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XXVIII.35 On costs

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

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Once there was in France no sentencing for costs in lay court. [1] The party that lost was punished enough by having to pay fines to the lord and his peers. Because of the procedure by judicial combat, in crimes the party that succumbed and lost life and property was punished as much as he could be ; and in other cases of judicial combat there were fines, sometimes fixed and sometimes dependent on the lord's will, which made the outcomes of trials feared enough. This was also true in cases that were decided only by combat. As it was the lord who had the principal profits, it was also he who covered the principal costs, either to assemble his peers, or to put them in a position to proceed to judgment. Besides, with matters ending in the very place and almost always promptly, and without the infinite number of writings introduced later, it was not necessary to award costs to the parties.

It is the practice of appeals that ought naturally to introduce that of awarding costs. Thus does Défontaines say that, when one appealed by written law, in other words when they were following the new laws of St. Louis, they awarded costs [2] ; but that in ordinary practice, which did not allow one to challenge without impeaching, there were none ; one obtained only a fine, and the possession for a year and a day of the item contested, if the matter was remanded to the lord.

But when new kinds of access to appeal increased the number of appeals [3] ; when by the frequent practice of these appeals from one tribunal to another, the parties were constantly transported outside their place of abode ; when the new art of procedure multiplied suits and dragged them out ; when the science of eluding the most just of demands had been refined ; when a party learned to flee solely in order to be followed ; when the demand was ruinous and the defense tranquil ; when the reasons got lost in volumes of words and writings ; when there were subordinates of justice everywhere who were not there to dispense justice ; when bad faith found counsel where it did not find support, it was really necessary to stop plaintiffs with the fear of costs. They had to pay them, for the decision and for the means they had used to elude it. Charles the Fair issued a general ordinance on that subject. [4]

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[1] Défontaines in his *Conseil*, ch. xxii, art. 3 and 8, and Beaumanoir, ch. xxxiii. *Establishements*, book I, ch. xc.

[2] Ch. xxii, art. 8.

[3] Now that one is so inclined to appeal, says Boutillier, *Somme rural*, book I, tit. 3, p. 16.

[4] In 1324.