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III

ROMAN LAW IN FRANCE

1. I HAVE already had occasion to notice several facts which show that Italy was by no means the only country in which signs of a revival of civilization appeared in the eleventh century. France was also on the way towards new ideals of culture and learning. If Italian life was preparing for the rise of Bologna, French life was gathering strength for the glory of the University of Paris. The course of the latter was dedicated to the arts, divinity, and canon law, but the great scholastic movement, consisting in the concentration of studies, was nowhere more powerful than in Paris, and it could not but react on legal learning. It showed a growth of intellectual power which by itself was bound to benefit indirectly the study of laws. And indeed, we find many products of French scholarship dedicated to law at the same critical period when the Italian school was gradually taking shape. Besides the *Exceptiones Petri*, already mentioned above, I should like to call attention to the work of Ivo of Chartres (about 1100). His *Decretum* and his *Panormita* show a minute acquaintance with Roman legal sources and more especially with Justinian's codification.

Another valuable legal book of French origin is the *Brachylogus juris civilis*, a very clear and learned manual for the teaching of Roman Law, probably composed in the first quarter of the twelfth century; though showing traces of the influence of the glossators, it still remains original in its method of arranging material and stating rules.

The most interesting contribution of France to the revival of Roman Law is the recently discovered summary of Justinian's Code, compiled for the use of judges in Provence, the so-called *Lo Codi*. Like the *Exceptiones Petri*, it originated in the south-eastern corner of France, probably in Arles, which in the twelfth century was a dependency of the Empire. An allusion to the possible capture of Fraga, a fortified town in the March of Barcelona, enables us to fix the date of its composition as about 1149. Certain Provençal expressions occur in the *Exceptiones Petri*, but *Lo Codi* was written entirely in the Provençal language, and presents therefore the first treatise on Roman Law composed in a native dialect.[1] The Provençal text has not been published yet, but Professor Suchier of the University of Halle is preparing an edition of it. A Latin translation,

[1 But see a forthcoming publication by L. Royer and A. Thomas in *Notices et extraits des manuscrits de la Bibliothèque Nationale et autres bibliothèques.*]

made by Ricardus Pisanus some time before 1162, is already in our hands, thanks to the industry of Professor Hermann Fitting, the leading representative of the study of Roman Law in the Middle Ages.[1]

Lo Codi stands already under the influence of the glossators. It follows closely a summary of the *Codex* extant in a MS. of Troyes (*Summa Trecensis*) and attributed by Fitting to Irnerius himself. The authorship of Irnerius cannot be proved, but the *Summa Trecensis* is, in any case, a fair sample of an early glossator's work. The compilers of the *Codex* have also utilized a *Summa Codicis* of Rogerius, a glossator of the third generation. It seems, in fact, that Rogerius personally took part in the compilation of the *Codi*. Yet the *Codi* has distinctive features which on the one hand distinguish it from the Bolognese books, and on the other hand connect it with the tradition of the *Exceptiones Petri*. It is written not for academic use, but for the courts, and more particularly for laymen acting as presiding judges or arbitrators; it is absolutely free from pedantry or abstruse argument; it aims chiefly at clearness, and at easy access in case of reference. Cases likely to occur in common practice are constantly put. *Lo Codi*

[1 Professor Suchier did not live to produce the Provençal version, and it is still unedited.]

is, in short, a manual for immediate use, somewhat resembling the books of reference of modern justices of the peace. I will give one or two instances in illustration of its treatment of the subject.

