Seeing Justice Done: Courtroom Scenes in Medieval French Theatre

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Electronic version
URL: http://crm.revues.org/13068
ISSN: 2273-0893

Printed version
Date of publication: 30 juin 2013
Number of pages: 75-91
ISSN: 2115-6360

Electronic reference

The text is a facsimile of the print edition.

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Abstract: The medieval French theatre offers several plays with trial scenes. These may occupy as much as half the action, or as little as a couple of pages. In the serious genre, there is the moralité, such as the very early sixteenth-century Condamnation de Banquet, 3,644 lines, where the somewhat tongue-in-cheek moral is advice to moderate gluttony. The comic genre is represented by the farce, such as Maître Pathelin, nearly 1600 lines, where there is more emphasis on amusing the audience, either with a discussion of legal procedure (for a learned audience) or with the tricks of litigants and lawyers (for a more popular audience). The legal professionals, especially the judges, are generally given respectful treatment, and do their duty, while the more amateurish practitioners simply use their wits. The procedure shown in these trials accords fairly well with that of the more didactic treatises of writers like Philippe de Beaumanoir.

Résumé: Le théâtre français médiéval comprend plusieurs pièces qui mettent en scène des procès. Ces scènes de procès peuvent occuper quelques pages, ou jusqu’à la moitié de la pièce. Dans le genre sérieux, on peut considérer la moralité, par exemple La condamnation de Banquet, (3.644 vers), où la morale à demi plaisante se résume à un simple conseil de modérer sa gourmandise. Dans le genre comique on compte surtout la farce, par exemple Maître Pathelin (environ 1.600 vers), dont le but est de divertir le public, soit par une discussion de la procédure juridique (public averti) soit par les supercheries des parties et des avocats (public vulgaire). Les juristes professionnels, tels les juges, sont traités avec déférence, et accomplissent leur devoir, tandis que les amateurs cherchent la trompacion. La procédure mise en scène dans ces procès est conforme à celle qu’on trouve dans les traités plus didactiques d’auteurs comme Philippe de Beaumanoir.

A courtroom drama usually makes for good theatre.¹ All the elements of drama are there: the various characters, whose interaction can give rise to different


Cahiers de Recherches Médiévales et Humanistes, 25, 2013
Journal of Medieval and Humanistic Studies
combinations; some issue whose clear-cut resolution gives a satisfying sense of an ending; perhaps a life at stake, or a great fortune. A courtroom comedy may be just as theatrical, with the opportunity to put before an audience the weaknesses of mankind or the subversion of a system. In other words, the serious or the comic: Perry Mason or Night Court. These elements and more are present in the medieval theatre, as they are in modern plays and movies. There are of course other plays which include lawyers and judges as characters, but not in trial scenes. Lawyers, after all, meet with clients, demand their fee, and many other things, and may be portrayed on stage doing these things. But the great legal or comic dramas are those which present realistic or preposterous courtroom scenes, or even a mixture of both. Moreover, many medieval authors of plays about non-religious subjects had received training in the law, and even on the stage, so that plays about lawyers drew from both these sources.  

The courtroom scene has the advantage of being familiar yet ever new: the decor is always the same, the various players are known by their functions and their location, the procedure follows the same sequence; and yet the issues, the various personalities can make each scene unique. The judge always takes the highest place, and the witnesses all come to the same place to be examined. The prosecutor is always the adversary of the counsel for the defense, and they speak in very much the same way: “Now, Mr. Shepherd, have you eaten any sheep?” or “Objection, your honor, Mr. Draper’s answer is unresponsive”. No matter where the scene begins, there is a known chronological order of offense or issue, accusation, denial, opening arguments, examination of witnesses, closing arguments, jury deliberation, and verdict. The scene, or the whole drama, may include the whole sequence or only a part: the dynamics of jury deliberation are enough by themselves to make theatre and movies. But the issues are different: each murder, each crime, each breach of contract is unique, and the solution is unique, even if the methods for discovering the truth are always the same. Methods of concealing or obfuscating the truth are often different.

The playwright has to take some liberties with the timing of events: many, even most, modern lawsuits take more than two or three hours (the time of a theatrical performance) to prosecute. There are separate appearances for arraignment and for trial; trial may take several days or weeks, even as long as several years. A pre-sentence investigation may put off sentencing for some time after a guilty verdict. The delays, repetitions and tedium of witness examination, for example, must be avoided on the stage, and the drama must present the moment of crisis, the nub of the argument, the gravamen of the defendant’s case. The attorneys or parties in a real suit must also present the judge or jury with the information needed to make a decision. In literature, such as the theatre, the author generally does not reveal too quickly the solution to the question posed by the plot, such as: “Who committed the crime?” The explanation of why the accused is guilty or not guilty thus often comes as a surprise, which again provides a dramatic moment for the play’s climax. While


medieval audiences were probably more noisy and intrusive than modern ones in plays including court proceedings, there is also evidence that the real court proceedings were not much different from literary ones. Parties not accustomed to legal proceedings often act inappropriately, as in university grievance hearings, where persons involved often act as they would in department meetings or scholarly debates, interrupting speakers and drifting from the point.3

