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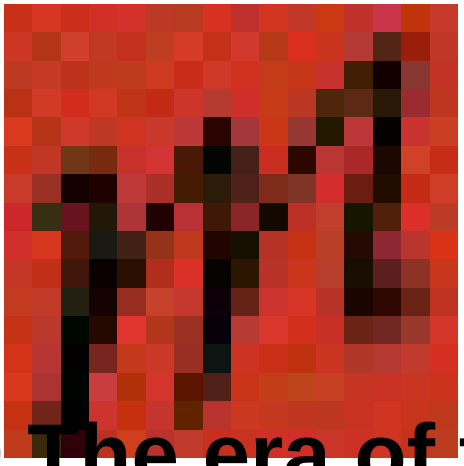

XXVIII.29 The era of the reign of St. Louis

- 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

St. Louis abolished judicial combat in the tribunals of his domains, as appears from the ordinance [1] he made on that subjec, and from the *Establishments*. [2]

But he did not suppress it in the courts of his barons, [3] except in the case of appeal for false judgment.

One could not impeach the court of one's lord without demanding judicial combat against the judges who had pronounced the verdict. [4] But St. Louis introduced the practice of impeaching without a fight, a change that made a sort of revolution. [5]

He declared that one could not impeach the judgments dispensed in the seigniories of his domains because it was a crime of rebellion. [6] Indeed, if it was a sort of crime of rebellion against the lord, it was *a fortiori* one against the king. But it was his desire that one be able to ask for the amendment of judgments dispensed in his courts, [7] not because they were wrongly or maliciously dispensed, but because they did some prejudice. [8] What he wanted, on the contrary, was that one be required to impeach the judgments of the barons' courts in order to lodge a complaint about them. [9]

One could not, according to the *Establishments*, impeach the courts of the king's domains, as we have just said. One had to petition the same tribunal for amendment ; and should the bailiff did not wish to make the required amendment, the king permitted the making of an appeal to his court [10] ; or rather, by interpreting the *Establishements* by themselves, the presenting to him of a petition or supplication. [11]

With respect to the courts of lords, St. Louis, by allowing their impeachment, wanted the matter to be taken before the tribunal of the king or the overlord, [12] not to be decided there by combat, [13] but by witnesses, following a form of proceeding for which he set rules. [14]

Thus, whether one could impeach as in the courts of the lords, or could not, as in the courts of his domains, he established that one could challenge without running the risk of a combat.

Défontaines relates the two first examples he had seen where it this had been done without judicial combat : one in a matter judged at the court of Saint Quentin, which was in the king's domain, and the other in the court of Ponthieu, where the count who was present opposed the former jurisprudence ; but these two affairs were judged by law. [15]

The reader will ask, perhaps, why St. Louis prescribed for his barons' courts a manner of proceding different from the one he established in the tribunals of his domains. Here is the reason. St. Louis in making rules for for the courts of his domains was not inhibited in his views ; but he had measures to keep with the lords, who enjoyed the ancient prerogative of never having affairs taken from their courts unless one exposed oneself to the dangers of impeaching them. St. Louis maintained this practice of impeachment, but he wanted it to be possible to impeach without combat ; in other words, so that the change would be less noticeable, he suppressed the thing and let the terms subsist.

It was not universally accepted in the courts of the lords. Beaumanoir says that in his time there were two manners of judging, one following the king's *Establishment*, and the other following the traditional practice ; that the lords were entitled to follow either of these practices ; but that, when in a given case one had been chosen, one could no longer revert to the other. [16] He adds that the count of Clermont was following the new practice, whereas his vassals held to the former one ; but that he could at will restore the former one, otherwise he would have less authority than his vassals. [17]

You must know that France at that time was divided into lands of the king's domain and in what was called lands of the barons, or baronies [18] ; and to use the terms of St. Louis's *Establishments*, in lands of king's obedience and lands outside the king's obedience. When the kings made ordinances for the lands of their domains, they were using none but their own authority ; but when they made some that also included the lands of their barons, this was done in concert with them, or sealed or endorsed by them [19] ; otherwise the barons accepted them or not, depending on whether they seemed to them to suit the welfare of their seigniories. The under-vassals were on the same terms with the vassals. Now the *Establishments* were not issued with the consent of the lords, although they pronounced on things that were of great importance to them ; but they were accepted only by those who thought it advantageous to them to accept them. Robert, son of St. Louis, allowed them in his county of Clermont, and his vassals did not think it appropriate for them to enforce them in their fiefs.

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[1] In 1260.

[2] Book I, ch. ii and vii, and book II, ch. x and xi.

[3] As appears everywhere in the *Establishments*, and Beaumanoir, ch. lxi, p. 309.

[4] In other words, appeal a wrong judgment.

[5] *Establishments*, book I, ch. vi, and book II, ch. xv.

[6] *Ibid*., book II, ch. xv.

[7] *Establishments*, book I, ch. lxxviii, and book II, ch. xv.

[8] *Ibid*., book I, ch. lxxviii.

[9] *Ibid*., book II, ch. xv.

[10] *Ibid*., ch. lxxviii.

[11] *Ibid*., book II, ch. xv.

[12] But if one did not impeach, and one wished to appeal, it was not received (*Establishments*, book II, ch. xv : "Li Sire en auroit le recort de sa Cour Droit faisant").

[13] *Ibid*., book I, ch. vi and xlvii, and book II, ch. xv ; and Beaumanoir, ch. xi, p. 58.

[14] *Establishments*, book I, ch. i, ii, and iii.

[15] Ch. xxii, art. 16-17.

[16] Ch. lxi, p. 309.

[17] *Ibid*.

[18] See Beaumanoir, Défontaines, and *Establishments*, book II, ch. x, xi, xv, and others.

[19] See the ordinances of the beginning of the third dynasty in the Laurière collection, especially those of Philip Augustus, on the ecclesiastic jurisdiction, and that of Louis VIII on the Jews ; and the charters recorded by Mr. [Nicolas] Brussel, notably that of St. Louis on the lease and redemption of lands and the feudal majority of daughters, vol. II, book III, p. 35, and *ibid*., the ordinance of Philip Augustus, p. 7.