The rules as to the responsibility of a person using goods belonging to another greatly exercised the ingenuity of Roman lawyers. The borrower was, of course, answerable for fraudulent misuse (*dolus*), but how far was he answerable for negligence (*culpa*)? Nerva, as reported by Celsus, had laid down that gross negligence (*culpa latior*) is equivalent to fraud, and constitutes a breach of good faith. But what is to be taken as the measure of gross negligence? The *Codi* points to some palpable absurdities to illustrate the general meaning of gross negligence. It arises when a person thinks that what is noxious to every one else is innocuous to him, as, for example, if I leave a book out in the rain and do not consider that it is sure to be damaged, or if I lead a horse, entrusted to my care, by places that I know to be the haunts of robbers and thieves. Such acts constitute gross negligence, and I must compensate for any damages resulting from it. But it is not sufficient to point to extreme absurdities. In practice, much will depend on the standard of reasonableness. And although the *Codi* does not follow the Roman lawyers in tracing minutely the differences between *culpa*, *culpa*

latior, and *dolus*, it is very careful to set up a standard of reasonable care and to make it as practical as possible. Classical jurisconsults were divided: some held that a *minimum* of average care was sufficient to avoid direct responsibility for damage, others that the party to a contract was bound to exercise a high degree of diligence, to act as a good householder (*bonus paterfamilias*) and as a wise man (*sapiens*) would have done under the circumstances. The compilation of Justinian and the early glossators did not pay much attention to the controversy, and failed to provide definite rules for the guidance of practitioners. Not so the *Codi*. From its eminently practical standpoint, the question as to the proper standard was of much greater importance than the abstract derivation of *culpa*. It declares for a standard of high efficiency: it amounts to culpable negligence if I have not taken care of borrowed goods as a wise man would have done (*sicuti faceret aliquis sapiens homo*, IV, 69, 9; cf. IV, 55, 3).

Let us take another instance, showing to what extent the abstract doctrines of Roman Law were influenced by customary rules and local conditions. In the treatment of damages occasioned to someone by another person's fraud or deceit (*fraude vel inganno*, II, 10), the *Codi* follows, in a general way, the doctrine laid down in Justinian's Code, II, 20.

But it introduces variations in point of detail. It starts from an important distinction. If the deceiver induced the aggrieved party to enter into an unsound transaction, as, for example, to make a contract on the strength of false information, the contract must be rescinded at the request of the aggrieved party. If I have sold goods to a man who has deceived me as to the price, I may claim the difference between the diminished price and the fair value. If I did not wish to sell at all and have been induced thereto by fraud, the sale is of no effect whatever. Should fraud be employed without any reference to a contract, compensation must be made if the damage done is considerable—not less than two *byzantes*. In insignificant cases no action is allowed, but there may be important cases in which indemnity ought to be granted. For instance, a person called his brother to his death-bed and said to him, 'Brother, be you my heir, and if you are not my heir, my wife shall be'. After the death of the testator the widow circumvented the rightful heir by fraudulently persuading him not to accept a ruinous inheritance. When he followed her advice she took the inheritance and holds it. This is a case for indemnity, although not connected with any particular contract. The whole setting of the case and of the distinctions is evidently coloured by actual

practice, and is not merely copied from Justinian's Code or from the summaries of the glossators.

2. We have thus in the Provençal *Codi* an excellent example of the intelligent and practical use of Roman Law in a region where this law was recognized as the principal legal authority. But the influence of Roman sources stretched much farther. It affected materially the state of the law in parts of France governed by customary laws derived to a large extent from German tradition. Here the process of transformation is especially suggestive. It does not start with the acceptance of an external authority from which all changes in detail should be derived, but from a kind of struggle for existence between concrete rules and institutions of German and of Roman origin.

Naturally the initial move in this case came from the spread of knowledge. It was necessary to study Roman Law before applying it, and it is material from this point of view that the Bolognese school not only attracted foreigners, and, among them, many Frenchmen, but also that it sent forth disciples into France. One of the most brilliant glossators, Placentinus, disgusted with Bologna, became a famous teacher of the law school at Montpellier. The legal faculty there was situated in the *pays de droit écrit*, in the region dominated by Roman Law, but it also served as an influential

centre for the rest of France. There can be no doubt that the rise of this rival of Bologna on French soil greatly contributed to the development of jurisprudence, and to the progress of law itself, during the eventful centuries when both England and France evolved the fundamental institutions of their national law. Later on, the school of Orléans, organized in 1312 by Philip IV, became the authoritative representative of legal teaching in the *pays de droit coutumier*, but this official step had been prepared by the activity of legal writers and by academic influence, first in Montpellier and then in Orléans itself.

