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# **XXVIII.13 The difference between the Salic law or law of the Salian Franks, and the law of the Ripuarian Franks and other barbarian peoples**

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

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The Salic law did not allow the practice of proofs by negation ; that is, by the Salic law, the person who made a demand or an accusation had to prove it, and it was not enough for the accused to deny it : which is consistent with the laws of almost all nations on earth.

The spirit of the law of the Ripuarian Franks was entirely different [1] : it was satisfied with proofs by negation, and the person against whom a demand or accusation was made could in most cases justify himself by swearing with a certain number of witnesses that he had not done what was being imputed to him. The number of witnesses who had to swear increased with the importance of the business at hand [2] : it went sometimes as high as seventy-two. [3] The laws of the Germans, Bavarians, Thuringii, those of the Frisians, Saxons, Lombards and Burgundians were made on the same model as those of the Ripuarians.

I have said that the Salic law did not allow proofs by negation. There was, however, one case where it allowed them, but in this case it did not allow them alone and without the support of positive evidence. [4] The plaintiff had his witnesses heard to establish his demand [5] ; the defendant had his heard to justify him, and the judge sought the truth in the testimonies on one side and the other. [6] This practice was very different from that of the Ripuarian laws and other barbarian laws, where an accused justified himself by swearing that he was not guilty and having his family swear that he had spoken the truth. These laws could suit only a people that had some simplicity and a certain natural candor ; legislators even had to prevent its abuse, as we shall shortly see.

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[1] This relates to what Tacitus says : that the German peoples had common practices and local practices.

[2] Law of the Ripuarians, tit. 6, 7, 8, and others.

[3] *Ibid.*, tit. 11, 12, and 17.

[4] It is the case of a certain Antrustion, in other words a vassal of the king in whom one expected greater candor was accused ; see tit. 76 of *Pactus legis Salicæ*.

[5] See tit. 76. of *Pactus legis Salicæ*.

[6] As is still practiced in England.