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**A View Of Society In Europe, In Its Progress From
Rudeness To Refinement: Or, Inquiries Concerning The
History Of Law, Government, And Manners**

Stuart, Gilbert

Edinburgh, 1778

Section II.

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SECTION II.

(1) **I**N rolls of the militia of France in the year 1236, and preceding that period, which were observed by *Pere Daniel*, there were entered military tenants who were marked down for the service of 5 days, and for other proportions of the ordinary service of forty days. And these are proofs, not only of fees in France, but of the fractions of fees. *Milice Françoise*, p. 55.

This learned author, indeed, not attending to the regulations which made the fractions of a fee give their proportion of the ordinary service, has endeavoured to account for the limited number of days which many tenants were bound to serve, by refined reasonings and conjectures; which show how acutely, and yet how absurdly, a man of ability may employ himself in searching out the truth*.

Littleton,

* * Pour ce qui est de ceux que l'on voit dans les roles n'être obligez qu'à cinq, qu'à quinze, ou vingt-cinq jours, ce furent des concessions particulieres, dont il est difficile de conjecturer la cause; ce fut pour quelque service signalé rendu a l'etat,

Littleton, having remarked that the ordinary service of the knight's fee was forty days, is careful to add, 'that he, which holdeth his land by the moitie of a knight's fee, ought to be

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' l'etat, ou peut-être que leurs ancêtres durant les guerres civiles fournirent au Roi leurs châteaux, ou leurs terres à cette condition, ou qu'ils avoient quelque autre obligation qui supléoit au service ordinaire; comme, par exemple, de faire la garde en certains lieux lorsque l'ennemi approchoit. On voit en effet dans ces roles quelques gentilshommes fieffez, obligez seulement à faire le guet en certaines occasions dans quelques forteresses.

' Une autre raison peut avoir contribué à la réduction du service à un terme plus court qu'il n'étoit autrefois: C'est que sous la première race, et fort avant sous la seconde, l'empire François étoit beaucoup plus étendu que sous la troisième. Il falloit aller chercher les ennemis et les rebelles dans la Germanie, et au delà; il falloit passer les Alpes, ou les Pyrénées, et entrer bien avant en Italie et en Espagne: Par conséquent les expéditions duroient beaucoup plus long-tems que sous la troisième race, sous la quelle le royaume avoit des bornes beaucoup plus étroites.' *Liv. 3. ch. 2.*

The wildness of these conjectures does not require to be pointed out minutely; as it will appear from a comparison of the text with this note. Yet I censure not the abilities of this historian. If we could reach the truth in all sciences, we should find, that it is the greatest men who have wandered oftenest. The philosopher, who states sentiments of his own, must necessarily be mistaken at times, and is often to reason hypothetically. The author who would catch the general sense and opinions of the world, has no title to travel out of the right path; and, if his errors are frequent, he deserves to be contemptible. It is not so with the wanderings of the inventive and reflecting mind. Though they merit not approbation, they call for respect. The absurdities of the profound are the results of thought and of courage; those of the shallow are the fruits of mere weakness.



‘with the King twenty days; and that he which holdeth his
 ‘land by the fourth part of a knight’s fee, ought to be with the
 ‘King ten days; and so he that hath more, more; and he
 ‘that hath lesse, lesse.’ *Tenures, p. 69.*

In a roll, *de l’ost de Foix*, in the year 1272, there are the following explicit proofs of the fractions of fees, and of the limited service that was to be given for them.

Gaufridus de Baudreville, praesentavit servitium suum per xx dies pro dimidio feodo.

Johannes Morant dicit, quod debet servitium quarti unius militis.

Johannes de Falesia Scutifer dicit, quod tenet dimidium feodum loricae, pro quo debet, sicut dicit, auxilium exercitus et calvacatae quando per Normanniam levatur, aut servitium per xx dies eundo et redeundo; et si servitium dictorum xx dierum captum fuerit, auxilium praedictum non debet capi nec levari. *See Brussel, Usage-general des fiefs, p. 174.*

In England, the fractions of fiefs are to be proved by almost every article in the *Black Book of the Exchequer*, and by a multitude of records in *Madox*; and to these authorities I refer the inquisitive reader:

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(2) Du Cange, voc. Membrum Loricae. Craig Jus Feudale, lib. 1. Affises de Jerusalem, avec des Notes, par Thaumassiere, p. 104.

(3) Cowel, Interpreter, voc. Fee Ferm. Spelman, voc. Feodi Firma. Du Cange, voc. Feudi Firma.

(4) See what is said by *Mr Baron Dalrymple*, in the masterly sketch he has given of the history of the alienation of land, in his comprehensive and learned treatise concerning feudal property in Great Britain.

(5) Littleton, Tenures, sect. 96. Daniel, Hist. de la milice Françoise, liv. 3.

(6) In the strictness of the feudal regulations, the estate of the vassal might be forfeited for his neglect of service. But, in general, it seemed equitable, that a fine only should punish his disobedience. *Brussel, tome 1. Affises de Jerusalem, avec des notes par Thaumassiere, p. 267. Etablissemens de S. Louis, liv. 1.*

In England, in the Anglo-Saxon times, the forfeiture of the benefice or a fine, as in the other countries of Europe, was the punishment of the refractory vassal. The case was the same in the Norman period of our history. When the King's summons

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ad habendum servitium, was issued, it was expected that it would be complied with. The following fines and forfeitures for neglect of service are from records.