The reign of St. Louis is as conspicuous for the progress of legal institutions as for its two crusades and its brilliant feats of chivalry. Trial by battle is relegated to the background in the Royal courts, and the production of evidence takes its place, while the organization of the Parlement of Paris assumes a systematic and well-developed form. To this juridical revival two principal causes can be assigned—the growth of royal authority and a diligent study of Law. As we are concerned with the latter, let us notice the appearance of the *Conseil à un ami* (Advice to a friend) of Pierre de Fontaines, *bailli* of Vermandois. His work testifies to an eager interest in, and a very poor understanding of, written law. Fontaines simply copies

passages from the Digest and from the Institutes without being able to co-ordinate or interpret them. More curious is a production of the Orléans school, the *Book of Justice and Pleading* (*Livre de jostice et de Plet*). Of its 342 clauses, 197 are borrowed from Roman sources, while the rest are of customary origin. The unknown author, perhaps a professor of the Orléans school, tries to enliven his dry subject by numerous references to the sayings and doings of the great personages of his time; but these references turn out to be fictitious—somewhat resembling similar references to King Alfred and Anglo-Saxon judges in the English *Mirror of Justices*. A passage from Ulpian appears, for example, under the name of King Louis himself, and quotations attributed to Renaut de Tricot, Geoffroi de la Chapelle, and other worthies, are not more genuine.

Next comes a private compilation which achieved a great reputation and influence under the name of the *Établissements de Saint Louis*. Only its first nine chapters are drawn from the Ordinances of St. Louis. The other paragraphs of the first book present a statement of a custom of Touraine-Anjou, while the second book consists of a custom of the Orléanais. The compiler has patched these two records of customary law with extracts from Justinian's *Corpus Juris*, but even

when these are removed, the influence of Roman rules remains distinctly traceable, especially in the Orléans custom.

3. The most interesting document of French juridical revival under the influence of Roman Law is the remarkable *Coutumes de Beauvaisis*, compiled by Philippe de Remi, sire de Beaumanoir, between 1279 and 1283, some ten or fifteen years later than Bracton's great treatise on the Common Law of England. Beaumanoir had been *bailli*, that is, judge and deputy governor, of the county of Clermont in Beauvaisis, which belonged to Robert de Clermont, the sixth son of St. Louis. He was a man of extraordinary ability, learning, and varied experience. He had served in England in his early youth and has left not only the juridical tract already mentioned, but poetry, including a poetical romance describing the adventures of a French knight, Jehan, and a fair lady of Oxford, Blonde d'Oxford. His originality of mind did not fail him when he came to treat of legal topics, and his *Coutumes de Beauvaisis* is one of the most refreshing legal treatises in existence. He knew his Roman Law thoroughly, and used it with the freedom and dexterity of one who had mastered its contents and was not a slave to its superior authority.

In order to judge of the influence exerted by

Roman Law on the legal usage of Northern France, we can hardly do better than consider in some detail the teaching of Beaumanoir on a few subjects of legal doctrine.

Beaumanoir's prologue[1] to his work is well worth notice. He does not hope to impress the reader by his personal authority, and even conceals his name until the end of the book, so that the good wine he offers may not be left untasted because of its poor *étiquette*. We need not take the author's modesty too literally, but this much is certain: he sets himself a carefully restricted and unambitious aim. He wants to give primarily the substance of local custom in his own place—Clermont in Beauvaisis, because he is well acquainted with it, while the farther he goes from his district, the less he can vouch for the accuracy of his knowledge. Therefore, if he can base his information on actual judgements or ascertainable custom of Clermont, he will rely first of all on them, and only when doubts arise as to local custom, will he turn to the custom of neighbouring lordships or even to the common law of the kingdom of France. The point of view is characteristic of a French lawyer of a period which may still be called feudal. It is exactly opposed to the method of Bracton, who, strong in the judicial authority of Royal courts,