Medieval French playwrights were aware of these theatrical aspects of courtroom scenes, and they wrote plays which staged trials and other examples of the administration of justice. The trial scenes and other portrayals of legal matters could take two forms: serious or comic. In the first, some fundamental issues of human behavior, or justice and fairness might be addressed. In the second, these issues were subordinated to the showing of lawyers’ tricks and litigants’ antics. It is some of these plays, both serious and comic, which I would like to examine in this paper.4

Modern trials are of various kinds and in various courts. There are civil and criminal trials, and the chief difference between them is that in criminal trials, the state, in the person of the prosecutor, accuses somebody of having committed a crime, while in a civil trial, a party other than the state, such as an individual or a corporation, accuses another party of having caused them some loss for which they want restitution, or of some behavior or status (such as marriage) they want changed. The distinction between these two types of trial was much less clear in the French middle ages, for a criminal trial, even a murder trial, often had to begin by an accusation made by a party who had suffered loss, and was seeking restitution. In medieval French courts, crimes looked a lot like our modern torts: murder was like wrongful death, larceny was like conversion, although criminal penalties were of course assessed. A murdered person’s relatives might bring a charge of murder.

In modern America, there are *grosso modo* two court systems, the state courts and the federal courts. Some cases can be tried only in federal courts, others are generally tried only in state courts, whereas yet other actions may be brought in either state or federal courts, at the choice of the plaintiff. In medieval France, there were also several kinds of courts. At the lowest level of these were the seigneurial courts, presided over by minor noblemen or hired judges; another lowest level court was the village or small town court, presided over by an officer often called the mayor. Decisions in these courts could sometimes be appealed to successively higher-level courts until they reached the king’s court in Paris, also called the Parlement, which was the court of last resort. Just below the king’s court were the courts of his major vassals, which were often presided over by judges called *baillis* or *prevosts*, professional administrators appointed by the king or his chief vassals, and paid a salary. It is to these royal *baillis* such as Pierre de Fontaines5 and Philippe

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3 Personal experience of the author.
4 I shall not deal with trial scenes in religious plays, as these have been discussed at length by J. Enders, *op. cit.*
F. R. P. AKEHURST

[255x705]F. R. P. AKEHURST

that we owe some extraordinary treatises on local law in the thirteenth century.

Complicating this system and intersecting with it was another whole system of courts administered by the church, the ecclesiastical courts, where the presiding judge was called an official or ordinaire. These courts also existed at various levels, from the village to the papal Curia, and appeals ran from the lower courts to the bishop’s to the archbishop’s to the pope’s court. Jurisdiction was retained in these courts for certain issues: clerks and widows were under their protection, as were crusaders, and the officials also had cognizance of wills, and disputes over marriage and much other family law. Other issues, which were within the jurisdiction of the secular courts, could also be tried in the ecclesiastical courts if both parties agreed; but on the other hand some issues where the ecclesiastical court had jurisdiction could be brought to the secular judge if the parties agreed. There were disputes over jurisdiction.

Another complication caused by the dual system of secular and ecclesiastical courts was that they operated under different systems of law, both substantive and procedural. Ecclesiastical law, or Canon law, was the law of the church, derived largely from official pronouncements of ecclesiastical councils or dignitaries. The study of Canon law commenced in earnest with the publication in about 1140 of Gratian’s (or Gratians’) Concord(ant)ia discordantium canonum, (also known as the Decretum) to which other materials were later added. The complete Canon law corpus included Gratian’s Decretum, the Liber extra (also called the Decretals of Gregory IX), the Liber sextus, the Clementinae and the Extravagantes. Secular courts operated under many different systems, for their law was local, and differed from province to province, from county to county, even from tiny village to tiny village. Secular law, in the north of France, was what the local administrators and court officers thought had always been applied in their province; but since their memories were not perfect, the law itself changed rather rapidly, as new ad hoc solutions were found for the same issues. It was not written down in most areas until the thirteenth or even the fourteenth century. Roman law, in the form of the Corpus Juris Civilis, mostly compiled under the Eastern Roman Emperor Justinian in about 527-533, and based on earlier models, was studied from the late eleventh century on, first of all at Bologna. Its influence on French law was considerable by the time of the plays I shall be discussing, and many of the plays which deal with the courts include citations to the Corpus Juris Civilis and the Corpus Juris Canonici. The use of a system of citation now long replaced makes the citations all the more recondite. Although this may add to the obscurity of the plays for a modern audience, it is actually an element of realism, which has lawyers and judges speak on stage in the

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7 Authorship of this treatise is not completely clear, see A. Winroth, The Making of Gratian’s Decretum, Cambridge, University of Cambridge, 2000.


way they probably spoke in real courts. There was some rivalry between the ecclesiastical courts and the secular courts, and this rivalry is sometimes expressed as satire of one kind of lawyer for the delight of an audience consisting of the other kind.

