MY LORD AND GENTLEMEN,

APPOINTED to address a Society, distinguished, in its origin, by the rank and character of its noble Founder, and, in the first stage of its progress, by the respectability and talents of its numerous Members; whose high and meritorious purpose is, to extend more amply the advantages of Science and Literature to a remote, but rising portion of the Great Empire to which we belong, and the beneficial effects of its disinterested labours to future times, I am anxious to devote the period, in which I hope to be honored with your attention, to a subject which, corresponding with the views of your Institution, & involving matter interesting to Science, may, in some degree, be worthy of your notice.

Confining myself, therefore, to the more immediate object of the Society—Historical Research—I shall offer to your consideration an Essay upon the Juridical History of France, antecedent to the erection of the Sovereign Council of Quebec, in the year 1663; the Law, as it was then administered in France, in the Tribunals of the Vicomté of Paris, being, in fact, the Common Law of the division of Canada which we now inhabit(1).

The study of the Municipal Law of every country requires some previous knowledge of its rise and progress.—The obsolete principles of former ages are, most commonly, the foundations of what we possess; and, in many instances, the true object and intent of modern Institutions, can only be known by reference to the history of their origin and gradual improvement. And as I feel assured, that, to persons of liberal education, knowledge of the Law which constitutes the rule of their civil conduct, must at all times be desirable, I cannot but hope that what I am about to offer, upon the peculiar Municipal Law by which *we* are governed, (though,

(1) Edits et Ordonnances, vol. 1. p. 21.

I am conscious, it will be found imperfect,) will nevertheless be favorably received, as an attempt to elucidate a subject which, in Lower-Canada, cannot be thought to be uninteresting.

The conquest of Gaul by the Roman power—the entire subversion of the Roman Government by the Franks—the nearly total annihilation of the power of the Crown at the close of the eleventh century, and the subsequent re-establishment of that power, are the events which more immediately affected the Laws of France, and occasioned their successive mutations. To these events, therefore, and to the greater effects which they have respectively produced in her legal polity, our inquiries will at present be confined.

Of the state of Gaul before the Roman conquest, (which was effected under the immediate command of Cæsar, about fifty years before the birth of our Saviour,) but little can be said with any degree of certainty. The inhabitants were then governed by a few unwritten customs and usages, peculiar to themselves, barbarous in the extreme and not meriting the appellation of Laws. Their manners were simple, and produced but few causes of contention, and such controversies as arose, were decided by their Druids, who, as among the ancient Britons, were both Priests and Judges.(1)

A consequence of the Roman conquest was, the introduction of the Roman Law, and for five entire centuries, during which Gaul remained a Province of the Empire, her people were wholly governed by that system. (2) The Roman Law, however, of that day was not the Justinian Code, for that was compiled near a hundred years after the expulsion of the Romans.(3) It consisted of the several Constitutions of the preceding Emperors, and of the writings of certain Civilians.

* * The

(1) Cæsar de Bello Gal: Liber, 5 & 6.

(2) Histoire du Droit François, by l'Abbé Fleury, p. 9 & 10. Vide also, at the beginning of 1st vol. of Henry's, a learned Dissertation, by Bretonnier, which establishes this fact.

(3) Fleury, p. 10.

The Constitutions had been collected in three Codes—the Gregorian, Hermogenian, and Theodosian, but the latter, published by the Emperor Theodosius, confirmed and adopted the two former, and as the writings of the Civilians consisted of such only as were sanctioned by the Code of Theodosius, there is reason to believe that it was the Theodosian Code only which was called the Roman Law.(1)

The power of the Roman Empire, in Gaul, was totally annihilated about the year 450 of the Christian æra. Rome, weakened by the extent of her dominion, and yet more by the degeneracy of her citizens, debased in sentiments, depressed in talents and enervated in courage, (2) fell a sacrifice to the more hardy and enterprising Nations of the North, and the Government of all that extent of Territory, which has since been denominated France, was transferred to Barbarians—to the Franks and their associate Tribes—the Goths and Burgundians,(3) and from the accession of the first Chieftain of the Franks (Merovée,) France dates the origin of her Monarchy, divided into three Dynasties or races of Kings—The Merovingian—the Carlovingian—and the Capetian. The first comprehends Merovée and his descendants, who possessed the Throne from the year 450, to the year 770, when they were succeeded by Charles, the son of Pepin, afterwards called Charlesmagne, and his descendants, who constitute the Carlovingian race, in whose possession it remained until the year 987, when it passed to the Capetian race, who continued in possession, until the death of the late unfortunate Monarch, Louis the 16th, a descendant from Hugh Capet, the first of the Capetian dynasty.(4)

There was not among the Barbarians, by whom the Romans were expelled, any general Government, they were subject, in

(1) Fleury, p. 12.
(2) Gibbon's Decline & Fall, vol. 1st p. 94. 1st. L. C. Dénizart's Discours Préliminaire, p. 59.
(3) Esprit des Loix, Lib. 30, c. 6, vol. 2, p. 354.
(4) See the Histories of France by Duhaillan, Mezeray, &c.

in their own District, to the Chieftain who could do them the most good or the most injury, (1) and, when they conquered Gaul, they took possession of the country as a band of independent clans.(2) Their first object was to secure their new acquisitions, and with this view, the leaders distributed among the soldiery, the lands which they had conquered, with a condition of continued military service annexed to the Grant, an idea which appears to have been suggested by the peculiar situation in which they were placed, and to have been put in practice, as the best means of furnishing that immediate mutual assistance, which was indispensably necessary for the defence and preservation of their conquest. Large districts or parcels of land were accordingly allotted to the Chieftains and to the superior Officers, who were called Leuds (Lords or Seigneurs) (3) and their allotments, which were called feuda (fiefs or fees) were subdivided among the inferior officers and soldiers upon the general condition, that the possessor should do service faithfully, both at home and abroad to him, by whom they were given.(4) Every feudatory was, therefore, bound, when called upon, to defend his immediate superior, from whom he had received, and of whom he held, his estate: that superior to defend *his* superior, and so upwards to the Prince, while, on the other hand, the Prince and every Seigneur was equally bound to defend his vassals or dependants, who held their estates of him, so that the duty of the whole was severally and reciprocally to defend the conquest they had made together, and every part of it.(5) This singular Institution, which is now called the feudal system, by degrees became general in France, and, by the new division of property which it occasioned, with the peculiar maxims and manners to which it gave rise, gradually introduced a species of laws before unknown.

The

(1) Dalrymple's Essay on the Feudal System, p. 5.
(2) Ibid, p. 6.
(3) Dalrymple, p. 11. Loyseau des Seigneuries, §60 & 61, cap. 1.
(4) Loyseau des Seigneuries, cap. 1. §62 to 66.
(5) Wright on Tenures, p. 8.

The whole of France, however, was not so distributed, nor so holden—all was not seized by the conquerors, such of the ancient Inhabitants, as were allowed to remain in the country, kept their estates as they held them before; many, also, of the invaders, who were not yet attached to any particular chieftain, took possession of vacant Lands and enjoyed them in the same manner,(1) and there were some, even among the soldiery, who considering the portions which fell to their lot, as recompences due to their valour, and as settlements acquired by their own swords, took and retained possession of them in full property as freemen.(2) From these causes, there were many estates which were allodial, which the possessors enjoyed in their own right and did not hold of any superior Lord, to whom they were bound to do homage or perform service.(3) Every tenant of this description was called *liber homo* in contradistinction to "*vassalus*," or one who held of a superior,(4) yet they were not, by any means, exempt from the service of the state—they were subject to the command of the Dukes, or Governors of Provinces, and the Counts, or Governors of Towns, who were officers of the King's appointment; and the duty of personal service was considered so sacred, that they were prohibited from entering into holy orders, unless they had obtained the consent of the Sovereign. (5)

At their first incursions, the Barbarians, like the aborigines of Gaul, were governed by traditional customs. Their manners were uncivilized; war and hunting, were the only subjects of pursuit in estimation, and, as they had no fixed habitations, no other property than cattle, their common disputes arose either from personal quarrels or acts of depredation.

