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XXVIII.40 How the judicial forms were taken from the decretals

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

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But how is it that in abandoning the *Establishments* they preferred the judicial forms of Canon law to those of Roman law ? It is because they constantly had before their eyes the clerical tribunals, which followed the forms of Canon law, and they were unfamiliar with any tribunal that followed those of Roman law. Moreover, the limits of ecclesiastical and of secular jurisdiction were little known in those times : there were people [1] who pleaded indifferently in the two courts [2] ; there were issues for which the same was true. It seems [3] that lay jurisdiction had kept, exclusively from the other, only the judgment of feudal matters [4] and of crimes committed by laymen in cases that did not offend religion. For if, for reasons of conventions and contracts, they had to go to lay justice, [5] the parties could voluntarily proceed before clerical tribunals, which, having no right to oblige lay justice to execute the sentence, forced submission by means of excommunication. In these circumstances, when they wanted to change the practice in the lay tribunals, they adopted that of the clerics, because it was familiar, and did not take that of Roman law, because they were not familiar with it : for when it comes to practice, you know only what you practice.

[1] Beaumanoir, ch. xi, p. 58.

[2] Widows, crusaders, and those who held property of the churches for reasons of those properties (*ibid.*).

[3] See Beaumanoir, all of ch. xi.

[4] Ecclesiastical tribunals, under pretext of oath, had even assumed jurisdiction, as we see in the famous concordat between Philip Augustus, the clergy, and the barons which is found in Laurière's ordinances.

[5] Beaumanoir, ch. xi, p. 60.