In modern American courts cases may be tried to a judge or to a jury (although a jury trial is not available for some issues, such as minor misdemeanors). French medieval courts did not use juries at the time when the courts were the subject of theatrical writings, so a jury is never seen on stage. Instead, a judge might have a number of assessors, who gave him advice on how to rule on various issues, including collateral ones. Other rights which are considered basic to American justice, and guaranteed by the United States Constitution (chiefly in amendments) were not available to litigants in medieval France. There was no cross-examination of witnesses, for example, who were generally examined out of the presence of the parties; and in some courts the testimony of witnesses was not revealed to the parties even after the examination.¹⁰

Because of the difference in civil procedure between modern American and medieval French trials (even assuming the lay person is familiar with American criminal and civil procedure, if only from television dramas) some of the details of the courtrooms scenes may be hard to understand. The following account is reductive and based largely on Beaumanoir, chapters 1, 6, 7, 39, 40, 59, and 67.¹¹ In the middle ages, a French civil trial (in the sense of a trial in a lay court, not an ecclesiastical court) is divided into three parts: first comes the period of pleadings, where the plaintiff accuses a defendant of something, or demands something of him. The judge, acting alone, but perhaps with some assessors looking on, tries to sharpen the issues, in order to make it clear what the parties disagree about. The parties can produce documents at this stage, such as written contracts and the like. When the parties and the judge are satisfied that the issues have been clearly stated, and that each party’s position has been established and his or her contentions declared, the judge asks if the parties are ready for trial.¹² When they say they are, this first stage of the trial is over and no further amendments to the pleadings are permitted. The parties have little to do after this except to present their witnesses. The witnesses, who may be challenged for bias, or consanguinity, etc., but not for truthfulness, are interrogated by special magistrates called auditeurs or commissaires, who ask them questions provided by the parties. The answers are written down and sealed. This all takes place out of the presence of the parties, who are thus powerless to influence the testimony and examination of the witnesses, and also unable to cross-examine them. An account of the written testimony is then closed up and sealed, and delivered to the judge. The third and final phase of the trial is the judgment. The judge and his assessors read or listen to the record of the testimony of the witnesses, and then deliberate and formulate a judgment. The parties are recalled to listen to a

¹⁰ Beaumanoir, Coutumes, op. cit., chap. 30.
¹¹ I have also consulted with profit Y. Bongert, Recherches sur les cours laïques du Xᵉ au XIIIᵉ siècle, Paris, Picard, 1949.
¹² Beaumanoir uses two expressions in the Coutumes to express this declaration: “s’apuyer en jugement”, Beaumanoir, Coutumes, op. cit., §§ 23, 33, etc., and Beaumanoir, Coutumes, op. cit., “se mettre en droit”, §542 etc.
reading of the judgment and they must appeal immediately (ILLICO) for false judgment or lose their chance to do so.\textsuperscript{13}

Thus the three phases of the trial, pleadings, examination of witnesses, and judgment, involve three relatively distinct groups of persons, and take on three different modes: argumentative, inquisitorial, and deliberative/declaratory. The pleadings take place in public, so that the audience of a play could with little difficulty be transformed into the spectators at a trial. The examination of witnesses takes place in camera, and if it were presented on stage, the audience would be silent and invisible spectators of something normally hidden. There is no confrontation of the witnesses by the parties, so that any dramatic tension must be provided by the auditors’ or the judge’s efforts to get at the truth, and the witnesses’ unwillingness or inability to reveal it. Finally, the judgment is again public, but it gives little scope for dialogue, since it consists mainly in the reading or pronouncement of sentence, which might be very short. It is clear that the first of these stages, the pleadings, gives the best scope for dramatic presentation. This would not be so in a modern trial, where the pleadings (complaint and answer) are filed in writing, at an interval of several weeks. In a medieval court the pleadings were oral and confrontational, and the answer had to be given, in many cases, immediately.

Before the trial even began, delays were inevitable: illness, snow, a rising creek, absence of parties or witnesses on a crusade or a pilgrimage, were valid excuses for failure to appear in court. As in modern trials, the parties in medieval disputes, or their lawyers, could raise liminal or collateral issues which required intermediate judgments: for example a party might challenge the authorization of the other party’s lawyer, or the jurisdiction of the judge. This kind of issue might delay a suit, but would not be on the main point in dispute. Such objections and objections were called dilatory, and included such things as challenges to jurisdiction, claims of insufficient process or insufficient service of process, or illness of the party, which prevented him from attending court on the assigned day, and a host of other minor or procedural matters. Eventually, however, the accused, or the defendant, had to admit or deny the truth of the allegations. The first brought immediate condemnation, and the second required proof, such as the testimony of witnesses or the production of documents. It is plainly in the dilatory exceptions that lawyers’ tricks can be most easily shown, and consequently these find a place in the comic genres. Once an answer to the main complaint had been made, further dilatory exceptions were not permitted.