(1) Dalrymple, p. 10 & 11.
(2) Robertson's Charles V. vol. 1st. p. 214. Lefevre de la Planche Traité du Domaine, vol. 1st. p. 117 & seq.
(3) Robertson's ibid. vol. 1st p. 214.
(4) Robertson's ib. p. 216. Dalrymple, p. 10 & 11. Cust. of Paris, art. 182
(5) Capitular's Liber. 1st sec. 114.

dation. These were usually decided in public meetings of the people, held annually, at the close of winter, in general upon the information of witnesses, but in doubtful cases, by the ordeal of fire or water, or by combat. (1)

The polished minds of Romans, found nothing worthy of imitation in such conquerors—but the conquerors, savages as they were, perceived much in the Romans, which they could not but admire. They particularly viewed a written Code of laws as a novelty possessed of many advantages, and, not only permitted the Roman Jurisprudence to survive the destruction of the Roman Government, but, in imitation of what they approved, reduced their own usages to writing, particularly the Salique Law, which was the peculiar Law of the Franks, (2) The Theodosian Code, and the Laws, Customs and usages of the Barbarians, became, therefore, equally the Laws of France, (3) and as all Laws were held to be purely personal, and were not, for this reason, confined in their operation to any certain District, the Barbarian was tried by the Law of his tribe, the Roman by the Roman Code, the children followed the Law of their Father, the wife that of her husband, the widow came back to that to which she was originally subject, and the freedman was governed by the Law of his Patron. (4) Yet, notwithstanding these general provisions, every Individual was permitted to make election of the Law by which he chose to be governed, it was only required that he should make it publicly, and such elections were frequent. (5) The Clergy, in particular, who were chiefly Romans, considered the privilege of being governed by the Roman Law to be so valuable, that when any person entered into holy orders it was usual for him to renounce the Law to which he had been

(1) Fleury, p. 12 & 13.
(2) Fleury, p. 21.
(3) Esprit des Loix, Liber. 28, cap. 4, vol. 2 p. 240.
(4) Esprit des Loix, Liber. 28, cap. 2.
(5) Esprit des Loix, Liber. 28, cap. 2d. Fleury, p. 18.

been formerly subject, and to declare that he would, from henceforth, be governed by the Roman Code. (1) Many customs, also, peculiar to the victors, were continued after the conquest of Gaul. It had, particularly been their practice to meet in council, at the close of every winter, upon the state of their respective nations; and during the first and second Dynasties, several meetings of the Sovereign and of the Chiefs, in church and state, with the addition of the commons (from the reign of Charlemagne) were held, in the open air, annually in the month of March or May, and from thence denominated *champs de mars*, or *champs de mai*.(2)

In these Assemblies, Laws were passed for the government of the Kingdom at large, and Canons established for the regulation of the Church—Taxes were imposed—Regencies were appointed, and the Sovereign elected until the Crown became hereditary, and then, the Successor was proclaimed, if his right to the Throne was not controverted, and, if it was, it was solemnly determined.(3) The question on each subject of discussion was generally propounded by the King, who, when it had been fully debated, pronounced the definitive resolution. The result was then put into writing, the questions and resolutions which were passed upon them were reduced under distinct heads, called chapters, and to collections of several chapters was given the name of Capitulars.(4)

It is certain that a supreme jurisdiction over all persons, and all causes, was exercised by the Assemblies of the Champ de Mars, but the precise extent of that Jurisdiction, which was originally vested in the subordinate Courts of the Crown, or of the feudal Lords or Seigneurs, cannot now be determined.

(1) Robertson's Charles V. vol. 1st. p. 315.
(2) Fleury, p. 39.
(3) Encyclopedia Method. de Jurisp. verbo "Champ de Mars," vol. 1st. part 2d. p. 443, Robertson's Charles V. vol. 1st. p. 167.
(4) Fleury, p. 40.

mined.(1) It appears, however, from the learned researches of a modern writer,* to have been a fundamental principle of the French Monarchy, that every person who held a military command in chief, was, of right, entitled to a civil Jurisdiction over all whom he led to war.(2) Justice, therefore, was distributed by every feodal Seigneur to his vassals, within the limits of his Fief, whether he was a layman or an ecclesiastic, for he led them in person against the enemy, if he was a layman, and by his substitute (advocatus) if he happened to be an ecclesiastic,(3) and, upon the same principle, the *Liberi* or tenants of allodial estates who were led to war by the Dukes and Counts were subject to *their* jurisdiction.(4) The rule of decision, however, in every court was the general Law of the state, and the King, being the acknowledged head of the Government, in all matters, civil and military, all proceedings were in his name.(5)

The Dukes, the Counts and the Seigneurs, in their respective jurisdictions, originally decided causes in person, (6) but they, afterwards, entrusted this part of their duty to others. The officer who was appointed for the purpose by a Seigneur, was sometimes, called a *Seneschal*,† but, most commonly, a Bailiff which, in the language of those days, imported a guardian or protector of Justice, (7) and those who were named by the Dukes and Counts, were called

† Viscounts,

(1) Robertson's Charles V. 1st p. 304. *Montesquieu.

(2) Montesquieu, lib. 30, cap. 18—Répert. 8vo. vol. 25, p. 6. Loyseau des Seigneuries, cap. 1st sect. 72 and 73.

(3) Montesquieu, liber 30, cap. 17, vol. 2d. p. 377.

(4) Montesquieu, lib. 30 cap. Repert. vol. 6, p. 8—8vo. edit.

(5) Montesquieu, lib. 30. cap. 17.

(6) Dictionaire de Jurisprudence, vol. 3. p. 18. col. 1.

†The title of Senechal imported "an officer of the household"—Viscounts were said to be "quasi comitum vicem gerentes"—Prevosts "quasi præpositi jurediccndos—Viguieres "quasi vicarii comitum."—and Chastelans "quasi castrorum custodes."—Loyseau de l'abus de Justice des Villages p. 6. quod vide.

(7) Ency. Method. verbo "bailiff," vol, 1. p. 710. Dict. de Droit, verbo "bailiff." Loyseau de l'Abus de Justice des Villages, p. 6, and Loyseau des Offices, p. 1. & p. 319.

Viscounts, Prevosts, Viguiers and Chastelains.(1) But in all their Jurisdictions, an usage, which derived its origin from the forests of Germany, was continued. Neither the Dukes, the Counts nor the Seigneurs, nor any of their officers decided alone : They assembled in their courts a kind of assize composed of their vassals, to the number of twelve,(2) who were, principally, the officers of their respective courts, and by those persons (who as vassals were the equals of the parties whose causes were there tried and thence called Peers) the judgment was pronounced according to the opinion of the majority, unless there was an equal division of voices, when, in criminal cases, it was given for the accused, and, in cases of Inheritance, in favour of the Defendant, subject always to an appeal to arms, and an ultimate decision by judicial combat.(3)

The feudal system is well calculated for defence, but not for the support of order.—In theory it is founded in subordination, but in practice it has been found universally to have diminished the power of the Sovereign, while it increased that of the greater vassals. This was particularly the case in France, where the Seigneurs, at a very early period of the monarchy, began to usurp the rights which had, till then been deemed the distinctions of Royalty, and with such advantage, in consequence of the weakness of the Kings of the second race, and the anarchy into which the Kingdom was thrown by the depredations of the Hungarians and Normans(4), during the ninth and tenth centuries, that the very dependants of the Crown, the Dukes, the Counts, and even the inferior officers of the State, were induced, by their example, to adopt the same conduct ; they combined together, and, about the period at which Hugh Capet, the first of the third race, took

(1) Loyseau de l'Abus de Justice des Villages, p. 6.
(2) Montesquieu, book 30, cap. 18. vol. 2. p. 381 & 382.
(3) Montesquieu, Book 28, cap. 23, 24, 25, 26 & 27.
(4) Fleury, p. 47.

took possession of the Throne, were completely successful. They made hereditary, in their families, the lands, titles and offices, which, before, they had enjoyed for life only. They usurped the sovereignty of the soil, with civil and military authority over the inhabitants. They granted lands to their immediate tenants, who granted them over to others by sub-infeudation, and, although they professed to hold their Fiefs from the Crown, they were, in fact, independent. Strong in power, they exercised, in their several territories, every Royal prerogative.—They coined money—fixed the standard of weights and measures—granted safeguards—entertained a military force—imposed taxes—and administered justice in their own names, and in Courts of their own creation, which decided ultimately in all cases, civil and criminal, not according to the written Laws of the Kingdom, but according to the unwritten customs and usages of the District over which they respectively claimed and exercised Jurisdiction.(1)

By these usurpations of the Seigneurs, the foundations of the ancient laws of France were gradually undermined. But the demolition of this venerable fabrick was greatly promoted by the profound ignorance which pervaded the Kingdom during this period. Few persons, except ecclesiastics, could read, and, hence, the Theodosian Code—the Laws of the Barbarians, which had been reduced to writing, and the Capitulars sunk imperceptibly, but equally, into oblivion. The clergy also furthered its destruction by adopting, in their jurisdictions, the Canon Law which they had begun to compile early in the ninth century, and the Crown completed it by the publication of the ever-memorable Edict of *Pistes*, so called from the City of Pistes, where it was promulgated in the year 861, by Charles the Bald, one of the weakest of the weak descendants of Charlemagne. By this Edict, in the mistaken policy of conciliation, the unwritten usages of each

(1) Fleury, 51 & 52—Hargraves' Notes on Coke's Littleton, p 366, a.

