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XXVIII.14 Another difference

- 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 proof by single combat ; the law of the Ripuarians [1] and almost all [2] those of the barbarian peoples did accept it. It appears to me that the law of combat was a natural sequel and the remedy to the law that established proofs by negation. When one made a demand, and saw that it was going to be unjustly eluded by an oath, what remained for a warrior to do who saw himself about to be confounded but to demand satisfaction for the wrong done to him, and even for the perjurer's offer ? [3] The Salic law, which did not allow the practice of proofs by negation, did not need proof by combat, and did not accept it ; but the law of the Ripuarians [4] and of the other barbarian peoples, [5] which accepted the practice of proofs by negation, were forced to establish proof by combat.

I invite the reader to inspect the two famous provisions of Gundebald, king of Burgundy, on this matter [6] : he will see that they are taken from the nature of the thing. What was needed, in the language of the laws of the barbarians, was to take the oath out of the hands of a man who meant to abuse it.

Among the Lombards, the law of Rhotaris allowed cases where it would free the man who defended himself with an oath from being further harassed by a combat. This practice was extended [7] ; we shall see subsequently what harm resulted from it, and how the old practice ultimately had to be reverted to.

[1] Tit. 32, tit. 57, §2, tit. 59, §4.

[2] See note below.

[3] This spirit appears well before the law of the Ripuarians (tit. 59, §4, and tit. 67, §5) and the capitulary of Louis the Debonaire appended to the law of the Ripuarians of the year 803 (art. 22).

[4] See this law.

[5] The law of the Frisians, the Lombards, the Bavarians, the Saxons, the Thuringians and Burgundians.

[6] In *The Law of the Burgundians*, tit. 8, §1-2 on criminal affairs ; and tit. 45 which also bears on civil affairs. See also the law of the Thuringians, tit. 1, §31, tit. 7, §6, and tit. 8, and the law of the Germans, tit. 89, the law of the Bavarians, tit. 8, ch. ii, §6, and ch. iii, §1, and tit. 9, ch. iv, §4, the law of the Frisians, tit. 11, §3, and tit. 14, §4, the *Leges Langobardorum*, book 1, tit. 32, §3, and tit. 35, §1, and book II, tit. 35, §2.

[7] See below, ch. xviii at the end.