It is to be expected that the serious treatment of justice will be found in serious works. There are numerous trials in Old French literature: one of the first is that of Ganelon in the \textit{Song of Roland}, on a charge of treason, a trial recently given

\textsuperscript{13} In Beaumanoir’s county of Clermont, some thirty-five miles north of Paris, there existed this kind of “jury”: two or more of the lord’s vassals, \textit{li homme (de fief)}, gave the judgment in their role as \textit{jugeeur}, “assessors” while the \textit{bailli} merely ran the proceedings and did not take part in the decision, Beaumanoir, \textit{Coutumes, op. cit.}, §§23, 43. But Beaumanoir also makes provision for trials and decisions by a judge aided by counselors, Beaumanoir, \textit{Coutumes, op. cit.}, §23.
extensive treatment by E. J. Mickel." There is a trial in the lai “Lanval” of Marie de France, where a young knight is tried by his peers on a spiteful charge of defamation, and the trial goes through the stages of accusation and denial, suggested proofs and the deliberation of the peers, only to end with the best of defenses, proof of the truth of the allegedly defamatory statement. There are trials in the Roman de Thèbes, and in the Prose Lancelot cycle, and also in the Roman de Renart. In the secular drama, the serious treatment of the law is to be found in the genre moralité. About seventy of these plays have been preserved. I should also mention the Advocacie Notre-Dame, a poem not presented as a drama, but easily transformed into one, since most of the lines are spoken dialogue, and it was in fact made into a play by another author. It concerns two trials where the plot includes a miracle by the Virgin Mary.

Even in the serious, allegorizing moralité, however, there are few scenes dealing with lawyers. Harvey claims that lawyers are referred to in only a half a dozen of the moralities which have a satirical intention, and of the non-satirical

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22 In the Moralité nouvelle d’ung empereur qui tua son neveu qui avoit prins une fille a force, et comment, ledict empereur extant au liet de la mort, la saïnte hostie luy fut apportée miraculeusement, there is a discussion of justice: an old emperor (of Germany) hands over the administration of his empire to his nephew, who promises to be faithful, but immediately misuses his power in order to rape a young woman. When the old emperor hears of this, he condemns his nephew and personally cuts his throat. This savage act, reproved by a priest who refuses the old emperor communion, is apparently given divine approval when the host is miraculously transported from the paten to the dying emperor's mouth. There is, however, no courtroom scene, and the kind of justice seen here is perhaps better described as feudal, or even divine, than judicial. Moralité de l’Empereur et de son neveu, in E. Fournier, Le théâtre français avant la Renaissance 1450-1550: Mystères, Moralités et Farces, Paris, Laplace, Sanchez, n. d. [1873], p. 354-369.
moralties he cites only three containing lawyers. There is a full-fledged courtroom scene in only one: La condamnation de Banquet.

At 3644 lines, this morality is of generous proportions: in the Koopmans and Verhuyk edition, with footnotes at the bottom of the page, it occupies 222 pages. The first half of the play is taken up with the three feasts which lead to the death of four of the revelers: feasts hosted in turn by the personifications Disner, Souper and Banquet. The seven revelers are served by four servants, and finally set upon by a group of ten diseases. There appear in addition a sermoniser and a fool, so that there are a total of 26 different characters in this part of the play, no two of whom can be conveniently played by the same actor. Only eight of these characters (three revelers, the three “meals”, the sermoniser and the fool) go forward into the second half of the play, which introduces thirteen new characters, who could be played by some of the eighteen actors whose roles did not go beyond the middle of the play. These new characters include the Father confessor, seven serjants, the judge and four members of his counsel, who are medical writers of Antiquity. There are several different locations involved: a public place, one or more feasting rooms, the court room; and the place of execution.

Once the four revelers have been slain by Banquet and his helpers (various diseases), the principal feaster, Bonne Compaignie, makes a criminal complaint to the judge Expérience concerning Soupper and Banquet. The accused are ordered to be arrested, and the serjants find them still at the scene of the crime. They at first deny their guilt, and are taken away while Expérience consults with four members of her counsel: the doctors Hippocrate, Galien, Avicenne and Averroës (Hypocrates, Galen, Avicenna and Averroës). The doctors ask to examine the defendants. The complaint is repeated, and the evidence of the arresting officers is taken. At this point Soupper turns “state’s evidence”, and accuses his fellow-defendant Banquet. Next, however, Soupper undertakes the delicate task of challenging the judge’s jurisdiction, for Expérience, following the gender of her noun, is a woman, and women cannot, according to Roman law, hold public office. Here, as elsewhere, the author provides a footnote in the original printed edition, giving a reference to the Digest. Expérience quotes many authorities to the contrary, including the Bible, and Canon law. Soupper accepts her jurisdiction. The defendants are again removed, while the doctors consult. They give their opinions, and the defendants are brought back again. Now Banquet confesses, and Expérience notes that after a confession, condemnation must swiftly follow. The confession of course obviates the need to examine witnesses, a procedure which would have lengthened this already lengthy play. After a further removal of the defendants, the counselors recommend death for Banquet and then for Soupper a banishment of six hours from Disner, in addition to

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23 In addition to the Condamnation de Banquet and Moralité nouvelle d’un empereur, Harvey cites only the Moralité ou histoire rommaine d’une femme qui a voulu trahir la cité de Romme, et comment la fille la nourrit six sepmaines de son lait en prison, Harvey, op. cit., p. 64.
25 Similar objections and defenses are raised in the Advocacie Nostre Dame, op. cit., v. 860-977.
Courtroom Scenes in Medieval French Theatre

heavy weights placed on his wrists so that he cannot serve food so readily. The
defendants are brought back, and after the verdict has been read by the clerk
Remede, the sentence is carried out: Soupper is sent away and Banquet is hanged, on
stage.

