," &c. will they not consent to claim the meed of praise which really belongs to their country? Let them be justly proud of the progress made by modern Scotland in civilization. Let them extol, as they justly may, the literature, the morals, and the religion of their native land, and they will cease to value the toys for which they contend. They may do so without any disparagement to the good sense of their ancestors. As I said before, there was a time when the matter was worth a contest, but that time has passed away. The Unicorn now stands on the *sinister* side of the shield; and I hope that they will allow Kenneth to take his proper seat in the Witenagemot of the English king with equal tranquillity. Scarcely any argument need be addressed to those, who, uninfluenced by preconceived theory, will bestow an impartial consideration upon the question. It is only necessary that they should examine the evidence which is adduced^a, and upon such evidence their opinion will be formed.

Homages rendered by the Scottish Kings; their uniform course and tenour.

If we contemplate the succession of homages rendered by the Scottish monarchs, and in which their subjects so often concurred,

James I. The Scottish commissioners maintained, that since the Lions of England were only the united *Leopards* of the Duchies of Normandy and Guienne, the Scottish Lion, which, as they asserted, had always been the ensign of a kingdom, was entitled to precedence on all occasions; and James appears, in the first instance, to have been inclined to support this claim. The dispute was ended by a compromise. In the Scottish achievement the Unicorn stands as the *dexter supporter*, the Scottish Lion fills the *dexter quarter*. The jewel of the Thistle is suspended *above* the George; and in the Scottish style (see above, p. 522), Scotland *takes precedence* of England. (Nisbett on Armories.)

^a See Part II., *Proofs and Illustrations*, pp. 366-372, 374, 375, 381-385, 392, 394, 407, 415-417.

The principal passages are collected in the *Proofs and Illustrations* as last quoted, and I request that the reader will peruse them *before he attends to the arguments* which I have grounded upon such evidence. The objections which I have attempted to answer are principally those of Sir James Dalrymple, Lord Hailes, and Anderson.

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beginning with the reign of the first Bretwalda who is commemorated as having subjugated the Scots, we shall find the acts to be of uniform nature. In the more recent periods, the proceedings are recorded with greater care: but, from the first dawn of the Anglo-Saxon empire, down to the appearance of Alexander in the parliament of Edward, and the homage of Balliol, the series is continuous, the transactions are consistent. In no one instance, during this long period, is any voice raised against the dependence, either by king or people: excepting an ambiguous reservation of rights and dignities, faintly breathed by the sovereign, and which may be fully explained without any derogation to the superiority of the English crown.

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Consider how these acts bear upon one another. Perhaps some of these transactions may have related more particularly to Lothian and Cumbria; but others, many others, are most explicitly applied to the Scots, to the kings of the Scots, and to their kingdom. There was no anxiety manifested by the Scottish kings to draw any distinction between the homager of the Anglo-Saxon Crowns and the ruler of the Gael. And had the sons of Fergus been deprived of the lands south of Forth and Clyde, the name of king would scarcely have protected them in the remnant of their territory—the fragments of the old Pictish kingdom—pressed and menaced by the hostile Scandinavian settlements, and the insubordinate clans of the Gael.

Connexion
of the several
acts of
homage.

The king of the Scots and *all the Scots* submit to Edward the Elder, and choose him as their lord^a. No battles are stated to have been waged against them; their submission was voluntary: uncoerced and unconquered, they yield to the pacific dominion of the English king. Constantine, compelled to perform homage to Athelstane, stands upon record as a member of the Anglo-Saxon Witenagemot^b. He appears like the vassus Tassilo in the general Placitum of the Carlovingian emperor. Malcolm is placed upon the throne by Edward the Confessor. Like Balliol, in the aftertime, he is restored by his Superior; and having subsequently become the man or vassal of the Conqueror, he renews his homage and fealty to Rufus^c. These repeated renewals of homage upon each change of lord are in strict conformity to those feudal principles which we have before explained^d. When

Malcolm
Canmore,
when summoned to
appear at the

^a Part II., *Proofs and Illustrations*, pp. 358 ff.

^b *id.*, p. 374.

^c *id.*, p. 633.

^d See above, pp. 436, 437, 506–508, 519, 520, &c. and Part II., *Proofs and Illustrations*, pp. 744, 749, 773–777.

Part I. summoned to appear in the court of the English sovereign,
Ch. XX. Malcolm obeys the mandate. He does not protest that he is discharged from obedience, he only discusses the mode and manner.

court of Rufus, does not deny his subjection, but claims the right of being judged by border law.

Malcolm acknowledges that the Kings of the Scots were accustomed to do right to the Kings of the English, or of England.

He appears in the feudal court, and professes his readiness to submit to judgment. True it is, he maintains that such judgment should be given on the border, where the kings of Scotland or of the Scots had been long *accustomed* to do right to the kings of England or of the English; “Ubi Reges Scottorum erant *soliti* rectitudinem facere Regibus Anglorum.” We do not know whether Malcolm could have established the peculiar mode of proceeding which he demanded. Possibly his claim may have had some foundation. The tribunal existing on the confines of West Wales, in which the six British and six English “Lawmen” decided the disputes of the conterminous tribes, bears a considerable affinity to the judgment according to border law. The Inquest empanelled from either nation seems to represent the earlier Scabini of the Marches; and such a mode of terminating disputes between the people of the two dominions may have afforded a colourable pretext for the pretensions which Malcolm advanced. A tribunal thus constituted seems, however, more adapted to a discussion of the dissensions of subject and subject^a, than to the relation between vassal and sovereign. Yet, be this as it may, Malcolm, in preferring his plea, grounded his partial immunity upon an established usage which testified the Scottish subjection.

Upon the death of Malcolm, the throne is occupied by Donaldbane. Duncan, the son of Malcolm, applies to William Rufus, praying that he would be pleased to restore him to his inheritance, the kingdom of his father. William Rufus grants the request. Duncan takes the oath of fealty^b, and, supported by the English king, he expels the intruder and acquires the crown. Edgar,

^a See above, p. 388 and Part II., *Proofs and Illustrations*, pp. 330, 446, 447.

^b See Part II., *Proofs and Illustrations*, p. 640. The Saxon chronicle is also very full and explicit.

...when Duncan, King Malcolm’s son, heard all that had taken place, he was then in King William’s court, because his father had given him as a hostage to our King’s father, and so he lived here afterwards, he came to the King *and did such fealty as he required at his hands*, and so, with his permission, went to Scotland, with all the support that he could get, of English and of French, and deprived his uncle Dufonald of his kingdom, and so was King, Sax. Chron., ed. Ingram, p. 307.

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Objection II.
That the
Chroniclers
are
unworthy
of credit.

II. Similar remarks will apply to the doubts thrown upon the chroniclers. Sometimes these unhappy witnesses are at once driven out of court; sometimes their credit is destroyed by innuendo. Ordericus Vitalis relates a circumstance which stands in the way of a modern theorist. The modern replies, that Ordericus was a "blundering ignorant monk." Florilegus¹ and Brompton² and John of Wallingford³, insert the names of the vassals who graced the triumph of Edgar on the Dee. These are the embellishments of the monastic writers, "gradual improvements made upon the tale."^a Florence of Worcester designates Kenneth as a "subregulus." He is the best of our early annalists. You must, however, reject his authority, because "he lived a hundred years after the event"; besides which, he was an Englishman and a monk, and therefore a suspicious character. The chronicle of Melrose records the homage performed by Malcolm the Maiden. A monk of Melrose is as little to be trusted as if he were an Englishman, for the abbey is only a cell of Rievaulx, on the other side of the Tweed, and the passage has been interpolated by the scribes of the parent monastery. Objections of this nature are perfectly allowable to an advocate who labours to procure the acquittal of his client, but they do not elicit the truth in historical inquiry. If the modern Scottish historian refuses to admit the testimony of a particular chronicle, because the writer lived an hundred years after the event; if he discards the testimony of the English chroniclers, because they are Englishmen; and if he discredits all chroniclers, because they were monks and lived in monasteries, it may be proper to ask him where the materials of Scottish History can be found?

Objection III. That the supposed homages were merely voluntary leagues, &c.

III. A Scottish advocate, compelled to admit the chronicles as competent evidence, then cavils at the terms in which the testimony is given. He maintains, that the transactions may be considered as denoting a "voluntary league of friendship amongst princes," and not as a compulsory service; but it is an old artifice of state, even amongst rude nations, to disguise any onerous or disagreeable condition, by civil and courtly terms; and, after all, the feudal bond in its origin was usually a voluntary engagement, or, at least, a compromise of hostility.

^a It may be here observed, that in Florilegus (or Matthew of Westminster), who gives the fullest account of the homage, we may find numerous proofs that *his* Saxon Chronicle was fuller than those which we now possess.

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IV. The allegations, that the instances in which we find evidence of the subjection are few, and that more frequent proofs of the attendance of the Scottish monarchs at the court of the Basileus ought to be required, are susceptible of an obvious answer. Our history exists only in fragments; the notice of Scottish affairs is incidental; and the distance interposed between the Basileus and his vassal, will fully account for the frequent absence of the Scottish king. The munificence of the English kings provided mansions and hostels for their royal homager: but many a weary day's journey was interposed between the Pictish sea and the palace of Winchester or Westminster. Ethelred or Edward might be reasonably solicited to excuse the non-appearance of a monarch, who, on his return, was in danger of finding his throne occupied by an intruder^a.

V. When the facts are indisputable, the Scottish advocates maintain that the homage was obtained by hostility, the acts of submission extorted by duress, and ultimately renounced by the English kings. In examining these objections, we must recollect that the repeated acts of "infidelity" on the part of the Scots compelled the Anglo-Saxon or English sovereigns to establish their right by the sword. The last reason of kings is often the only mode of bringing an opponent to reason. Before the establishment of those courts and tribunals which gave a strictly legal character to feudality, a vassal had no other means of enforcing justice from his feudal Superior but by arms; and the feudal Superior would as readily adopt the same course, when he was wronged. In fact, the proceeding in either case resulted from the principle so generally adopted in the middle ages, of allowing a party to take the law into his own hands, when redress could not be otherwise obtained. Without doubt, the ingenuity of the Scots would often suggest a plausible reason for their refusal. Canute may have been told by "Malcolm, Mælbæth, and Jehmarc," that he had usurped the rights of the line of Cerdic, and that an intruder was not entitled to demand their fidelity. His armies convinced them that they were rebels, and afforded an irrefragable argument in favour of the legitimacy of the Dane.

The desire of releasing themselves from their *antrustionship*

^a The insecurity of the road is particularly assigned as the reason why Kenneth did not repair to Ethelred, for the purpose of obtaining his assent when Cumbria was transferred to Malcolm (Part II., *Proofs and Illustrations*, p. 408).

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Objection IV. That the examples of the homages performed, and of the attendance given, by the Scottish Kings at the Court of the Anglo-Saxon Basileus, are few in number.

Objection V. That the homages were enforced by hostility, and that the submission of William the Lion to Henry II. was extorted by duress, and afterwards released by Richard I.

Compulsion by hostility and military execution, the only mode of obtaining justice to which a feudal sovereign, circumstanced like Henry II., could resort.

A Vassal had originally no other means of obtaining justice against his Lord.

These proceedings resulting from the general principle of allowing parties to take the law into their own hands. (See above, pp. 147-151.)

The so-called rebellion of the Scots against Canute perhaps justified by the deficiency of his title as a usurper, which would enable the Scots to maintain that he was not entitled to the homage due to the line of Cerdic (see II., p. 415).

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Probability that Malcolm Canmore refused to submit to the Conqueror, in consequence of the claims which his wife, Margaret, possessed to the Anglo-Saxon Crown.

Proofs of the Saxon feelings which existed in the Court of Malcolm. Anglo-Saxon names assumed by the children of Malcolm. Gaelic appellatives never afterwards used by the Scoto-Saxon Kings.

would be sufficient to excite the Scots to withdraw their ancient and accustomed homage, when the invader who had won the English crown was scarcely settled upon his throne. But in the resistance offered by Malcolm Canmore to the Conqueror and to Rufus, we may trace deeper motives than those which actuated his predecessors. Malcolm was the husband of Margaret, the grand-daughter of Edmund Ironside, who, by the virtual resignation of her brother, Edgar Atheling, became, in popular estimation, the heiress of the Anglo-Saxon crown. I will not say that the rights which the Scot would derive through her were incontestable, so long as Edgar lived; but they would be sufficiently plausible to encourage the ambition of an active and enterprising monarch. Malcolm, by his possession of Lothian, was to be considered an Anglo-Saxon sovereign. "Saxonia"¹ became a place of refuge for the English, the "best men of the land,"^a who, amongst a people of their own race, could here avoid the Norman tyranny, and, by strengthening the hands of Malcolm, enable him to appear as the deliverer of their brethren. Of the Saxon feelings encouraged by Margaret and Malcolm, we have an unambiguous proof in the Anglo-Saxon appellations which their children assumed: *Edward* bore the name of the Confessor; *Edmund*, of the valiant Ironside, the hero of the English; *Ethelred*, of the immediate stem of the royal family; and *Edgar*, of the Emperor of Britain. The fair *Editha*, afterwards called *Matilda*, may perhaps have been borne to the baptismal font as the god-child of the widowed Saxon queen, whose last days passed away in tranquillity and honour under the protection of the Norman conquerors^b.

^a Sax. Chron.

^b *Alanus enim Rufus Britannorum Comes, Mathildem quæ priùs dicta est Edith, in conjugem sibi a Rege Rufo requisivit, sed morte præventus non obtinuit. Deinde Guillelmus de Guarenna, Suthregiæ Comes, Mathildem expetiit, sed divinitus reservata celebriùs alteri nupsit. Henricus vero, adepto Anglorum regno, præfatam virginem desponsavit, ex qua Guillelmum Adelinum, et Mathildem Imperatricem genuit, Ord. Vital., lib. vii. p. 702. [For Alan the Red, Count of Brittany, sought Matilda, who was formerly called Edith, as a wife from King Rufus, but being cut off by death, did not obtain her. Then William of Warenne, Earl of Surrey, sought Matilda, but being providentially kept back, she married another. For Henry, after he had obtained the kingdom of the English, married the afore-*

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Part I. and, in their own country, the *Scots* became the objects of the
Ch. XX. fear, the persecution, and even the enmity of their sovereign, who
 had transferred all his affections to the Saxon population of his
 realm.

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Edgar, the Vassal
 of William
 Rufus, and
 restored to the
 Crown of the
 Scots by the aid
 of his Superior,
 unable to assert
 his rights as
 representative of
 the line of
 Cerdic: but his
 assumption of
 the title of
 "Basileus,"
 probably indi-
 cated his claim.

Edgar, the son of Malcolm, the vassal of Rufus, could scarcely dispute the legality of the authority by which he had been appointed: and Edgar Atheling, seeking not power for himself, would avoid encouraging his kinsman in any attempt to regain the English throne. Yet Edgar's remarkable assumption of the imperial title^a, never adopted by any antecedent or subsequent Scottish king, may be deemed an indication that he asserted his pretensions to the prerogatives of his illustrious namesake and ancestor, though in such a mode as might escape the notice of his liege lord.

1137, 1138.
 Attempts made
 by the English to
 call in the
 Scoto-Saxon
 Kings against
 the Normans.

But the claim was not forgotten. The English yearned for the "right royal line." Conspiring against their Norman masters, they sought to place themselves beneath the dominion of a sovereign who seemed to be the truest representative of the ancient dynasty. David, an Englishman by education and feeling, and married to the daughter of Waltheof, Earl of Northumberland, whom the English considered as a martyr to the national cause, was invited by the "factious," in order that he might expel the Normans and ascend the throne. Immediately after this overture

says, that they drove out *all the English* who had been with Malcolm; and ealle þa Englisce ut adræfdon, þe ær mid þam cyng Melcolme wæron. [And they drove out all the English who were formerly with King Malcolm.] Lord Hailes whimsically calls this "a *savage and inhospitable* measure!" The Scots only submitted to Duncan upon condition that he should not allow any English or Normans to settle in their country, ...illum regnare permiserunt, *ea ratione*, ut amplius in *Scotiam* nec *Anglos* nec *Normannos* introduceret, Sim. Dunelm. *ut supra*. [They permitted him to reign *on this condition* that he would never introduce into *Scotland* either *English* or *Normans*.] The best praise which Malmesbury can bestow upon David was, that he had quite ceased to be a Scot; *Juvenis cæteris curialior, et qui nostrorum* convictu et familiaritate limatus à puero, omnem rubiginem *Scotticæ* barbariei deterserat, Will. Malm., lib. v. p. 89. [A youth more courtly than the others, and who, being from boyhood polished by intercourse and familiarity with *us*, rubbed off all the rust of his *Scottish* barbarity.]

^a Upon his great seal (see Anderson's *Diplomata*) he is styled "Eadgarus Scottorum Basileus." [*Edgar, Basileus of the Scots.*]

we find that he invaded England, seeking to “win the country”; and the ancient banner of Wessex, the Golden Dragon, cast down for so many ages, now waved amidst the host of the Scoto-Saxon King^a.

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David assumes the Dragon of Wessex as his standard.

David had certainly sworn to maintain the cause of his niece; but are we certain, that, if he had succeeded in regaining the inheritance to which he was invited by the people, he would have resigned his dominion in favour of the Empress, or that the English would ultimately have allowed a woman to retain the crown?

The opinion that the Scottish kings were the legitimate representatives of the Anglo-Saxon dynasty continued to prevail. It was recorded from age to age in the volumes of the monastic chroniclers. Shall we be told again that they were ignorant monks? But one writer addresses his work to William the Lion, to the sovereign whose right and title he proclaims, and to the members of the royal family: another is an historian who on all

The Scottish Kings considered by English Chroniclers as the legitimate heirs of the Anglo-Saxon rights.

^a 1138. In this year came *David*, King of Scotland, with an immense army to this land, and would fain win this land—wolde winnan þis land, Sax. Chron. Ordericus Vitalis (p. 912) relates the conspiracy which preceded this expedition; quidam pestiferi conspirationem fecerant, et clandestinis machinationibus sese ad nefas invicem animaverant, ut constituto die, *Normannos* omnes occiderent, et Regni principatum *Scottis* traderent [certain baleful men made a conspiracy, and by secret plots mutually encouraged one another to crime, to kill all the *Normans* on an appointed day and deliver the Kingdom to the *Scots*]. He afterwards (p. 917) assigns this invitation as one of the probable causes of David's invasion; propter fraudulentam invitationem factiosorum, a quibus ad patriæ detrimentum laccessitus fuerat, seu propter jusjurandum, quod jubente *Henrico* Rege jam nepti suæ fecerat [on account of a deceitful invitation from the factious, by whom he had been stirred up to the damage of this country, or else on account of the oath, which at the bidding of King *Henry*, he had sworn to his niece].

The Golden Dragon of Wessex is described by Huntingdon (see Part II., *Proofs and Illustrations*, p. 338) in a passage which, like many others in that valuable writer, must be considered as a version of an ancient war-song. For its employment as the national ensign of the Scots, see Ethelredus Rievallensis, de Bello Standardi, p. 346. The Dragon was not portrayed upon a banner, but the vane or ensign was made in the figure of a serpent, “vexillum ad similitudinem draconis figuratum.” [A banner in the shape of a dragon.]

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occasions echoes the popular voice, and flatters the passions of the multitude: a third is the compiler of a series of annals, which were found in every library: a fourth collects, to the best of his endeavours, the materials for the constitutional history of England^a. Whatever doubts may be raised, these authorities establish the point upon which the political importance of the claim advanced by any King *de jure* depends; it is entertained by the *Pretender*, and recognized by popular opinion.

When William of Scotland fell into the power of the king of

^a Joscelyn, the monk of Furness, in his Life of St. Waltheof (p. 248), dedicated to "*Willielmus Rex Scotiæ*," Alexander his son, and the Earl David, affords the most important of these testimonies; *Genitor ipsæ beatæ Margaritæ dictus Edwardus, nepos et hæres legitimus sanctissimi Edwardi Regis, jure hæreditario Anglici Regni per lineas rectas successivæ generationis in vos devoluto, vos sceptrigeros effecisset nisi Normannorum violenta direptio, Deo permittente, usque ad tempus præfinitum præpedisset.* (See also *Scotichronicon*, vol. i. p. 218, where the passage is inserted.) [The said *Edward*, the father of Saint *Margaret* herself, the nephew and lawful heir of the most holy King *Edward*, would have made you sceptred kings, as the hereditary right to the realm of *England* had devolved on you in the direct line of succession, if the violent pillage of the *Normans* had not, with God's permission, hindered you till the appointed time.] The positive assertion of the right, and the clear expectation of the restoration of the legitimate line, render the passage very remarkable. Matthew Paris makes nearly the same assertion; *Nati sunt denique Reginæ Margaritæ sex filii et duæ filiæ, quorum tres, Edgarus scilicet, Alexander et David, juxta generis sui nobilitatem, Reges fuerunt, ex quibus Regum Angliæ nobilitas, a propriis per Normannos expulsa finibus, ad Reges devoluta est Scottorum.* [Finally, there were born to Queen *Margaret* six sons and two daughters, of whom three, to wit, *Edgar*, *Alexander* and *David* became Kings, as was consonant with their noble lineage, and from them the royal descent of the Kings of England, expelled from their own lands by the Normans, descended to the Kings of the Scots.] The same passage is found in *Florilegus*, p. 226. In the Constitutional Collection of the Anglo-Saxon Laws (MS. Cott. Claudius D ii, f. 42; see p. 497), it is stated that Alexander asserted his right; *Alexander vendicavit sibi jure hæreditario coronam et monarchiam totius regni prædicti sicut verus hæres et justus de jure boni Regis Edwardi ultimi.* [*Alexander* claimed for himself, by hereditary right, the crown and rule of the whole realm aforesaid, as the true and rightful heir of the good King the last *Edward*.]

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Title of the Scottish Kings preferable to that which Henry II. could deduce through Maud, the daughter of Margaret, inasmuch as the Scottish Kings would take precedence as male heirs.

of their lineage; and, as we have just seen, the most grateful mode of approaching these descendants of Cerdic, was, by reminding them of their legitimate claim to the English throne, now occupied by the Norman intruder. This adverse claim could scarcely have escaped the vigilance of the wise and politic Henry. It is true that he did not, in express terms, deduce his right to the English throne from the Anglo-Saxon kings; but he was supported by the general belief, that in him the ancient dynasty was restored: the English traced his ancestry to Edgar and to Alfred, and to Cerdic and to Woden^a. The Conqueror is not

^a Ralph de Diceto has preserved one of these genealogies. Whilst the genealogy of the King from the Saxon stock is traced so carefully, there is no notice whatever of his Norman ancestry.

