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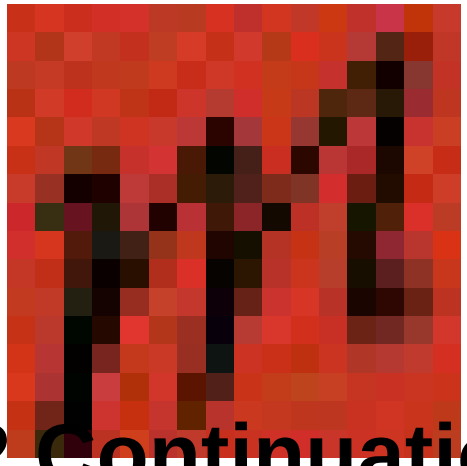

XXVIII.32 Continuation of the same subject

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

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When someone impeached the court of his lord, the lord came in person before the overlord to defend the judgment of his court. Similarly, in the case of appeal for default of justice, the party subpoenaed before the overlord brought his lord with him so that, if the default was not proven, he could reclaim his court. [1]

Subsequently, what were only two particular cases having become general for all suits by the introduction of all sorts of appeals, it seemed extraordinary that the lord should be obliged to spend his life in other tribunals than his own, and for other cases than his own. Philip de Valois ordered that bailiffs alone be subpoenaed, [2] and when the practice of appeals became even more frequent, it was up to the parties to defend on appeal ; the position of the judge became that of the party. [3]

I have said that in the appeal for default of justice, all the lord lost was the right to have the matter judged in his court. [4] But if the lord was himself attacked as a party, [5] which became very frequent, [6] he paid to the king or to the overlord before whom he had been challenged a fine of sixty livres. Whence the practice, when appeals were universally admitted, to have the fine paid to the lord when the sentence of his judge was being amended, a practice that long subsisted, which was confirmed by the ordinance of Roussillon, and which perished through its own absurdity.

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[1] Défontaines, ch. xxi, art. 33.

[2] In 1332.

[3] See what the state of things was in the time of Boutillier, who was living in 1402. *Somme rural*, book I, p. 19-20.

[4] Above, ch. xxx.

[5] Beaumanoir, ch. lxi, p. 312 and 318.

[6] *Ibid*.

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