Throughout the play, a Fool has been giving occasional comments on the
action, some more cogent than others, and, near the end, this Fool predicts that
Banquet will soon be resurrected. From this we can probably deduce that banqueting
will not cease for long. Of course, the hanging must have been carried out using
some sort of harness to protect the actor, and it is possible that the audience could
see this harness, and understand that Banquet was not really hanged at all.

This court room scene is subject to all sorts of literary constraints, which
somewhat detract from its seriousness. The whole play is of course in verse, and not
a monotonous series of octosyllabic couplets, but a varied assortment of meters and
rhyme schemes, including frequent rondeaux. The verbal exuberance of several
speeches is worthy of Rabelais: during the trial, Disner pauses to enumerate in verse
the names of twenty-three Theban anchorites, who allegedly ate only one meal a
day. On the ladder, just before he is thrust down to his death, Banquet pauses to say
adieu to fifteen different spices, and later produces seven lines using rimes
couronnées, where the last two syllables of the line are identical:

Justice m’est amere mere,
Quant de la mort m’assigne signe20

But the trial scene has its serious side. Harvey says of this play: “It is the only
complete, authentic, and scrupulously realistic representation of the trial of a
murderer to be found in the French comic theatre”.27 While there is some comedy
and humor in the play, its principal goal of warning against the dangers of over-
eating is quite serious (and not unknown in our own time). There are many elements
in the play which ironically undercut the seriousness of the message: the fool, the
intrusive rhymes, the complacent enumeration of foods, sauces, and wines; but the
law-enforcement characters are exemplary in their devotion to duty, their
seriousness and their competence. The serjants carry out their arrest and custody of
the accused with no errors, and the judge Expérience congratulates herself on her
calling: “Justement vit qui exerce justice”.28 The behavior of Expérience in no way
gives the lie to this self-evaluation. Thanks to this play, we can see followed the
criminal procedure of the time, as codified in an ordonnance of 1498, just a few
years before the play was first printed.29 Expérience insists on the procedure: the
defendants will be heard, as prescribed by Roman law, and the judge must seek
counsel from jurisconsults and other experts:

20 “Justice is my bitter mother, when she communicates a sign of death to me”,
Condamnation, op. cit., v. 3567-3574.
27 Harvey, op. cit., p. 52-53. By “comic theatre” Harvey means the non-religious theatre. He
acknowledges that there are serious trials in the mystères: Harvey, op. cit., p. 53, n. 36.
28 “A person who administers justice lives justly”, Condamnation, op. cit., v. 1771.
29 Harvey, op. cit., p. 56 and n. 41.
Expérience further insists that the confession of the defendants has been obtained without the use of torture, and that the written record must show this. The actions of Banquet, and his condemnation, are of course an allegory of the perils of gluttony and an effort to control it by the authorities. We have no sympathy for Banquet, because he is plainly guilty of premeditated assault and murder: he conspires with the various maladies, takes part in the assault, resists arrest, and generally behaves very badly; he deserves to be condemned and executed. Passetemps correctly names his crime when she cries out: “Voicy la trahyson seconde!”

This play was printed in 1507, and at least four times thereafter, and could have been performed by anybody after that. There is some evidence that it was seen in performance as late as 1594. While modern plays which include courtroom scenes often present an unjustly accused defendant, whose escape from the charges is finally procured by a wise or clever lawyer, the Condamnation de Banquet puts before the audience an obvious villain, whose conviction and execution satisfies the wishes of the spectators. In this sense, the play is very much a celebration.

Thus in the Condamnation de Banquet, it is apparent that we are seeing justice done. The judge is anxious that justice should also be seen to be done. The play was written by a doctor of Civil and Canon law, and may reflect some of the traditions of the Basoche, the society of law-clerks. But whether it was intended for an audience of professional lawyers or a wider one, it does not attack or even satirize the law or lawyers or judges, and is, as far as we can tell, a reflection of the best procedure in the royal criminal courts.