Hic est *Henricus* secundus Rex *Anglorum*, cujus mater *Matildis* Imperatrix, cujus mater *Matildis* Regina *Anglorum*, cujus mater *Margarita* Regina *Scotorum*, cujus pater *Edwardus*, cujus pater *Edmundus ferreum latus*, cujus pater *Ædelred*, cujus pater *Edgarus* Pacificus, cujus pater *Edmundus*, cujus pater *Edwardus* Senior, cujus pater nobilis *Aluredus*, qui fuit filius *Edwlfi* Regis, qui fuit filius Regis *Egbrithi*, cujus pater *Alcmundus*, cujus pater *Effa*, cujus pater *Eppa*, cujus pater *Ingles*, cujus frater fuit famosissimus Rex *Ine* nomine, quorum pater *Keonred*, qui fuit filius *Ceowald*, qui fuit *Cutha*, qui fuit *Cuthwin*, qui fuit *Cheluin*, qui fuit *Chenric*, qui fuit *Creoda*, qui fuit *Ceordic*, qui fuit *Elesa*, qui fuit *Esla*, qui fuit *Guis*. Iste fuit capud gentis suæ à quo et tota illa gens nomen accepit. Hujus pater fuit *Wig*, cujus pater fuit *Frewine*, cujus pater *Freddegar*, cujus pater *Brand*, cujus pater *Bealdæg*, cujus pater *Woden*, R. de Diceto, *Imagines Historiarum*, 529. [He is *Henry* the Second, King of the *English*, whose mother was the Empress *Matilda*, whose mother was *Matilda*, Queen of the *English*, whose mother was *Margaret*, Queen of the *Scots*, whose father was *Edward*, whose father was *Edmund Ironside*, whose father was *Ethelred*, whose father was *Edgar* the Peacemaker, whose father was *Edmund*, whose father was *Edward* the Elder, whose father was the noble *Alfred*, who was the son of King *Ethelwulf*, who was the son of King *Egbert*, whose father was *Alcmund*, whose father was *Effa*, whose father was *Eppa*, whose father was *Ingles*, whose brother was the most famous King, *Ine*, of whom *Kenred* was father, who was the son of *Ceowald*, who was the son of *Cutha*, who was the son of *Cuthwin*, who was the son of *Cheluin*, who was the son of *Chenric*, who was the son of *Creoda*, who was the son of *Ceordic*, who was the son of *Elesa*, who was the son of *Esla*, who was the son of *Guis*. He was the head of that race, and from him also the whole of that

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even named in Henry's pedigree. His subjects endeavoured to forget that Henry had any Norman progenitors; and, though he did not derive his crown from the popular voice or popular suffrage, his authority was supported by popular feeling. But if the son of Geoffrey Plantagenet had any right to the sovereignty of England by reason of his English blood, the Scottish king had a better. The recollection of "good Queen Maud" might be endeared to the nation by her virtues and her ancestry. An *Atheling* of her race would be regarded with more affection than a Norman damoiseau^a. Still, she could not be called the heiress of Edmund Ironside, so long as the descendants of her brothers existed: for, whatever irregularities may have prevailed in the course of descent, the brothers of Edith would be preferred to a female heir.

Part I.
Ch. XX.

Under these circumstances, every homage performed by a Scottish king was a virtual acknowledgment of the title of the *Lord by disseisin*, and therefore most important to the intruder. The reservation in the previous homage of Malcolm IV., "salvis dignitatibus suis," was probably inserted to guard against the effects of the submission. Henry, by the renewal of the homage pursuant to the treaty, and without any reservation, obtained a permanent and authentic record of an act which could not be explained away. And at the same time he protected his territories by the garrisons, which entirely bridled the power of the rival family.

The successor of Henry II., the selfish and cruel Richard, whose character, in consequence of an epithet misapplied and misunderstood, has been invested with a false and delusive halo of chivalrous valour, allowed the treaty of Falaise to be cancelled: or, as we are told, "he *invited* William to his court at Canterbury, and *generously* restored Scotland to its *independence*."^b But the *invitation* was one which could not be easily refused. The Archbishop of York was despatched for the purpose of summoning William to appear; and though the King of Scots was received with due honour, yet his journey was that of a vassal attending

1189.
Ric. I. or
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releases to
William the
Lion all
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Falaise, a
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sented as a
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race took its name. His father was *Wig*, whose father was *Frewine*, whose father was *Freddegar*, whose father was *Brand*, whose father was *Bealdæg*, whose father was *Woden*.]

^a William, her eldest son, always took the Anglo-Saxon title of *Atheling*.

^b Lord Hailes, vol. i. p. 155.

Part I. at the bidding of his liege lord, according to the usage of his
Ch. XX. predecessors^a.

Tenour of the charter of release purchased by William by the fine of 10,000 marks.

Homage being performed for the dominions of the King of Scots in England, or Lothian, he agrees to pay the sum of ten thousand marks of silver; and in consideration of this payment, Richard yields two of the castles, agrees to abandon any encroachments upon the Marches, grants to William an acquittance of all conventions and agreements to which Henry had "constrained him by new charters, and by means of his captivity"; and all deeds and charters relating thereto were to be delivered up and cancelled. Richard, furthermore, releases all the homages which he had obtained from the immediate subjects of the Scottish King. But to this release of the new "conventions and agreements" is annexed the most important proviso, that William shall completely and fully perform *whatever his brother Malcolm had performed, or ought of right to have performed, to the King's predecessors.*

Effect of Richard's so-called restoration of Scottish independence. He gives up the occupation of fortresses which it would have been inconvenient to retain; returns obligations which it might have been difficult to enforce; but inserts clauses by which all the ancient rights of the English Crown are reserved, so that the question of subjection remained as open as before.

The so-called "restitution of independence," therefore, resolves itself into the narrowest possible compass. In consideration of a very large sum of money, Richard, about to depart for the Holy Land, gives up the occupation of certain fortresses which it might have been burdensome or difficult for him to garrison and retain. He releases an obligation imposed upon the subjects of the King of Scotland, which he might never be able to enforce, he delivers up certain parchments relating to the covenants, which he has discharged, and having done all this, he reserves to himself every right whereunto, if he be King of England, he is entitled by law. Had Richard, in the most express terms,

^a 1289. Eodem anno, mense *Novembris*, *Gaufridus*, *Eboracensis* Electus, per mandatum Regis *Ricardi* fratris sui, ivit contra *Willelmum*, Regem *Scotiæ*, usque ad aquam de *Thewdam*, cum Comitibus et Baronibus *Eboracensis-syræ*; et ibi recepit eum in conductum, et perduxit in *Angliam* usque ad *Cantuariam* ad Regem, administrans ei necessaria, secundum consuetudinem prædecessorum suorum, Benedictus Abbas, p. 575. [A.D. 1289. In the same year, in the month of *November*, *Geoffrey*, the Bishop elect of *York*, by the order of King *Richard* his brother, went to meet *William*, King of *Scotland*, as far as the river *Tweed*, with the Earls and Barons of *Yorkshire*; and there he received him in safe-conduct, and brought him into *England* as far as *Canterbury* to the King, providing for him all things necessary, according to the custom of his predecessors.]

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Part I.
Ch. XX.

had as good a right to the Superiority as to the castles and earldoms which he alienated from the crown. If he had no right to hold, he had no right to surrender.

Legends and fables adduced by Edward I. (and also by the English Chroniclers) to support the Anglo-Saxon claims. The Scots rebut fables by fables.

We shall lose nothing in our argument, by freely confessing, that the English monarchs, or their agents or ministers, have given a suspicious appearance to the Anglo-Saxon rights, by the legendary fables and apocryphal narratives, which they mingled with authentic history. But the Scots did the same; and, without disputing that Lochrine¹, the first settler of Lloegria or England, was the eldest son of Brute, and Albanact and Camber his juniors, they depended upon the pre-eminence possessed by the Egyptian Princess Scota², from whom they deduced their race and name. Leaving to Edward the full benefit of the conquest of Scotland by Arthur, they recalled to his memory, that when the British monarch was slain by Modred, Scotland recovered her pristine liberty. Dunwallo, the Briton, may have defeated Staterus, King of the Scots, but the effect of his success was more than counterbalanced by the victories of Gregory the Great, the son of Dungal³, who subdued all England^a.

the aforesaid Malcolm: to wit, both in his journey to our court, and in his sojourn there, and in his return thence, and in procurations and in all liberties and dignities and honours due to him by right; according as it will be ascertained by the four nobles of our realm who were chosen by the said King William, and the four nobles of his realm who were chosen by us.

But if any of our men has unjustly taken possession of the Marches of the Kingdom of *Scotland*, after the time when the aforesaid *William* was captured by our father, we will that they be completely restored, and reinstated as they were before his capture....

We have also restored to him the allegiance of his own men, which was accepted by our father, and all the charters which our father obtained from him by reason of his capture; and if, perchance, any of them be retained by forgetfulness, or be afterwards found, we will that they shall be entirely invalid: but the oft-mentioned King *William* has become our liege man for all the lands for which his ancestors became the liege men of our ancestors, and has sworn fealty to us and our heirs.]

The charter granted to William by Richard, and securing his allowances when summoned to attend the English court in pursuance of the King's writ or command (Part II., *Proofs and Illustrations*, p. 656), was evidently executed in pursuance of this treaty.

^a See the letter addressed to the Pope by the Barons of Scotland. (*Scotichronicon*, p. 11.)

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Some of the charters produced, in later periods, as evidences **Part I.** of the rights of the English crown, are unquestionably falsified or **Ch. XX.** spurious. If famous John Harding¹ be tried before a jury of antiquaries, for feloniously counterfeiting the great seals of David II., Robert I., and Robert II., and affixing such counterfeits to the letters patent which he forged, a verdict of guilty will infallibly be returned: and when the pension of twenty pounds per annum was granted to him by government as a reward for his discoveries, we may be assured, that the Lord High Treasurer, the Earl of Shrewsbury, did not cause the instruments to be subjected to a very critical examination^a. Other

Charters forged by the English as evidences of the Scottish homages, but which charters, by displaying the ignorance of the individuals who attempted to counterfeit ancient charters, afford, by comparison, the best proof of the authenticity of such documents as are genuine.

^a Harding pretended that James I. had offered him the sum of one thousand marks sterling for certain charters, testifying the homages of the Scottish kings. His life had been exposed to the greatest peril in obtaining these documents; nor did he escape without sustaining an incurable hurt or maim. In consideration of his sufferings and his fidelity, an annuity of twenty pounds was granted to him, payable out of the issues of the county of Lincoln, by Letters Patent tested at Westminster, 28th Nov. 36 Hen. VI. (Anderson's App. no. 7.) The records of the Exchequer contain a memorandum of the delivery of the charters to the Earl of Shrewsbury. The following Charters were probably counterfeited about the same period. Even if the phraseology did not at once betray the imposture, the armorial bearings and Gothic ornaments of the seals would be sufficient to prove the forgery.

Malcolmus, Dei gratia Rex Scotorum et insularum adjacentium, omnibus Christianis ad quos presentes literæ pervenerint, salutem, tam Danis et Anglis quam Scotis. Sciatis nos et Edwardum primogenitum filium nostrum et heredem, Comitem de Carrick et de Rotsaye, recognovisse nos tenere totum regnum nostrum Scotiæ et insulas adjacentes de excellentissimo domino nostro domino Edwardo, filio Ethelredi nuper Regis Angliæ, superiore domino Regni Scotiæ et insularum adjacentium per homagium ligium et fidelitatem, prout antecessores et progenitores nostri pro antea temporibus retroactis satis notabiliter recognoverunt et fecerunt, prout per antiquiora recorda coronæ satis nobis constat. Quare ex jure directo nos devenimus homines vestros, O Domine noster serenissime Edwarde fili Ethelredi, Rex Angliæ et Superior Dominus Scotiæ et insularum adjacentium, durante vita nostra contra omnes homines vobiscum vivere et mori tanquam ligii subditi vestri fideles; et ligiam fidelitatem vobis et heredibus vestris portabimus, sic Deus nos adjuvet et sanctum Dei judicium. In cujus rei testimonium presentibus sigillum nostrum apponi fecimus pro nobis et filio nostro predicto apud Eboracum quinto die Junii anno regni nostri nono, in

Part I. fictitious documents of the same class, and which may have been
Ch. XX. manufactured about the same period, are extant. But, fortunately for the cause of truth, these productions afford a sure test

parlamento predicti domini superioris nostri ibidem tento. Ex consensu et consilio *Margaretæ* consortis nostræ, filiæ *Edwardi* filii *Edmundi* ferrei lateris, *Edgari* Atheling, fratris ejusdem consortis nostræ, et quam plurimum magnatum aliorum regni nostri predicti, Anderson, App. no. 1. [*Malcolm*, by the grace of God King of the *Scots* and of the neighbouring islands, to all Christian people, *Danes*, *English*, and *Scots*, to whom these presents shall come, greeting. Know ye that we, and *Edward* our firstborn son and heir, Earl of *Carrick* and *Rothsay*, have acknowledged *that we hold by liege homage and fealty the whole of our kingdom of Scotland and the neighbouring islands of our most excellent Lord, Edward, son of Ethelred, lately King of England, the superior lord of the Kingdom of Scotland and the neighbouring islands, even as our ancestors and progenitors in times past by common knowledge admitted and did, as has been satisfactorily proved to us by the more ancient records of the Crown. Wherefore, of simple right, we have become your men, our most serene Lord, Edward, son of Ethelred, King of England, and Superior Lord of Scotland and the neighbouring islands, while life lasts, to live and die with you against all men as your faithful liege subjects: and we will bear liege fealty to you and your heirs, so help us God and the holy judgment of God. In witness whereof we have caused our seal to be affixed to these presents on behalf of ourself and our aforesaid son at York on the 5th day of June in the ninth year of our reign, in the parliament of our aforesaid superior lord there held, with the consent and advice of Margaret our consort, the daughter of Edward son of Edmund Ironside, and of Edgar, the Atheling, the brother of our said consort, and of very many other magnates of our kingdom aforesaid.]*

Edgarus, Dei gratia Rex *Scotorum*, omnibus ad quos presentes literæ pervenerint tam *Francis* et *Anglis* quam *Scotis*, salutem. Sciatis nos, ex licentiâ *Willelmi*, Regis *Angliæ*, Superioris Domini regni *Scotiæ*, pro animabus *Malcolmi* patris nostri et *Margaretæ* matris nostræ ac pro animabus *Edwardi* et *Duncani* fratrum nostrorum necnon pro salute nostra, dedisse et concessisse Deo et Sancto *Cuthberto* confessori, *Willelmo* Episcopo, *Drugeto* Priori et Monachis *Dunelmicæ* Deo servientibus imperpetuum Baroniam et Manerium de *Coldyngham* cum hiis mansionibus subscriptis, scilicet *Berwic*, &c....cum omnibus pertinentiis, juribus, et decimis garbarum et feni cum omnibus libertatibus, franchesiis et regalibus, adeo libere et plenarie sicut prædictus pater noster et dominus illa tenuit: habenda et tenenda omnia et singula prædicta

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(See above,
p. 523.)

Homages
and acts of
submission
of the Scots,
to be con-
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according to
the con-
temporary
practice, and
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Arguments
by which the
Scots
attempt to
disprove the
Anglo-Saxon
superiority,

bestow the heraldry of the fourteenth century upon Malcolm, endeavoured to indite an Anglo-Saxon *Landboc*, their ignorance would, in like manner, have rendered them liable to instant detection. Without doubt, the exposure of this deceit was amongst the considerations for which the learned collector of the "Diplomata Scotiæ" received his well-earned parliamentary reward. But it is a curious proof of the effect of party prejudice, that, when treating on the *Regiam Majestatem*, in the very same work, Anderson's acuteness wholly forsakes him; and he ascribes the law-book to the reign of David, though the tokens which stamp it as spurious, are not a whit less palpable, than those appearing in the inventions of the mendacious poet and chronicler.

Lastly, we must acknowledge that the evidences, taken separately, do not go to the full length of establishing the assertion advanced by Edward, that the kings of England, or the Anglo-Saxon kings, had, from the first origin of that kingdom, the full and direct dominion over the kingdom ambiguously termed by the name of "Scotland"; nor can we always decide whether any given act of homage performed by the Scots, after the grant of Lothian to Kenneth, was or was not intended more particularly for that last-mentioned country. It is sufficient for us to know, that the obligations of the Scottish sovereigns are such, as, in the Anglo-Saxon or Carlovingian age, might be demanded from an *Antrustion*, from one who had accepted the son of Cerdic as his "Lord, Protector, and Defender." The engagements contracted by a chieftain in the tenth century, when Feudality was still in its germ, are not to be measured by the standard of Pavia, Paris, or Bologna. A period existed when the act of homage performed by the Scots possessed a double character: it might be due in respect of the *Benefice*, or might proceed from an unbene-*ficed Antrustion* commending himself to his Superior. But the Scots, kings and people, allowed this submission to grow upon them, even as similar relations had arisen within their own realm. The objections of the Scots, if valid, prove too much for the Scottish king. Neither Bruce nor Balliol would have derived any real advantage from the doctrines advanced by the advocates of Scottish independency. If the arguments employed against the supremacy of the English crown had been pursued, they would destroy the most valued rights of Scottish sovereignty.

How was the "Kingdom of Scotland" created or acquired? By what process did the king of Dunfermline gain the superiority of the soil from the Solway to the Orkneys? The pages of the

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modern Scottish historians glance at events which the writers will hardly dare to explain or unfold. The men of Moray are subjugated by the sword. The Scoto-Saxons compel them to submit, and exact the oath of allegiance or fealty. They attempt to vindicate their ancient independence; and though, by a desperate policy, a great portion of this tribe is dispersed over the dominions of Malcolm IV., they still spurn their chains, and attempt to cast off the yoke by which they are enthralled. The Galwegians, governed by a native prince, and possessing their own laws, are even more stubbornly contumacious: they expel the Scots, and slay the officers of the Scoto-Saxon king. The Northmen of Caithness refuse their obedience, and declare that they consider themselves as the real owners of the land; and Torphin¹, Earl Harold's son, blinded and mutilated, is cast into the dungeon, where he expires, to expiate the treason which his father has committed by striving to assert the rights of his Scandinavian ancestors. All these "barbarous nations" were *rebels* in the judgment of the Scoto-Saxon kings. The English, and the Normans, and the Flemings, paid and rewarded by the lands of the Celtic tribes, composed the baronage of the Scoto-Saxon monarchs, and kept them on the throne; and the swords of these foreign and odious lineages alone insured the obedience, not only of the Picts and the "Wallenses" and the Galwegians, but of the Scots themselves^a.

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Ch. XX.

capable of being retorted so as to destroy the legal superiority of the Scottish Crown over the Islands and Highlands, &c.

The Scottish, or to speak more correctly, the *Sassenach* historians of the present day, praise the energy of James I. in reducing to obedience the Highland chiefs who had thrown off "all respect to the mandates of the crown." and who "might be considered as having returned to their *pristine independence and barbarism.*" But had they not a *right* to their independence and *barbarism*, if they preferred liberty to subjection under the Scottish monarch, and their native customs to the laws and usages

Sassenach feeling displayed by the modern Scotch historians who treat all attempts made by the Gael to regain the^{if} ancient liberties as acts of rebellion, though such attempts differed little (if at all) from the resistance opposed by the Scots to the English.

^a The speech of Robert de Brus to David I. (Ethelredus Rievalensis, de Bello Standardi, p. 343) conveys the idea of a monarch entirely supported on the throne by the ascendancy of the non-Celtic portion of his subjects, and by the aid of foreign settlers. We may excuse the ill-humour expressed by the historians of Scotland, both ancient and modern, against the attempts made by the different tribes and nations to release themselves from the supremacy of the Lowlands. But we must deny the justness of the language, unless *they will allow the same to be applied to their own rulers.*

Part I.
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which a relentless *conqueror* attempted to enforce? In reading such expressions, are we not reminded of the lion and the painting? Had the Celtic tribes prevailed in the battle of the Harlaw¹, how would their bloody history have been told? and in the deeds which are often recounted as redounding to the glory of the Scottish sovereign, we ought only to hear the lament of the clan, and the widow's wail^a. If national feelings, habits, patriotism in short,

^a The proceedings of James I. in the parliament of Inverness, may be taken as illustrating the course pursued by the Scottish government. The Highland chiefs attend upon the summons or invitation of the king; as soon as they enter the hall, they are seized, chained and fettered, and cast into dungeons. The remainder of the story must be told in the words of my friend, Mr. Fraser Tytler (vol. iii. p. 252).

Upon this occasion, forty greater and lesser chieftains were seized; but the names of the highest only have been preserved: Alexander of the Isles; Angus Dow, with his four sons, who could bring into the field four thousand men from Strathnarven; Kenneth More, with his son-in-law, Angus of Moray and Makmathan, who could command a sept of two thousand strong; Alexander Makreing, of Garmoran, and John Macarthur, a potent chief, each of whom could muster a thousand men; along with John Ross, William Lesly, and James Campbell, are those enumerated by our contemporary historian; whilst the Countess of Ross, the mother of Alexander of the Isles, and the heiress of Sir Walter Lesly, a very rich and potent baron, was apprehended at the same time, and compelled to share the captivity of her son.

Some of these, whose crimes rendered them especially obnoxious, the King ordered to immediate execution. James Campbell was tried, convicted, and hanged for his murder of John of the Isles; Alexander Makreing and John Macarthur were beheaded, and their fellow-captives dispersed and confined in different prisons throughout the kingdom. Of these, not a few were afterwards condemned and executed; whilst the rest, *against whom nothing very flagrant could be proved, were suffered to escape with their lives*. By some, this *clemency* (!) was speedily abused, and by none more than the most powerful and ambitious of them all, Alexander of the Isles. This ocean lord, half prince and half pirate, had shewn himself willing, upon all occasions, to embrace the friendship of England, and to shake himself loose of all dependence upon his *lawful* sovereign, pp. 252, 253.

Compared with this atrocious breach of faith, Edward's conduct towards the Scots was mildness and mercy. The *lawful* dominion of James over the "ocean lord" was merely that of the strongest. The

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(See II.,
p. 545).

the resistance presented to his power by those whom he called his subjects. William the Lion can scarcely be excused, even by the barbarity of his age, when he decreed that the son of Harold, unheard and untried, should perish in torture, because his father had violated his fealty. But the punishment of Wallace, however cruel, was warranted by the jurisprudence of England.

It is extremely possible, that in the earlier ages of the monarchy, the Scandinavian and Celtic chieftains *commended* themselves to the Scoto-Saxon kings, in the same manner as the Scots had done to Edward the Elder or to Edgar, and this subjection grew into the rights of feudal dominion, which the Stuarts, in more recent periods, exercised with so much rigour. If such acts of homage did not take place, the proceedings of the Scottish monarchs were mere acts of encroachment and aggression. Should a Scottish historian choose to adopt the *first* supposition, and assert that Galloway was held of Bruce or Balliol, his assertion compels him to admit that Scotland was the fief of the English crown. Preferring the *second* supposition, the epithets bestowed upon the English Edward must be transferred to the Scottish James, and whether the first or sixth of the name, they will be equally deserved.

But the better course, perhaps, will be to avoid all hard words and opprobrious epithets, for the question may be presented in such a form as shall not militate against the dignity of either realm. Margaret's descendants endeavoured to avoid an act, which, upon every repetition, was a disclaimer of the rights which they possessed, or fancied they possessed, by reason of their Saxon lineage. The successors of the Conqueror, in attempting so to employ their superiority as to break down the power of Scotland, were influenced, not only by the ordinary ambition of powerful Sovereigns coveting the possessions of weaker neighbours, but also by the remote apprehensions, excited by the claims, however shadowy, of the princes to whom the "dignity of the Anglo-Saxon kings had devolved."^a They could not fail to see that the name of a pretender might be employed in encouraging the projects of those sturdy subjects or aspiring nobles, who sought either to limit the authority of the reigning monarch, or to expel him from the throne.

^a Edgar Atheling, according to Fordun, during the reign of Donald Bane, concealed his nephews and nieces, to whom the hereditary right of the Anglo-Saxon crown belonged, somewhere in England. (Vol. i. p. 275.)

CHAPTER XXI.