Seigneurie were ratified and declared to be Law; a declaration which may be considered not only as the efficient cause of the final extinction of the ancient Law, but of the permanent establishment of that infinite variety of customs, which obtained in France until the late Revolution(1).

The authority of the Crown of France, at its ultimate point of depression, about the close of the tenth century, was merely nominal, the Royal Jurisdiction being confined to the Royal Domaine, which comprehended no more than four cities, in which the King was obeyed as feudal Lord, and not as Sovereign(2); on the other hand, the power of the Seigneurs at this epoch was enormous—their tyranny exorbitant.—The whole country was laid waste by the wars which they waged against each other, and their own vassals were reduced to an actual state of slavery, under the denomination of *serfs* and *hommes de poite,* or under the pretended rights of personal service and *corvé*, were treated as if, in fact, they had been reduced to that wretched condition(3). By this state of anarchy those who were yet in the possession of allodial property, were, in the first instance, induced to annex what they held to the Jurisdiction of some Fief, and to subject themselves to feudal services, for the immediate safety of their persons and the defence of their estates, and so generally was this the case that it gave rise to the maxim "*nulle terre sans Seigneur*," which at length, became the universal Law of France.(4) But as the Seigneurs could not, in every instance, protect their dependants against the Incursions of their neighbours, and as the feudal burthens were, in themselves, insufferable, many vassals abandoned their Lords, by degrees, and sought protection in walled towns where

(1) Montesquieu, Lib. 28. cap. 4. vol. 2d p. 243.
(2) Robertson's Charles V. vol. 1st. p. 366.
(3) Dictionnaire de Jurisprudence, vol. 3d. p. 16 and 17.
(4) Robertson's Charles V. vol. 1st. p. 223—Dict. de Jurisp. vol. 3, p: 16—Fleury, p. 61—Robertson ibid, p. 16.

where they united and entered into armed associations for mutual defence.(1)

These associations, which began during the reign of "Louis le Gros," about the year 1109, & were called "communes," could not long remain without some government; regulations, therefore were made, and usages adopted by each commune for the control of its subjects, and being asylums for all who where inclined to be peaceable, and barriers against the common enemy (the Seigneurs) the crown afforded them every assistance in its power—conceded to them the right of enacting Laws for their own internal Government and enfranchised the Inhabitants.(2)

The seigneurs plainly saw that the Institution of communes was adverse to their interest, yet they could not prevent the increase of such associations; they even found themselves compelled to have recourse to the same expedient to prevent their dependants from taking refuge in the royal cities which were incorporated: many of the towns, also, within their territories, were willing to purchase charters of liberty, and as most of the seigneurs had expended large sums in the holy wars, and were needy, they sold them as a means of present relief. From hence, in less than two centuries, most of the towns in France, from a state of dependence, became free corporations, and personal servitude was generally abolished.(3)

The effects of these establishments were very soon felt; they were found to afford a degree of security equal to that which was afforded by the seigneurs, who began to be of less importance when they ceased to be the protectors of the people. The *communes* themselves became attached to their sovereign, whom they considered as the author of their liberties, and they looked to the Crown as the common centre of union, necessary for the defence of the whole against their oppressors.

(1) Dict. de Jurisp. vol. 3d. p. 17.
(2) Dict. de Jurisp. vol. 3d p. 17. Réper. vol. 13. verbo "commune."
(3) Robertson's Charles V. vol. 1st. p. 33. 227 & 251.

oppressors.(1) On the other hand, the sovereign considered them as instruments which might, with great advantage, be employed to increase the Royal Prerogative. To this end, they endeavoured to raise them to importance, and, with consummate policy, called them to assist, by their Deputies, in the States General of the nation. Availing themselves, also, of their co-operation, under the idea of restraining the power of the seigneurs, they laboured in the great design of restoring to France her ancient limits, and to the Crown its original Jurisdiction. From time to time, as opportunities occurred, they reunited the dismembered Provinces to the Royal Domain, and reduced them to immediate dependence by conquest, by escheats and by treaties, (2) they abolished private warfare and judicial combats, and extended the administration of Justice, under the royal authority, to all persons, and to all causes,(3) by steps of which the most effectual shall be more particularly noticed.

Before, and during the reign of Charlemagne, Justices in Eyre of the royal appointment, under the title of "*Missi Dominici,*" visited, occasionally, the different Provinces, chiefly for the purpose of investigating the conduct of the Dukes and Counts in the several Jurisdictions, civil and criminal, which they exercised under the authority of the Crown, which was sometimes greater, and sometimes less, as the sovereign was more or less feared and respected.(4) Louis the VI. about the year 1125, attempted to revise the office of the "Missi Dominici," under the title of *Juges des Exempts*(5), but the seigneurs were in his time too powerful, and

(1) Robertson's Charles V. vol. 1st p. 31.

(2) This design was ultimately completed in 1735, by the re-union of the Provinces of Bar and Lorraine—Vide Abrégé Chronologique des grands Fiefs de la Couronne de France, Paris 1759, and Hargrave's Note on Coke and Littleton, 366 b.

(3) Loyseau des Seigneuries, cap. 5. sec. 63. Delolme, p. 17. Robertson's Charles V. vol. 1st. p. 36 & 56.

(4) Répert. 8vo vol. 40, p 180 verbo "Missi Dominici." Du Cange verbo « Dux,» « Comites,» et « Missi.»

(5) Reper. verbo «Missi Dominici,» vol. II. p. 573.

and he was obliged to abandon his intention.(1) His successors had recourse to expedients less alarming.—Among the first, certain cases in which the King was interested, or presumed to be interested, were declared to be "Pleas for the Crown," or "*Cas Royaux*" which, according to feudal principles, (he being the Lord paramount) could not be decided by the officer of his vassal, and were therefore cognizable in the Royal courts exclusively. To this distinction, the seigneurs of inferior note submitted, but it was scorned by the more powerful, who, relying upon their strength, continued to exercise Jurisdiction over all cases. The attempt, however, even with respect to the latter, was productive of benefit; it turned the attention of the vassals to courts distinct from those of their oppressors, and taught them to view the sovereign as a protector, and this facilitated the subsequent introduction of Appeals, by which the decisions of the seigneurial courts were brought under the review of the Royal Judges.(2) Of these the Appeal "*de défaut de droit,*" on account of the delay or refusal of Justice, was the first. The feudal law had provided that if a Seigneur had not as many vassals as enabled him to try, by their peers, the parties who pleaded in his Court, or if he delayed, or refused to proceed to trial, the cause might be carried by appeal to the Court of the superior Lord of whom the Seigneur held, and be there tried (3) The right of Jurisdiction had been usurped by many inconsiderable Seigneurs who were often unable to hold Courts, for want of Officers and Vassals, and while trials by battle continued in use, there were times, and cases, even in the Courts of the greater Seigneurs, in which it was difficult to assemble the Peers, by reason of the danger to which they were exposed, by their being liable to appeals, by either party,

(1) Hénault's Abrégé Chronologique, tome 2d p. 730.
(2) Robertson's Charles V. vol. 1st. p. 60, 61.
(3) Beaumanoir, cap. 62, p. 322. Esprit des Loix, Lib. 28, cap. 28.

