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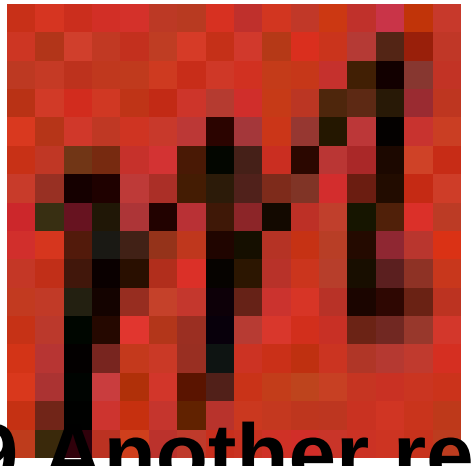

XXVIII.19 Another reason for the disuse of the Salic and Roman laws and the capitularies

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

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I have already stated the reasons that had cost the Salic and Roman laws and the capitularies their authority ; I shall add that the great extension of proof by combat was the principal cause.

The Salic laws, which did not allow this practice, became more or less useless, and disappeared ; the Roman laws, which did not allow it either, also perished. The single concern at this point was to constitute the law of judicial combat, and construct a solid jurisprudence on the cases which came up in connection with them. The provisions of the capitularies became no less useless. Thus, while so many laws lost their authority, we cannot point to the moment when they lost it ; they were forgotten without our being able to identify others that took their place.

Such a nation did not need written laws, and its written laws could quite easily fall into disuse.

If there was some discussion between two parties, combat was ordered. For that, no great competence was required.

All civil and criminal acts come down to facts. It is over these facts that they duelled ; and it was not only the substance of the matter that was judged by combat, but also the incidental and preliminary judgments, as Beaumanoir says, giving examples. [1]

I find that at the beginning of the third dynasty jurisprudence was all procedures ; everything was determined by the point of honor. If one had not obeyed the judge, he pursued his offense. In Bourges, [2] if the provost had summoned someone, and he had not come : "I sent for thee," he would say, "thou didst not deign to come, answer to me for this contempt" : and they fought. Louis the Fat reformed this custom. [3]

Judicial combat was practiced in Orleans in all claims of debt. [4] Louis the Young declared that this custom would apply only when the claim was for more than five sous. This ordinance was a local law, for in the time of St. Louis it was sufficient that the value be over twelve deniers. [5] Beaumanoir had heard a lord of the law say that a bad custom once existed in France that one could hire a champion for a certain time to fight in his causes. [6] The practice of judicial combat must at that time have been prodigiously extended.

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[1] Ch. lxi, p. 309-310.

[2] Charter of Louis the Fat of the year 1145, in the compendium of ordinances.

[3] [*Prévôt* : "He used to be the lord who administered justice himself, and did the same in the *prévôtés* as bailiffs in bailiwicks, senechals in *sénéchaussées*" (Furetière).]

[4] Charter of Louis the Younger of the year 1168, in the compendium of ordinances.

[5] See Beaumanoir, ch. lxiii, p. 325.

[6] See custom of Beauvaisis, ch. xxviii, p. 203.