Anglo-Saxon Government—Authority of Wessex, as the preponderating State—Imperial authority—Titles assumed by Egbert and his Successors—States composing the Empire, aggregated under one Head, but not united into one Monarchy—The Monarch separately inaugurated in each State—Anglo-Saxon Burghs—Scantiness of materials for their history anterior to the reign of the Confessor—The Danish Burghs—Lahmen or Lawmen—Municipal Magistrates—Free Burghs or Cities in the nature of Dependent Republics—Exeter—resistance of its Citizens to the Conqueror—Rights and Privileges of the Burghs—Legislative Assemblies—General or Imperial Witenagemot—Legislative bodies existing in the several States—Members composing the Witenagemot—Ecclesiastical Councils—Synods—Their effects upon the Temporal Legislatures—Laws enacted in the Imperial Witenagemot, and transmitted to the Dependent States for their acceptance—Functions of the Witenagemot in relation to Royal Grants—Criminal jurisdiction of the Witenagemot—Increase of its influence—Imperial Witenagemot, becomes a species of Political Congress—complicated character of the Imperial Witenagemot—Attendance given by the Thaness of the Danish Burghs—Discussion of the question, whether any Representatives attended from the Burghs in general?—Ancient Elections, how conducted—Customs and Usages creating the Witenagemot—Royal or Imperial Prerogatives—Title of Basileus—The King the Supreme Magistrate and Paramount Source of Remedial Authority—Judicial Eyres or Circuits of the Sovereign—Administration of Justice by the King in person—mode of exercising this authority—The Great Seal introduced by the Confessor—Effects of the innovation—The Clerks of the Chapel or Chancery—Features of the Anglo-Norman Administration discernible before the Conquest—No material alteration in the Theory of the Constitution under the Conqueror and his immediate Successors—Manner in which alterations were introduced—Theory of a compact between the Sovereign and the

Part I.
Ch. XXI

*People—Responsibility of the Monarch first taught by the Clergy
—Constitutional rights at the close of the Anglo-Saxon Empire.*

Part I.
Ch. XXI.

Complicated principles of government amongst the Anglo-Saxons. Imperial authority of the line of Wessex, after the extinction of the royal title in the dependent kingdoms, though such kingdoms still continued independent of each other

IN the physical world, we found our calculations not so much upon particular instances, as upon general averages. The same mode of reasoning applies to the measurements of the moral world. Therefore, when estimating the form and force of any government, allowance should be made for the accidental circumstances disturbing the height and level which the constitution of the state has assumed. Amongst Egbert's successors were numbered the weakest and also the most energetic monarchs of the English race. The sceptre, which trembled like a reed in the hand of the effeminate Edwy, became the awe and terror of the island when grasped by the mighty Edgar. We must combine the two extreme cases, and take the mean between them, in order to form a just opinion respecting the extent of power possessed by an Anglo-Saxon king.

The evidence proving the nature, extent, and exercise of civil or municipal authority, can never even possess a uniform complexion or character. Much is doubtful and imperfect; more obscure. We must receive it with all its imperfections, and often help ourselves by hypothesis. But until they are disproved, the titles appearing in the charter of the sovereign must be admitted as describing his dominions, though the chronicles may not disclose their extent. The acts of the monarch speak when the charter is silent. The designation of the magistrate indicates the whole organization of the burgh or city. We must often content ourselves with a hint; we are compelled to leap over chasms which never can be supplied. Yet so long as the different species of testimony support each other by their consistency and conformity, we may maintain that the consequences deduced from the whole body of such evidence are established with sufficient certainty, though some of the links may depend upon inference or conjecture.

Reasonings founded upon insulated facts are unsound, because an insulated fact is generally evidence of the exception rather than of the rule. A fact may, however, appear to stand alone, without being necessarily insulated. It may seem to be solitary, simply in consequence of our want of information; and if it belongs to a known and definite class, we are entitled to connect it with any other in the same category.

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Part I. over other communities; and the privileges possessed by the
Ch. XXI. cities or burghs were such as to render them important members
of the empire. Originally, the Teutons abhorred the very name
of a walled town. The protection of the lofty ramparts appeared
synonymous with degradation and servitude^a. When they
planted themselves on Roman ground, their ancient maxims
were forgotten. Occupying the Municipium or the Colony, they
pursued their conquests from these points of defence, and enriched
themselves with the spoils of wealth and civilization. But the
followers of Hengist and Horsa who established themselves
within the walls of Dorobernia, or the Anglian tribes who gained
the city of Cunobeline, did not thereby surrender their freedom:
and the reminiscences which the Britons preserved of the ancient
municipal governments would tend to increase the independence
and power of the "Burhware" or Burgesses to whom the land
belonged. The invaders, however, had so greatly the prepon-
derance, that the walled towns were organized like the open
country. The Burgh, or the Wards composing it, assumed the
form of a Hundred or a Shire; and the few deviations from this
rule seem to occur either in the North or the West of England.
In other parts, the British or Romanized British population was
rapidly absorbed by the Anglo-Saxons; and, with the exception
of the trading Gilds¹, which descend in a direct line from the
"Colleges" of Operatives, only scanty vestiges of Roman municipal
institutions can be discerned.

(See above,
p. 271.)

No materials
for the
history of the
constitution
of the
Anglo-Saxon
Burghs
anterior to
Domesday.

When we examine the history of the Anglo-Saxon Cities or
Burghs, we cannot, as in Gaul, deduce their political existence
from the Roman era. And we must lament the irretrievable loss
of all documents and records concerning their constitution, until
we reach the last age of Anglo-Saxon history. Nor can we even
venture to assert that the Domesday Surveys describe these com-
munities as they existed prior to the reigns of the Danish kings.
During the devastations and incursions of the Northmen, it is
probable that many cities became wholly waste. We know that
such was the fate of Chester^b; and it may have fallen upon
many other Roman colonies, whose walls and gates stood firm,

^a Tacitus, *Germania*, c. 16.

^b And when thus abandoned, it was occupied by the Danes;
civitatem Legionum, tunc temporis desertam, intrant, Flor. Wigorn.
ad an. 894. [They enter the city of the Legions, which at that time
was deserted.]

though surrounding grass-grown streets and crumbling ruins. The so-called "Danish Burghs" were repeopled and colonized by the invaders; and won and lost by the Anglo-Saxon power. In other cities and shires, the Danish thanes are noticed as an integral part of the population^a. The "Burhware" of London affected and copied the "barbarity" of their conquerors^b. In our metropolis, the chief municipal court, the "Husting," still bears a Danish name, and remains a living monument of these ancient masters of England.

Part I.
Ch. XXI.

Danish Burghs, i.e. York, Lincoln, Stamford, Nottingham, and Derby, colonized by the invaders (see summary of their history II., p. 532).

Such changes having been sustained, we must abandon any conjectures as to the government of the burghs in the earlier periods. We must rest satisfied with the fact, that, in the reign of the Confessor, the larger burghs had assumed the form of communities, which, without much impropriety, may be described as territorial corporations. The legal character of the burgesse arose from his possessions: it was a *real right* arising from the qualification which he held. The burgesse was the owner of a tenement within the walls, and the possession might descend to his heirs, or be freely alienated to a stranger^c. The "lawmen" of the burgh were so denominated in respect of the "mansis" which each held: the rights appertaining thereto were exercised by the owner, unaffected by the change of dynasty. The son of the Anglo-Danish magistrate and the Norman occupant are found, after the Conquest, in equal possession of the rights resulting from their land. "Lawmen" occur by name, only in the Danish burghs; but a similar territorial magistracy existed in other places. The soke of the ealdormen of Canterbury was transferable, like any other inheritance; and the possession of the land imparted to the lord the right of judicature in the burghmoot or municipal assembly^d. Such functionaries were

Larger Burghs to be considered as territorial corporations. Rights of the Burgesse arising from their Burgage tenements.

Lahmen or Lawmen of Chester, Lincoln, &c. derive their authority from the "mansis," &c. which they held. Territorial Aldermanries of Canterbury.

^a As in Lincoln (*Proofs*, p. 535) and Worcester (Hickes, *Inst.* p. 142).

^b And this induced them, acting as a *State*, to join with the Danes in raising Harold Harefoot to the throne; *elegerunt eum Dani et Londoniæ cives, qui jam pene in Barbarorum mores propter frequentem convictum transierant*, Will. Malm., *de Gestis*, lib. ii. c. 12. [The Danes and the citizens of *London* chose him, for the latter had almost by this time been transformed into the manners of the barbarians through constant intercourse.]

^c See the very curious descriptions of Gloucester and Winchcombe, in the Evesham Domesday (Part II., *Proofs and Illustrations*, pp. 851-853).

^d See Somner, *Canterbury*, p. 97.

Part I.
Ch. XXI.

(See above,
pp. 80, 81,
101, 175.)

Qualified
rights of
sovereignty
possessed by
the King in
the principal
Cities or
Burghs.
Citizens of
Exeter
declare to
the Con-
queror that
they are
willing to
render the
accustomed
tribute, &c.,
but that they
will not
swear fealty
to him, nor
allow him to
enter within
the walls of
the city.

A City thus
circum-
stanced, to
be con-
sidered like
Marseilles,
as a species
of republic
enclaved in
the territory
of the King
(see above,
pp. 342 and
419).

lawmen or aldermen by *tenure*. Other burghs, however, may possibly have possessed an elective magistracy analogous to the continental Scabini, or the Inquest Thaners of the English Hundreds. Nor is it improbable but that the Gilds of Traders and Handicraftsmen possessed considerable influence; and the aldermen of these corporations may have been allowed to enter the Folkmoot, and to share in its proceedings.

In the larger and more important cities, the rights of the king appear in the guise of a qualified sovereignty. Various payments and services were imposed upon the municipal communities; but, provided these dues were discharged, the king had nothing more to demand. William attempts to exact the oath of fealty from the citizens of Exeter: in reply, they declare the extent of their liberties and the limitation of his authority^a. Tribute or Gafol, they would proffer to the king, such as was due to his predecessors; they would weigh out the eighteen pounds of silver; the "geld" would be paid, if London, York, and Winchester submitted to the tax: and if war arose, the king should have the quota of service imposed upon five hides of land. From the houses which belonged in demesne to the king, he should have his accustomed rents, but the citizens refused to become the men or vassals of the sovereign; they would not take the oath of fealty to him, nor allow the "Basileus" to enter within their walls.

A city whose inhabitants could thus boldly address their conqueror, may be described as a free State or Republic, though placed beneath the protection or liable to the exactions of the sovereign, by whose territory the community was surrounded. The defence of Exeter has preserved the memory of those franchises which the citizens asserted; and no reason can be found for rejecting the supposition that the rights of other burghs of the same class and order may have been equally extensive. Had they resisted, like Exeter, we should have known as much about them as we do of Exeter. It is scarcely probable, that the warlike Danish burghs, or the capitals of Wessex or of Mercia, should have been inferior to the capital of Damnonia: with respect to Winchester and London, their exclusion from the Domesday survey might afford reason for inferences as to the greater extent of the rights they enjoyed. Perhaps they would not allow the Royal Commissioners to enter within their walls.

^a Ord. Vital., lib. iv. p. 510, and Domesday, Devenescire, p. 100.

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Part I.
Ch. XXI.

As a body, they were often, if not always freed from the feudal bond. The rights of the territorial magistracy resulted from their own internal constitution, and not from the nomination of the crown. The *Lahman* acted as judge, not by virtue of the King's "writ" and "seal," but because he owned the *Mansus* to which the judicial right or duty appertained; and if, as there is every reason to suppose, the election of Reeves and other similar officers by the *Leet Juries* has descended from the Anglo-Saxon age, the other functionaries were virtually appointed by the people. Legislation was the prerogative of the sovereign and his *Witan*: yet, though the laws, thus enacted, extended in general terms to all those who were subjected to his supremacy; still, the mode of accepting the statutes, and of carrying them into effect, depended upon the deliberations of the *Burghmoot* and the discretion of its members; and London was as much entitled to the name of a distinct state or community as the Kentish kingdom^a.

General laws, carried into effect by and through the "By-laws" enacted in the "Frith-gild" of London (see above, p. 160).

Anglo-Saxon Empire, not a united Kingdom, but an aggregate of States and Communities, unincorporated, though tending to incorporation (compare with the constitution of the Carlovingian Empire). (See above, pp. 466-478.)

No permanent legislative assembly, possessing a coercive power over the whole realm.

Witenagemot, originally not differing from the Shiremoot of subsequent times.

The Anglo-Saxon empire, according to the usual scheme of Teutonic government, which I have frequently had occasion to notice, was a species of federation, consisting of many states and communities, possessing unequal degrees of importance and privilege: kingdoms and principalities, whose rulers were bound by ties of vassalage: free communities, fully acknowledging the superiority of the crown, and yet, in many respects, acting as if they were independent of the general government: all aggregated under the dominion of one monarch, who claimed the supremacy of Britain. Tending to unite into one commonwealth, these *political units* were as yet unincorporated; nor were they connected by any permanent constitutional assembly possessing a *coercive* power over the whole realm.

In the smaller kingdoms, such as Kent, the "Witenagemot," the Assembly, or Council of the Wise^b, did not probably differ materially in composition from the "Shiremoot," which assembled on Pennenden Heath in subsequent times. The prelates appear

^a This by-law, or "gerædnes," is said to be made by the Bishops and Gerefas who belong to London. By the first, are probably intended the Archbishop of Canterbury and the Bishop of London. It was confirmed by the "oaths and pledges" of all, Earl and Churl, "ægther ge eorlisce ge ceorlisce" [both nobles and churls].

^b For the various imports of the term *Witan*, see above, p. 115 and Part II., *Proofs and Illustrations*, p. 733.

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as the first order in the community. The Seniors, Earls, or Ealdormen, are convened, not only in the character of chieftains, but also by virtue of the bond of "trust" which connected them with their sovereign. The thanes gave suit and service, as principal landlords. And the ceorls, attending for the townships, listen to the promulgation of the decree, declare their grievances, and *present* the trespasses committed in the communities to which they belong. The actual appearance of the foregoing classes, is not a matter of hypothesis but of evidence: the document lies before us in which they address their sovereign^a; and, with respect to the functions exercised by the ceorls, the testimony of the Anglo-Saxon laws^b receives the fullest corroboration from the universal usage of subsequent times. In the Hundred Court, the Shire Court, and in every species of Folkmoot, each township was constantly represented by the Four Men and the Reeve, with some slight variations as to form. Sometimes the Tithing Man was added, or the Reeve might be absent, but the principle was maintained: and, till a comparatively recent period, we can trace the custom of asking the advice or obtaining the assent of the people, by means of representatives attending for the Anglo-Saxon communities^c. Consulting our Records, we discover that

Part I.
Ch. XXI.

Representation of the Townships by the Four Men and the Reeve (see above, pp. 96 and 225).

^a See the address of the Kentish men, Episcopi, Thayni, Comites, et Villani, to Athelstane (Part II., *Proofs and Illustrations*, pp. 170, 467).

^b Whatever may have been the date of the actual compilation of the laws ascribed to Henry I., they are the faithful evidence of Anglo-Saxon usage. In them (§ 7) we find the attendance of the men of the township most explicitly noticed.

^c In the Shiremoot of Hereford, the Lordship of Archenfield was represented by six or seven of the best men of the Wallishry (*Proofs*, p. 713). They were summoned or convened at the pleasure of the Sheriff. Defaulters forfeited an ox. They gave suit and service in the Hundred in like manner. In this case it is difficult to decide whether the custom be British or Anglo-Saxon. In the West of England, the suit and service appears to have been performed by one Tenant from each Tithing. But the Four Men and the Reeve attended, as usual, to make presentments. In East Anglia, Four Men and the Reeve appeared from every Township, the houses or hearths contributing in turn. For the conventions of the Four Men and the Reeve, see above, pp. 243, 248. In 9 Edw. III. Three or Four men from every Wapentake were summoned by the Sheriff to appear before the Council at York, at the same time that the principal military Tenants of the county were summoned by special writ. (Rot. Claus. 9 Edw. III. m. 16.) Owen Glendower is

Part I. this delegation existed by immemorial usage in every part of the
Ch. XXI. Anglo-Saxon territory. In the Shires of Wessex, we find Ealdor-
 men elected by the suitors of the Hundred, and appearing for
 the Hundred in the Shire Court: and although their attendance
 is only recorded upon the rolls of the fourteenth century, this
 institution bears the character of the most remote antiquity.

Elective
 Ealdorman
 of the
 Hundred
 chosen by the
 Suitors, and
 appearing as
 the repre-
 sentative of
 the Hundred
 in the
 Shire-moot.
 (See II., p.
 687.)

In some of the Shires, it is possible that each Hundred appeared
 by its Echevins. The Boroughs thus answered by their Twelve
 Jurors, the successors of the Scabini, in the Court held before the
 Justices Itinerant, and which retained the form of the ancient
 Shire-moot. Taking all these circumstances together, we may be
 led to the supposition that the elected or virtual representatives
 of Townships and Hundreds constituted the multitude, noticed
 as the *people*, in the narratives describing the great councils and
 other similar assemblies; for the share taken by the *folk* in the
 proceedings forbids the conjecture that the bystanders were a
 mere disorderly crowd^a, brought together only as spectators,
 and destitute of any constitutional character.

Dependent
 kingdoms
 retained
 their
 separate

In the earlier periods, a dependent or vassal kingdom retained
 its own Legislature, sitting and acting distinct from the Legis-
 lature of the paramount kingdom^b. But the Witenagemot

said to have summoned a *Parliament* at Harlech, composed of Four
 men from each Commot; *il ad somoné un Parlement a Hardlegh l'ou
 serront quatres des plus suffisaunts persones de checun comote parmy
 toutz Gales soubz sa obeisaunce esteauntz*, Letters illustrative of English
 History, by Ellis, Second Series, vol. i. p. 43. [He has summoned
 a *Parliament* at Harlech where will be *four of the most sufficient men of
 each commot* throughout Wales, being subject to his rule.] Kett the
 Tanner, sitting beneath the *Oak of Reformation*, administered justice,
 held his courts, and enacted his laws, *with the advice of two Deputies
 from every Hundred*. (Blomefield, Norfolk, vol. ix. p. 227.) This
 singular meeting bears great analogy to the convention of the Neustrian
 peasantry (see above, p. 474). Had the bold East Anglian any re-
 miniscences of the Anglo-Saxon age?

^a So that when, according to the common law, a jury was to be
 completed *de circumstantibus*, the summoners, by going into the body
 of the Hall, found as many Hundredors as they needed.

^b Thus the charter of Cenwulf, "*Rex Merciorum atque provinciae
 Canciae*" [King of the *Mercians* and of the province of *Kent*], is first con-
 firmed by the Mercian Witenagemot, and afterwards by the "*Satrapes
 Cantuariorum*" [the Chief of the men of *Kent*], sitting at Canterbury
 (Part II., *Proofs and Illustrations*, pp. 462, 463). The archbishop is one

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Part I. temporal jurisdictions. In a national council, the King of Albion
Ch. XXI. might listen to the petitions or exhortations of every prelate who acknowledged the jurisdiction of York or Canterbury. And since a "Mycel-gemot," for the despatch of temporal business, was seldom held without a concurrent ecclesiastical council, we may estimate the effect produced by the attendance of the clerical members. The association of the priesthood assisted in connecting the lay communities. A model was furnished for the Legislature by the example of that order which possessed most importance in the State. The ealdormen and subreguli were familiarized to the idea of unity of jurisdiction. If they chose to adopt the scheme, they might borrow a complete and symmetrical plan of territorial representation. At all events, a large and influential portion of the highest class in each kingdom was thus brought together, and taught to act together, in obedience to one impulse and one mind.

Like the general Placitum of the Franks, which it resembled in so many other respects, the imperial Witenagemot was not a legislative assembly, in the strict sense of the term, for the whole Anglo-Saxon empire. Promulgating his edicts amidst his peers and prelates, the king uses the language of command; but the theoretical prerogative was modified by usage, and the practice of the constitution required that the law should be accepted by the Legislatures of the several kingdoms. We discover this plan in the proceedings of the ecclesiastical councils. When the imperial supremacy happened to be divided, the canons passed and decreed in the council of the Province of York and confirmed by Elfwald and the Northumbrian Witenagemot, were transmitted by the legates to the council of Canterbury and the Mercian Witenagemot; and, recommended by the opinion and example of the Northern metropolitan, they were gladly adopted by Jaenberht and his prelates, and the "glorious Offa"^a

^a The supremacy of Offa does not appear to have been recognized north of the Humber. The canons were read to the Witenagemot in *Teutonic* (i.e. Anglo-Saxon or English) as well as in Latin. The Legates relate the proceedings:—

His peractis, et data benedictione, perreximus, assumptis nobiscum viris illustribus, Legatis Regis et Archiepiscopi, Maluinum videlicet et Pyttel, Lectores; qui una nobiscum pergentes, et ipsa decreta secum deferentes in concilium *Merciorum*, ubi gloriosus Rex *Offa*, cum Senatoribus terræ, una cum Archiepiscopo *Jaenberhto*, sanctæ ecclesiæ

Imperial Witenagemot, not a legislative assembly, possessing coercive authority over the whole realm. Similar in this and in other respects to the general Placitum of the Franks.

(See above, p. 466.)
 Proceedings of the Council of Cealchythe A.D. 785 (see above, p. 140).
 Canons enacted in the Council held for the Province of York and the Kingdom of Northumbria, brought into the Council held for the Province of Canterbury and Empire of Offa.

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 P. 7.

and his Senators.” In this case there was a friendly conformity; the example was followed because it was good and laudable.

The proceedings of the civil Legislature wear a different aspect. The “Basileus” speaks in the tone of prerogative; Edgar does not merely recommend, he commands that the law shall be adopted by all the people, whether English, Danes, or Britons, in every part of his empire. Let this statute be observed, he continues, by Earl Oslac, and all the host who dwell under his government, and let it be transmitted by *writ* to the ealdormen of the other subordinate states. In subsequent periods, the same plan was pursued with respect to the convocations of the provinces, the canons enacted by the Province of Canterbury being accepted almost as a matter of course by the Northern Province of York. And yet, in defiance of this positive injunction, the laws of Edgar were not accepted in Mercia until the reign of Canute the Dane. It might be said, that the course so adopted constituted an exception to the general rule; but, in the scanty and imperfect annals of Anglo-Saxon legislation, we shall be able to find so many examples of similar proceedings, that this mode of enactment must be considered as dictated by the constitution of the Empire. Edward was the Supreme Lord of the Mercians, but more than a century elapsed before they obeyed his decrees. The laws of the glorious Athelstane had no effect in Kent, the dependent apanage of his Crown, until sanctioned by the Witan of the Shire. Canute himself, the “King of all England,” could not compel the Northumbrians to receive his code, nor was it their law until the reign of the Confessor, when such acceptance became a part of the compact upon the accession of a new earl. Faint traces of this independence may be observed

Dorovernensis, et cæteris Episcopis regionum convenerat: et in conspectu concilii, clara voce, singula capitula perlecta sunt; et tam Latine quam Teutonice, quo omnes intelligere possent, dilucide reserata sunt, Concilia, vol. i. p. 151. [When the business was finished and the blessing had been given, we proceeded and took with us certain distinguished men, representatives of the King and the Archbishop, to wit, the Readers, Maluin and Pyttel; who went with us and produced the decrees in the Council of the *Mercians*, where the glorious King *Offa* had assembled with the Senators of the Kingdom and *Jaenberht*, the Archbishop of the holy church of Canterbury, and the other Bishops of those parts; and in the presence of the Council, each chapter was read in a clear voice, and was clearly explained both in Latin and in English, so that every one could understand.]

Part I.
Ch. XXI.

Analogous course prevailing in those councils or legislative assemblies which were purely temporal. Laws of Athelstane transmitted to the Kentish Witenagemot, and accepted by them (see II., pp. 170, 467). Edgar declares that his laws shall be adopted by English, Danes and Briton, and they are transmitted by writ to the Earl Oslac (Northumbria) and Ealdorman Aylwin (East Anglia) (see II., pp. 408, 409), yet they were not adopted in Mercia until the reign of Canute in 1018 (id., p. 505). Laws of Edward the Elder not accepted in Mercia until 1022 (id., p. 505).
Laws of Canute renewed in Northumbria 1066 (see II., p. 605). Compare with the legislation of the dependent nations composing the Carlovinian Empire (see II., pp. 800–812).

