

BOOK  
XXVIII.  
Chap. 14.

(<sup>a</sup>) See the  
76th tit.  
of the  
*Pactus le-  
gis Salicæ.*

not admitted alone, and without the concurrence of positive proofs. The plaintiff (<sup>a</sup>) caused witnesses to be heard, in order to ground his action; the defendant produced also witnesses of his side, and the judge was to come at the truth by comparing these testimonies. \* This practice was vastly different from that of the Riparian, and other barbarous laws, where it was customary for the party accused, to clear himself by swearing he was not guilty, and by making his relations also swear that he had told the truth. These laws could be suitable only to a people remarkable for their natural simplicity and candour; we shall see presently that the legislators were obliged to take proper methods to prevent their being abused.

#### CHAP. XIV.

##### *Another difference.*

THE Salic law did not admit of the trial by combat; though it had been received by the laws of the Ripuarians (<sup>b</sup>), and of almost all (<sup>c</sup>) the barbarous nations. To me it seems, that the law of combat was a natural consequence, and a remedy of the law which established negative proofs. When an action was brought, and it appeared that the defendant was going to elude it unjustly by an oath, what other remedy was left to a military man †, who saw himself upon the point of being confounded, than to demand satisfaction for the wrong done to him;

(<sup>b</sup>) Tit. 32.  
tit. 57. §.  
2. tit. 59.  
§. 4.

(<sup>c</sup>) See the  
note un-  
derneath.

\* According to the practice now followed in England.

† This spirit appears in the law of the Ripuarians, tit. 59. §. 4. & tit. 67. §. 5. and in the Capitulary of Lewis the Pious, added to the law of the Ripuarians in the year 803. art. 22.