party, on account of false judgments, which necessarily led to the hazard of a personal combat, if they maintained their opinion.(1) In all such cases Justice was delayed, and there were, therefore, frequent occasions for appeals of this description, from whence the practice became familiar, and served as an introductiou to appeals on account of the "injustice" or "iniquity" of the sentence, which followed, and gradually increased, as the trial by combat declined, for that mode of trial being, in fact, an appeal to the Deity, and the issue of the battle, held to be a decision by his immediate interference, was incompatible with a new judgment of any kind.(2)

To facilitate Appeals, and the recourse of the subject to the Royal authority, Judges, under the title of "*Grand Baillis*," were appointed in all the cities of the Royal Domaine, with an Appellate Jurisdiction over all causes, civil and criminal, heard in the Seigneurial and in the Royal (but inferior) Courts of Prevôté(3), which was final, except in certain cases of importance, which they were required to transmit to the King, to be decided by himself in his Council, where they were ultimately determined.(4) The number of these Jurisdictions, at their first creation, was inconsiderable, but in the reign of Philip Augustus, about the year 1190, they were numerous.(5)

A regulation of greater importance succeeded the institution of the Grand Baillis. The King's Supreme Court of Justice, or Council, in which he presided, which, as in all other feudal Kingdoms, was originally ambulatory, following the person of the Monarch, and held only upon some of the

(1) Montesquieu, Lib. 28, cap. 27, vol. 2d. p. 282 & seq. Robertson's Charles V. vol. 1st. p. 306.

(2) Robertson's Charles V. vol. 1st. p. 61.

(3) Dict. de Jurisp. vol. 3. p. 18. Dict. de Droit, verbo "Baillis," vol. 1, p. 166, col. 2d.

(4) Ency. Method. de Jurisp. verbo "Baillis," vol. 1st. p. 710.

(5) Dictr. de Jurisp. vol. 3d, p. 18. Fontanon, Lib. 1st. Tit. 1st. p. 179. Dictr. de Droit, vol. 1. p. 168.

the great festivals, was rendered sedentary at Paris, and appointed to be kept open the greater part of the year, under the appellation of the "*Parlement de Paris.*" This was effected by an Ordinance of Philip le Bel, passed in the year 1302, and emphatically entitled "*Ordonnance pour le bien, l'utilité, et la réformation du Royaume.*"(1)

This Ordinance erected, also, a Sovereign Court of Assize, at the City of Troyes, in Champagne, under the title of "Grand Jours," re-established the Parliament of Thoulouse, a Court before held under the authority of the Counts of that Province, and confirmed a Court of Exchequer at Rouen, which had subsisted since the re-union of that City to the Crown of France, in the year 1200, and was originally created by the Court of the Peers of France, by which John, King of England, was, by default, convicted, as a vassal of France, of the murder of his nephew Arthur.(2) Other Sovereign Courts of Parliament, making in all thirteen (*a*), were afterwards erected in the several Provinces of the Empire.(3)

To the several Royal Courts, when established, the people were invited to have recourse for redress, by every means which policy could devise. The Monarchs named Judges of abilities and legal acquirements—they added dignity to their character, and splendor to the administration of their office. To the Parliaments, which were the most respectable, and to the presidial Courts, which were established for their assistance, they granted the right of deciding, ultimately, in Appeal; and to the Baillis, whose judgments thus became liable to reversion, an original Jurisdiction which, before, they did not possess.(4) They appointed a number of Counsel-

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(1) Conférence des Ordonnances, by Bouchel, p. 137.

(2) Dictr. de Jurispr. vol. 3. p. 21 & 22. Ord. de Louvre, Tom. 1, p. 366.

(*a*) Paris, Thoulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix, Rennes, Pau, Mely, Besançon, Douai, Nancy.—See Répert. vol 11. p. 296, verbo "Parlement," and Dictr. de Droit, verbo Parlement.

(3) Répertoire, 8vo. vol. 11. p. 296.

(4) Dictr. de Droit, verbo Baillis.

lors or Members in each Parliament to assist the President,(1) and, in imitation of the Seigneurial Courts and those of the Dukes and Counts, in which the suitors had been accustomed to the trial by peers, they required the Baillis to summon to their assistance, a certain number of discreet persons (*prodes homines,*) and to decide according to their counsel and advice.(2) The people also were permitted, in the dialect of the times, "*de veignir à la Cort du Roi, par ressort, par appel, ou par defaute de Droit, ou par faux Jugement, ou par recréance nie, ou par Grief, ou par veer le droit de sa Cort,*"(3) and, under the sanction of this authority, the Royal Judges took advantage of every defect in the rights of the Seigneurs, and of every error in their proceedings, they brought before them, in their respective Jurisdictions, all causes which it was possible for them to remove, and held cognizance over all which it was possible for them to retain, at the same time, they laboured to render the practice of their Courts regular, and their judgments consistent, by which means they ultimately obtained the confidence of the people, and were generally respected. Suitors then began to abandon the Seigneurial Courts, (in which the will of the feudal Lord was, but too frequently, the Law by which the case of his vassal was decided,) and took refuge in the more discerning and more equitable Tribunals of the Crown.(4) The King was again universally recognised to be the source of Justice, and the Seigneurs were deprived of every Jurisdiction to which they could not shew title, derived by grant from the Crown.(5)

The ecclesiastics, who, in the reign of Charlemagne, were altogether subject to the temporal power(6), had, in common

(1) Répertoire, verbo "Parlement," vol. 44, p. 294.
(2) Montesquieu, Liber. 27, cap. 42, vol. 2. p. 320.
(3) Etablissemens de St. Louis, cap. 15, lib. 2. Ordonnances des Rois de France, de l'Imprimerie Royale, Tom. 1. p. 107. Dict. de Jurispr. vol. 3d. p. 21.
(4) Robertson's Charles V. vol. 1st. p. 309.
(5) Bacquet's Droit de Justice, vol. 1st. p. 9 & 10.
(6) Loyseau des Seigneuries, chap. 15, sec. 29 to 39.

mon with the Seigneurs, taken advantage of the disorders which prevailed, and of the superstition of the age, not only to enlarge their own peculiar Jurisdictions, but to shake off, entirely, their subjection to all authority, except that of the Church. They had, in fact, so multiplied their pretexts for extending the Jurisdiction of the Spiritual Courts, that it was, ultimately, in their power to withdraw almost every person, and every cause, from the cognizance of the Civil Magistrate.(1) They claimed and exercised, as their exclusive privilege, the right of deciding all civil causes, in which any of their body was a party, or was, in any manner, interested, and all criminal prosecutions, in which the defendant either was, or asserted himself to be, a Clerk ; in causes where none but laymen were concerned, they claimed and exercised a similar privilege for various extraordinary reasons—in matters of contract, because contracts were then usually enforced by the oath of the parties—in all testamentary cases, because the deceased having left his body to the Church for Sepulture, the execution of his Will, by the Church, was a necessary consequence, inasmuch as it concerned the repose of his soul(2)—in all matrimonial cases, because marriage was a Sacrament—and in all cases in which a widow or an orphan was a party, because it was the duty of the Church to protect such characters. In other cases the same privilege was claimed for reasons which were not less extraordinary. If an individual resisted their authority, he was excommunicated, and upon his submission, a pecuniary fine was imposed for reconciliation with the Church, which the temporal Judge, in whose Jurisdiction he resided, was required to enforce by his authority, under pain of personal excommunication, and the interdiction of the whole District over which he presided, in case of disobedience.(3)

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The

(1) Robertson's Charles V. vol. 1st. p. 112. Fleury's Institut. du Droit Canon, vol. 2. p. 8. Hericourt, part 1st. p. 120.

(2) Loyseau des Seigneuries.

(3) Fleury's Institut. du Droit Canon. vol. 2. p. 9 & 10.