Part I. in subsequent periods, and the last vestige of the constitutional
Ch. XXI. separation of Northumbria is perhaps discernible in the Parliament
 of 11 Edw. I., which was divided into two conventions, the one, for
 the counties of York, Cumberland, Westmorland, Northumberland,
 and Lancaster, at York; the other, for the counties south of
 Trent, at Northampton.

Legislation only
 a small portion
 of the business of
 the Witenagemot.

Legislation constituted but a small portion of the ordinary
 business transacted by the imperial Witenagemot. The wisdom
 of the assembly was shewn in avoiding unnecessary change.
 Consisting principally of traditional usages and ancestral
 customs, the Law was upheld by opinion. The people considered
 their jurisprudence as a part of their inheritance. Their privileges
 and their duties were closely conjoined: most frequently, the
 statutes themselves were only affirmances of ancient customs, or
 declaratory enactments. In the Anglo-Saxon Commonwealth,
 therefore, the legislative functions of the Witenagemot were of
 far less importance than the other branches of its authority.
 The concurrence of the Witan in grants made by or in the name of
 the king, was one of those branches. All Royal Charters or
Landbocs were promulgated in these assemblies. The gift is made
 with the knowledge or assent of the Optimates. Unless they
 assented, no valid alienation could be made of the royal demesnes.
 By their authority the *Landboc* was issued or renewed^a.

Royal grants
 promulgated in
 the Witenagemot.
 Analogous usages
 under the
 Anglo-Norman
 Sovereigns.

Yet, in these transactions there is reason for supposing that
 the king frequently acted only in a ministerial capacity, and that
 the grant, being made upon a previous *resignation*^b, was only the
 means of effecting the transfer of the land. In a great number
 of cases, these apparent concessions or donations may also have
 been consequent upon the renewal of homage, either when the
 heir received investiture, or when the lord ascended the throne.
 The members of the Witenagemot were the "Pares Curiaë" of
 the kingdom. How far, on these occasions, their opinion or
 their equity controlled the power of the crown, cannot be ascer-
 tained. But the form of inserting their names in the "*Testing
 Clause*," was retained under the Anglo-Norman reigns: and the
 sovereign who submitted his charter to the judgment of the
 Proceres, professed to be guided by the opinion which they gave^c.

^a Part II., *Proofs and Illustrations*, pp. 308, 309, nos. 9 and 10.

^b See above, pp. 438, 439 & Part II., *Proofs and Illustrations*, p. 749.

^c Thus Henry II. renewed the Battle Abbey charters, Part II.,
Proofs and Illustrations, pp. 107-109.

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Part I. constituted a congress, in which the sovereign could treat more
Ch. XXI. conveniently and effectually with his vassals than by separate
negotiations. It was in such an assembly that the Witan agreed
to render that fatal tribute, the Danegeld. But the determinations
of the Witan bound those only who were present, or who concurred
in the proposition: and a vassal, denying his assent to the grant,
might assert that the engagement which he had contracted with
his Superior did not involve any pecuniary subsidy, but only
rendered him liable to perform service in the field^a. Most of the
great "Gemoots" or assemblies enumerated in the chronicles
appear to have been of this ambiguous character, conventions
of the prelates, nobles and optimates of the land, who, some-
times compelled by the imminent necessity of the case, and
sometimes stimulated by the desire of forwarding their own plans

any particu-
lar measure
could not
bind those
who did not
concur.

^a See above, p. 371 and Part II., pp. 407, 408. The doctrine that a parliamentary grant only bound the parties who had assented thereto, appears to have prevailed in the reign of Edward II. About that time, says Madox, it became a general opinion amongst men, that if they consented they were answerable, and that if they did not consent, they were not answerable for the prestation or payment charged on them.

In the first year of K. *Edward II.* *Walter de Stapeldon*, Bishop elect of *Exeter*, one of the Executours of *Thomas Button* or *Bitton*, late Bishop there, complained to the King in his Council, that whereas the said deceased died before the time when the Earls, Barons, and Communities of Counties of *England*, granted to the King for his subsidy a *twentieth* of their *moveable goods*, and the Citizens and Burgesses of *England*, and the Tenants of the ancient demeane of the Crown a *fifteenth* of their *moveable goods*, and that the deceased was never in his lifetime requested to grant the King the said subsidy, nor gave his consent to the grant thereof; that, nevertheless, the Taxours and Collectours of the said *twentieth* and *fifteenth* in the county of *Devon*, taxed the *goods and chattels* which the said deceased had on the day of his death in that county, to the said *twentieth* or *fifteenth*, and went about to levy the same, unjustly, *Baronia Anglica*, pp. 116, 117. Madox adds an extract from the Record. It does not appear certain that this plea prevailed. But all circumstances render it exceedingly probable, that, in the earlier ages of Parliament, the assent of every individual Baron was almost always obtained, either by fair means or foul; and that the majority, supposing a division took place, had no clear right to bind the minority. In the States of Flanders, an absolute unanimity was required, the dissent of any one town arrested the whole proceeding.

and views, took upon themselves to extend their functions beyond their original powers. Authority, however, always strengthens by exercise; and it is probable that the imperial Witenagemot of Wessex would ultimately have been consolidated into the States General of the Anglo-Saxon empire^a.

If it be allowable to pursue our conjectures, supported in some degree by historical parallels, we may suppose that the assembly convened by the Basileus, and which for want of a better term I have called the "imperial Witenagemot," was a *Shire Court* for the district in which it was held; a *Land-gemot* for the particular kingdom; and an *Imperial Witenagemot* for the whole empire. In such a case, the Lay Assembly would contain within it three classes of members: or rather there would be three assemblies, appearing, at this distance of time, as resolved into one; but which would be perfectly distinguishable by a contemporary.

Part I.
Ch. XXI

The Imperial Witenagemot, or the Assembly convened by the Basileus, probably included a *Shire Court* for the district in which it was held, and a *Land-gemot* for the kingdom.

Assuming that King Edward "wore his crown" at Winchester, all the members of the Shire of "Hamtun," including the Reeves and Men of the townships, would attend *de more*. The earls and royal thanes of Wessex would be convened pursuant to special writs. And the general proclamation^b would require the attendance of the Scottish and British Reguli or kings, the great Earls of Mercia, and East Anglia, and Northumbria, and all the other Heads of communities, whether burghs or shires, even from the most distant confines of the island. A statute enacted in such an assembly would acquire legal validity in *Wessex proper*, without any further promulgation, the West Saxon Witenagemot being included in the Imperial Witenagemot; whilst in the other states, the Ordinance would not take effect until accepted and re-enacted in manner before described.

The attendance given by the great earls or ealdormen, and by the thanes, the feudal tenants of the crown, is proved by every Anglo-Saxon charter: and there are very strong reasons for supposing, that a landed qualification, of definite extent, was requisite to obtain a seat in the assembly^c, unless the member

^a There are indications that if Normandy and England had continued under one crown, a union would probably have been effected by time and custom between the duchy and the kingdom. See the proceedings of the Council of Verneuil under Henry II. A.D. 1177. (Benedictus Abbas, p. 248.)

^b See Part II., *Proofs and Illustrations*, p. 707.

^c See Part II., *Proofs and Illustrations*, p. 734.

Part I. held his station as a great officer of the crown, or perhaps as a
Ch. XXI. municipal magistrate. The authority of the Anglo-Saxon imperial
 Legislature differed most materially from that of an old English
 parliament; but its conformation approached to the shape which
 parliament afterwards assumed.

(See above,
p. 256.)

Thanes of
the Danish
Burghs
attend in the
Witena-
gemot.

Upon the connexion between *remedial representation*, or the attendance given for the purpose of carrying the law into effect, and Parliamentary representation, I have already spoken sufficiently. We may discover other means, whereby branches possessing some analogy to the more modern House of Commons, might have been formed. That the thanes of the Danish cities or burghs were members of the Witenagemot, is indisputably proved^a. Their attendance is stated by historians, and attested by charters. Indeed, when we consider the station held by those powerful nobles, there would be some difficulty in pointing out any principle upon which they could have been excluded. Nor is it very probable that the ealdorman who ruled the burgh was destitute of the rights possessed by the ealdorman who presided in the shire.

Probability
that the
great Anglo-
Saxon
Burghs may
have formed
conventions
amongst
themselves,
analogous to
the con-
vention of
the Scottish
Burghs, the
Hanse
Towns, the
League of
the Lom-
bard cities,
&c.

Exeter
confederates
with other
Burghs
against the
Conqueror.

Whether on special occasions, and for particular purposes, the greater burghs might not form conventions separate from the Witenagemot is a conjecture not entirely unworthy of attention. The federative union of the Cinque Ports, so truly Anglo-Saxon in the organization of its courts, appears to have existed from time immemorial. The Danish burghs are always noticed as if they constituted a recognized state or community^b. Some species of mutual concert would seem to have been necessary amongst the burghs which could not be required to pay the Geld, unless they contributed simultaneously^c. Exeter was one of these communities: and the city so distinguished, attempted to form a defensive confederation with the other burghs against William the Conqueror^d. An opposition to the intrusive sovereign might naturally have induced the citizens to enter into an alliance with the *Shires* of Devon or Dorset. But this league bespeaks a consciousness that the *Burghs* formed a class apart,

^a Sigferth and Morcar were slain whilst attending the Witenagemot at Oxford (Part II., *Proofs and Illustrations*, p. 532). They are described as *Milites* in the charter of Ethelred (*id.*, pp. 318–322, no. 17), in which they also appear as members of the assembly.

^b Part II., *Proofs and Illustrations*, p. 532.

^c See above, p. 554.

^d Ord. Vital., p. 500.

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Part I. laws and usages united in the formation of the Witenagemot, or
Ch. XXI. of those assemblies which ultimately expanded into Parliamēt.
 Romans and Britons may have concurred with our Anglo-Saxon
 ancestors. The great irregularities and anomalies apparent in
 our institutions; and the difficulty, or rather impossibility, of
 explaining them upon the presumption of any uniform system,
 will, if duly weighed, contribute to reconcile us to this supposition.
 However impracticable it may be to follow the theory in its
 details, it results from the only principles by which we can be
 safely guided in attempting to develope the history of the middle
 ages.

Influence of
 the Duode-
 nary Courts,
 or of the
 bodies which
 replaced
 them, in
 creating the
 legislative
 and municip-
 al institu-
 tions in
 England (see
 above, pp. 90
 -109).

Theory of
 the Anglo-
 Saxon
 Monarchy.

Imperial
 title of
 "Basileus"
 assumed by
 the Sove-
 reigns of
 Wessex.
 Inferences
 drawn from
 the assump-
 tion of this
 title.

In Anglo-Saxon Britain, however, we may generally discern one predominating element. The Duodenary Courts, or those bodies which replaced them, are perpetually re-appearing. And in the great majority of instances, whenever the form and mode of election can be traced, it is found to have been vested in Duodenary *Committees*, acting on the part, and in the name of the community.

Whatever constitutional restrictions may have been imposed upon the ruler of the Anglo-Saxon realms, they were deemed to be consistent with a supreme and transcendent authority. Edgar declared that he wielded the sword of Constantine^a. The title of "Basileus," retained in Britain till the reign of the Confessor, the last legitimate Anglo-Saxon king, is in itself an important token of the prerogative asserted by the sovereign, or attributed to him by his advisers. For the reasons before stated, I lay great stress upon the pageantry of royalty, whether in language or in costume, whether addressed to the eye or to the ear: and the use of the title of "Basileus" is peculiarly remarkable, since no other sovereign in Western Christendom presumed to write himself like the Eastern Cæsars^b. Nor must it be supposed that an ignorant vanity induced the Anglo-Saxons to borrow this lofty style, imitated from the ceremonial of Byzantium; they knew its import and its weight. Much communication took place between England and new Rome. The effects of this intercourse are to be traced in the barbarous hellenisms

^a The passage occurs in Edgar's celebrated oration addressed to the clergy; *Ego Constantini, vos Petri gladium habetis in manibus, Ethelredus Rievallensis, de Genealogia Regum*, p. 361. [I have the sword of *Constantine*, you have the sword of *Peter* in your hands.]

^b See above, p. 419 and Part II., *Proofs and Illustrations*, p. 663.

of the charters and the chroniclers^a. When the monk Hadrian¹ traversed Gaul on his road to Britain, he was arrested by Ebroin, the Mayor of the Palace, upon suspicion, lest he might be a secret ambassador despatched by the Byzantine emperor, for the purpose of injuring the interests of the Frankish monarchy^b; and this circumstance seems to indicate that relations subsisted between Britain and Constantinople, of which historians have not preserved any notice or memory. Nor were the doctrines of the civil law unstudied or unknown. All the secrets of this subtle lore had been unfolded to the learned Aldhelm^c: and the fragments are yet extant, displaying the knowledge of the Roman jurisprudence possessed by the sages of Anglo-Saxon Britain^d.

Part I.
Ch. XXI.

Aldhelm,
Bishop of
Sherborne,
705, 709.
His proficiency in the
Civil law.

Claiming to be the paramount legislator, the "Basileus" was, in fact, the supreme Judge and Magistrate of the realms over which he presided. Under the reign of Edgar, the diligent and rigid administration of justice by the sovereign, must have given him a power beyond the law. He was always in the view of his subjects, always in their mind, the object of terror to the offender, of awe to the peaceable: and the punishment inflicted upon the robber, would tend to appal every contemner of royal authority. Twice in each year, the "Basileus," in whose person the highest functions of remedial jurisdiction were concentrated, visited every part of the dominions over which he had been called to rule^e. Charlemagne discharged these duties by his Missi,

Edgar's
rigid admin-
istration of
the law (see
II., p. 183),
the means
of increasing
his personal
influence.

^a Part II., *Proofs and Illustrations*, p. 292.

^b ...quoniam suspicabatur eum habere aliquam legationem Imperatoris ad *Brittanniæ* Reges adversus regnum, cujus tunc ipse maximam curam gerebat, Bede, lib. iv. c. 1. [Since he suspected him of being engaged on some embassy of the Emperor to the Kings of *Britain* against the kingdom, of which he was the ruler at that time.]

^c Neque enim parva temporum intervalla in hoc lectionis studio protelanda sunt, ei duntaxat qui sagacitate legendi succensus, legum Romanarum jura medullitus rimabitur, etiam cuncta jurisconsultorum secreta imis præcordiis scrutabitur, *Vita Aldhelmi*, p. 6. [For no small stretches of time have to be prolonged in this pursuit of reading, at any rate on the part of the man who, inflamed with zeal for studious investigation, will explore to the marrow the principles of Roman law and likewise will search to the very heart the distinctions of the jurisconsults.]

^d The treatise to which I allude is contained in the *Holkham MS.* from which I have published the *Laws of the Conqueror*.

^e See *Will. Malm. de Gestis Regum*, lib. ii. c. 8, and above, p. 232.

Part I. just as our Anglo-Norman monarchs despatched their Justices
Ch. XXI. Itinerant: but Edgar made his circuits in person; and, proceeding from *Folk* to *Folk*, from Shire to Shire, from Earldom to Earldom, and from Kingdom to Kingdom, he listened to the supplications of the lowly, punished the unrighteous functionary, and rectified or amended the judgments of all in power.

Judicial Eyres or Circuits of the Sovereign (see also above, p. 233) as the supreme Magistrate and source of remedial authority. Resort to be made to the King in person, when right could not be obtained in the inferior jurisdictions: being the remedial jurisdiction afterwards exercised by the King in Parliament, and from whence Courts of Equity were ultimately derived.

These Eyres, diligently performed by the monarchs of the Anglo-Saxon empire^a, presented the "Basileus" to all the subjects and dependents of his crown, in the character of the source of conservative justice. When the ordinary Folkmoots failed to relieve the suitor, he was to have recourse to the king. The letter of this law directs—and the direction was perhaps given for the king's ease and convenience—that the default of the inferior tribunal should be strictly proved. No one was to trouble the sovereign, until he had been denied right at home. Still, a universal power of inspection and control continued vested in the monarch^b: and the particular instances which can be collected concerning his prerogative authority, as Supreme Judge of the empire, are such as to shew that, in the latter periods at least, any case or cause of importance could be brought before the king. Whether any rule of law guided or restrained the applications of the suitor, it is difficult to decide. Sometimes a hearing before the king appears to have been demanded as a right; sometimes solicited as a favour. The fear of the influence exercised by a powerful adversary is often alleged as the ostensible cause for seeking a trial in the royal court: but the hope of obtaining a favourable judge may have often been as forcible an inducement for soliciting the interposition of the crown.

The authority thus exerted was inherent in the king's person: nor was it shared with any other judge, council, or tribunal. This fact appears by the commendations bestowed upon those monarchs who excelled in vigilance and justice. It is not the Witan who obtain the encomium, but the king. Farther proof is afforded by the disclosures, more sincere than edifying, of the gifts which assisted in obtaining the monarch's decree. The

^a It is to these judicial circuits that the Monk of Ramsey alludes; cum quadam vice, Rex *Cnuto* more assueto, regni fines peragraret, &c., Hist. Ramesiensis, p. 441. [When at a certain time, King *Canute* was travelling through the territories of his kingdom, as was his custom.]

^b This appears from the account of Edgar's circuits, and the earlier example of Alfred. (Asser, p. 70.)

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Supreme remedial authority vested in the King's person, and not shared by the Witan.

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Part I. throne, added considerably to the importance of the document.
Ch. XXI. The Landboc was valid and effectual when merely signed with the cross: but the further corroboration of the "*Sigillum Eaduardi Anglorum Basilei*,"^a was now considered as an indication of his special good will, and to be obtained only after long solicitation, and by favour of the king^b. Most of the different "*Gewrits*" to which the seal was appended, resulted from the king's special grace and mere motion. It will be recollected that, by such instruments, the king bestowed his favour, or imparted his "peace" or protection. A "*Gewrit*" was issued when the sovereign delegated his authority to the judges, appointed for the purpose of representing him on the hearing of a cause. The powerful offender who had refused to obey the citations of the prelate, was compelled to appear by virtue of this prerogative process^c. For all such mandates, the applicant was compelled to petition, or to make humble request. They were granted at the will of the sovereign. We have seen how the prayer of the suitor was supported. Gifts were tendered to the Royal Majesty: the Writ was acquired by the liberality of the plaintiff: and the Clerks of the Chapel who engrossed the Precept, can scarcely have escaped the considerate bounty of the petitioner. Their office was merely ministerial: no authority had yet been delegated to them by the king; but the suitor might find that the quill did not glide smoothly over the vellum which contained an ungrateful name, and the wax would melt more readily to oblige a friend. The Chaplains also were shrewd and learned clerks. They could not make the grant: but their advice might influence the king's irresponsible discretion. When they followed the king into the Witenagemot, increasing deference would be paid to their discretion and wisdom; and the Bench of the "Clerks of the Chapel" or "Chancery," may be considered as engrafted upon the Great Council of the Empire.

employment of the Great Seal (see II., p. 296). Influence obtained by the Clerks of the Chapel (see above, pp. 117, 143-146 and II., p. 672).

In the general outline of the Anglo-Saxon government, we may discern many features possessed by the Anglo-Norman administration. Abuses, ascribed solely to William and his Norman successors, had their origin, at least, in native policy: the precedent was English, however much it may have been

^a See Part II., *Proofs and Illustrations*, p. 297; a faithful representation of one side of this seal may now be found in my *History of England* [vol. v. of this series].

^b Hist. Ramesiensis, p. 453.

^c Hist. Ramesiensis, p. 440.

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improved by the rapacious ingenuity of the invaders. Thus, the gift humbly presented to the sovereign, for the purpose of obtaining a trial before him or in his court, differed not in principle from the *finēs* afterwards paid into King John's Exchequer as the purchase of the original writ. In the *compliment* to Queen Editha, we find the origin of the "*Aurum Reginae*"; and the successors of Hugoline, the Bower-Thane or Chamberlain, still continued to keep the Chirographs, testifying the concord between the litigant parties before the king's tribunal. Justice, or injustice, continued to be dispensed by the king according to the Anglo-Saxon principles, which assumed that he was the supreme and uncontrolled expounder of the law^a.

Part I.
Ch. XXI.

Aurum Reginae.
Custody of records in the Treasury of the Exchequer.

During the earlier years of the Conqueror's reign, it is difficult to point out any change in the constitution of the Legislature. Anglo-Saxon Earls, the sons of Algar and Siward, sat in the great Council of the Realm by the side of the Norman Comites: and, seen at this distance, the assembly convened by William does not appear to differ in any material point from the Witenagemot of his "good cousin," whose realm he had acquired. We are still in the Anglo-Saxon age, when we are told that Henry Beauclerk sent his "*Gewrits*" over all England, and summoned his Bishops, and his Abbots, and his Thanes to the *Witenagemot*^b. The "Law of Edward the Confessor," though *amended* by the Conqueror, had been restored to the English by this monarch^c. Espoused to the daughter of Cerdic, "of the right royal line of

Great Council of William the Conqueror, in the earlier years of his reign, not differing materially from the Witenagemot of the Saxon Kings (see charter in which Edwin, Morcar and Waltheof, appear as members of such council, see II., p. 673).

1123.
Witenagemot held at Gloucester by Hen. I. Bishops, Abbots, and Thanes summoned by the King's writ.

^a The best exposition of the course of Anglo-Norman legal proceedings, will be found in the narration of the suit of Richard de Anesty, and in the various proceedings relating to the Battle Abbey suits and the Battle Abbey charters. (Part II., *Proofs and Illustrations*, pp. 30-119.)

^b 1123. Then soon after did the King send his writs over all England, and summoned all his Bishops, and his Abbots, and his Thanes, that they should come to his Witenagemot at Gloucester, on Candlemas-day, to meet him, and they did so.

þa sone þær æfter sende se kyng hise *writ* ofer eall Engla-lande, and bed hise biscopes, and hise abbates, and hise þeignes ealle, þet hi scoldon cumen to his gewitenemot on Candelmesse deig to Gleawceastre him togeanes, and hi swa diden, Sax. Chron. p. 344.

^c Lagam Regis Eadwardi vobis reddo, cum illis emendationibus quibus pater meus eam emendavit, consilio Baronum suorum. [The law of King Edward I restore to you, with those amendments, with which my father amended it by the advice of his Barons.]

Part I. England," the Normans who conspired against the king's
 Ch. XXI. authority, expressed their scorn by the English names which they
 applied to Henry and his consort: and the contempt which they
 felt towards "*Godric*" and "*Godiva*"^a may be considered as
 testifying how closely the king adhered to the customs and usages
 of the Anglo-Saxon nation, bowed down, but not crushed, beneath
 the yoke of their invaders.

Hen. I.
 Anglo-Saxon
 nicknames
 given to him
 and his con-
 sort *Maud* or
Edith (see
 above, p. 530)
 by the
 Normans.

Anglo-Saxon
 institutions
 and laws,
 retained in
 England
 after the
 Conquest to
 a much
 greater
 extent than
 in the
 institutions
 and laws of
 the parallel
 periods on
 the con-
 tinent, where
 the earlier
 jurisperu-
 dence and
 policy
 rapidly
 passed away,
 although no
 foreign
 conquest
 had taken
 place (see
 above, pp. 41
 and 43).

We attribute over-much to the Norman Conquest. The sub-
 jugation of the English race affords an easy and plausible mode
 of accounting for the vast difference between the state and
 government of England under the Plantagenets, and the institu-
 tions of an earlier age. But the simplest theory is not always
 the truest: and, notwithstanding the ascendancy of the Normans,
 the usages and customs of Anglo-Saxon England were retained
 with much greater pertinacity than in those countries where no
 foreign ruler attained the throne. When William won the crown
 of England, Gaul and Germany had already forgotten the Salic
 and the Ripuarian laws. Scarcely had the Capets established
 themselves on the throne, when all the Barbaric Codes of the
 Carolingian Empire seem to pass away. The legislation of
 Charlemagne was forgotten in the glories of the Twelve Peers.
 And, whilst the fabulous enterprises of the Hero of Chivalry
 were sung by the minstrel in hall and bower, the venerable
 volumes of the capitularies, cast away by the Jurist, sank into
 that repose from which they were not to be awakened, until their
 pages became the toilsome study of the mere antiquary.