‘ The Abbot of Pershore was amerced, for not sending his
 ‘ knights to serve in the army of Camarun, as he was warned to
 ‘ do. William de Hastings fined in c marks, that he might
 ‘ have the king’s favour, because he did not march at the king’s
 ‘ summonce in the army of Normandy. William, bishop of
 ‘ Winchester, fined, or was amerced, in c marks, because he was
 ‘ not in the army of Gannok, nor had his service there. Mat-
 ‘ thew Turpin was disseised of his land and serjeanty in Winter-
 ‘ law, because he was not in the king’s service beyond sea. Dun-
 ‘ can de Lafcels was disseised of three knight’s fees and a half,
 ‘ because he was not with the king in his army of Scotland,
 ‘ with horses and arms. Roger de Cramavill was disseised of
 ‘ his land, because he did not go with the king in his voyage to
 ‘ Ireland. Malgar de Vavafur was disseised of his land, because
 ‘ he neither went with the king into Ireland, nor made fine for
 ‘ the voyage.’ *Madox, Hist. of the Exchequer, vol. 1. p. 662.*
 663. See farther *Baron. Anglic. book. 1. ch. 5.*

(7) Littleton, tenures, sect. 95. Du Cange, Gloss. voc. Scutagium.

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(8) Daniel, Milice Françoise, liv. 3. Du Cange, voc. Cotrelli, Brabanciones, Brabantini. Hume, Hist. vol. 1. p. 308.

In France, it is said, that mercenaries were not employed in considerable numbers, till the reign of Philip the August. In England, it is thought, they were first known under Henry II. From the causes I mention, it is probable, that their use must have been familiar, and even extensive, in both countries, in earlier times.

(9) Baronia Anglica, book 1. ch. 6. Daniel, Milice Françoise, liv. 3.

(10) 'The *religious*,' says *Madox*, 'insisted that they held all their lands and tenements in frankalmoigne, and not by knight service. This allegation was used with success by the abbot of Leycester, the priour of Novel-lieu without Staunford, and the abbot of Pippewell.' He cites the records which prove these frauds; and, in another place, appealing also to records, he has these words. 'The abbot of St Austin had a great success in defrauding the king of his services. The abbot, it seems, had been feoffed to hold by the service of fifteen knights. Of these fifteen, he found means to conceal twelve, and answered to the king with three only.' *Baron. Angl. p. 109. 114.*

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(11) A record of Henry III. says of Richard Crockel, 'Faciet 'servitium tricesimae partis feodi j militis.' A record of the same prince, says of John Hereberd, 'Faciet servitium sexagesimae partis unius feodi.' *Hist. of the Exchequer, vol. 1. p. 650. 651.* A variety of instances, to the same purpose, are to be collected.

On the supposition that the fractions of a fee beyond the eight parts, were not properly its members, the demands of service for the thirtieth and the sixtieth parts of a fee, must have been encroachments and severities, against the usual practice and usages of fiefs. If *service*, however, was required for such fractions, the assessment of a *scutage* on the tenants of knight-service would necessarily subject them in their proportion of payments. And the difficulties attending either the exaction of these services, or these payments, must have been infinite.

It is to be confessed, that the giving the thirtieth or the sixtieth part of the service of forty days, which was the usual term of the service of the military tenants, has a strange aspect. Perhaps the grants I mention were not regulated by the usual rules which directed fees. It is well known, that there were tenants in knight-service who were bound to give, not the usual service of forty days, but the attendance of themselves and their knights, both at home and abroad, at all times, and wherever it should

should be demanded. Even in this view, however, it is difficult to comprehend the regulations which must have governed the fractions of such fees.

But there were also vassals in knight-service whose stipulated time in the field and in expeditions was sixty days. See *Etablissemens de S. Louis*, p. 23. There might thus, by the agreement of superiors and tenants, be stipulated services for one hundred, two hundred, or any definite number of days whatever. On this principle, it is easy to account for the fractions of fees which gave service for the thirtieth, the sixtieth, or any such proportions of a fee. In this state of the matter, however, the fractions I speak of in the text, though out of the common usage of fiefs, must have been *members* of the fee.

In the courtly and agreeable introduction to the History of Charles the Fifth, in the *View of the Progress of Society in Europe, from the Subversion of the Roman Empire, to the beginning of the sixteenth century*, of which the scheme is so comprehensive, it is remarkable, that, amidst a wide variety of other omissions, there is not even the slightest consideration of knight-service, and the knight's fee. Yet these circumstances were of a most powerful operation, both with respect to government and manners. I make not this remark to detract from the diligence of an author whose laboriousness is acknowledged, and whose total abstinence from all ideas and inventions of his own, permitted him to carry an undivided attention to other

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men's thoughts and speculations; but that, resting on these peculiarities, I may draw from them this general and humiliating, yet, I hope, not unuseful conclusion, that the study and knowledge of the dark ages are still in their infancy. Are we forever to revel in the sweets of antient lore? And are we never to dig up the riches of the middle times?

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