The first attempt, by the King's Courts, to reduce the exorbitant pretensions of the Clergy, was the appeal "*de Deni de Justice,*"(1) which was similar to the appeal "*de Défaut de Droit.*" This was daily extended, by construction, to a great variety of cases, and was followed by the "*Appel comme d'abus,*" which, in the nature of a prohibition, suspended all proceedings, and was allowed, at any stage of a cause,(2) to all who complained, that the Judge of the Spiritual Court had exceeded his authority by any proceedings, contrary to the Canons of the Church, *recognized in France,* or to the Law of the Land in any respect.(3) This remedy was in practice long before the year 1539, but in that year it was formally declared to be the Law of France, by an Ordinance of Francis the First "*pour la réformation et abrévia-*" *tion des Procès.*"(4) By this Ordinance the Ecclesiastical Judges were also forbid to cite before them any of the King's lay subjects, in any matter whatever, except those which were strictly Spiritual, and the King's lay subjects were forbid to institute any suit, of a temporal nature, before any Court of Ecclesiastical Jurisdiction.(5)

Thus the Crown of France, by persevering in one great plan, with indefatigable exertion, and continued prudence, suspending its attempts when the conduct of the Clergy, or any formidable conspiracy of the greater Seigneurs, required it; and resuming them when they were feeble or remiss, became once more the Fountain of Justice. That part of its original Jurisdiction, over causes and persons, which the Clergy and the Seigneurs had usurped, was regained, and the entire proceedings of the Seigneurial and Ecclesiastical Judges, in all causes, civil and criminal, spiritual and temporal, which were

(1) Dict. de Jurisprudence, vol. 1st. p. 292.
(2) L. C. Dénizart's Preliminary Discourse to vol. 1st. p. 73.
(3) Fleury's Institut. du Droit Canon. vol. 2d. p. 12.
(4) Dictionnaire de Jurisprudence, vol. 1st. p. 297. Traité de l'Abus, vol. 1st. cap. 2. p. 11. ed. of 1778.
(5) Ordonnances de Neron, vol. 1st. p. 162. Loyseau des Seigneuries, cap. 15. sec. 75, 76 & 77.

were legally subject to their inquiry, were brought before the review and control of the Sovereign, through the medium of his Courts.

Upon the re-establishment of the Royal authority, the local customs of France were so numerous and so various, that there were not two Seigneuries, throughout the whole Kingdom, entirely governed by the same Law.(1) Some of the causes of this amazing diversity have been traced in the different usages of the Barbarians, which were introduced by the original conquest of Gaul---in that peculiar principle of their Jurisprudence, which permitted each individual to make choice of the Law by which he thought proper to be governed, and the consequent existence, not only of the customs of each particular tribe, but of the Theodosian Code, especially among the Clergy—in the introduction of the feudal system, and the distinctions which it created between feudal and allodial property—in judicial combats which were necessarily introductive of new usages created by their several and various issues—in the usurpations of the Seigneurs, the means which they, severally, adopted to support them, and the independent administration of Justice within the limits of their respective Jurisdictions—in the Ordinances enacted by the Sovereign for the government of the Royal Domaine—in the establishment of Communes and their bye-laws—and in the compilation of the Canon Law, and its general application to all questions decided by Ecclesiastics. But to these causes must be added the discovery of the Justinian Code, which was brought from Italy into France about the middle of the twelfth century,(2) and soon affected her Jurisprudence in various gradations :—In some of the Provinces it was entirely adopted and confirmed, and declared, by the Royal authority, to be exclusively their Common or Municipal Law. In others it was received as subsidiary to their own

(1) Montesquieu, Lib. 28, cap. 45.
(2) Idem, Lib. 28, cap. 42. Robertson's Charles V. vol. 1st. p. 316.

own local customs, as a rule of decision in cases for which they had not provided ; but in the greater number it mingled imperceptibly with their usages, and had a powerful though less sensible influence.

To the revival of the Roman Law must, also be attributed the decline of the Trial by Peers and by the *prodes homines.* The duties of both were, originally, similar and required neither capacity nor study. They decided upon the usage and custom of the people and place to which they belonged, and a knowledge of these was all which it was necessary for them to possess. But when the Institutes and digest of Justinian were translated and publicly taught, the proceedings in the different Tribunals were materially changed, Learning among the laity was totally unknown—but the clergy having some information, and being in possession of all the offices in the different Courts, eagerly adopted the practice of the Roman Law. A new form of Trial was thus introduced, which was no longer an exhibition of state, grateful to the Seigneur and interesting to a warlike people, but a dry course of pleading which they neither understood nor cared to learn, and upon which the Judge was soon left to give judgment alone, for the Peers and the "*prodes homines,*" being no longer capable of deciding, withdrew by degrees, and were succeeded by Lawyers, who were appointed to assist the Judges with their advice, under the title of *Assessors.*(1)

The Royal Judges, upon their re-establishment, were greatly embarrassed by the different local customs to which, in the administration of Justice, they were compelled to have recourse, and upon which, by the secession of the Peers and *prodes homines*, they found themselves obliged to decide in person. It was impossible for them to have a knowledge of the usages of each particular Seigneurie, and, therefore, in all cases in which any question arose respecting the existence of a custom, or of the practice which had obtained under a

(1) Montesquieu, Book 28, cap. 42, vol. 2d. p. 319 & 320.

particular custom, there was an absolute necessity for a recourse to parole testimony, by which means all questions of Law became mere questions of fact, in which he who held the affirmative was required to prove what he asserted, by the production of ten witnesses at least.(1)

In such an enquiry, which was called an "*Enquète per turbes,*" so much depended upon the influence and industry of the suitors, and upon the experience and integrity of the witnesses, that it was, at all times, difficult to come to the truth, especially when evidence was adduced by both parties; in such cases equal proof was sometimes made of two customs, in direct opposition to each other, in the same place, and upon the same fact.(2)

The reduction of the whole to writing was pointed out, by reference to the Roman Law, as an effectual remedy for these evils, and was adopted. At first the usages of certain Bailiwicks were collected by individuals:—Pierre Desfontaines (the earliest writer on the Law of France,) published his "*Conseil,*" which contains an account of the customs of the country of Vermandois, and Beaumanoir, the "*Coustumes de Beauvoisis,*" during the reign of St. Louis, which began in the year 1226.(3) These works were followed by others of the same description,(4) and by one of a public nature, "*Les établissemens de St. Louis,*" which contained a large collection of the Law and customs which prevailed within the Royal Domaines, and was published by the authority of that Monarch.(5)

The compilations of individuals could have no weight in the King's Courts, except what they derived from the truth and notoriety of the subjects upon which they wrote; yet it cannot

(1) Fleury's Hist. du Droit François, p. 85, Ferrière's gd. Com. vol. 1st. p. 5, sec. 2, art. 1.
(2) Fleury's Histoire du Droit François, p. 85.
(3) Robertson's Charles V. vol. 1st. p. 317.
(4) Montesquieu, Lib. 28. ch. 45. vol. 2d. p. 324.
(5) Dictionnaire de Jurisprudence, vol. 3.

cannot be doubted that they contributed greatly to those redaction of the customs which were afterwards made under the sanction of the Sovereign. In 1302, Philip the IV. directed the most intelligent inhabitants of each bailiwick to be assembled for the purpose of informing his Courts of the customs which had been observed in their respective Jurisdictions, and required his Judges to register and observe those which should be worthy of approbation, and to reject all which should be found unreasonable, and this command was carried into execution in several parts of the Kingdom.(1)

Charles the VII. conceived the idea of digesting the several customs into one general code for all France, and to this end, by the 125th article of the ordinance of 1453, (2) usually called the ordinance of *Montils le Tour*, he directed the several customs and usages of each Jurisdiction to be written, but nothing further was done, until the year 1495, when the custom of Ponthieu was reduced to writing under Charles the eighth. His successor, Louis XI, is represented, by the Historian, Philip de Commines, and by Dumoulin, to have been very desirous of having "*one custom, one weight, and one measure, throughout his Kingdom, and that every Law should be fairly enregistered in the French language;*" (3) yet it does not appear that any of the customs were compiled during his administration of the Government, but in the reigns of the succeeding monarchs, particularly Louis XII, Francis the I, and Henry the II, many were finished, and the whole, comprehending sixty collections of general customs, in force in the several Provinces, and about three hundred local customs, in force in the different Cities and Bailiwicks of the Kingdom, were completed under Charles the IX, after the expiration of the century from the commencement of the design.(4)

In

(1) Dénizart, vol. 1. p. 575, 9th edit.
(2) Ordonnances de Neron, vol. 1st. p. 43.
(3) Dictionnaire de Jurispr. vol. 3d. p. 47. Fleury, p. 68.
(4) Fleury's Hist. du Droit François, p. 69. Reper. verbo « Coutumes, » vol. 16, p. 390.