The changes in English policy were effected principally by
 the slow operation of internal causes; by usages which modified
 the statute; by the common assent which altered or revoked the
 law; and by the silent establishment of new forms and proceedings,
 creating new channels for the administration of the government.
 The most important principle of the English Constitution, which,
 without asserting in direct terms that the sovereign is responsible
 to the nation, does virtually place him in subordination to the law,
 may be traced as it began to be developed in the Anglo-Saxon
 empire. In the earlier ages of Anglo-Saxon history we may

^a These *nicknames* were given to Henry and his Queen by the
 Norman Barons. (Will. Malm., lib. v. p. 88.) *Godiva* seems to be *Godwife*
 or *Goody*. It is possible that the name of *Matilda* was given to *Edith*
 after her coronation, in order to conciliate the Normans. *Godric* may
 perhaps have been a colloquial name for an Anglo-Saxon.

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Part I. demanded from the sovereign the most solemn engagement for the
Ch. XXI. due performance of the trust which he undertook to perform.

Raised to the supreme dignity of his tribe, the pagan chieftain was lifted up upon the shield, or he ascended the rocky fragment, or the mound; and the bard repeated his genealogy, and extolled the deeds of his ancestors; from them he derived his right. No oath was imposed, no compact formed. The head of the kindred, he stood unchecked and unchallenged amidst the tribe. But the Christian monarch, the anointed sovereign, was rendered accountable for his duty to those over whom he ruled.

Anglo-Saxon
coronation
oath and
royal
consecration
(see II., p.
669).

Three were the promises exacted by the people from the Basileus of Britain: that he would always preserve true peace, forbid rapacity and injury, and in all his judgments command equity and mercy. Such an oath was taken by Ethelred. Let us consider the result of his reign. He is accused, perhaps justly, of imbecility and of tyranny. The affections of his subjects were alienated—he was guilty in their eyes—their support lost, and Ethelred was compelled to abandon his crown to the Danish invader. Canute, the son of Sweyne, was called to the succession by his followers. But experience had been acquired by the English, and the “Witan”—the Optimates, Clergy, and Laity—now discovered that no king could be so dear to them as their own “*gecynde Hlaford*”—their own natural sovereign—*provided he would govern them more justly, and treat them more equitably than he had hitherto done.* The address, for thus we may term the declaration of the national legislature, was transmitted to Ethelred, then an exile in Normandy. In answer, he despatched the Atheling Edward, accompanied by his ambassadors. Ethelred greeted his lieges well, and promised to be good lord to them. All those things would he amend which were disliked by them; and all that had been said or done against him, he would pardon, *provided they would submit to him loyally and without deceit:* and, pursuant to this compact, Ethelred was restored to the Crown^a.

1014.
Ethelred
restored,
upon his
entering into
a new com-
pact with
the nation;
promises to
amend his
course of
government,
to grant a
general
amnesty, &c.
(See II., pp.
411, 412.)

This was a most memorable proceeding. The address of the Witan amounted to a complete recognition of the right of the House of Cerdic: but at the same time it involved an equally clear and distinct assertion, that the Legislature could impose limitations upon the wearer of the crown. Ethelred was their legitimate king; but, inasmuch as he was made by the law, he

^a Part II., *Proofs and Illustrations*, p. 412.

must govern by the law; and the English were entitled to demand security for the due administration of the royal authority. Ethelred assented to the claim, he complied with the wishes of his people, and promised to grant a general amnesty. But this very promise implied that he asserted the theory of an indefeasible right, and that he might be remitted to the full exercise of his power, if his subjects should violate their duty, or fail in the observance of their engagements towards their sovereign.

Part I.
Ch. XXI.

Such compact the result of a compromise between the doctrines of hereditary right and royal responsibility.

This mutual covenant gave sanction to the principle, that the king and his people were bound together by law. The right to the throne is not derived from the people; but the people are entitled to demand security for their privileges from the sovereign. Haughty as the port of the king or his ministers might be, this doctrine was never entirely forgotten. When the Anglo-Saxon sceptre had passed into the hands of the Norman line, and the memory of the ancient constitution was hallowed by time, the "law" of the last legitimate Anglo-Saxon king appeared as the people's protection against arbitrary power. Edward was viewed as a sovereign whose empire was founded upon justice. The name of the Confessor was echoed from reign to reign, and the Anglo-Saxon liberties were transmitted from charter to charter, until at last the constitution settled into that form, which, whatever may be its defects, bestows upon the sovereign the least power of abuse, and the greatest share of beneficial authority.

EDITOR'S NOTES

The dates enclosed in brackets placed after names are those of birth and death, but if r. precedes they indicate the duration of the reign of a king or emperor. When the period of the tenure of office of a pope, bishop etc. is given, the title is inserted within the brackets. d. = died, r. = reigned, c. = circa. *E.g.*

Savigny, Friedrich Karl (1779–1861).

Witichind (d. c. 973).

Hlothhære (r. 673–685).

Caracalla. Marcus Aurelius Antoninus Bassianus, Emperor of Rome (r. 211–217 A.D.).

Egbert (Archbishop of York, 734–766).

p. iv. 1. *Savigny, Friedrich Karl* (1779–1861). Professor of Roman Law at Berlin and a pioneer in the historical method of investigation. He published his *History of Roman Law in the Middle Ages* at intervals between 1815 and 1831.

— 2. *Allen, John* (1771–1843). Warden and later Master of Dulwich College. He was the author of various articles on history and politics in the *Edinburgh Review*, *The Encyclopædia Britannica* and the *Annual Register*. His *Inquiry into the Rise and Progress of the Royal Prerogative* was published in 1830.

— 3. *Dubos, Jean-Baptiste* (1670–1742). A pensioned agent of the Regent Orleans, who employed his leisure in historical and literary studies. He became a member and was later perpetual secretary of the French Academy. In 1734, appeared the work referred to by the author, in which he maintained that the Franks did not enter Gaul as conquerors, but at the invitation of the Provincials, who recognized their own unfitness for self-government. This view was refuted by Montesquieu at the end of Book xxx of his *L'Esprit des Lois*, but Voltaire shared the author's favourable opinion of Dubos.

— 4. *Montesquieu*. See *N. and E.* vol. I, p. 442, note 8 to p. 14.

p. 3. 1. *Upsala*. The ancient capital of the Swedes. *Toledo* was the capital of the Visigothic kingdom of Spain, whose people were akin to the inhabitants of South Sweden.

p. 4. 1. *Gloomy Gothic hall*. Westminster Hall, where the mediæval Councils and Parliaments were often held, and where State trials took place. It was originally built by Rufus, but was altered by Richard II in 1395–1399.

p. 6. 1. The "*enlightened Statesman*" is Sir Robert Peel. When Home Secretary in Lord Liverpool's Ministry, he made a famous speech in the House of Commons on March 9, 1826, setting forth the principles on which he based the five great Acts reforming the Criminal Law and abolishing the death-penalty for offences against property. Peel was a disciple of Sir Samuel Romilly and more immediately of Mackintosh.

p. 8. 1. *Caucasian continent*. Europe, peopled mainly by the Caucasian race.

— 2. *Edda*. The Eddas are the old Icelandic Romances of the Early Kings and Heroes. The name Edda is that of the great-grandmother mentioned in one of the stories. Prof. York Powell [in the *Corpus Poeticum Boreale*] says that in their present form they do not date earlier than 800–1100 A.D., and that, being transmitted orally, they were taken down in writing in the 13th century. There are two Eddas. The Older or Poetic Edda dates from *circ.* 1200

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p. 13. 1. *Bonde, Bunda*. The *N.E.D.* (*s.v.* *bond*) derives *bond* ultimately from the O.W. Scand. verb *búa* or *bóa*, to dwell, and thus connects the *bonde* with the German *Bauer* or peasant-farmer. Judging by the meaning of analogous words in other Teutonic languages, especially Icelandic, *bonde* only obtained the more contemptuous sense of villein or serf in later years, and is not connected with the verb, to bind.

— 2. *Manens*, from L. *manere*, to remain. The term was applied to a peasant who was compelled by custom to remain on the lord's land. [See Du Cange, *s. v.* *manens* and cf. *mansio* and *manerium* from the same root.]

— 3. *Gebur*. The word is the same as our "boor" (in Goldsmith's lines, "Where the rude Carinthian boor, Against the houseless stranger shuts the door"), the German *Bauer*, and the Dutch *boer*. Cf. note on *bonde*, above.

— 4. *Cotarii, Cotsætan*. Cottagers who held only a small portion of land, and worked also on the land of others.

— 5. *Bordarii* as a class disappeared from England soon after the Conquest. They were either villeins with less than the usual holding or cottiers with more than the usual holding. [Cf. Maitland, *Domesday*, pp. 23–25, 38–41, 107, 363.]

— 6. *Charter*, etc. See *N. and E.* vol. I, Index, *s.v.* *Charta Divisionis*.

p. 14. 1. *Land-agend* is the equivalent of *hlāford* and *landrīca*, and means the proprietor of the land, i.e., the lord of the soil as opposed to his tenant. [Cf. Thorpe, *Ancient Laws*, glossary.]

— 2. *Liti, Lathen, Litones, Lassi*. In the Doms of Ethelbert of Kent [printed in Thorpe's *Ancient Laws*] we read of the *laet* in Kent, who is neither a freeman nor a slave. Probably he is akin to the *litiète*, etc., of the Continent, but we find no similar class in England till Domesday Book tells us of the *buri, burs*, or *coliberti*, who seem to be bound to the soil and so inferior to the *bordars* and *cottiers* and yet superior to the *servi*. Maitland [*Domesday*, pp. 27, 28] is chary of identifying the *laet* with the *colibertus* but, unlike the author, differentiates him from the *ceorl*. [See also Oman, *England before the Norman Conquest*, pp. 354, 360, 361, and Du Cange, *s.v.* *Litus*.]

p. 15. 1. *Vavassours*. The word here corresponds to the mesne-tenants of feudal times who held their land not in chief from the king, but from another baron.

p. 16. 1. *Agenhine*. Du Cange (*s.v.*) explains this word as "familiaris seu famulus domesticus," household servant, and quotes the Law of the Confessor. *Agen* means own and *hine*, servant.

p. 17. 1. *Ambacti*. *Ambactus* is said to be a Gallic word meaning hired servant. [Cf. Du Cange, *s.v.*] The A.S. word is generally *ambeht*.

— 2. *Frisians*. Frisia was approximately modern Holland and the name is perpetuated in Friesland. Cf. below, p. 582, note 2 to p. 33, and Shore, *Origin of the Anglo-Saxon Race*, pp. 66 ff. For the *Leges Frisiorum* see Seebohm, *Tribal Custom in Anglo-Saxon Law*, pp. 194 ff. They are printed in full in Pertz, *Mon. German. Historica*. [See also *Ancient Laws and Constitutions of the Frisons* published in a later volume of this series.]

p. 18. 1. *Centenary* (*Centenarius*). (See ch. III, pp. 70–73.) The *Capitularies* were the royal legislative and administrative orders, in this case of Charlemagne. (See ch. XVII, pp. 461–464.)

— 2. *Mundiburd*. *Mund*, lit. hand, is used here in the sense of *grith*, peace or protection; *byrd* is the abstract noun from *bora*, bearer. Cf. *Mundbyrd*, *N. and E.* vol. I, p. 291, where the word is used for the guardianship of a widow by the Church. [Cf. Chadwick, *Studies on A.S. Institutions*, p. 115.]

— 3. *Hijo dalgo*, lit. son of somebody. The Spanish expression for a lesser noble or gentleman by birth. Such alone were entitled to be called Don.

p. 19. 1. *Roturiers*. A French word for those who followed a plebeian occupation, especially tillage. Littré connects it with the Low Latin word *ruptura*, land newly broken up by the plough. [See Du Cange, *s.v.* *rumperæ, rupturarius*.]

— 2. *Old Saxon*. See *N. and E.* vol. I, p. 442, note 3 to p. 17.

— 3. *Witichind*, otherwise *Widukind* or *Witiking* (d. c. 973). A Benedictine monk of the Abbey of Corbey in Westphalia. He left behind a history in three books entitled *Res gestæ Saxonicae sive Annales de gestis Othonum* (919–973), but it ended with the death of Otho I.

p. 20. 1. *Iring, Irmin*. See note on *Irminsule*, *N. and E.* vol. I, p. 474, note 1 to p. 96. Cf. also Part II, *Proofs*, p. 192, note a.

— 2. *The Saxon Mirror*. See *N. and E.* vol. I, p. 444, note 11 to p. 18.

— 3. *Lithuanian*. See *N. and E.* vol. I, p. 489, note 4 to p. 207.

— 4. *Slavo-Wendic*. See *N. and E.* vol. I, p. 489, note 2 to p. 209.

p. 21. 1. *Lloegria*. The Celtic name for Britain south-east of the Severn and Humber.

— 2. *Britons entirely extirpated*. German historians, followed more or less closely by Freeman, Green and Stubbs, adopt this view. Seebohm's *English Village Community* (esp. pp. 412 ff.) argues for the survival of an important Romano-Celtic element in Eastern Britain. Coote in *Romans of Britain* attempts to maintain the rather improbable view of the survival of the Roman cities. [See also Vinogradoff, *Villainage in England*, esp. Introductory Chapter summarizing the problem.]

— 3. *The refuge-taking tribe of the people of Galedin* were Belgic tribes, who are said to have migrated to Britain in consequence of an inundation in their own country, perhaps the Netherlands, and to have settled probably in the Isle of Wight and the neighbouring mainland. [Cf. Guest, *Origines Celticæ*, vol. I, pp. 403 ff., vol. II, pp. 19, 20, 202.]

p. 22. 1. *Wealh . . . by the Saxon Laws*. The reference is to the Laws of Ine, King of Wessex (r. 688–725), printed in Thorpe, *Ancient Laws*, pp. 45–65, and Liebermann, *Gesetze*, vol. I, pp. 88–123. The author's view is supported by the existence of numerous villages called Walton (?Weala-ton) away from the line of Hadrian's Wall. Cf. also the legend of St. Guthlac of Croyland being attacked by devils, whom he at first took for a marauding party of Welsh.

p. 23. 1. *Gafol*. Tribute or rent paid to a lord for land, sometimes in service. [See Palgrave, *Dictionary of Political Economy*, vol. II.]

— 2. *Manor*. See ch. III, pp. 51 ff.

— 3. *Thirlage*. A term in Scots Law; lands which are thirled or bound to a certain mill entailed upon the possessors the obligation of having their corn ground at that mill only, and a certain quantity of grain—termed the multure in England—generally one-thirteenth, was retained by the miller for his services. The mill-servants also kept a smaller share called sequels. By the Thirlage Act of 1799 the obligation can be commuted and is now all but extinct.

— 4. *Howel the Good (Hoel Dda)*. A Welsh ruler of the early tenth century. He witnessed several charters as the vassal of Edward the Elder and Athelstane. He is said to have summoned men from each cantred in his dominions to help him to codify existing customs. [For the Laws of Howel the Good, see Aneurin Owen, *Ancient Laws and Institutes of Wales*, Record Commission, 1841.]

p. 24. 1. *Dynwal Moelmud (Dunwallo Molmutius)*. A legendary Welsh Prince and Lawgiver of the pre-Christian Era. Having slain in battle Ymner, King of Lloegria, and having afterwards defeated by a stratagem and killed the Kings of Cambria and Albania who sought to avenge Ymner, he obtained power over the whole island and issued the famous Molmutian Laws. [See Geoffrey of Monmouth, bk. II, ch. 17, and cf. Part II, *Proofs*, p. 189.] His so-called Triads are printed in English and Welsh by Owen in *Ancient Laws and Institutes of Wales*.

p. 28. 1. *Clydno (Cloten)*. See Geoffrey of Monmouth, bk. II, ch. 17.

— 2. *Robertson's View*. William Robertson (1721–1793) prefaced his *History of the Reign of the Emperor Charles the Fifth*, published in 1769, by "A View of the Progress of Society in Europe." In it he says that "towards the close of the sixth century . . . very faint vestiges of the Roman policy, jurisprudence, arts or literature remained. New forms of government, new laws, new manners, new dresses, new languages and new names of men and countries were everywhere introduced."

p. 29. 1. *Bards of Strath Clyde*. The reference is to the famous early Celtic poets, such as Taliesin and Llywarch Hên, who flourished in the Cymric Kingdom of Strathclyde in the sixth century.

p. 30. 1. *Trial by ordeal*. See ch. VII, pp. 176 ff. The ordeal was so open to abuse that, in the Assize of Clarendon, Henry II insisted on the exile of bad characters who had satisfied the test. In 1215 the ordeal was condemned by the Lateran

Council and its place was soon taken in England by the petty jury. [See Pollock and Maitland, *History of English Law*, esp. vol. II, pp. 598, 599.]

p. 30. 2. *Wihtware*, men of Wight. Cerdic conquered the Isle of Wight and gave it to Stuf and Wiht (or Wihtgar) his kinsmen. [See Part II, *Proofs*, pp. 331, 438, and *A.S. Chronicle* under 530 and 534 A.D.]

p. 32. 1. *Witichind* or *Widukind*. See *N. and E.* vol. I, p. 482, note 1 to p. 136.

— 2. *Vassi*. See above, pp. 446 ff.

p. 33. 1. *Procopius*. A Byzantine historian, born at Cæsarea in Palestine at the end of the fifth century of our era. He wrote an account of the Wars of Belisarius and a treatise on the buildings of Justinian.

— 2. *Wulemar*. The mythical legislator of the Frisians. The Angles, Saxons and Frisians occupied North Germany from the Elbe to the Rhine and were kindred tribes. For the *Leges Frisiorum*, see note 2 to p. 17.

p. 34. 1. *Nighon sithe yeld*, etc. Said of a tenant who has forfeited his land through failure to pay his rent. He may recover it by paying nine (or eighteen) times his arrears and five pounds as wergild. "Seemingly the proverb means in truth that the tenant will lose the land for good and all." [Pollock and Maitland, *History of English Law*, ed. 2, vol. II, p. 271.]

— 2. *Dog draw*, etc. Of unlicensed hunters in the forest taken with the manner, that is, either with a hound drawing after a beast wounded by the hunter, or at his station ready to shoot or slip a dog, or carrying off a beast, or stained with blood. In such circumstances the forester may arrest the offender. [See Manwood, *Treatise of the Forest Laws*, ed. 4, 1717, p. 193.]

— 3. *Dooms of Ethelbert*. For these see Thorpe, *Ancient Laws*, and Liebermann, *Gesetze*, vol. I, p. 3.

— 4. *Alaric in the Breviarium*. Alaric II, king of the Visigoths, who in 506 A.D. ordered a compilation of Roman Laws to be made, which is especially valuable, because it is the only collection of Roman Laws in which the first five books of the Theodosian Code and the five books of the *Sententiæ Receptæ* of Julius Paulus occur. For a long time also it provided the only copy of the *Institutes* of Gaius. It is also called the Anian Breviary from Anienus the King's Referendary, who was ordered to send certified copies of it throughout the dominions of Alaric II.

— 5. *Theodoric in the Edict*. This Edict was compiled by order of Theodoric, King of the Ostrogoths, between 500 and 515 A.D. He professed to admit the suzerainty of the Emperor and to use his laws for all his subjects, Roman or Goth. The Edict, which was drawn from the writings of Paul the Jurisconsult, the Gregorian, Hermogenian and Theodosian Codes and the Post-Theodosian Novels, was, however, mainly in force for the Romans, as the Goths evidently maintained their own customs in a number of matters.

p. 35. 1. *Brehon laws* (from *Brethem*, Judge). The name incorrectly given to the Ancient Laws of Ireland. The most important of these legal documents is the *Senchus Mor*, the great old Lawbook. The Laws are a series of minute enactments dealing with everyday life and allow compensation for offences. An imperfect version of the Brehon Laws in six volumes was published by the Brehon Law Commission (1865–1901). The Laws were not administered by paid officials such as sheriffs or police, but depended for their execution merely on public opinion.

— 2. *Ernulphus* or *Ernulf* (1040–1124), bishop of Rochester, was a pupil of Lanfranc and a friend of Anselm. He was a great authority on the Canon Law, but he is better known by his famous *Textus Roffensis*, a collection of documents relating to the Church of Rochester, English Laws of Ethelbert and others, papal decrees and other materials for English history. It is preserved among the archives of Rochester Cathedral.

p. 36. 1. *Hlothhære* (r. 673–685) and *Eadric* (r. 685–686). *Wihtræd* (r. 690–725). See Bede, bk. IV, c. 5, 26, and bk. V, c. 23. For their laws see Thorpe, *Ancient Laws*, pp. 11–19, and Liebermann, *Gesetze*, vol. I, p. 9.

— 2. *Berghamstede*. Not the modern Berkhamstead, but Bersted, near Maidstone.

p. 37. 1. *Court-leet*. See Hearnshaw, *Leet Jurisdiction in England*.

— 2. *Sheriff's tourn*. This was the half-yearly visit the sheriff paid to the various Hundreds not in private hands in his shire, to dispose of the smaller

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vol. I, pp. 234 ff.] The author (Part II, *Proofs*, p. 287) derives the word from *emphyteusis*, a Roman legal term; it is generally now taken to come from the Teutonic root represented in German by *Vieh*, cattle, the earliest form of loan or reward, but its etymology is uncertain.

p. 52. 5. *Læn*, A.S. *læn*, loan. (See p. 422, note b, and Part II, *Proofs*, pp. 282 ff., for a fuller discussion of the matter.)

p. 53. 1. *Folkright*, "common law, public right, the understood compact by which every freeman enjoys his rights as a freeman." [Bosworth-Toller, *Anglo-Saxon Dictionary*.]

— 2. *Tyddin*, etc. *Tyddin*, homestead. *Rhandir*, share-land, sometimes equivalent to *trev*. *Gavell*, a holding of land, being a subdivision of a *wel*. [See Seeböhm, *Tribal System in Wales*, and Lewis, H., *Ancient Law of Wales*.]

— 3. *Commot*. "This is a great seigniorship or lordship and may include one or divers manors," according to Coke on Littleton. [Quoted in *N.E.D.* s.v.]

p. 60. 1. *Roderick*. Rhodri Mawr, or the Great (d. 877 A.D.). A Welsh prince of the ninth century who ruled over a large portion of Wales and drove back the Danes and Saxons. However on his death in battle, his domains were divided among his three sons, one of whom, Cadell, was father of Howel (Hoel) the Good.

p. 61. 1. *Theel Lands*. *Erb Theel*. *Theel* is the same word as the German *Theil*, a share, *theilen*, to divide. [See *Ancient Laws and Constitutions of the Frisons*, printed in a later volume of this series; also Shore, *Origin of the Anglo-Saxon Race*, p. 148, and Elton, *Origins of English History*, p. 196.]

p. 63. 1. *Diceneus*. The traditional law-giver of the Goths.

p. 64. 1. *Recent devastation of Sutherland*. The reference is to the displacement of the crofters by the first Duke of Sutherland, in whose opinion there were far more of these peasant farmers than the land could support. Between 1811 and 1820 when he was Marquis of Stafford, 15,000 peasants were compelled to leave their holdings in the interior of the shire and settle along the coast. The Duke maintained that he was really acting in the interests of the peasants, for he reduced rents, reclaimed waste lands and made roads and bridges; moreover he did his best to abolish the "tacksmen" or middlemen, so that the peasants might hold directly from the Duke. However the scheme was unpopular and certainly involved considerable hardship.

— 2. *Sac and Soc*. A good account of the origin and meaning of this phrase is to be found in Maitland's *Domesday*, pp. 258–290. [See also Pollock and Maitland, *Hist. of Eng. Law*, vol. I, pp. 578 ff.]