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sets out to describe the common law of England and refers to local custom only as a subordinate source of information. This being so, what is the meaning attached to the term 'common law' by Beaumanoir? It occurs several times in his treatise, and can only mean legal rules generally accepted throughout the realm of France, for example, the rule that a husband disposes of his wife's property during their married life. This is not a rule especially expressed in Beauvaisis custom or established in the tribunal of Clermont, nor is it a rule in strict correspondence with Justinian's law, but is the view generally prevailing in France, and, I presume, acted upon by Royal courts such as the Parlement of Paris (cf. § 552 on wardship). From this and other instances it is clear that Beaumanoir's use of the term is a much more lax one than that of Bracton. Whereas for the latter the common law of England is primarily substantiated and exemplified by the decisions of the Royal courts of justice, the French jurists seem to look more to the comparative evidence of divers customs, amounting to what might be termed a law common to all French territories. Some of the MSS. of Beaumanoir have actually expressed as much in the text of the passage in question. An appeal to the decision of Royal courts, of the Parlement of Paris, is not excluded, but is not indicated

as necessary (cf. § 374). As for a possible reference to Roman Law, it cannot have been the meaning of the author to speak of it as the general or common law in the same sense as, for instance, Lombard jurists had done. Roman Law as such was not recognized within the territory of customary law. It applied only when it had been accepted by the jurisprudence of local courts, by local custom, or general custom. This seems clearly proved by two considerations: firstly, by an express declaration that reasonable men ought to follow their own customs and not 'ancient laws' of which they do not know enough; and, secondly, by the fact that Beaumanoir's prologue is constructed on the same lines as a passage of Julian's in the Digest, but that he intentionally differs from it as to the decisive point. Where Julian has recourse to the Law of Rome, Beaumanoir says, 'common law of the kingdom of France', or 'the customs of France'.

4. I dwell on the analysis of this prologue because it affords the best clue to the interpretation of Beaumanoir's references to Roman Law. He does not accept them on authority, and yet he draws constantly on Roman rules in so far as they have been already accepted by French legal custom or jurisprudence. Consequently, he never once quotes from Roman books, and yet his expressions frequently follow the exact wording of these same

books. To put it shortly, he deals largely, not with written law itself, but with customary law partly derived from Roman origins. A good illustration is provided by his chapters on the so-called *renunciations*, on clauses inserted in charters for the express purpose of renouncing a possible appeal to some legal rule or expedient of pleading. A number of purely Roman remedies are guarded against, as, for example, the *exceptio pecuniae non numeratae*, or the complaint that a vendor has obtained less than half value for his property. It is evident, however, that Beaumanoir did not compose for himself the list of all these 'renunciations'. He simply took the customary formulae which had made their way into the region of customary law in the North from the region of written law in the South, where they had a much more real meaning (§§ 1094–8). This makes his references to Roman Law only the more interesting; they depend not on his personal taste, but on a process of acceptance or reception effected by the legal custom and jurisprudence of the age.

Some of the principal points worked out by thirteenth-century jurisprudence concerned forms of procedure. It was a matter of importance to settle in what manner and order legal remedies should be granted, claims framed, and defences against them allowed by the courts. Unless these and similar procedural points were definitely