In the execution of the edict of Charles VII, the States General of each Province, consisting of the deputies of the nobles, the ecclesiastics and the representatives of the commons, were convoked by the royal letters patent, issued for that purpose. By them, when assembled, an order was directed to all the Judges and other Royal Law Officers of the Province, requiring them to transmit to the States General, reports of all the customs and usages practised in their respective Jurisdictions, from time immemorial. These reports were referred to a special committee of the States General, by whom they were reduced to abstract maxims, arranged in order, and so returned to the States General by whom they were examined, confronted with the original reports, discussed and accepted or rejected.(1) Those which were accepted, being confirmed by the King, enregistered and published in the sovereign Court of the Jurisdiction to which they related,(2) became the Law of that Jurisdiction, binding upon its inhabitants, but in no way affecting the rights or prerogatives of the Crown,(3) and subject, at all times, to any alteration which the King might think proper to make by a royal ordinance.(4)

The redaction of the Custom of Paris was among the first. In 1510, Louis the XII. published a general edict, in which, after reciting, that a fixed rule in the administration of Justice was absolutely necessary for the happiness of a state, & that no Government could exist without it; and declaring himself to be well acquainted with the great vexations, de-

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(1) Fleury's Hist. du Droit François, p. 70.

(2) Loyseau des Seigneuries, ch. 3. sec. 11. Ferrière, pet. Com. v. 1 p. 5.

(3) Bacquet Droit de Justice, ch. 10, No. 8. Droit d'Aubaine, ch. 29, no. 2. Droits de Francs Fiefs, ch. 11. No. 5. Som. Seule.— Brodeau sur Paris—Tronçon sur Paris, art. 75.—Galland, Traité de Franc aleu, ch. 8—Ferrière gd. Com. v. 1, p. 9, sec. 10—D'Aguesseau, vol. 7. p. 302 & 363, & vol. 8, p. 152, & 153. Case of Rex and the Duke and Dutchess de Vanquinon, decided 5th August, 1762, and reported in Ferrière, D. D. verbo "Coutumes," vol. 1, p. 434, edit. of 1771 & in the Dict. des Domaines, vol. 2. p. 479.

(4) Brodeau sur Loüet, letter D. ch. 25—Ferrière, D. D. vol. 1st. p. 542, verbo "Droits Coutumiers."

lays and expenses to which his subjects had been, and yet were obliged to submit, in consequence of the confusion, obscurity and uncertainty which pervaded the customs of the different Provinces and Bailiwicks of his Kingdom ; he commanded the whole to be collected in the manner directed by his predecessor, Charles the VII.(1) and by a royal commission of the same date, Thibault Baillet, President, François de Morvillier, Counsellor, and Roger Barme, Attorney-General in the Parliament of Paris, were authorized to call together the Counts, Barons, Chastelans, Seigneurs, Prelates, Abbots, Chapters, King's Officers, Advocates and Attornies of the city, prevoté and vicomté of Paris, with a certain number of respectable citizens, and to lay before them the Custom of Paris, as it had then been reduced to writing, in an assembly of the three estates, (which had been previously held for that purpose,) for such alterations as this new assembly of officers and citizens, upon discussion, should find requisite.(2) This was, accordingly, done, and some changes were made ; and His Majesty having declared, in the edict above mentioned, that he sanctioned and approved whatever his commissioners and the three estates of any Province should, mutually, agree and certify to be the customs of that Province,(3) the whole, as it then stood, was enregistered and published in the Parliament and Chatelet of Paris, as the edict required, and, thereupon, became the Law of the Prevoté and Vicomté of Paris.(4) In this state it remained until the year 1580, when, in an assembly of the three estates, in which the celebrated Christopher De Thou, first President of the Parliament of Paris, by virtue of Letters Patent, issued for that purpose by Henry the

(1) Intr. to Ferrière, gd. Com. vol. 1. p. 51.
(2) Intr. to Ferrière, gd. Com. vol. 1. p. 33.
(3) Ibid. gd. Com. vol. 1st. p. 52,
(4) Vide Edict of 1510, in Introduction to Ferrière, grand Comment. vol. 1. p. 52, and the conclusion of the Procès Verbal of the Redaction of the Custom of Paris, ibid. p. 50.

the III. presided, it was reformed and amended, with all the formalities which were used at the original redaction ; but it received no improvement or alteration of any kind after that period, and the several articles, as they were then corrected, continue, to this day, to be the text of the Custom of Paris.

Various attempts were made by succeeding Monarchs, particularly Francis the I, Henry the IV. and Louis the XIV to renew the great design of Charles the VII. for the Government of France by one general and uniform code of Laws, but never with success.—The customs were too deeply rooted in the pride and prejudices of the inhabitants of the districts in which they obtained, to be eradicated, and they prevailed, though the evils arising from such a discordant mass of Laws were most sensibly felt and frequently deplored ;—" Our numerous customs," says an animated writer on the *Law* of France, " obscure and susceptible of any interpretation, " form a vast and eternal Labyrinth, in which the peace, " the happiness, the lives and fortunes of our citizens, the " very character and honor of Jurisprudence, are lost for " ever."(1)

The supreme legislative authority was, originally, vested in the assemblies of the Champ de Mars,(2), and, by them, it was exercised until the year 921, when the last of the capitulars was enacted, under Charles the simple.(3)

During the disorders which followed, the Sovereign and the great Vassals were influenced by motives, which, though extremely different, produced the same effect in the conduct of both, and equally prevented all acts of general Legislation. The weakness of the crown compelled the King carefully to abstain from every attempt to render a Law general throughout the Kingdom ; such a step would have alarmed

(1) Prost. de Royer, Dictr. de Jurisp. vol. 3. p. 37. Vide also the Preamble to the Ordinance of 1731.

(2) Robertson's Charles V. vol. 1. p. 166.

(3) Robertson, ibid, vol. 1. p. 367.

the Seigneurs—have been considered as an encroachment upon the independence of their Jurisdictions, and have led to consequences which might have proved fatal to the little remains of power which he yet retained. On the other hand, the Seigneurs as carefully avoided the enacting of general Laws, because the execution of them must have vested in the King, and must have enlarged that paramount power which was the object of all their fears. The general assemblies, or States General of the nation, thus lost or voluntarily relinquished their legislative authority, which, abandoned by them, was assumed by the Crown.(1)

The first of the royal ordinances, which can be taken for an act of Legislation, extending to the whole Kingdom, was published in the year 1190, by Philip Augustus, and is entitled "*Edit touchant la mouvance des Fiefs, entre divers Héritiers.*"(2) Previous to this period they contained regulations, whose authority did not extend beyond the limits of the royal domain, so that no addition whatever was made to the statute Law of France, during the long period of 269 years, which elapsed between the date of the last capitular, in the year 921, and the publication of this edict.(3)

The first acts of general legislation were published by the Kings of France with great reserve and precaution. They assembled a Council, composed of the great officers of the Crown, and of certain of the Bishops and Seigneurs, which is generally supposed to have been no other than the King's Council of that day, the Court of the Palace, which was afterwards made sedentary and called the Parliament of Paris.(4) With them they deliberated—with their advice and consent they legislated, and by them the ordinances were signed, as well as by the Sovereign himself.(5) But, in a later period

(1) Robertson's Charles V. vol. 1. p. 167 and 168.
(2) Conférence de Guenois Chronologique, p. 2.
(3) Robertson's Charles V. vol. 1. p. 368 and 167.
(4) Maximes de Droit Publique Françoise, vol. 4. p. 186.
(5) Miraumont des Jurisdictions de l'enclos de Palais p. 61.—Coquille, Instit. du Droit François, cap. 1.—Maximes du Droit Pub. Françoises, vol. 4. p. 184.