— 3. *Gerefa*. For this word see Kemble, *Saxons in England*, vol. II, pp. 151–181. Cargraves are still appointed in parts of North Lincolnshire. According to the *New English Dictionary* there is no connection between *gerefa* and the continental *graf* or *gravo*; nor is it to be derived from *gefera*; its etymology is unknown.

p. 66. 1. *Folkmoot*. This was the meeting of the freemen of the kingdom or folk, where matters of common interest were transacted and justice done. When England became one kingdom, the folkmoots sank into shiremoots or county courts.

— 2. *Villa*, now generally called a vill (hence villein). It was a village community, as far as possible self-contained.

— 3. *Mallum*. See p. 462, and Part II, *Proofs*, p. 800.

— 4. *Gravio*, later *graf*, count. He came to be merely the deputy of the superior lord, although he later regained a considerable amount of independence.

— 5. *Tunginus* is described in an old glossary as the judge next in authority to the count.

p. 67. 1. *Township* . . . might arise from the acquisition of a British *Maenawl* by an Anglo-Saxon Chieftain. It is interesting to find the author anticipating what is substantially the view of Vinogradoff. [See Vinogradoff, *Growth of the Manor*, p. 40.]

p. 68. 1. *Cacique*. The title of the Indian village chief in America. Locke proposed to use it as the title of an American nobility in his fanciful Carolina Constitution. The author is referring to the villages on the large estates in Mexico where the peons or natives lived in a state of serfdom.

— 2. *Primates*. The Christian representatives of the various Greek speaking

districts, especially in the Morea, who formed the Council of the local pasha or bey. In theory they only helped to assess the taxes for their own district, but in practice they became a sort of aristocracy who as tax-farmers oppressed their co-religionists, but they redeemed their offence to a large extent by acting as local leaders in the Greek War of Independence.

p. 68. 3. *Papas* or popes. The village priests (lit. fathers). Mahommed II had made the Patriarch at Constantinople national ruler of the Orthodox Church, and the Christians, who had no rights in the Mahomedan Courts, used the bishops and clergy as arbitrators in their disputes and later as leaders in war. [See Fyffe, *Modern Europe*, pp. 525 ff.]

p. 69. 1. *Comites*. See Müllenhoff, *Deutsche Altertumskunde*, vol. iv, p. 253.

p. 70. 1. *Gauding*. For the termination cf. *Husting*, and *Landzthing*, and *Hærrædzthing*.

p. 71. 1. *Scabini*. The English aldermen or jurats. [Cf. the *Keuren* of Lille, *N. and E.* vol. iii, p. 141.] They correspond somewhat to the Gothic *Næmda*.

p. 73. 1. *Hærræd*. O. W. Scand. *herað*, Norw. *herred*, district; by its derivation meaning command of an army, then the region over which a chieftain rules.

p. 74. 1. *Toft*. The dwelling house and the land immediately around it, sometimes later walled in for a garden, as opposed to the croft, which was an enclosure, either pasture or arable, detached from the dwelling house.

p. 76. 1. *Agrimensor*. The official surveyor who measured out the forfeited land (*ager publicus*), upon which colonies were planted among conquered peoples.

— 2. *Næmda*. These were twelve elected officials corresponding somewhat to the *scabini* or *échevins* of Western Europe, and were analogous to the "twelve senior thanes" of Ethelred II's law. There were two different kinds of *næmda*; one managed the land of the community and the other acted as suitors at the *Hærrædzthing* or court of the *Hærræd*. (See pp. 96 and 100, and Part II, *Proofs*, p. 272.)

— 3. *Allodial* means held by freemen by hereditary right and not by feudal tenure. The Udallers of Orkney, descendants of the old Norse colonists, were examples of this tenure. Stubbs, *Constit. Hist.* vol. i, p. 207, speaks of "a progress from allodialism to feudalism," and Stephen, *Laws of England*, vol. i, p. 174, defines the allodialist as one who held of no one, but enjoyed his land as a free and independent property. [See *N.E.D.* s.v., *allodium*.]

p. 77. 1. *Shedding* (sheading), a parting, division: A.S. *scēadan*, to separate. The six sheddings are Glenfaba, Middle, Rushen, Garff, Ayre and Michael, each with an officer called a coroner whose duties are similar to those of a sheriff.

p. 80. 1. *Devonian Compact* (cf. Part II, *Proofs*, p. 330). It is now held that the reading "Deunsetan," in Lambarde's version of the Ordinance referred to, is a clerical or typographical error, as elsewhere Lambarde writes "Dunsetan" and all the MSS. have the reading Dunsetan, i.e., the mountain dwellers. Thorpe, *Ancient Laws*, p. 150 note, suggests that the context proves that the river is the Wye, which Athelstane established as the boundary [see Will. Malm. *de Gestis Regum*, lib. II, c. 6] and not the Exe, as the author suggests. (Part II, *Proofs*, p. 447.)

p. 82. 1. *Anglo-Saxon boroughs . . . as hundreds*. Maitland, *Domesday*, p. 209, says, "Probably it (i.e. the borough court) was, at least as a general rule, co-ordinate with a hundred court and indeed at starting the borough seems to be regarded as a vill which is also a hundred." Maitland further suggests (p. 210 note) that "the moot held in the borough had perhaps a jurisdiction over a territory considerably larger than the walled space." In this case it is possible that it was the encroachments of the sheriff and private lords that had forced the borough hundred to concentrate within its walls and the desire for security led to the struggle of the burgesses to be free from the shire court. Miss Mary Bateson, *Medieval England*, pp. 124 ff., maintains that it is the characteristic of a borough that its burgesses had not to appear before the courts of the Shire or Hundred.

p. 84. 1. *Pelasgic*. The Pelasgians were the pre-Hellenic inhabitants of Hellas.

— 2. *Amphictyonic League* (*Amphictyones*, lit. dwellers around). The reference is probably to the League of the Delphic Apollo, composed originally of the twelve tribes who dwelt round Pylæ (Thermopylæ), in honour of Demeter.

p. 85. 1. *Pylagoras*, lit. one sent as a deputy or orator to Pylæ. The meeting of the Amphictyonic Council really took place at Anthela near Pylæ.

— 2. *Pan-Ionian Synod*. A meeting of "all the Ionians" at the common Temple (Panionion) on Mount Mycale in Asia Minor. The Twelve Ionic Cities at an early date joined this League, but it never developed a political side and the cities fell under the control of Persia.

— 3. *Androclus*, according to legend was the son of Codrus, King of Athens, who in the 11th century B.C. led a mixed body of Ionians and allies to colonize Ephesus. Probably the foundation of Ephesus was later than this date.

p. 86. 1. *Milesian antiquity*. A reference to the legend that Ireland was originally colonized by Milesians from Spain. The Milesians were the eight sons of Miled (Milesius) whose mythical ancestors reach back to Noah; they wandered at various times in Scythia, Egypt and Crete and finally reached Spain.

p. 87. 1. *Tectosages, Trocmi, Tolistobogii*. Three Celtic tribes originally settled in the South of France, the first named around Toulouse. Part at least followed Brennus over the Alps and burst into Macedonia and Thrace, 280 B.C.; after wholesale ravaging they settled down in Galatia around Ancyra, Taurium and Pessinus.

— 2. *Brennus*, lit. king, probably a title and not a proper name. The leader here referred to, after raiding Macedonia and Thrace in 280 B.C. at the head of the Tectosages, etc. attempted to plunder Delphi after turning the Greek position at Thermopylæ. However he was driven off wounded and in despair committed suicide.

p. 88. 1. *Galatians familiarly acquainted with the Greek tongue*. Lightfoot in his commentary on the Epistle to the Galatians adopts the view that the Epistle was addressed to the Celtic people of Galatia. However the researches of Prof. Ramsay have made it clear that the Epistle of St. Paul was really addressed to the inhabitants of such cities as Pisidian Antioch, Iconium, Derbe and Lystra, which were in the Southern portion of the Roman Province of Galatia. St. Paul certainly visited these cities on his First Missionary Journey [Acts xiii, xiv], but we do not know that he ever travelled in North Galatia. [See Ramsay, *St. Paul the Traveller*.]

— 2. *Hercynian Forest*. This was a forest in ancient Germany, sixty days' journey in length and nine in width, extending along the right bank of the Rhine from the Black Forest to the Harz Mountains. [See Caesar, *de Bello Gallico*, lib. vi, c. 24.]

p. 89. 1. *Marcomanni*. A Suevic tribe who fought with the Quadi against Marcus Aurelius (see below). The name means Men of the Mark or Border.

— 2. *Quadi*. A German tribe in the district now called Moravia. They were defeated by Marcus Aurelius, 174 A.D.

p. 91. 1. *Reeffsting*. Cf. *Landzthing, Hæredzthing*, etc. It was a Court of Final Appeal to decide matters that had not been definitely settled elsewhere. Cf. the Appellate jurisdiction of the House of Lords.

p. 92. 1. *King Bergher* (Birger) of Sweden (r. 1290–1321) was son of King Magnus Ladulas. As he was only nine years old at his succession, his guardian, Thorkel, Canute's son, ruled in his name till 1299. Under Thorkel the old Law of Upland was revised and amended in 1295 by the Justice (Lagman) of Tiundaland, Birger Pederson of Finsta, with the aid of twelve Assessors from all the three Folklands. [See Geijer, *Hist. of Sweden*, p. 54, and article by the author on "The Ancient Laws of the Scandinavians," published in a later volume of this series.]

p. 93. 1. *Godord* (*goðord*), lit. parish or temple-district. As each Norse Chief settled in a district of uninhabited Iceland, he built a temple and he himself became at once chief and priest (*goði*) of the district. About 930 A.D., the various *goðords* were persuaded by Ulfjot to federate and form the Althingi or Central Parliament for Iceland. Thirty years later, Thord Gellin organized the island into a hierarchy of *goðords*, *fierdings* and *thing*. (Cf. account of Icelandic Courts, Part II, *Proofs*, p. 272.)

— 2. *Fierding* (*fjórðungr*), lit. fourth part or quarter. Cf. Yorkshire, Riding or third part (originally *thriding* or *thirthing*.)

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They were foot-soldiers who wore no armour, but dressed in skins and heavy brogues (abarcas). They were armed like the Roman legionary with two heavy javelins, a short stabbing sword and a shield. They were purely professional soldiers and played an important part in the reconquest of Spain from the Moors. Similarly armed mercenaries appeared later in Sicily, the Morea and Asia Minor.

p. 105. 2. *Almocaden* is derived from the Arabic *Al-Mokaddem*, the front part of anything. The *almocaden* was a captain of infantry and obtained his name from his position in battle with regard to his men. [Cf. Du Cange, *s.v.*]

— 3. *Ricos Hombres* were the great land-owners and corresponded to the Anglo-Saxon *landricas*. They were not a feudal nobility, but owed their importance solely to their wealth. They are the same as the *senatores* and *potentiores* of the Visigoths. The name *Ricos Hombres* does not appear in written documents before the twelfth century.

— 4. *Fueros of Navarre*. *Fueros* means laws and is derived from the Latin *forum*, a law-court.

Navarre was originally a March of the Carolingian Empire lying across the Western Pyrenees, partly in France and partly in Spain. As an independent Kingdom it disappeared when, at the end of the sixteenth century, Henry of Navarre became Henry IV of France. However by 1516, Spain had already annexed all south of the Pyrenees.

— 5. *Siete Partidas del Rey Don Alonzo*. Don Alonzo was Alfonso X or the Learned King of Castile (r. 1252–1284). The *Siete Partidas* or Seven Divisions was formed by him about 1260, by combining the best of the existing local laws. It was not treated as a Code of Laws till the Cortes of 1338 at Alcalá, and even then it might not prevail against any existing *fuero* or law.

p. 106. 1. *Almogen, Landzthing*. See the author's Essay on "The Ancient Laws of the Scandinavians," published in a later volume in this series.

— 2. *Road of Eric*. After the Swedish King had been elected in the Upsala Thing and had sworn the usual oath at the rock of Mora, he was compelled by custom to make his "Eriksgata" or formal tour through his dominions. On this tour he confirmed the different provinces in their ancient customs and received in return their formal allegiance. [See Geijer, *Hist. of the Swedes*, p. 54.]

p. 107. 1. *Suerre the priest*, otherwise known as Sverre or Sverru. Though really the son of a smith, he claimed to be son of Sigurd Mund, King of Norway (see below). The Archbishop of Drontheim forced the King, Magnus V, to buy his coronation in 1164 by a promise to hold his crown from the Church. Sverre formed the party of the "Birch-legs" to resist the Church, and, helped by the Nobles, ruled as King, 1184–1202.

— 2. *Sigurd the King*. Sigurd Mund or Sigurd III (r. 1136–1155). He was one of the three sons of Harold Gilchrist (r. 1130–1136) who, claiming to be the natural son of Magnus III (Barefoot, r. 1093–1103), had deposed Magnus IV, last of the line of Harold Harfäger. Harold Gilchrist was in turn slain by another Pretender, and the reigns of his three sons were one long anarchy. They were all slain, and it was an attempt to obtain the crown by help of the Church for Magnus V, who claimed to be a descendant of Sigurd Jorsalfar (r. 1103–1130), that gave Suerre the priest his chance.

— 3. *Eyrarthing of Drontheim* was so called because it was held on the gravel banks of the River Nid near Drontheim (Niðaros). *Eyrar* is from O. W. Scand. *eyrr*, a river bank, or the shore of the sea. It is the same word as *öre* in the Danish Elsinore (Helsingör).

— 4. *Agdeness*. A district near Drontheim. There is a modern fort on the promontory of Agdenes or Drontheim Fiord.

p. 108. 1. *Tanais*. The classical name for the River Don. It has been suggested that Odin was originally a caravan leader and warrior of a trading city, "Asgard," on the borders of the Steppes east of the Don, and that he was driven north by the pressure of Pompey's attack on Mithradates in Asia Minor, *circ.* 66 B.C.

— 2. *Sigtuna* (lit. city of victory, from O. W. Scand. *sig-*, cf. Siegfried, and *tún*). The historic Sigtuna on Lake Malar, founded in the 11th century, contains some fine ruined churches, but it was probably a centre of civilization in Sweden in even earlier times.

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p. 109. 1. *Gladheim* (O. W. Scand. *Glaðs-heimr*, Home of Joy). The site of Valhalla, the Hall of Odin, where the dead warriors feast continually.

— 2. *Ygdrasil*. The ash-tree of Life which has roots deep down in the kingdom of Hela or Death; its trunk reaches up heaven-high and spreads its boughs over the whole universe: it is the Tree of Existence. At the foot of it, in the Death Kingdom, sit Three Nornas—Fates—the Past, Present, Future; watering its roots from the Sacred Well. [Cf. Carlyle in "The Hero as Divinity."]

p. 112. 1. *Oak of Guernica*. Guernica, on the river Mondaca in North Spain, was, until 1876, the meeting-place of the Estates of the Province of Biscay. The meeting round the oak-tree probably dated back to Visigothic times. Cf. the Shire-oak at Leeds, round which the Wapentake of Skyrack met. Cf. also Part II, *Proofs*, p. 206, for similar instances of open-air Courts.

— 2. *Vascongados*. The Vascones were one of the tribes of pre-Roman Spain. *Provincias Vascongadas* is the Spanish name for the famous Basque Provinces whose lordship was contested between Castile and Navarre. Throughout fifteen centuries these provinces were devastated by war, but they retained considerable local autonomy with separate *fueros* until the First Carlist War, 1833–9. After six years hard fighting, the Liberal Cortes at Cadiz prevailed and the Basques, who had merely supported Don Carlos to preserve their autonomy, had to accept a considerable modification of it. The Second Carlist War, 1872–6, was even more disastrous, and, in theory at least, most of their autonomy was lost. However by means of Parliamentary pressure later, the Basques have obtained a considerable measure of municipal and provincial self-government and taxation.

— 3. *Mons Placitorum*. *Moot-hill of Scone*. Cf. the Hill of Pleas in Iceland, p. 93. Scone was the capital of the Picts, and on the Moot-hill the first recorded National Council met in 906 A.D. It was also called the Hill of Belief, because Constantine, King of Alban, at this National Council issued the Edict regulating the Christian Church in Scotland.

— 4. *King Malcolm*. Malcolm II (r. 1005–1034), son of Kenneth II (r. 971–995). In 1018, he defeated the Northumbrians at Carham-on-Tweed and ravaged the land, until he was bought off by the cession of Lothian. Canute had to confirm this, but in 1031, he forced Malcolm to do homage at Abernethy. Malcolm was one of the Founders of Scotland, and was the first king who handed the crown down to his son directly. His laws, in which he is said to have transformed all Scotland into a feudal monarchy, are apocryphal, for feudalism did not penetrate into Scotland till the time of Malcolm Canmore and his sons. [See *D.N.B.*, Mackay's article on Malcolm.]

— 5. *Crokentorre* (Crockerntorre) is a hill or tor on Dartmoor where the Devon Stannary court met. (See above, p. 587, note 2 to p. 98.)

p. 114. 1. *Mancipation*, from *mancipatio*, transfer, a later form of *mancipium* (*manucapium*). It is a Roman law term. The formal enrolment of a citizen's possessions in the Census fixed his class in the state, and so it was laid down that no transfer of property already enrolled would be recognized, unless made in a particular form before witnesses. This legal form of conveyance was called *mancipium* or *mancipatio*, and the lands, etc., conveyed by it were called *res Mancipi*. Property that could be legally transferred by simple delivery was called *res nec Mancipi*, until Justinian abolished the distinction. When a father wished to free his son from parental control (*manus*), he had to sell his son formally to a friend. Then the friend re-sold the son to his father, who could at once legally free him. Hence we get the idea of emancipation from slavery.

— 2. *Fiery Cross* or Fire Cross (called in Gaelic *cross-taraidh* or *craun-taraidh*, the cross or beam of gathering). This was a cross or piece of wood, one end of which had been burnt in the fire and the other dipped in blood, symbolical of fire and sword. It was passed from clansman to clansman, so as to raise the alarm in a district as soon as possible. [See *N.E.D.*, s.v. Fire Cross. Cf. Scott, *Lady of the Lake*,

"He vanished and o'er moor and moss
Sped forward with the fiery cross."]

p. 115. 1. *Ponderous weapon*. The Morning-star or Holy-water Sprinkle was a spiked mace or ball, in the latter case fastened to a staff by a chain and used like a flail. [See Hewitt, *Ancient Armour*, vol. III, p. 604.]

p. 115. 2. *Orvarthing*. O. W. Scand. *örvar-þing*, an assembly summoned by an arrow.

— 3. *Stefnovitni*. O. W. Scand. *stefnu*, citation, summons, and *vitni*, witness: Norwegian *stævne* and *vidne*.

p. 119. 1. *Mair*. The Scottish form of mayor. It was occasionally borne by the Chief Magistrates of certain Royal Boroughs later called Provosts, but in Scotland generally *Mair* had a wider meaning, and signified any official with delegated jurisdiction. In Gaelic *Maor* stands for a policeman as well as a steward. [See *N.E.D.* s.v. *Mair* and *Mayor*.]

p. 120. 1. *Manumission*, setting free; *manus*, authority, *mittere*, to send. The duty of freeing one's slaves was often urged on the dying by the clergy. The formula of manumission varied. In Roman times it was generally performed in the prætor's court. The master said to his slave "Be thou free," and the prætor or lictor ratified the act by touching the slave with a rod. In mediæval times, the slave or "neif" was given a charter or sometimes was allowed to purchase a charter of freedom for himself and his family.

— 2. *Drontheim*. Drontheim or Trondhjem is on Drontheim Fiord half way up the West Coast of Norway. It is one of the oldest royal towns.

p. 122. 1. *Heath of Pennenden*. A common, one mile north-east of Maidstone. It retained one vestige of its former importance until 1820, when the last execution took place there. It is now enclosed as a public park.

p. 123. 1. *Ynesuuitrin* (Ynys Wydrin), explained by William of Malmesbury as Island of Glass, is another name for Ynys yr afallon—the isle of apples—the *Avalon* or *Avilion* of the Arthurian Legends. *Avalon* is the Welsh *Elysium*—the Isles of the Blest, to which heroes, such as Arthur, go after death. [See Rhys, *Studies in the Arthurian Legend*, pp. 330–337.] It has been suggested that there is some connection between *Ynesuuitrin* and the Teutonic *Glasberg*—the Kingdom of the Dead. *Glasberg* has been confused with the actual Anglo-Saxon village of *Glaestingaburh* or *Glastonbury*, and the name *Isle of Avalon* has thus been given to the district of Central Somerset around *Glastonbury Tor*. Here a famous abbey grew up with its legends of St. Joseph and the Sacred Thorn. The British Abbey dates back to 601 A.D., and it was replaced by Ine by a Saxon Abbey in 708. Dunstan became Abbot about 946 A.D. and restored much of its glory.

— 2. *Domnania* or *Damnonia*. South-West England including Cornwall, Devon and perhaps West Somerset. (See Part II, *Proofs*, p. 443.)

p. 125. 1. *Verulam* [*Verulamium*]. The Roman city near St. Albans. It was originally the stockaded capital of *Caswallon*, captured by Caesar in 54 B.C. Apparently it was settled by the Romans soon after 43 A.D., for it was a *municipium* when sacked by *Boadicea* in 61 A.D. Its ruins surrounded by massive rubble walls cover about 200 acres. St. Alban the Martyr is said to have been one of its citizens, and the town which grew up round the famous Abbey, founded in 793 A.D. by *Offa of Mercia*, was called, like the Abbey, after his name.

— 2. *Eleutherius* was Bishop of Rome, c. 176–190, and, according to *Bede*, sent missionaries to Britain at the request of King *Lucius*. However the story, originally resting on the authority of the Roman *Liber Pontificalis* (early sixth cent.), is chronologically impossible. *Bede* says the mission took place in the reigns of *Marcus Antoninus Verus* and his brother *Aurelius Commodus*, who became Emperors in 156 A.D. No such Emperors ever reigned together, and the reign of *Marcus [Aurelius] Antoninus* began in 161 A.D. and ended in 180. He was succeeded by his son *Commodus*, a youth of nineteen.

— 3. *Vendic tribes*,—the *Wends*, the German name for the South Baltic Slavonian tribes.

p. 127. 1. *Fæstingmen*. See Part II, *Proofs*, p. 867, note 1 to p. 305.

p. 128. 1. *Castaldus* or *Gastaldus*. Originally a Lombard officer of the King, who acted as bailiff or factor of an estate. The word came to mean a royal officer charged with the government of a district. [See *Du Cange*, s.v.]

p. 129. 1. *John Selden* (1584–1654). A Parliamentary lawyer under James I and Charles I. His *History of Tythes* was officially suppressed. He was imprisoned under James I for his hostility to the king, but continued to oppose Buckingham. He took a leading part in the *Five Knights' case* and in the struggle for the

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have succeeded St. Teilo. According to the Book of Llandaff, he was son of Budic of Cornouaille (Britanny) and Ananned, a woman of Dyfed (West Wales). Budic is said to have been a king in Britanny c. 500, and Ananned to have been sister of St. Teilo, who trained Oudoceus to be his successor. However, as the grants of land to Oudoceus, as recorded in the Book of Llandaff, fix his date as c. 630, the story is chronologically impossible.

p. 138. 2. *Ceolwulf*. King of Northumbria (r. 729–737), to whom Bede dedicated his *Ecclesiastical History*. He was famous for his generosity to the Church. In 731 he was for a time deposed and forced to become a monk, and later in 737 he voluntarily resigned his throne to his cousin Eadberht and retired into a monastery.