30 “Hey, we must listen to the defendant, AUDI PARTEM, says the Law. You must examine the circumstances, and consult, properly, with doctors and lawyers. In such crimes and disputes, a lot of consultation is needed: for a thousand ducats, I would not want to have a reputation for corruption”, Condamnation, op. cit., v. 1923-1931.
31 Condamnation, op. cit., v. 3230.
32 Condamnation, op. cit., v. 474-475.
33 Condamnation, op. cit., v.1592 ff.
34 Condamnation, op. cit., v. 2039-2043.
35 “Here is the second sneak attack”, Condamnation, op. cit., v. 1595.
37 The Basoche is extensively discussed in H. G Harvey, The Theatre of the Basoche, Cambridge, Harvard University Press, 1941, and more recently by J. Enders, op. cit., ch. 3.
The *Condamnation de Banquet* is from the early sixteenth century, and indeed most of the plays with courtroom scenes are from the period after 1450. Before this, however, a dramatic monologue by a great French writer, Eustache Deschamps, called *La farce de M' Trubert et d'Antrongnart*, gives some information about a lawyer’s work in the late fourteenth century. The proto-drama is identified by its author as a farce. Deschamps was a lawyer, and a royal *bailli* of the jurisdiction of Senlis, just north of Paris. There is no courtroom scene in this play, which deals with the first contact between a would-be litigant and his attorney: Antrongnart is thinking of suing somebody for trespassing on his property and stealing an almond, and while Maître Trubert recognizes the essentially frivolous and harassing nature of this suit, he vaunts his own lawyerly skills, which are mainly in the realm of raising dilatory exceptions, and accepts a retainer. He discovers that his client has a store of twenty gold francs, and offers to play a game for them. The other accepts, and insists on choosing his own game and the judges, inviting Trubert to swear an oath renouncing all possible remedies if he should lose. The rash Trubert, like an unwary and naive litigator, promises, and loses all his money, including the four francs which his client has already paid him, and more which he borrows on security of most of his clothes. The comic effect of this piece is that the methods used by the clever Antrongnart are precisely those used by an unscrupulous lawyer to fleece a client. There is some indication that the play also discusses a jurisdictional battle, since the supposed tort, that some person has “cueilli une amande” (picked an almond) is phonologically identical to the other expression “cueilli une amende” (extracted a fine) which could be the source of a complaint against a court which has taken improper jurisdiction of a case. But this play never reaches litigation, and if there is in it satire of village lawyers such as Trubert, who know a little but not enough to stay out of trouble themselves, there is also satire of litigious and devious clients.

In French law, modern as well as medieval, a difference is observed between actions for possession and those for ownership, French *possessoire* and *pétitoire*. A renter or lease-holder may be in possession of some property, without being the owner or landlord. When someone is deprived of possession, he or she has an action for repossession. For real property (usually land), this is called novel disseisin, French *nouvelle disseisine* or *disseisine et de nouvelle*. If the true owner has been dispossessed, or loses a suit on novel disseisin, he or she has an action on ownership. Beaumanoir has a chapter on this issue.39

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39 The client’s name appears in the manuscripts sometimes as Entrongnart, sometimes as Antrongnart, and the alternate spellings confirm the pun of the homophonous pair *amande* and *amende*.
40 Beaumanoir, *Coutumes, op. cit.*, chap. 32. Novel disseisin probably originated c. 1160 in England or Normandy, in the time of Henry II, but spread to other areas of France by Beaumanoir’s time.
As further examples of procedure from about a century later, two curious little plays by Guillaume Coquillart, dated about 1478-1480, may give an idea of how a judge might have handled a suit on novel disseisin, although the case involves “personal property”. The Plaidoyé and the Enqueste might have been performed as monologues by a clever jongleur, and were probably performed as a Basoche entertainment, as there is some reference to the time of the hearing as being Saturday after supper. It seems that at the time of the composition of the plays, Coquillart was a law student in Paris. As the Plaidoyé begins, Mâ Simon, the attorney for La Simple (Simpleton), calls on the judge to give him a default judgment against La Rusée (Cunning) in a suit on novel disseisin. The judge is about to do so when an attorney, Mâ Olivier, speaks up for the defendant La Rusée. His authorization is immediately challenged by Mâ Simon, but it appears to be in order. The judge then hears four pleadings: two from each attorney, of decreasing length, where each but the first answers the one before. After this, the judge hears Mâ Simon ask for his client to be repossessed of the property temporarily, until a judgment is given on the main issue. After consulting with his assessors, the judge awards possession pro tem to La Simple, declares that there are issues in dispute, and orders a further hearing to examine witnesses. Several times the judge has to stop some squabbling between the attorneys. This scenario departs a little from what we know of civil procedure in the secular courts going back to the thirteenth century: the pleadings of parties or their attorneys do not usually go beyond a complaint, an answer denying the complaint or raising defenses, and a reply or replicacion to the answer. The whole subject of the suit is, however, completely frivolous: the property of which La Simple claims that La Rusée has recently deprived her is none other than a man, presumably a lover or gigolo, Le Mignon (Cute). It is the seriousness of the procedure when applied to this property that makes for the humor of the piece; but it is precisely the fact that the subject is frivolous that means that the procedure must be impeccable for the joke to work. The unlikelihood, even the outrageousness, of the substance guarantees the authenticity of the form.

Guillaume Coquillart, Œuvres, ed. M. J. Freeman, Paris and Geneva, Droz (Textes Littéraires Français), 1975, (Cited as Coquillart); the two plays are Le plaidoyé de Coquillart d’entre la Simple et la Rusée, p. 3-55 (cited as Plaidoyé), and L’enqueste d’entre la Simple et la Rusée faicte par Coquillart, p. 56-112. (Cited as Enqueste).

The editor M. J. Freeman points out that the monologue form may have been adopted to avoid the ban on theatrical performances by the Basoche, Coquillart, p. xli. This would also explain the curious epilogue by the author, who talks about judges who are also parties, and lawyers who represent both sides, Plaidoyé, v. 802-809. This seems like standard satire of lawyers, but it is not very appropriate for this play, unless a single performer acted all the parts, and thus was judge and parties and both attorneys all at the same time. The performance time of Saturday after supper is today adopted by the Pseudo Society, at the Congresses of the Medieval Institute, Western Michigan University, Kalamazoo.