worked out, no discussion as to substantive rights could avail. The importance of procedure as a framework for material law was further enhanced by the very complicated nature of jurisdiction, the intermixture of feudal justice of various degrees, on the one hand, and of lay courts and courts Christian on the other. These difficulties presented themselves to English lawyers as early as the twelfth century, in the time of Henry II, while in France they only began to be cleared up one hundred years later, under St. Louis and his successors. And it is evident from Beaumanoir's treatise that an acquaintance with Roman terms and forms of procedure greatly facilitated the task of French lawyers in this respect. The beginning of his exposition on stages in pleading illustrates this point (ch. vi). Our author notices expressly that clerks, learned ecclesiastics, have at their disposal very suitable expressions borrowed from Latin speech, but laymen do not understand these terms when put in French. They have consequently to be explained to the latter, and they may be used in lay courts, as it were, in a vernacular guise. An action begins with a *demande* (a bill of petition), corresponding to the *libellus* of the clerks. The *libellus conventionis* of the libellary process of later Roman Law is alluded to. Beaumanoir does not dwell on the *libellus responsionis* of the

defendant (*Niance de fet*, cf. § 257), but proceeds to point out the pleas which may be brought forward in answer to the allegations of the plaintiff. These are styled *exceptions*, as in Roman procedure. The plaintiff may oppose them by *replications*, again as in a tribunal administering justice according to the *Corpus Juris*. But here the similarity ceases. The Romans admitted further pleadings on both sides, duplications, triplications, &c., and the courts Christian followed their example in this. Not so the lay courts. The process was simplified: each party could plead in bar once only. After that, issue must be joined on questions of fact. The context, in which the doctrine is expounded, makes it probable that the Romanistic views were passed over to the courts of customary law through the channel of ecclesiastical tribunals. In the same way we find in the *Coutumes de Beauvaisis* (as well as in the *Établissements de St. Louis*) Justinian's classification of actions into personal, real, and mixed; the first aiming at enforcing obligations, the second directed towards asserting ownership of things, and the third starting from an obligation but resulting in claims as to things (§§ 228–30, cf. Inst. IV, 6, §§ 1, 2, 20). In this case there is no need to assume the influence of Canon law. The distinctions were well known and frequently treated in all schools where law was taught.

A subject of much importance to all lawyers, and especially to lawyers of this period, was the very fundamental distinction between ownership and possession, and its effects on legal procedure. In ancient German law, when private ownership of land was greatly restricted, quarrels as to ownership occurred chiefly between clans, townships, ecclesiastical institutions, &c., and were treated as fundamentally different from the assertions of individual claims. On the other hand, rights of protected occupation and possession arose easily, and were based on the application of labour to a particular plot of land. If a man was suffered to settle on and to cultivate a piece of land for a year and a day, he could claim the protection of the courts for his labour and occupation. This is the origin of the peculiar German *usucaption* by a year and a day. It is derived from the effective short-period cultivation of an otherwise unreclaimed plot. This mode of *usucaption* is clearly set forth in the customal of Touraine-Anjou enrolled in the first book of the *Établissements* (I, 163), and it occurs also in Beaumanoir's treatise. 'The user of one year and a day is sufficient to acquire seisin (protected possession), as when a man holds ploughed land, or a vineyard, or another piece of inheritance (land) and takes the fruits of it for a year and a day. Should anyone come then and prevent him,

the lord ought to remove the obstacle, until he has lost the land in a trial for ownership' (§ 685; cf. 955). Apart from the peculiarly short period of *usucaption*, we notice here the definite wish of the authorities to protect seisin as a *prima facie* ground for occupying and using land. Several distinct actions sprang from this far-reaching principle. The well-known remedy of the English courts—the action of Novel Disseisin—is not unknown in French law, but it comes into being rather late by a Royal Ordinance of 1277 (§§ 958, 959). Customary procedure admitted also of a plaint, or a complaint, as they said in France, to the lord of the country against violent interruption of peaceful possession, and it was sufficient that this should have lasted for a year and a day. On the other hand, Canon law had borrowed from Roman Law a process which, through the channel of ecclesiastical jurisdiction, obtained access into provincial customals, as, for instance, into that of Orléans. In this case an entirely different theory of acquiring possession was deemed necessary. A person disturbed in the peaceful enjoyment of a plot could bring an action for a *réintégrande*, but the court when deciding the question of possession would require one of at least ten years if reasonable ground for it was shown, and one of thirty years if no specific ground was stated. We find the teaching as to ten and thirty years' prescription clearly stated by Beaumanoir, and he advises his readers to try for seisin by prescription before venturing on the much more difficult plea of ownership. First get your seisin, and then prove ownership if you can (§ 199).