— 3. *Ninian* is said to have been a Strathclyde Briton who was educated at Rome. He founded a church at Whithern on the west coast of Wigtown Bay. Bede says it was called Candida Casa, the White Church, because it was built of stone, and that it was dedicated to St. Martin of Tours, while Ailred of Rievaulx says that St. Martin provided the masons. Ninian is said to have died in 432 A.D.

— 4. *Ethelred* who became king of Northumbria on the deposition of Alchred in 774 was the son of Moll Ethelwold. He had a stormy reign. Expelled from his throne in 778 or 779, according to Simeon of Durham, for the murder of three High Reeves, he won it back in 790. He married a daughter of Offa. He was murdered at Corbridge in 796, and the kingdom of Northumbria rapidly declined.

p. 139. 1. *Eutychian heresy*. The error of Eutyches, an abbot at Constantinople in the fifth century, who maintained that after the hypostatic union there was but one nature in Christ. Later the general name of Monophysites was applied to those who followed him at Alexandria.

p. 140. 1. *Cealchythe*. Now generally identified with Chelsea. [See Haddan and Stubbs, *Concilia*, vol. III, p. 445.]

p. 141. 1. *Wini*, according to Bede, a West Saxon, who was educated in Gaul and made Bishop of Winchester (c. 660 or, according to Stubbs, 663) by King Coenwealh, when he grew tired of the barbarous tongue of Agilbert, the French scholar who came from Ireland to convert that King's people. Agilbert refused to share the see with Wini and returned to Gaul. Wini himself was soon expelled and took refuge with Wulfhere of Mercia, from whom he purchased the see of London, which he held till his death. In 664 or 666 it fell to Wini as the only canonical bishop in the island to consecrate Chad at Winchester with the doubtful assistance of two Welsh bishops.

— 2. *Edsi* or Eadsige (Archbishop of Canterbury, 1038–1050), succeeding Ethelnoth, "the good archbishop." In 1043, he consecrated Edward the Confessor as king, but next year "through infirmity" obtained the king's consent to the consecration of Siward, Abbot of Abingdon, as suffragan or assistant, lest another should attempt to buy the see. In 1048, Siward resigned and Edsi took the see again, but in 1050, he died and was succeeded by Robert of Jumièges.

p. 145. 1. *Thurkettle* (Thurcytel), according to the Pseudo-Ingulph, was of the blood-royal and acted as chancellor to Athelstane and some of his successors. He won high favour by his valour at the battle of Brunanburh as commander of the Londoners and the Mercians. Later he became Abbot of Croyland and vigorously asserted the rights of the abbey.

p. 151. 1. *Murdrum*. A late Latin word formed from the root seen in Old English *morðor* and Old French *murdre*, meaning "a secret killing" as opposed to the open revenge of a private wrong. The word is akin to the Latin *morior*, to die. (Cf. Part II, *Proofs*, p. 173.)

p. 152. 1. *Visne*. Formed from the Latin *visnetum*, the neighbourhood, i.e. the four nearest villas who were responsible for the arrest of any murderer or criminal among their inhabitants. [For the whole matter see Pollock and Maitland, *History of English Law*, especially vol. II, pp. 486–7.]

p. 153. 1. *Exe*. This should really be the Wye. (Cf. above, p. 585, note 1 to p. 80 on the *Devonian Compact*.)

p. 154. 1. *Team* or generation. For the meaning of "Team" see Pollock and Maitland, *op. cit.* vol. I, p. 579, where the interpretation traditionally accepted

is disputed. "Apparently it ought to mean the right to hold a court into which outsiders may be vouched as warrantors." [See Bosworth-Toller, *Anglo-Saxon Dictionary*, s.v.]

p. 155. 1. *Concionator*. The village crier or beadle, who seems to have acted as the general servant of the vill. (Cf. Part II, *Proofs*, p. 169.)

p. 157. 1. *Frankpledge* (*francum plegium*). Apparently a mistranslation of the A.S. *frith-borh* which really means peace-pledge. But the form in the Laws of Edward the Confessor is *friborg*. (Cf. p. 161 and Part II, *Proofs*, pp. 137, 148, 167.)

[For the whole question see Pollock and Maitland, *op. cit.* esp. vol. I, pp. 568-571.]

p. 161. 1. *Manupast*. A dependent fed by the hand (*manu, pascere*) of a lord (or loaf-giver). [See Pollock and Maitland, *op. cit.* esp. vol. II, pp. 530-532.]

p. 165. 1. *No view of Frankpledge . . . in Northern Baronies*, etc. Pollock and Maitland, *op. cit.* vol. I, p. 570, quote the Laws of the Confessor for the statement that in Yorkshire *tenmannetale* corresponded to *frith borgas* elsewhere, but point out that historically at least the former word is the name of a tax, perhaps identical with Danegeld.

p. 169. 1. Liebermann, *Gesetze*, vol. i. p. 330.

p. 170. 1. *Summary decapitation*. This practice survived in Northumberland at least down to the reign of Edward I. See preface to Page's *Assize Rolls of Northumberland* (Surtees Society), No. 88, p. xx, and numerous examples in the Rolls, e.g. 70, 73, 79, etc. (Cf. also Part II, *Proofs*, pp. 258, 259.)

p. 171. 1. *John Howard* (1726-1790). A famous English philanthropist and prison reformer. His experience as High Sheriff of Bedford in 1773 caused him to devote his life to reforming prison conditions both in England and abroad. He was thanked for his work by the House of Commons in 1774, and in 1777 he published his famous work on "The State of the Prisons in England and Wales." He died abroad in 1790 from camp-fever. The reference in the text is to the fine statue in St Paul's. There is another statue to him at Bedford.

p. 172. 1. *Hond-habbend*, having (stolen property) in one's hand; *back-barend*, having (stolen property) on one's back. [See Bosworth-Toller, *Anglo-Saxon Dictionary*, s.v. Cf. p. 24 and Part II, *Proofs*, p. 202, and see Pollock and Maitland, *op. cit.* vol. I, p. 577.]

p. 174. 1. *Halifax*. The authorities from which the author derived this inference are not accurate. The custom at Halifax was of comparatively modern origin. At the time of the introduction of the cloth trade in the fifteenth century, Halifax was a mere hamlet of thirteen houses, but henceforth it grew rapidly, until, at the end of the sixteenth century, the number had increased to five hundred and twenty, probably largely due to the influx of fugitive weavers driven by Alva's cruelty from the Netherlands. The first recorded instance of the "Gibbet Law" being put into force was in 1541. Under it any one who stole goods worth more than 3d. was tried by a jury of sixteen frith-burgesses and, if found guilty, was executed on market day on what is still called "gibbet-hill," an eminence just outside the old village. The gibbet was a sort of guillotine and was last used in 1650.

p. 175. 1. *Halidom*, lit. holiness, cf. king-dom. It was the Bible, the Book of the Gospels, a sacred relic, or the Sacrament of the Altar. (Cf. Part II, *Proofs*, p. 161.)

p. 179. 1. *Frotho*. The third of that name in Saxo Grammaticus. "De qualibet vero controversia ferro decerni sanxit, speciosius viribus quam verbis configendum existimans."

p. 180. 1. "*Ladies love and druery*." The full quotation is
"And of ladyes love-drury
Anon I wol yow telle."

It occurs (l. 184) in Chaucer's "Rime of Sir Thopas" in the *Canterbury Tales*. The word is derived from the Old French "drut" or "dru" and means friend. [See *N.E.D.* s.v.]

— 2. *Gunnlaug's Saga*. See Part II, *Proofs*, p. 188, for the story of how Gunnlaug by a trick won for his wife the fair-haired Helga, daughter of Thorstein the Wise.

p. 181. 1. *Assart*. A clearing in the forest made for agricultural purposes.

The word is derived from the late Latin *exsartare*, the frequentative form of *exsarrare*, to weed or hoe thoroughly, to make land fit for cultivation.

p. 184. 1. *Forms of Process*. For a learned discussion of these, see Pollock and Maitland, *op. cit.* vol. II, pp. 558–673.

p. 186. 1. *Esplees*. The plural form of the old French *esplet* or *exploit*, revenue. *Esplet* is derived from the Latin neuter participle *explicitum*, something unfolded or extracted, or accomplished. (Hence modern sense of exploit, achievement.) The *esplees* were the produce yielded by the land whether crops or money. [See *N.E.D.* s.v.]

— 2. *Ranulf de Glanville*. The Northern sheriff who captured William the Lion at Alnwick in 1174. He was one of Henry II's ablest officials, and not only helped him both in war and diplomacy against his rebellious sons and their ally the king of France, but was also a Justice in Eyre and a member of Henry's Central Law-court. He went on the Third Crusade with Richard I and died at Acre, 1190. On the evidence of Roger of Hoveden, Glanville is accepted as the author of the "Treatise on the Laws and Customs of England."

— 3. "We must now proceed to tell how recourse is had to the Superior when a man has lost both natural and civil possession."

p. 187. 1. "When therefore the disseised has been so negligent in this matter that he *will not or cannot eject his disseisor*, by the kindness of his Prince he is helped through the inquest of the Assize of Novel Disseisin, a process devised and thought out in many vigils."

p. 191. 1. *Civilian*. One skilled in the Roman or civil law. *Cent. Dict.*

p. 193. 1. *Robert Joseph Pothier* (1699–1722). A famous French jurist. He was Judge of the Presidial Court of Orleans and won fame by his edition of the *Pandects of Justinian*, published 1748–1752. Later he was Professor of Law at Orleans and his writings contributed largely to the formation of the French *Code Civil*.

p. 197. 1. *Ralph Niger* (*floruit circ.* 1170). An historian and theologian educated at Paris. He was a violent partisan of Becket. Accused before Henry II, he fled into exile and there wrote, besides theological works, two Chronicles. His materials are mostly borrowed, but he is famous for his savage attacks on Henry II.

p. 199. 1. *Trial by Jury*. For the modern view of the origin and work of the Jury, see Pollock and Maitland, *op. cit.* vol. I, pp. 138–149, and vol. II, pp. 616–632, 641–659.

p. 204. 1. *Vicecomes*, lit. the earl's or count's deputy, a description which is correct on the continent, and refers to an official corresponding somewhat to the sheriff. Hence the Norman lawyers translated sheriff by *vicecomes*, but the sheriff was actually the king's deputy and not the earl's.

p. 205. 1. *Meliores*, the better men; *Fideles*, the faithful or loyal men; *Proceres*, the chiefs or leading men. Probably all three terms refer to the same persons and mean the chief landowners of the hundred.

p. 206. 1. *Maxima Concio*, lit. greatest assembly. Here it means the folkmoot attended by all the suitors of the Court.

p. 210. 1. *Assizes of Clarendon or of Northampton*. The former assize was held 1166 A.D., the latter 1176 A.D. The Constitutions of Clarendon were issued in 1164, and dealt with ecclesiastical immunities in such a way as to provoke the outburst of the quarrel between Becket and Henry II, which ultimately caused the murder of the former. [For the Assizes, see Stubbs, *Const. Hist. of England*, vol. I, pp. 505 ff., and Pollock and Maitland, *op. cit. passim*. For the Constitutions, see Pollock and Maitland, *op. cit. esp.* vol. I, pp. 447–457, and Stubbs, *op. cit.* vol. I, pp. 498 ff.]

— 2. *Honour of Warene*. Stubbs reads here Wallingford, and gives a different explanation from that of the author. He says that the Honour was an escheated estate, kept in the king's own hands, and treated like a separate shire. Naturally the inference to be drawn is, that if the King's own estates were to be subject to the Assize, much more so those of the great nobles. [See Stubbs, *op. cit.* vol. I, p. 433 note.] As Stubbs points out in his preface to Benedict Abbas in *Chronicles and Memorials*, Rolls Series, No. 49, vol. II, p. cli, it is really a question of the proper extension of the abbreviated form Warreng.

— 3. "Acting on the advice of the Archbishops, Bishops, Abbots, and the others, his Barons."

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of the Picts see Guest, *Origines Celticae*, vol. II, p. 29, and Skene, *Celtic Scotland*. See also Part II, *Proofs*, pp. 625 ff.]

p. **261**. 1. *Boadicea*. Probably the correct form is Boudicca, the Celtic equivalent of Victoria. She was the wife of Prasutagus, King of the Iceni of East Anglia. Prasutagus was an ally of the Romans, and on his death left them half his kingdom in the vain hope of preserving the rest for his wife and daughters. When the Romans seized all his lands, his wife protested. She was scourged and her daughters outraged. Boadicea took advantage of the absence of Suetonius Paulinus in Anglesey to rouse the Britons, and sacked the Roman cities of Verulamium, Camulodunum and Londinium. However Suetonius managed to rally the Romans and utterly defeated her and slew eight thousand Britons in a battle, traditionally placed near King's Cross Station [but see Scarth, *Roman Britain*, p. 50]. The beaten queen then committed suicide, 62 A.D. A magnificent statue of the "British Warrior Queen" by Thorneycroft now stands on Westminster Bridge.

— 2. *Cartismandua*. The wife of Venusius, chief of the Brigantes of Yorkshire. According to Richard of Cirencester, a dubious authority, she was herself a Roman. Cartismandua is notorious for her betrayal to the Romans of her step-son, the brave Silurian chief Caractacus (Caradoc), who for nine years had resisted the Roman general Ostorius Scapula.

p. **262**. 1. *Claudius*. Tiberius Claudius Drusus Nero, Emperor of Rome (r. 41–54 A.D.).

p. **263**. 1. *Caracalla*. Marcus Aurelius Antoninus Bassianus, Emperor of Rome (r. 211–217 A.D.).

— 2. *Papinian*. Æmilianus Papinian was a Roman Jurist, 175–212 A.D. He was made Pretorian Prefect by Severus, but was put to death by Caracalla, who had dismissed him because he was too noble, and who executed him because he would not defend the murder of Geta.

— 3. *Bruto, Brutus*. The fabled eponymous hero of the Britons. He was son of Silvius, whose father was Ascanius, son of Aeneas. [See Geoffrey of Monmouth, bk I, ch. 3 ff.]

p. **265**. 1. *Cogidumnus*. A British chief who, unlike Caractacus, submitted to the Romans and was rewarded by an extension of territory at the expense of his more patriotic neighbours. Both he and Prasutagus, king of the Iceni, were only client-princes of the Empire and bound to help their lord the Emperor.

— 2. *Regni*. Probably they inhabited the part of Sussex around Chichester which was called Regnum by the Romans. For Lucius see p. 125.

p. **268**. 1. "Irenarchs, military magistrates appointed to the end that, having undertaken the guardianship of the provincials, they should establish the harmony of order and peace, each throughout his own district."

p. **269**. 1. *Age of the Antonines*. This was the "golden age" of the Roman Empire, and comprised the reigns of Nerva, 96–98 A.D., Trajan, 98–117 A.D., Hadrian, 117–138 A.D., Antoninus Pius, 138–161 A.D., and of Marcus Aurelius, the Philosopher King, 161–180 A.D.

p. **270**. 1. *Curiales*. The members of the Curia or governing body of a Roman Provincial Municipality, especially under the Later Empire. In practice the word came to mean the Middle Classes who were made responsible to the Emperor for the taxation due from their district or *civitas*. They had to make good all deficits and were legally unable to abandon their status, which was hereditary. They were slowly ruined by their accumulated burdens. [See Reid, J. S., *Municipalities of the Roman Empire*, Cambridge Univ. Press, 1913.]

p. **271**. 1. *Council of Arles*. When the Empire fell, this Convention was on its way to becoming a sort of Senate for the Prefecture of Gaul, rivalling that of Rome, and it perhaps formed a centre of unity for the Provincials during the Gothic invasions.

p. **276**. 1. *Honorius*, son of the great Theodosius was Emperor in the West, (395–423) while his brother Arcadius (395–408) ruled in the East. Honorius was a feeble ruler who only showed vigour against heretics. According to some accounts, he abolished gladiatorial shows and improved the criminal law.

p. **278**. 1. *Assembly at Toulouse*. This was a meeting held 506 A.D., and was analogous to the Council of Arles.

p. 278. 2. *The Anian Breviary*. See above, p. 582, note 2 to p. 34.

p. 281. 1. *Diocese* (in Greek, *dioikēsis*). This was a subdivision of the Prefecture, one of the main divisions into which Diocletian reorganized the Empire. By the end of the fourth century, there were four Prefectures, the East, Illyria, Gaul, and Italy, and thirteen Dioceses, of which Britain composed one. There was a further subdivision into one hundred Provinces. Later the term Diocese was borrowed by the Church to describe the sphere of a Bishop's authority.

p. 286. 1. *Richard of Cirencester*. The real Richard of Cirencester (1355–1400) was a monk of Westminster whose only extant work is the *Speculum Historiale de Gestis Regum Angliæ*, an account of the Anglo-Saxon kings before the Conquest, and is of little original merit. In 1747, there was published at Copenhagen, together with the works of Gildas and Nennius, a work called *De Situ Britannia*, which was ascribed to Richard of Cirencester. It is now known for certain that this was a forgery by the Editor, Charles Julius Bertram, Professor of English at Copenhagen. It completely deceived Stukeley, the eminent eighteenth century antiquary, but in his Introduction to the *Speculum* which he edited for the Rolls Series (1863–9), Professor Mayor exposed the fraud both by internal and external evidence, and traced the sources of the information used by Bertram in compiling his forgery.

p. 287. 1. *Inscription . . . at Chichester*. Printed in *C.I.L.* vii, 11. The expansion of R into Regis is very doubtful.

p. 288. 1. *Aquæ Solis*, lit. waters of the sun, the Roman name for Bath, sometimes called *Aquæ Sulis*, because of the altars there dedicated to the goddess Sul.

— 2. *Sylla* (Lucius Cornelius Sulla Felix, 138–78 B.C.) and *Marius* (Gaius Marius, 159–86 B.C.), were the leaders respectively of the Aristocratic and Democratic factions at Rome.

p. 289. 1. *Triumvirate*. The reference is to the Second Triumvirate, the alliance of Octavian (Cæsar's adopted son and successor), Mark Antony and Lepidus, formed in 43 B.C. to avenge the death of Julius Cæsar.

— 2. *The Trinobantes*. The British tribe which inhabited the district round Colchester, and the South of East Anglia generally. The North of East Anglia was held by the Iceni, for whom see above, p. 596, note 1 to p. 261 on Boadicea.

p. 290. 1. *The Limitanei* or Limitaneans. The troops who defended the *Limes* or Roman Rampart which ran across South-West Germany from Coblenz on the Rhine to Ratisbon on the Danube.

— 2. *The Riparian soldiery* or Ripuarii. The troops defending the frontier rivers such as the Rhine, the Danube and the Euphrates.

p. 294. 1. *Galgacus*. The leader of the Caledonians whom Agricola defeated at Mons Graupius or Granpius, the position of which is much contested.

— 2. *Walls of Septimius Severus, of Hadrian, and of Lollius Urbicus*. The general result of recent investigation tends to prove that the Stone Wall and the Vallum that ran between Tyne and Solway were built by the Emperor Hadrian, c. 120 A.D., and were repaired and strengthened by the Emperor Septimius Severus, c. 208 A.D. Lollius Urbicus, Imperial Legate of Antoninus Pius and Proprætor in Britain, was the builder of the wall between Forth and Clyde, sometime after 138 A.D. It was made of turves or sods with a stone base and served to connect the line of forts built about 81 A.D. by Julius Agricola.

p. 296. 1. *Magistri Militum*, lit. Masters of the Soldiery. The *Magister Militum* was the General Commanding in Chief of one of the Imperial Prefectures. He was the highest military officer and corresponded to the civilian Pretorian Prefect. [See Gibbon, vol. II, p. 319.]

p. 297. 1. *Brancaster* lies between Wells and Hunstanton on the North Coast of Norfolk. Its Roman name was Branodunum. [See Map I in *The History of the Anglo-Saxons*, vol. V of this series.]

— 2. *Portus Adurni*. Probably Aldrington in West Sussex.

p. 298. 1. *Theodoric*. King of the Ostrogoths (c. 454–526). *Anastasius I.* Emperor (c. 430–518).

p. 299. 1. *Ariovistus* (fl. during second half of the first century B.C.). A German Chieftain. The title of Rex was conferred by the Roman Senate.

— 2. *Merobaudes*. A Frankish chief upon whom the Emperor Gratian

(r. 367–383 A.D.) conferred the Consulship. [See Sismondi, *Fall of the Roman Empire*, vol. I, p. 110.]

p. 301. 1. *Arbogast*, *Salogast*, together with *Widogast* and *Bodogast*, were the old Salic Judges.

— 2. *Vase of Soissons*. Gregory of Tours tells us that when at Soissons the Franks were sharing out the spoils of Gaul, Clovis, their king, begged for himself a precious vase that had belonged to the Church at Rheims. The army agreed, but a certain soldier struck the vase with an axe saying “you shall have nothing here but what falls to you by lot.” Clovis dared not openly resent this, but the soldier afterwards paid dearly for the slight. For the story and Hallam's comments, see *Middle Ages*, vol. I, p. 155.

p. 302. 1. *Childebert I* of the Merovingian Dynasty, ruled at Paris, 511–558. *Clothaire I* of the same Dynasty, ruled at Soissons from 511, sole King of the Franks, 558–561. [See Genealogical Table I, *Normandy and England*, vol. I.]

p. 305. 1. *Quintilius*, brother of the Emperor Claudius Gothicus, who, on the latter's death in 270 A.D., vainly attempted to dispute the accession of Aurelian, who had been nominated Emperor by Claudius. [See Gibbon, vol. II, p. 9.]

— 2. *Valerian* became Emperor in 253 A.D. when Aemilianus, the murderer of Gallus, was himself killed. He associated his son Gallienus with him in the Empire, but the latter was a worthless youth and far inferior to his father. The Empire was attacked both by the Germans and the Persians and neither Gallienus on the Rhine nor Valerian in the East could gain any lasting success. Valerian was taken prisoner by the Persian king Sapor in 260 A.D. and died in captivity. Gallienus had to be content with such parts of his realm as the “Thirty Tyrants” left him, and in 268 A.D. he was murdered. With his last breath he named Claudius Gothicus as his successor. [See Gibbon, vol. I, pp. 388 ff.]

— 3. *Posthumus*. The general of Gallienus who won the title of Conqueror of the Germans and Saviour of Gaul. He was later proclaimed Emperor, and, after seven years' hard fighting against rival pretenders, he was slain by his own soldiery for refusing them the plunder of the captured city of Mainz, 267 A.D.

p. 306. 1. *Victorina*, mother of Victorinus, who was associated in power with Posthumus and slain with him in 267.

— 2. *Julia Mamæa*, created Augusta, mother of Alexander Severus (Roman emperor 222–235 A.D.) was killed with her son, in a mutiny, in 235.

p. 307. 1. *Galerius* was appointed by Diocletian (292) with the title of Caesar to administer the affairs of Gaul, Spain and Mauritania.

— 2. *Avitus*. A Senator who was proclaimed Emperor by the Assembly of Arles, 455 A.D. He afterwards took up his residence at Rome, but he became so unpopular by his profligacy that Ricimer, the Commander of the Barbarian Auxiliaries, deposed him in favour of Majorian after a battle near Piacenza. He was allowed to become a bishop, but was murdered soon afterwards, 457 A.D. [See Gibbon, vol. IV, pp. 260 ff.]

p. 308. 1. *Maximian*. He became the colleague of Diocletian in 286 A.D. By origin a peasant of Sirmium, he was a fierce and cruel soldier who was used by Diocletian to put down the various rebellions in the Empire. As ruler of Italy, he treated the Senate with studied neglect. In 305 he was forced by Diocletian to join him in a renunciation of the Empire. Not long afterwards he made an attempt to regain power, but both his own son Maxentius and his son-in-law Constantine opposed him and he was at last compelled to commit suicide, 310 A.D. [See Gibbon, vol. II, pp. 66 ff.]

p. 311. 1. See *History of the Anglo-Saxons*, vol. V of this series, where these coins are reproduced.

p. 313. 1. *Helena*. The reference is to Geoffrey of Monmouth, bk V, ch. 6.