Since the complaint is one of which the secular court would normally have jurisdiction, the author is probably not following the procedure of an ecclesiastical court, where multiple pleadings were quite possible: Beaumanoir, Coutumes, op. cit., §196.
The *Enqueste* which seems to follow the *Plaidoyé* consists of two parts: first the assessor who has heard the witnesses makes some comments about the fact that the original plaintiff, La Simple, has called the witnesses, and this seems anomalous because she is in possession. The subject of this *enqueste* is in fact a suit on ownership, not possession, and this makes it seem that the second play does not really follow properly on the first, since M's Simon, La Simple’s attorney, has stated plainly that her suit was on possession, not ownership. The argument presented by the assessor is in any case very abstruse, although it might well have appealed to an audience of lawyers. The second part of the play is then merely the assessors’ report on the examination of the witnesses, read by a clerk. The six witnesses are none of them prepossessing, being mostly low-life characters, and the play ends when the clerk finishes reading the report. No judgment is given. This second play could very easily have been performed by a single jongleur, since the judge speaks only six lines, and the two lawyers two lines each, the balance of the fifty-seven pages in Freeman’s edition being the harangue of the assessor and the reading by the greffier. It is tempting to think that this play might actually have been written first, and the other, more dramatic one, only later, and on possession instead of ownership.

The contents of the *Enqueste* nevertheless give some idea of how witnesses were examined. The date and time of the examination of each is carefully noted, and the main part of the testimony is written out in full, with the irrelevant material or protestations of ignorance being given in abbreviated form. The main part of each deposition adds something to our knowledge of the case, and this kind of information is not repeated. In this way, the *Enqueste* is perhaps untypical, and constructed as a literary exercise, rather than as the report of a judicial one. The material is in any case mostly trivial or scandalous. Mignon is treated as property, which is subject to acquisition, inheritance, and even escheat to the crown when the owner dies without heirs. La Simple seems to obtain permanent rights to him when he goes through a ceremony that looks like homage, swearing with his hands between hers to serve her faithfully, and making a renunciation in due form of all possible appeals against her sovereignty.  

Thus the *Plaidoyé* and the *Enqueste* offer what is probably a fairly accurate picture of the kind of suit that might have been brought for novel disseisin in the late fifteenth century. Once again, the very frivolousness of its subject matter suggests that the comic effect is derived from the perfectly correct procedure used to deal with the problem. The learned nature of some of the discussion would suggest, however, that the audience expected or intended by the author was not naive about legal matters, and enjoyed an argument over an obscure point of procedure as much as a lampoon of lawyers and litigants. The legal professionals all treat the suit as perfectly serious, and once this attitude has been accepted by the audience, there is nothing to disapprove of in the behavior of any of these persons. The lawyers do

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*Plaidoyé*, op. cit., v. 905-936. The renunciation is similar to those given in Trubert, op. cit., v. 347-379, and in Beaumanoir, Coutumes, op. cit., §1094.
their best for their clients, the judge tries to move the proceedings along, and the assessor makes what he feels to be the needed explanation about the burden of proof. The witnesses, preposterous as they are, are treated with respect and questioned about relevant issues. One can have some confidence that lawyers and judges who proceeded in this way reached sensible and equitable results in their trials.

If the criminal trial of Banquet and Souper seems to be held in the court of some royal baille, and the pleadings and inquest of Coquillart’s pieces appear to follow the procedure of the provincial court, what other kinds of courts appear in the dramatic literature of the French middle ages? The remaining plays I shall discuss take place in lower level courts, at the village or small town level, perhaps even in the open air rather than a courtroom. There is some discussion as to whether certain of these courts are secular or ecclesiastical. And these plays are farces.48

In the comic theatre of the farces, realism is often sacrificed to satire, and while the subjects of the suit may be quite serious, such as conversion or assault, the lawyers, judges, and especially the litigants are ready to do anything to escape an adverse judgment, even to subverting the system by outright lying.

In Les deux savetiers49 first printed in 1506, a rich shoemaker plays a cruel joke on a poor one. The rich man, annoyed by his neighbor’s cheerful poverty, explains that riches come from God, and that the poor man should ask God for some, say a hundred crowns. The poor man says he will not take less or more than a hundred. The rich man hides behind the altar, and when the poor man asks God for money, he tosses him a purse with ninety-nine crowns. The poor man makes the best of it, and takes the ninety-nine, to the fury of the rich man, who runs after him to get his money back. The poor man goes along with the charade, however, and insists that the crowns were given him by God. The rich man hales him before the prevost, a lower level judge, even lending him (but not giving him, as the text makes clear) clothes to wear. The poor man seems to know the judge, however, and although he is the defendant he gives his version of the case first. The poor man asks for summary judgment. The rich man is obliged to reveal his scheme, and the judge sees the transfer of money as a gift, which is not refused. The claim that the giver did not expect the gift to be accepted is dismissed. The poor man is leaving, when the rich man asks for his clothes back, and the judge listens to this claim also; but the poor man simply denies that the clothes were lent to him, and the rich man can offer no proof, and loses again. He leaves muttering imprecations on everyone. While the first count, concerning the money, may be properly disposed of in this very summary procedure, the second, concerning the clothes, is clearly a miscarriage of justice, where the poor man wins by simply lying to the judge.