From this point of view of the 'beatitude of seisin' (*beati possidentes*) both the Orléans customal and Beaumanoir lay great stress on a rule which was expressed by the formula—*le mort saisit le vif*. This does not mean that the dead man clutches the one alive, but that the seisin of the land or inheritance passes from the dead man, the ancestor, to the living man, the successor. It is a short and more striking way of saying that the heir has no need to prove his title to land: he is protected by the seisin of his predecessor. The question turns on inheritance, and not on title to property. Here again we are on firm Roman ground.

The technical character of these rules must not conceal from us their great social importance. The elaboration of the doctrine of seisin, protected possession, with all its eventualities and ramifications, made it possible to avoid the tangle of feudal claims, and, what is more, to establish a *prima facie* legal order where violence and casual appropriation had reigned supreme. The check put on

Novel Disseisin was a fair test of the efficiency and social value of the State. When the protection of seisin had been achieved, the disentanglement of fundamental rights could follow. And the part played by Roman distinctions and rules in this process was considerable.

5. In matters concerning family law, the influence of Roman conceptions is not so obvious, because some of the latter remained archaic, as, for instance, the *patria potestas*, even in its mitigated form. There was little to choose between Germanic and Romance custom in regard to the authority of the father and the privileged position of the male sex in legal arrangements of all kinds. On the other hand, special tenacity was evinced in the retaining of ancient native custom in the branch of law that treats of some of the forms of kinship. We find, therefore in the Beauvaisis customal such institutions as the *retrait lignager*, the right of redeeming goods alienated by a relative, the German dower—the portion settled on the wife out of the property of the husband's family, &c.

A very important departure is established by the admission of the mother to the guardianship of her child under age (§ 629; cf. Nov. 118). This, of course, ran entirely counter to ancient Germanic, and indeed to ancient Roman, ideas. It is not impossible that we have to do here not with a principle borrowed from Justinian's law, but with an indigenous evolution of legal conceptions.

In paragraph 640, Beaumanoir discusses the responsibilities of parents for crimes committed by their children. According to this view, the father should pay the fine incurred, if the children are under his patronage (*mainburnie*). Such a child has nothing of his own, whether he be of age or under age. If the father or the mother desire to avoid responsibility, they must place their children out of their power (*main*) and patronage (*mainburnie*), and divide bread and broth (*pain et pot*) with them. This teaching presents a quaint combination of terms—*main* corresponds to the Roman *manus* in the sense of power, authority, while *mainburnie* is a corruption of the Germanic *mundeburdis*. The vital points of the doctrine are, however, that children dwelling with their parents round the same kettle, even when of age, are not considered independent persons in the sense of having property of their own—a very positive expression of the unity of the joint household. The latter was, of course, very characteristic of Germanic archaic custom, as well as of Roman. The *Corpus Juris* shows that a person, who had attained a full age, remains in the power of the father unless emancipated by him, the separation

of the households and property rights being commonly effected by the marriage of the son.

Another department of the law strongly affected by Roman influence was the law of contract. This subject grows in importance with the development of intercourse, and, naturally enough, Roman rules were greatly in advance in this respect, as compared with the customs of barbarian communities. Besides, the circumstances under which obligations arise, are enforced, or declared invalid, vary considerably, and give occasion to much casuistry. Barristers and judges had therefore a greater latitude in bringing forward personal views, and in drawing on Roman juridical sources to support them. The definition of partnership (*compagnie*), for example, is borrowed from Inst. III, 25, §§ 1, 2. Beaumanoir especially wanted to impress his readers with the idea that it was by no means necessary for partners to contribute equal pecuniary shares to obtain equal shares in the profits. He could not do better for that purpose than refer to the passage in the Institutes.