period, and by succeeding monarchs, these were considered as unnecessary formalities, and rejected. They, then, enacted laws in their own names, and alone—the style of persuasion, which was used in the earlier edicts, was changed for the imperative declaration of an absolute Legislator, "*voulons*, "*commandons et ordonnons, car tel est notre plaisir*," and for the deliberative voice of the council, was substituted the practice of verifying and enregistering the royal ordinances in the Parliaments or Sovereign Courts of those Jurisdictions to which the King thought proper to extend them; a practice which was continued, without deviation, until it became a fundamental maxim in French Jurisprudence, recognised, equally, by the Prince and by the People, that no Law could be published in any other manner, and that no ordinance could have any effect, or bind the inhabitants of any particular Jurisdiction, before it was verified and enregistered, by the King's order, in the Sovereign tribunal of that Jurisdiction.(1) Under the sanction of this maxim, the Parliaments of France, at various times, refused to verify and enregister particular ordinances which they conceived to be oppressive to the subject, or subversive of the constitution, with a spirit and constancy which reflected the highest honor on their members, but bore no proportion to the power which they opposed.—In some instances of their opposition, the King voluntarily abandoned the obnoxious Law; in others, the Parliament, on their part, thought it most prudent to submit, and obeyed the royal commands, contenting themselves with an entry, purporting that the enregistry was made by compulsion, "*ex iterativo et expresso mandato Regis.*"(2) But, whenever instances have occurred in which the

(1) Rocheflavin des Parlemens de France, liv. 13, cap. 17. No. 3. p. 702 Papon, troisième Note, tit. de la clause "car ainsi nous plait," p. 334 and 336—Pasquier, Recherches de la France, lib. cap. 4.—Loyseau des Seigneuries, cap. 3. no. 11.—Des Offices, lib. 4, cap. 5. No. 67.—Coquille Inst. au Droit François, cap. 1st.—Henrcourt, Loix Ecclesiastique, p. 108. cap. 16, sec. 10.—Maximes du Droit Public François, vol. 4. p. 57.

(2) Maximes du Droit Public François, vol. 4. p. 240 & se. 1 q.

the Parliaments have inflexibly refused to enregister an ordinance which the King had determined to carry into execution, the plenitude of the royal power has afforded a remedy for their refusal. Upon such occasions, the King repaired, in person, to the Parliament and held a "*lit de Justice.*" He took possession of that seat, which he was *supposed* at all times to occupy, and commanded the ordinance to be read, verified and registered in his presence—for, being the Sovereign, and personally present, the Parliament was held then to have no authority, according to the principle, *adveniente principe, cessat Magistratus*, a principle which the constitution of France seems to have recognized, and which most effectually defeated every effort of her Parliaments to limit and control the Crown, in the exercise of a supreme legislative authority.(1)

"*Ordonnance*" is a generic term, comprehending, *in its most extensive* application, every rule of conduct prescribed by the Sovereign to his subjects *in person*, as the Royal Edicts, Declarations, and *Arrèts du Roi en son Conseil*, or *by his authority*, as the bye-laws of corporations and the Arrèts of his superior or Sovereign Courts.(2)

In a narrower sense, it signifies all laws which emanate from the King directly, and those only ;(3) but, in its most limited import, it is confined to such general laws as are enacted by the Sovereign in person, and are rather codes of regulations respecting one or more branches of Jurisprudence, than provisions for particular objects, and this is its proper signification.(4)

In this sense the ordinance of John the I. of March 1356; (5) one of Charles the VII. of July 1438, usually called the pragmatic

(1) Rocheflavin, p. 928 & 929—Pasquier's Recherches, vol. 2. p. 576, 577, and 1st. p. 61—Répert. "Lit de Justice," vol. 36. p. 529.
(2) Bornier's Preface, p. 2. Couchot, prat. Univ. vol. 1st. p. 4.
(3) Couchot, prat. Univ. vol. 1. p. 4.
(4) Bornier's Preface. p. 3. Hericourt, Loix Ecclésiastique, cap. 16, sec. 5, p. 108.
(5) Neron, vol. 1. p. 2.

pragmatic sanction ;(1) another of Charles VII. of October 1446 ;(2) another of the same monarch, of April 1453, usually called the ordinance of *Montil les Tours*.(3) The ordinance of Louis the XII. of March 1498 ;(4) that of Francis the I. of October 1535, commonly called the ordinance of *Ys sur Tille* ;(5) another of the same monarch of June 1536, usually called the edict of Cremieux ;(6) another of the same monarch, of the month of August 1539, commonly called the ordinance of *Villars Cotterets* ;(7) one of Charles the IX. of January 1560, commonly called the ordinance of Orleans ;(8) another of the same Monarch of January 1563, commonly called the ordinance of Ronsillon ; (9) another of the same Monarch, of February 1566, commonly called the ordinance of Moulins ;(10) one of Henry the III. of May 1579, commonly called the ordinance of Blois.(11) The celebrated edict of April 1598, commonly called the edict of Nantes,(12) and that of Louis the XIII. of January 1629, better known by the names of Code Michaud and code Marillac,(13) are the principal ordinance enacted before the erection of the Sovereign Council of Quebec.(14)

The ordinance of January 1629, which is one of the most extensive and best digested, was enregistered in a "*Lit de Justice*," held in the Parliament of Paris, on the 15th January, 1629. It was compiled by Michel de Marillac, then keeper

(1) Guenois' Chronologie, p. 7.
(2) Neron, vol. 1. p. 17.
(3) Neron, vol. 1. p. 21.
(4) Neron, vol. 1. p. 56.
(5) Neron, vol. 1. p. 93.
(6) Neron, vol. 1. p. 152.
(7) Neron, vol. 1. p. 158.
(8) Neron, vol. 1. p. 368.
(9) Neron, vol. 1. p. 421.
(10) Neron, vol. 1. p. 444.
(11) Neron, vol. 1. p. 508.
(12) Neron, vol. 2. p. 921.
(13) Neron, vol. 1. p. 782.—Répertoire verbo "Code Michaud."
(14) Vide Dictr. de Jurispr. vol. 3. p. 30—Repert. verbo "Ordonnance," vol. 43, p. 470—Dénizart, verbo "Ordonnance."

keeper of the seals, by order of Cardinal De Richelieu, and was, at first, received with great approbation, which it well merits. But on the death of the Marechal de Marillac, who was brought to the scaffold by the Cardinal, the seals were taken from his brother, Michel, who was imprisoned, and died of a broken heart in the Castle of Chateaudrin in 1632.

The disgrace of Michel de Marillac affected the credit of the Ordinance of which he was known to be the author. It fell into general disrepute, and, certainly, for a period, was not cited in the Parliament of Paris. There were, however, even during that period, some Jurisdictions which continued to receive it, and in which it was quoted and admitted to be Law, particularly the Parliament of Dijon, and by some writers it is asserted, that it was finally received as such in all.(1) But by others this is denied, and the Ordinance is, by them, said to have become obsolete. *Non mihi licet tantas componere Lites.*

Much of the Ecclesiastical Law of France, as it stood at the erection of the Sovereign Council of Quebec, is contained in the Ordinances which have been enumerated.—They relate, in general, to the Government of the Church as well as of the State, and to the Jurisprudence and practice of Courts, Ecclesiastical as well as Civil. There are, however, others which wholly concern the Church, some enacted upon the representations of the States General—some upon the representations of the Clergy—and some upon the mere motion of the Sovereign.(2) But the principal Ordinance, on this head, is that of Charles the Seventh, of July 1438,(3) called the Pragmatic Sanction.

During the schism of Avignon, when, from the year 1378 to

(1) Journ. d. Aud. vol. 4. p. 486—Dietr. de Jurisp. vol 3. p. 44—Dénizart, verbo "Pareatis," No. 25—L. C. Dénizart, vol. 4. p. 586, case of the Princess of Carignant, an. 1748—L. C. Dénizart, vol. 9, p. 761—Répertoire, 8vo. vol. 11. p. 431 to 434—Encyclopedia Méthodique de Jurisprudence, vol. 2. p. 692—L. C. Dénizart, vol. 1. p, 184, sec. 4. no. 3.

(2) Hericourt, Loix Ecclesiastique, introduction, p. 12 & 13.

