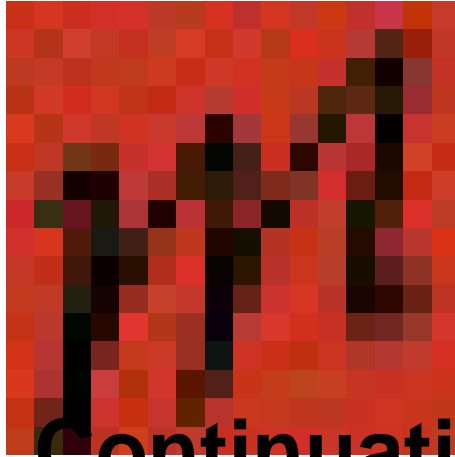


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XXVIII.31 Continuation of the same subject

- The Spirit of Law - Book XXVIII. On the origin and transformations of the civil laws among the French -

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The commoner could not impeach the court of his lord : we learn this from Défontaines [1] ; and this is confirmed by the *Establishments*. [2] Hence, again says Défontaines, "There is between thee, lord, and thy commoner, no other judge but God." [3]

It was the practice of judicial combat that had excluded commoners from impeaching the court of their lord, and so true is this, that the commoners who by charter [4] or by custom had the right to fight also had the right to impeach their lord's court, even if the men who had judged had been knights [5] ; and Défontaines [6] offers expedients so that this scandal of the commoner who by impeaching the judgment would fight against a knight, should not occur.

With the practice of judicial combats beginning to die out, and that of the new appeals beginning to be introduced, it seemed unjust that free men should have a recourse against the injustice of the court of their lords, and commoners not have it ; and the parlement accepted their appeals as those of free persons.

[1] Ch. xxi, art. 21-22.

[2] Book I, ch. cxxxvi.

[3] Ch. ii, art. 8.

[4] Défontaines, ch. xxii, art. 7. This article and the art. 21 of ch. xxii of the same author have so far been very poorly explained. Défontaines does not place in opposition the lord's judgment with the knight's, since it was the same ; but he opposes the ordinary commoner to the one who has the privilege of fighting.

[5] Knights can always be numbered among the judges (Défontaines, ch. xxi, art. 48).

[6] Ch. xxii, art.14.