

<http://montesquieu.ens-lyon.fr/spip.php?article3081>



XXVIII.16 On proof by boiling water established by the Salic law

- 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

Copyright © Montesquieu - Tous droits réservés

The Salic law [1] allowed the practice of proof by boiling water ; and as that ordeal was very cruel, the law included a means of tempering its severity. [2] It allowed the person who had been summoned to come make the proof by boiling water to redeem his hand with the consent of his adversary. The accuser, for a certain sum which the law specified, could content himself with the oath of a few witnesses who would declare that the accused had not committed the crime : and this was a particular case of the Salic law in which it allowed for proof by negation.

That proof was a matter of agreement which the law permitted but did not require. The law granted a certain compensation to the accuser who was willing to allow the accused to defend himself by way of negation ; the accuser was free to be satisfied with the oath of the accused, as he was free to forgive the harm or injury.

The law offered a mediation so that before the verdict, the parties, one in fear of a frightening ordeal, the other at the sight of a small, present compensation, would put an end to their disputes and end their animosity. [3] It will be clear that this proof by negation once consummated, none other could be required, and thus that the practice of combat could result from this particular provision of the Salic law.

[1] And some other barbarian laws as well.

[2] Tit. 56.

[3] *Ibid.*, tit. 56.