(3) Guenois' Chronologie, p. 7.

to the year 1417,(1) the Christian world saw, with astonishment and disgust, two co-existent Popes, each claiming an equal right to the Papal Throne, and supporting their respective pretensions by the full exercise of the papal power, the Gallican Church rejected all foreign authority, and governed herself, principally, by those parts of the Canon Law which had been observed previous to the publication of the new Decretals. In the great Assembly of the Church, which was afterwards held at Constance, in the year 1414,(2) the superiority of the Œcumenick Councils over the Pope was acknowledged and formally declared, and, in consequence of this declaration, and of an agreement which took place between the Council held at Basle in the year 1437, and the Sovereign and States General of France convened at Bourges, in the same year, the Pragmatic Sanction was enacted.(3) But as this Edict materially affected the Papal Jurisdiction, it necessarily created many differences between the Courts of France and Rome, which, becoming subjects of negotiation, were terminated in the year 1516,(4) by the Concordat, a treaty concluded between Francis the First and Pope Leo the Tenth, at Boulogne, and enregistered in the Parliament of Paris, but enregistered in opposition to the opinion of that respectable body, and in their own expression "*du très exprès commandement du Roi, réitéré plusieurs fois.*"(5)

The encroachments of the See of Rome have, in fact, ever been opposed by France,(6) and the liberties of the Gallican Church, in opposition to the exorbitant pretensions of the Holy Pontiff, have, at all times, been asserted, and at all times, supported by the King, the Clergy and the People.(7) These liberties, which comprehend not only the privileges and

(1) Millot's History of France, part 2d. p. 153 & 217.
(2) Dict. Canon. verbo "Constance."
(3) Fleury's Inst. au Droit Canon. cap. 1. vol. 1. p. 20.
(4) Fleury's Instit. au Droit Canon. vol. 1. p. 22.
(5) Hericourt, Loix Ecclesiastique, introduction, p. 9, 10 & 11.
(6) Fleury's Instit. au Droit Canon. vol. 2. p. 220.
(7) Vide the Declaration of the Clergy of France of 1682, and the Royal Edict thereon in Neron, vol. 2. p. 172.

and immunities conceded by the Concordat, but all the ancient Canons adopted by the Gallican Church for its own government, with all its ancient usages, are recognised in the celebrated declaration of the Church of France, made on the 19th of March, 1682, by the Archbishops, Bishops, and Deputies of the Clergy, assembled at Paris, by the King's order, are confirmed by the Royal Edict of the same month, and are founded upon two maxims of very great extent, viz: That the papal and all other ecclesiastical power, is purely spiritual, and does not extend, directly or indirectly, to any thing temporal ;(1) and, that in spiritual concerns, the authority of the Pope being inferior to that of the Councils, he is restrained by the Canons, and cannot, by any new constitution, infringe them, or set aside any usage or custom of the Church of any State, recognised, by the Municipal Law of that State, to be valid(2). The Ecclesiastical Law of France, therefore, at the period above mentioned, although it recognised the Papal Canon Law, comprehended the parts, only, of that system, which had been received by the Gallican Church, under the sanction of the Sovereign, expressed in letters patent, or implied from immemorial usage.—No Papal constitution, decree, decretal, epistle, rescript or bull—no canon or decree of any Council of the Church Œcumenical, national or provincial, had, at that time, or afterwards, in France the effect of Law, until published by the Clergy in their respective Dioceses ; and such publication (even of a constitution relating to an article of faith,) could not be made without the Royal authority and permission.(3) Even the decrees of the Councils of Trent (admitted to have been legally convened,) were not recognised to be Law, their publication

[1] Pothier, 4to. vol. 6. p. 306.

(2) Hericourt, Loix Ecclésiastique, introduction, p. 13, vol. 1. p. 112—Repert. verbo "Libertés de l'Eglise Gallicane."—Dictr. de Droit verbo « Libertés de l'Eglise Gallicane»—La Combe, Recueil de Jurisp. Canon. verbo "Libertés de l'Eglise Gallicane."—Fleury's Inst. au Droit Canon. vol. 2, p. 220 & seq.—Preuves des Libertés de l'Eglise Gallicane, by Pithon.

(3) Hericourt, Loix Ecclesiast. vol. 1. p. 105. col. 2. and vol. 1, p. 98, and col. 1st. and 2d p. 100, col. 1st and p. 105, col. 1. & 2. Dict. Canon. verbo « Canon.» et Droit Canon. La Combe, Recueil de Jurisp. Canon. introd. p. 1 & 2.

cation not having been authorised by the Sovereign ; and to give effect to many of its dispositions, which it was thought proper to adopt, they were enacted in the Royal Ordinances.(1)

The Royal Ordinances, with the Law of nature and of nations, and the Ecclesiastical Code, so far as it was sanctioned by the Sovereign, may be considered as the Common or universal Law of France ; but the remaining part of the municipal Laws of her several Provinces or Districts were very dissimilar. In the Pays de Droit Ecrit, which were those Provinces in which the Roman Code, by the especial favour of the Sovereign, had been permitted to remain, and was declared to be in force, that system obtained to the exclusion of the Customs ;(2) while in the others, and particularly in the Vicomté of Paris, the Customs obtained, to the exclusion of the Roman Law, which, in these Provinces, or Pays de Droit Coûtumier, was of no force, and was considered only as a system of written reason. It was long, indeed, a disputed question in the Jurisdictions of the Vicomté of Paris, whether recourse was not to be had to the Roman, as to a positive Law, for decisions in unforeseen cases for which no remedy was provided by the Custom ; but it was ultimately settled that such recourse ought not to be had, and that the Judges were not bound to decide by it.(3)

I feel that I have already trespassed upon your time, yet before I conclude, as the subject upon which I have the honor to address you appears to allow it, I cannot but solicit your attention to the actual state of the Study of the Law in Canada.

The experience of many ages and of many countries seems to have shown, that the elements of science are best inculcated by public lectures—rightly conducted they awaken the attention

(1) Héricourt, Loix Ecclesiastiques, vol. 1, p. 99, col. 1 & 2.

(2) Ferrière, D. D. verbo « Pays de Droit Ecrit. »

(3) Ferrière, D. D. verbo " Pays de Droit Ecrit." Dumoulin, des Fiefs introduction, no. 106 & 109. D'Aguesseau, vol. 1. p. 156. L. C. Dénizart, vol. 5, p. 671. Ferrière, gd. Com. vol. 1. p. 18 & 19, no. 1, 2, 3, 4 & seq. Ibid. p. 306, vol. 1. nu. 10. Dict. de Jurisp. de Prost. de Royer, vol. 1. p. 6. Discours Préliminaire. La Peyrère Cent. 3. cap. 85, p. 675, which cites an Ordinance of Philippe le Bel, declaring France not to be governed by the Civil Law.

attention of the student, abridge his labour, enable him to save time, guide his enquiries, relieve the tediousness of private research, and impress the principles of his pursuit more effectually upon his memory.(1)

The Student of Law in Canada has no assistance of this description; he toils alone in an extensive field of abstruse science which he finds greatly neglected, and therefore too hastily deems to be despised, and, discouraged from the commencement of his labours, he is left to his own exertions, and is compelled to clear and prepare the path of his own instruction, almost without aid of any kind.

Would not an effort to relieve him in this arduous and solitary task, as one among the first fruits of this Society, be highly worthy of its views and character? And is it too much to say, that a public Institution, which would enable those who intend to pursue the profession of the Law to lay the foundation of their studies in a solid scientifical method, and afford them more ample knowledge of the peculiar system of Jurisprudence by which we are governed, would be productive of great and lasting benefit, not merely to the student, but to the public at large?

It is not, however, my intention, upon the present occasion, to press this subject any farther. The system to which I have just alluded is one of real merit, it is built upon the soundest foundations of natural and universal Justice, approved by experience, and is most admired by those who know it best. Its claims to notice are therefore so apparent, that I shall indulge myself in the hope, that the influence of this Society will soon be exerted for the establishment of some Institution of a public description, in which the Law may be taught AS A SCIENCE—A science which, though hitherto neglected, is of the first importance to mankind, and "with all its defects, redundancies and errors, is the united "reason of ages—the pride of the human intellect"(2)

(1) Vide Sir James Mackintosh's discourse on the Study of the Law of Nature and of Nations, p. 2.

(2) Burke's Works, 4to. vol. 3. p. 134.