In the analysis of contracts created by order (*mandatum*) a nice point occurs in connexion with the personal character of the order. It is not difficult to see that if the person giving the order changes his mind and countermands it in time, the contract does not hold good. It is also clear

that if the counter-order does not reach the agent and the latter executes the order in good faith as given to him, the principal is held by it. But what is to happen if the principal dies? As the agent represents his person, the agreement falls to the ground, and the heir is not bound by the obligation. But one eventuality must in fairness be guarded against. If the heir has obtained some profit by the execution of the order, he cannot repudiate the obligation. Thus Beaumanoir follows Institutes III, 26, §§ 9, 10, in all its windings (§§ 810, 811).

I need not pursue further the examination of the traces of Roman influence in Beaumanoir's text. What has been said seems more than sufficient to show how great that influence was. It was conditioned by the superiority of Roman legal rules in their struggle with corresponding, but not identical, conceptions of Germanic origin. The influx of Roman doctrine produced neither a haphazard collection of fragments nor wholesale copying and complete subordination in form and contents. It led rather to an intelligent 'reception', if I may use this term commonly employed by German scholars. In other cases, Roman views were modified, combined with native ideas, or entirely rejected. And when one meets with a personality such as Beaumanoir, one comes to

understand better in what way the process took place.

6. But I must not leave the subject without calling attention to one peculiarity in this psychological side of 'reception'. It happened not infrequently that the practitioner or the learned judge, who were the chief agents in the process, picked out one or the other doctrine not in its proper and logical sense, but in order to confirm or to prove some opinion of their own, which possibly did not fit in exactly with the concrete rule brought forward to support it. Take, for instance, the famous maxim, *quod principi placuit legis habet vigorem* (Inst. I, 2, § 6). Beaumanoir quotes it expressly in his paragraph 1103. But it is certainly not the generally constitutional import of this doctrine that he wishes to acclimatize in the France of his day. It were odd indeed if he wanted to do so at the end of the thirteenth century, in the time of Philip the Fair, a few years before that King brought together with considerable difficulty the first more or less complete assembly of the estates of his realm. No; Beaumanoir makes use of this famous maxim to give authority to a statement as to the right of a king, starting on an expedition or a crusade, to suspend the fulfilment of obligations for knights joining his army. In this medieval guise the saying of Roman jurists is hardly recog-

nizable, but we need not accuse the *bailli* of Clermont of ignorance or misrepresentation; he simply made use of this Roman plank to build a platform of his own.

Another curious case in point turns on the use made by Beaumanoir of the principle of the *res judicata*:[1] when judgement has been delivered in a case, it ought not to be reversed in the same court. In the absence of such a rule litigation would have been endless. The Romans recognized the rule in theory, and consistently put it into practice. So does Beaumanoir—he states it in his thirty-first clause, but he gives it a peculiar twist. The one judgement aimed at by the *res judicata* rule is, for him, the judgement of the court of the lord with its full complement of assessors, peers, or *prud'hommes*, according to medieval phraseology. From such decisions are to be distinguished those taken by the *bailli* himself as sole judge—in cases sufficiently clear and admitting of reference to custom. Such decisions are not judgements. Why should our jurist have recourse to such an ambiguous play with words? Two reasons may be stated. Firstly, he wanted to enlarge the scope of the personal jurisdiction of the *bailli* untrammelled by assessors. Secondly, his distinction was made to allow of reconsideration in some cases which the

[1] App. VII.

bailli found after all to be too difficult, by bringing them before the full court, without prejudice to the *res judicata* rule. In any case, we must accustom ourselves not to treat our medieval lawyer's references to Roman texts in too strict and pedantic a manner. His object was not to present us with a faultless commentary on the *Corpus Juris*, but to make use of some of the Roman doctrines for his own purpose as a wise judge of France.

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