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XXIX.11 How to judge the difference between laws

- The Spirit of Law - Book XXIX. On the manner of composing laws -

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In France, the punishment of false witnesses is capital ; in England it is not. In order to judge which of these two laws is the better, we have to add : in France, torture is practiced against criminals, in England it is not ; and further say : in France the accused does not produce his witnesses, and it is quite rare for what they call exculpatory facts to be allowed ; in England witnesses are heard on both sides. The three French laws form a very tight and coherent system ; the three English laws not less so. The law of England that is innocent of the torture of criminals has little expectation of extracting a confession of his crime from the accused ; it therefore calls on all sides for outside testimonies, and dares not discourage them by the fear of a capital punishment. French law, which has one additional resource, is not so fearful of intimidating the witnesses, on the contrary, reason requires it to intimidate them ; it listens only to the witnesses on one side, [1] those whom the public prosecutor produces ; and the fate of the accused depends on their testimony alone. But in England witnesses are heard on both sides, and the matter is, in a manner of speaking, discussed amongst them ; false testimony can thus be less dangerous there ; the accused has a recourse against false testimony, whereas the French law offers none. Thus, in order to judge which among these laws are the most in keeping with reason, we must not compare these laws one by one ; they must be taken all together, and compared all together.

[1] By the old French jurisprudence, the witnesses were heard on both sides : thus we see in the *Establishments of St. Louis*, book I, ch. vii, that the penalty against false witnesses in justice was pecuniary.