— 2. *Trahern*, *Marius* and *Leoline*. Their adventures are told by Geoffrey of Monmouth in bk. V, ch. 8.

p. 314. 1. *Crocus* or *Erocus*. King of the Alemanni, and was probably the first independent barbarian King who assisted the Romans. Erocus may be a corruption of Eric or perhaps of Ertoccus, which in turn may be a Latinized form of the Teutonic Heretoga or Herzog, a commander (*dux militum*). Cf. Brennus as the name of a Celtic King. [See Gibbon, vol. II, p. III, and Lappenberg, *Hist. of England*, vol. I, p. 47.]

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canto and first appears in English in Macpherson's *Ossian*, 1765. [See *N.E.D.* *sub voce.*]

p. 326. 1. *Claudian*. The last of the Roman poets. He flourished under Honorius, and Stilicho was his patron. One of his poems celebrates the marriage of Stilicho's niece, and in another poem quoted p. 319, he refers to Britain. Claudian was by birth an Egyptian of Alexandria and died c. 404 A.D.

— 2. *Marcellinus*. The last Roman historian of any importance (c. 325–c. 391). Ammianus Marcellinus was a Greek by birth, and served in the Imperial Army both in the East and in Gaul. He was an enthusiastic admirer of the Emperor Julian, whose campaigns he describes. He wrote his history at Rome in his old age as a continuation of the work of Tacitus. Thirteen out of the thirty-one Books are lost, but the remainder, dealing with the period 353–378 A.D., are most valuable and, by their description of the deterioration of the army and the progressive exhaustion of the Middle Classes, unconsciously prophesy the coming disaster.

p. 328. 1. *Thong-Castle*. Hengest, the Jutish Chief, begged from Vortigern enough land for a fortress, the area to be as much as he could encircle with a leathern thong. On his request being granted, he cut up a bullock's hide so as to form a single thong. By this stratagem he was able to obtain a strong natural fort which he had long coveted. The traditional site is Tong in Kent. The story is told by Geoffrey of Monmouth, bk. vi, ch. 11.

p. 330. 1. *Mons Badonicus* or Mount Badon. Many authorities now follow Guest who in *Origines Celticae*, vol. II, p. 189, makes out a good case for Badbury Rings in Dorset as the site.

— 2. *Andredes Ceastre*. The Saxon name for Roman Anderida, probably to be found near Pevensey Castle, which is certainly built on the site of a Roman fortress. Anderida was built towards the end of the third century of our era as part of the defences of the Saxon Shore, and seems to have been repaired perhaps by Stilicho c. 400. A massive Roman wall still stands in very fair condition at Pevensey, although some antiquarians seek for Anderida at various neighbouring towns.

— 3. *Ella* or *Ælla*. Very little is really known about him. Bede is our chief authority and he makes *Ælla* the first Bretwalda, and perhaps hints that he was the real leader of the invaders. He died c. 514. For an ingenious reconstruction of his supposed achievements, see *The Storming of London and the Thames Valley Campaign*, by Major P. T. Godsall.

— 4. *Baronius*. Cardinal Cæsar Baronius (1538–1607), the famous ecclesiastical historian and Librarian of the Vatican under Clement VIII. The reference is to his *Annales Ecclesiastici*, written between 1588 and 1607 by order of his Superior, St. Philip Neri, as a reply to the Protestant *Historia Ecclesiæ Christi* (1559–1574), the earlier version of the famous Magdeburg Centuries. The *Annales* are on the whole trustworthy and never err from bad faith.

p. 332. 1. *Querulous Gildas*. He is so called from the title of his book *Gildas Sapiientis de Excidio Britannia Liber Querulus*, in which he truly says he writes "by way of lamentation rather than for display." Stevenson, who in 1838 edited the *Historia* and the *Epistola*, says, "we are unable to speak with certainty as to his parentage, his country or even his name, the period when he lived or the works of which he was author." Actually, although he is the only Celtic historian of the Saxon Conquest, he is by no means trustworthy, and his work was for long suspected of being not genuine. We gather from his *Historia* that he was born in 516, that he was a cleric and spent a considerable time abroad, probably in Brittany; and the Cambrian Annals say he died 570. [See Ebert, *Allgemeine Geschichte der Literatur des Mittelalters*, vol. I, p. 562.]

— 2. *Maglocunus*. In Geoffrey of Monmouth, Malgo,—in Nennius, Mailcunus,—Maelgwn Gwynedd of North Wales. Gildas calls him the Dragon of the Island, and agrees with Geoffrey of Monmouth (bk. XI, ch. 7) in painting him as a fierce and successful warrior who disgraced his valour and personal beauty by unspeakable immoralities. According to the *Annales Cambriae* he died in 547 A.D.

— 3. *Legends of Arthur in Sicily*. Gervase of Tilbury was an English scholar, born at Tilbury in Essex. He flourished c. 1200. After an adventurous and wandering life in France, Sicily and Germany, he became Marshal or Governor

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of the Kingdom of Arles under the Emperor Otto IV. For his patron's delectation he wrote, about 1211, the curious work known as *Otia Imperialia*, full of the most astonishing stories. Excerpts are printed by Stevenson at the end of his Edition of Ralph of Coggeshall [Rolls Series, No. 66]. On p. 438 is the passage referred to by the author. It is also printed in Liebrecht's *Auswahl*, p. 12.

p. 332. 4. *Childeric*. He is described in the *Otia Imperialia* as *ipsum ducem Germaniæ*.

— 5. *Aurelius Ambrosius*. The reference is to the battle of Mons Badonicus. See p. 330.

p. 333. 1. *In the North*. Probably in the region between the two Roman Walls. The battle sites cannot possibly be identified now with any certainty, even if they are not legendary.

— 2. *Douglas, the black water of Deira*. Duglas in Celtic literally means the Black Water or stream. Skene [*Celtic Scotland*, vol. I, p. 153] places the site of this battle on the Douglas which flows into Loch Lomond. There is a Duglas river which formed the southern boundary of Lothian and this is favoured by Giles. Whitaker, in his *History of Manchester*, identifies the stream with the Duglas near Wigan. The Wedale referred to by the author is identified with a village six miles west of Melrose. It is said to be really Woldale, *Vallis dolorosa*, where, according to one of the MSS. of Nennius, there were kept fragments of the miraculous image of Our Lady which helped Arthur to win his battles.

— 3. *City of the Legions*. This is generally identified with Chester, but, if a northern site is required, perhaps Carlisle may be intended.

— 4. *Caledonian Forest*. This is said to be Englewood Forest, which extended from Penrith to Carlisle.

— 5. *Forest of Broceliande*. This was a magic forest in Brittany, which appears in the Arthurian Romances. There it was that Merlin was enchanted by Vivienne, the Lady of the Lake, and imprisoned in a rock. The name Broceliande is used as the typical *mis-en-scène* of romance and an example of the unreality of legendary scenery.

— 6. *Geoffrey of Monmouth*. A writer of the twelfth century who in 1152 became Bishop of St. Asaph. His fame rests chiefly on the *Historia Britonum*, which he claimed to have translated from an ancient Welsh MS. No one accepts its wild impossibilities as sober history, but Geoffrey probably did work up old Celtic legends into his History, and it has been the source of much of the mediæval Romance writing.

p. 336. 1. *Ancient Rampart*. Wodensdike or Wansdike is a large Roman or Romano-British entrenchment of uncertain date in Wiltshire, about 60 miles long, stretching from the neighbourhood of the Bristol Channel to a point a little east of Savernake. It shows best along the Marlborough Downs, and consists of a bank of earth with a trench on the north side. It is studded with forts at intervals, and was undoubtedly a defence rather than a mere boundary. There are other "dikes" in the neighbourhood, such as Botterley dike which is partly the boundary of Dorset and Wilts. Wodnesbeorg is Wanborough, near Swindon.

For the Rech dike or Giant's dike of East Anglia, see Part II, *Proofs*, pp. 554, 555.

p. 344. 1. *Venta Icenorum*. Caistor by Norwich. [See the article by Prof. Haverfield on Roman Norfolk in the V.C.H. *Norfolk*.]

p. 345. 1. *Rampart ascribed to the Giant*. This is the Giant's Dike or Rech Dike. (See Part II, *Proofs*, pp. 554, 555.)

— 2. *London . . . lost to the Britons*. Coote, in his *Romans of Britain* argues ingeniously, if unconvincingly, for the survival of London as a purely Roman city at least down to the reign of Alfred. Major Godsal, in his *Storming of London and the Thames Valley Campaign*, represents it as falling at an early date before a joint attack of the invaders led by the Bretwalda Ella.

In any case it is difficult to believe that so important a city could be captured without leaving even a tradition behind, and the presumption of a continuous habitation of London is very strong.

— 3. *Camulodunum*. The Roman Colony on the site of modern Colchester. Together with Londinium and Verulamium (see above, p. 590, note 1 to p. 125), it was sacked by Boadicea in the rising of 61 A.D.

p. 348. 1. *Pictish Question*. See Guest, *Origines Celticae*, vol. II, pp. 28 ff.

p. 350. 1. *History of St. Patrick*. See Dr J. B. Bury's *Life of St. Patrick and His Place in History*, London, 1905.

p. 351. 1. *Erc* in Irish legend was king of Ireland and enemy of the hero Cuchulain. At the last battle of that hero, Erc seized one of his spears and wounded his celebrated horse, the Grey of Meche, to death. Actually his historical importance lies in his relation to his more famous sons. [See Skene, *Celtic Scotland*, vol. I, pp. 139 ff., and Pinkerton, *History of Scotland*, vol. II, p. 89.]

p. 356. 1. *The Flame Bearer*. It was Theodric, the son of Ida, who was called by the British writers, Flamddwynn, the Burner.

p. 357. 1. *Dol*. Now a small town in North Brittany, near St. Malo, in the *département* of Ille et Vilaine, it was an important Armorican settlement.

p. 360. 1. *Denisesburn*. This is said to be the Rowley Burn, a tributary of the Devilswater which flows into the Tyne near Corbridge. The Welsh name for the battle is Catscaul. (See Part II, *Proofs*, p. 569.)

p. 362. 1. *Maserfelth* or Maserfield. The site is unknown, but is perhaps near Oswestry in Shropshire.

p. 379. 1. *Cunedda Wledig*. See Part II, *Proofs*, p. 614.

— 2. *Days of Giraldus*. Giraldus was Giraldus de Barri, also called Cambrensis or the Welshman (?1146–?1220). He was the youngest son of a Norman Knight by the daughter of a Welsh princess. A keen patriot, he passed his whole life in one long struggle to become Bishop of St. David's and to assert the independence of the Welsh Sees from Canterbury.

p. 388. 1. *Deunsetas*. The river intended here is the Wye and not the Exe. See above, p. 585, note 1 to p. 80, and Part II, *Proofs*, p. 446.

p. 396. 1. *Places unknown*. Dunfoder is probably Dunnottar in Kincardineshire, and Wertermere, Kirriemuir in Forfarshire. [Skene, *Celtic Scotland*, vol. I, pp. 338, 352.]

p. 398. 1. *Lothian*, strictly speaking, is the three counties of Linlithgow, Edinburgh and Haddington.

p. 399. 1. The *Carse* is the belt of fertile alluvial land around Falkirk, and lies just west of Lothian proper.

p. 400. 1. *Eadulf, the cowardly Earl of Northumbria*. See Appendix on the Cession of Lothian in Freeman's *Norman Conquest*, vol. I.

— 2. The *Merse* is the March or Borderland of South-East Berwickshire.

p. 403. 1. *Mr Tytler*. Patrick Fraser Tytler, the friend of Alison and Scott and one of the founders of the Bannatyne Club. The reference is to his *History of Scotland* published 1828–1843. Tytler was a barrister as well as an historian.

p. 404. 1. In connection with this Chapter the author's *Documents and Records illustrating the History of Scotland*, published by the Record Commission in 1837, should be consulted.

p. 406. 1. *Marculfus*. The reference is to the *Formulæ Marculfi*, the work of the monk Marculfus who, in 650, compiled, for the use of the Merovingian Court, a "formulary" or series of model state documents or diplomata, which survived with only slight alterations into early Carolingian times.

p. 410. 1. *Alcuin* (c. 735–804), who liked to call himself Albinus, was one of the most learned ecclesiastics of the eighth century. He was born at York, and was a relation of St. Willibrord of Utrecht. He was educated at the Episcopal School at York, of which he became head master in 766. Returning from Rome in 780 he met Charlemagne at Parma, who persuaded him to settle at his court and heaped preferment upon him. From 781 to 790, Alcuin ably carried on the task of reorganizing the educational system of the Franks. At least twice he returned to England for short periods, but Charles needed him to combat heresy by his learning and he finally died in France as Abbot of St. Martin of Tours. He is a chief actor in the Carolingian Renaissance.

p. 414. 1. *Female reign of Irene*. Irene was the wife of the Eastern Emperor Leo IV, and mother of Constantine VI, whose eyes she had put out for opposing her will. She was a strong supporter of image-worship. It is said that she proposed to marry Charlemagne and that, when he refused, she broke off the marriage contract between his daughter and her son. After five years of prosperity, she was deposed and exiled by Nicephorus, her Minister of Finance.

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cannot assert that these assemblies were no longer convened, but during a long period we have no proof of their existence."

p. 455. 1. *Bernay*. Berny-Rivière, *dépt.* Aisne.

p. 459. 1. "*Pepin and Carloman* summoned the prelates to these assemblies, and the latter soon found themselves masters in them. By this single innovation, which a religious people saw no reason to decline, the constitution suffered a fundamental change and the *Champs de Mars* of the warriors became synods of bishops. As a result, the prelates introduced into these assemblies the use of the Latin language and the practice of long speeches. They brought before them all questions concerning the Faith, church discipline and controversy, matters of which the Frank soldiers could make nothing. Ignorant of the language of theology and of the forms employed by the prelates in their deliberations, their share in them became quite passive. Their rights were not in dispute, but they were driven away by sheer absence of interest from the very place where they had once been supreme. The prelates, who, without a revolution, without any perception on the part of the nation that it had lost its rights, found themselves all at once the holders of all legislative power as a consequence of the simple fact of their admission into the council of the warriors, did not fail to give their decrees a powerful sanction by reducing to a system the procedure of excommunication and its consequences."

— 2. "These assemblies were in essence Parliaments, and Councils only on occasion."

p. 464. 1. *A Capitulary framed by the Emperor*, etc. See Lavissee, *Histoire de France*, vol. II, p. 313.

— 2. "This capitular is the work of Louis le Débonnaire, but we may, nay, *we must*, without fear of mistake, attribute to Charlemagne the institution of the provincial parliaments of which I am speaking. I wish to emphasize that no inference in opposition to my view can be drawn from the silence of the capitulars of Charlemagne with reference to these parliaments, since a considerable number of them has been lost and since we are far from possessing a complete collection of his laws or a full account of his administration. In the second place, it would be hard to believe that the provincial parliaments were instituted by Louis le Débonnaire. In the fourth chapter of this book, it will be seen that this institution is not of a piece with the general line of conduct of this prince, or, at any rate, with the policy of those who directed him."

p. 468. 1. "There are stages in the progress of civilization, periods when society is incapable of attaining to a national unity, when it possesses neither the knowledge nor the aims, nor the springs of action which create, out of a mere throng scattered over a wide territory, a single people united under the same laws, living the same life and stirred by the same motive principle. . . . What ideas, what connections, what common aims could cement and maintain it? The only society possible in those days is a society strictly limited and bounded, like the mental outlook and the manner of life of its members. And if, as the result of some weighty event, of some passing influence, a society less limited is formed for a moment, it is soon seen *to break up*, and, in its place, *there arises a number of little societies* proportioned to the stage of development of their members, which soon produce, each within its own limits, a government suited to their culture. Such is the phase which *began to run its course in France after the death of Charlemagne*, which had for its goal the establishment of the feudal system."

p. 469. 1. *Boulainvilliers, Henri, Comte de* (1658–1772), was a French political writer whose historical writings were marked by an enthusiastic admiration for the feudal system. He attacked impartially the claims of absolute monarchy and democracy and maintained that the nobles alone should rule.

— 2. *Montlosier, François Dominique de Reynaud, Comte de* (1755–1838), was a Royalist member of the Constituent Assembly in 1791, but emigrated in the September of that year. Afterwards he returned and took service under Napoleon. The allusion in the text is to his *De la Monarchie Française*, which displeased Napoleon by insisting on feudal limitation of the royal authority. Under Charles X, he became anti-clerical and died out of communion with the Church.

— 3. "Charlemagne had endeavoured to make himself the sovereign of a *great*

people and a great empire; the civilization of the country would not lend itself to this attempt, and none of his successors was capable of conceiving the idea. Under their rule, the administration and the governed suffered a *gradual disintegration, a progressive dissolution*. Soon there was no longer king or nation. Each landowner, who had a free hand and power, *made himself supreme* within his domains, each count, marquis or duke in the area where he had *represented* his sovereign. It is idle to inquire whether that was for good or evil, lawful or lawless; it was the necessary consequence of the condition of men and things; it was the universal effort of society *striving to take shape and unable to expand beyond narrow bounds*. Authority and the *nation disintegrated*, because a single authority and an *united nation* were impossible; everything became localized, because nothing could be centralized, because all community of interests, of existence and ideas had disappeared. Law and its administration, the maintenance of order, wars, oppression and liberty, *every energy was confined within small areas*, because within a larger compass none could be organized or maintained. When this violent agitation among diverse social conditions and authorities, which extended all over France, had done its work, when the *small societies which inevitably rose from it* had, both for good and for bad, taken a shape approaching in some measure to system and definiteness, the hierarchic relations which united them, the result of conquest and the re-birth of civilization, took the name of the feudal system."

p. 469. 4. "The King cannot administer justice in the Baron's territory without his consent, any more than the Baron in the territory of his vassal tenant." The sentence preceding this extract from *Les Établissements de St. Louis* is "Bers si a toutes Justices en sa terre" [The Baron is the sole administrator of justice in his territory], which shows the meaning of *mettre ban* (lit. to make proclamation) in this place.

p. 470. 1. "As long as France was a confederation under the feudal system, the power of making laws was in abeyance. Hugh Capet and his successors up to the accession of St. Louis had no right to make laws, the nation had no diet, no assemblies regularly organized, the authority of which was recognized by it. The feudal system, adopted and developed tacitly by custom, was the only system recognized by the numerous supreme authorities which divided the provinces between them. For them it held the position of social bond, of monarch and legislator."

p. 471. 1. "Was that a free government? Assuredly not, for we do not discern in it any institution independent and subsisting by itself, any driving power of society attaining to open expression and permitted to put a peremptory limit to the will of the sovereign. Still it was not, on the other hand, a despotic régime, since the maintenance of order meant for the weak a much larger liberty than they had previously enjoyed, and as for the powerful, Charlemagne, by putting constraint on himself to listen to their advice from time to time, with a view to controlling them and making use of them, accepted the necessity of submitting often to their influence. Hincmar extols the exactness with which whatever had been agreed upon in the general assembly was upheld and carried out.

What was then the character, on the whole, of his government? A great and noble performance, the transitory achievement of the dominance of one man, a short-lived triumph of the monarchical system, due solely to the genius and commanding influence of the monarch, who did not and could not, by means of institutions, establish either the liberties of the people or royalty, but who, summoning the nation to assist him to be really a king, was able to stamp for a moment on the people and on his rule the unity of his ideas and his will."

p. 472. 1. "It is true that the Champ de Mai possessed the power of legislation, but, if we pay close attention, it was only somehow *in a precarious fashion*, because the extreme ignorance and the failings of the French *did not allow Charlemagne to divest himself* of some portions of executive power. Those which he would not have kept in his own hands would have been badly administered, and would have become a hindrance to his plans."

— 2. "A fresh cause of the impending decay of the government was the fact that the assembly of the Champ de Mai was not limited to *any fixed and invariable form in its methods of deliberation and procedure* in the enactment of laws. So

far as one can guess with the help of our ancient records, it often anticipated the prince and begged him to attach the royal seal to the regulations it had drawn up. Sometimes the prince himself put before it a law and demanded the consent of the nation thereto. Now the three estates of the realm drew up their articles apart, now they joined to produce an ordinance in concert. It does not appear that there were fixed dates for adjourned deliberations on the same subject. Some laws were passed only after several long debates, others were proposed, accepted and published on the spot, as it were by acclamation.

Charlemagne had permitted this *undefined* sort of procedure in the Champ de Mai to persist, because *the crass ignorance* of the French *did not allow of his* keeping them in session without his supervision and direction of their proceedings, and formalities, by embarrassing him, would always have stood in the way of utility. Besides, the necessity which obliged him to pass from one frontier to another of his vast empire, leaving him at liberty to hold an assembly only for a short time, made it imperative to settle the business quickly, and the genius of Charlemagne decided in a moment difficulties which formalities would have rendered more embarrassing, and which his subjects could never have solved."

p. 473. 1. "Our States became General only by the coalition of the separate states of each seneschalsy, which assembled separately at first and having combined afterwards composed a single body."

p. 474. 1. *Count Raymond*. This was Raymond VII (r. 1222–1249). Under his father, Raymond VI, heresy had been favoured, but the Albigensian heretics had been destroyed or forcibly re-converted by the elder Simon de Montfort, who had fallen in an attempt to recapture Toulouse in 1218. Raymond VII had to renounce heresy to regain his lands.

p. 475. 1. *The Tribes of Galway*. The Norman family of Burke or De Burgo obtained the City of Galway after the English Conquest, and when the walls were built, about 1270, encouraged settlers to develop its commerce. The fourteen chief families of Saxon, Norman and Welsh descent were known as the Tribes of Galway, and haughtily disdained marriage with the other inhabitants. The town flourished until the Civil War, but in 1641 the ancient inhabitants were expelled, for the most part in favour of English adventurers and disbanded soldiery, who alone retained civil rights after the war of 1688.

p. 477. 1. "The history of the great feudatories, much more powerful than the king himself, if we had documents sufficient to write it, would be the history of France."

p. 489. 1. *Ella . . . Bretwalda*. See pp. 330, 331, and Part II, *Proofs*, p. 469, esp. note b. The authority for the list in note d is Bede, bk. II, c. 5.

p. 497. 1. For the interpretation of this extract, see Skene, *Celtic Scotland*, vol. I, p. 396, and Liebermann, *Ueber die Leges Anglorum*, p. 4.

p. 499. 1. *Billingham*, near Stockton.

p. 501. 1. *John Selden*. See above, p. 590, note 1 to p. 129. Probably the reference is to his *Privileges of the Baronage*, published in 1642.

— 2. *Spelman*. Probably the reference is to *Tenures by Knight Service*, written by Sir Henry Spelman (1564–1641), an historian and antiquary who founded a short-lived Anglo-Saxon Readership at Cambridge in 1635.

p. 505. 1. *Mancusas*. The mancus was money of account, equal to thirty pence.

— 2. *Husting*. House assembly, meeting of retainers. Hence it got the meaning as here of a formal meeting of the King and his courtiers, corresponding to the Anglo-Saxon Witan.

p. 509. 1. *Their folk-lands of an inferior degree*. Here the author is contrasting the lands held by custom or folk-right as opposed to the rights acquired by a boc or Royal grant. It is interesting to find that on pp. 693 ff. of Part II, *Proofs*, he so nearly anticipates the reasoned conclusions of modern scholars that Bocland need only be originally the right to receive the King's dues from the folk-land or odal-land of others whose own rights to their actual land are unaffected, so long as they pay dues to the holder of the Boc or Charter. However pestilence and war had done their work long before the Norman Conquest and most land was held from a mesne lord, often on oppressive conditions.

— 2. *Work-lands*. Lands held by service of week-work. In the Customs of

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