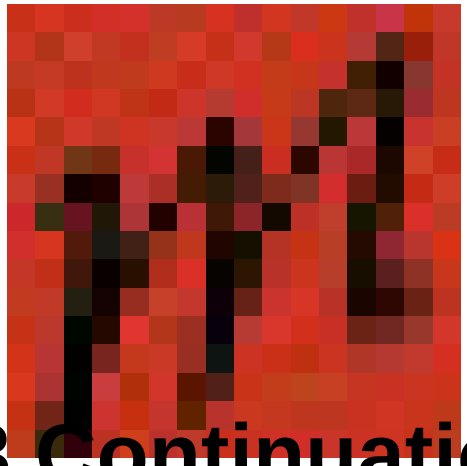
http://montesquieu.ens-lyon.fr/spip.php?article3108



XXVIII.43 Continuation of the same subject

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

Date de mise en ligne : vendredi 7 septembre 2018

Thus it was not a law that forbade lords to hold their own court ; it was not a law that abolished the functions that their peers had there ; there was no law that ordered the creation of bailiffs ; it was not by a law that they acquired the right to judge. All of that happened little by little, and by the force of things. Awareness of Roman law, of the decrees of courts, of newly-written bodies of customs, demanded a study of which the nobles and unlettered persons were incapable.

The sole ordinance we have on this matter [1] is the one that obliged the lords to choose their bailiffs from the order of the laity. This has inappropriately been regarded as the law of their creation : but it says only what it says. Besides, it sets down what it prescribes by the reasons it gives : "It is in order that bailiffs be subject to punishment [2] for their malpractice that they must be chosen from the order of the laity." We know about the immunities of ecclesiastics back then.

One must not believe that the rights which lords once enjoyed, and which they no longer enjoy today, were taken from them as usurpations : several of those rights have been lost by negligence, and others have been abandoned because, various changes having been introduced over the course of several centuries, they could not subsist with those changes.

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[1] It dates from the year 1287.

[2] *Ut si ibi delinquant, superiores sui possint animadvertere in eosdem*.