This court is a very simple one, like a conciliation court: the parties appear pro se, the usual procedure of complaint and answer is not followed, and the parties

simply state their cases to the judge, who has no assessors or clerk. The poor man is very anxious for a swift decision, but the judge insists on hearing the other party without citing the **AUDI PARTEM** in Latin. When a new complaint, concerning the clothes, is made, he prevents the poor man from leaving. Without giving a reason, he simply believes the poor man’s denial, and the audience knows this to be a lie. There is almost no legal jargon in this play. While the action is presented as a legal question, and on the whole satisfactorily resolved in favor of the intended victim of the joke, it also gives the moral or practical lesson, which need not be a legal one, that one should not offer something valuable in the expectation that it will be refused. Within the very short span of this play (two hundred and ninety-four lines, the trial scene eighty lines) a full trial was obviously impossible, and there is some insistence on the use of a summary procedure. Neither party is admirable: the rich man is gullible and rash, while the poor man is an outright liar. The judge seems decisive but arbitrary, and is deceived by the poor man. The motivation for the rich man’s stratagem is poor, and the whole play is constructed around a banal moral precept. The court scene could hardly be described as seeing justice done, except that much minor litigation may have taken this form, as perceived by the common person with no legal training. One could surmise that this play is intended for a lay public, more likely to be interested in being amused than in following the legal issues and procedure.

One play, perhaps from about 1500, shows a procedure in an ecclesiastical court. In *L’official*, a girl sues a young man for what might be called breach of promise. The unscrupulous Colin has taken advantage of Marion, a young girl, by promising to marry her if she has sex with him. Later he denies his promise. As it turns out, however, there is a witness who has been watching and listening through a hole in the wall, and this witness is produced and believed. Colin is sentenced to a fine, to beg forgiveness of Marion, and to marry her. The nature of the suit, the remedy and the name of the play which describes the ecclesiastical judge all indicate that this is an ecclesiastical court, at the village level. The litigants are not at all pleasant people: the girl is shrill and has to be silenced by the judge; the mother is scheming, and appears to have instructed her daughter to more or less entrap the young man; and the accused Colin is cynical and foul-mouthed. As is usual in these plays, the judge does nothing which could bring him reproach: in his first speech he echoes the satisfaction with his profession that is expressed by the judge in the *Condamnation de Banquet*:

* Celuy qui est droict maintenant  
  Est prisé de Dieu et des hommes*

He listens patiently to the wandering testimony of the witness, whose apparent senility provides most of the comic content of the play. The *official* finally does bring out the necessary testimony and gives what seems to be an appropriate judgment.

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50 Tissier, Recueil, op. cit., vol. II, p. 84.  
52 “He who administers justice is valued by God and man”, L’official, op. cit., v. 50-51.
The most famous courtroom scene in medieval French drama also occurs in a farce, the *Farce de M’ Pierre Pathelin*. As in the *Condamnation de Banquet*, the trial is in the second part of the play, after considerable introductory material in the first half. Here, Pathelin gulls a draper into selling him some cloth on credit, and then, back home, when the draper appears to demand payment, Pathelin and his wife pretend he has been ill for some weeks, and could not possibly have bargained for cloth with the draper that day. Included in this first part of the play are hilarious scenes where the draper and Pathelin are each trying to cheat the other, and later where Pathelin speaks fragments of various languages, as if in delirium. In the later scenes, a shepherd who has been killing and eating the same draper’s sheep has been caught and accused of this, and the draper is out to prosecute him for restitution. The shepherd comes to Pathelin, seeking to hire him as a lawyer, candidly admitting his crime. Pathelin makes a secret pact to defend him, instructing him to answer the questions of the judge only by bleating like a sheep, saying “Bée”. Of course once they are in court the draper recognizes Pathelin, and becomes confused, talking now about his cloth, and now about his sheep. Pathelin, naturally, does his best to keep the draper bewildered and the judge uninformed. Finally the judge questions the shepherd, receiving no answer but “Bée” each time, and he is finally convinced that the shepherd is an imbecile, who cannot be prosecuted, and discharges him. The final scene of the play shows Pathelin trying to collect his fee from the shepherd, who replies to him in the same way as Pathelin himself taught him to answer in court, by saying “Bée”, and running away. As in the *Farce de M Trubert*, the lawyer who is so sure of his bag of tricks has been bested by a litigant, who uses one of the very tricks the lawyer himself taught him, in order to deny the lawyer his fee.

It has been pointed out that this is a lower level court, perhaps an ecclesiastical court at the village level. Pathelin is an untrained but clever rogue, whose forte is not, as he claims, *advocacion*, but, as his wife claims in rhyme, *trompacion*. The judge is apparently an honest man: he tries to get at the truth, and to make sense of the ravings of the draper, but without much success. He tries to move the case along, as do all the judges, more or less, in these medieval French plays. He seems to have compassion for the accused shepherd, and takes pains to explain to him that he need not answer any further summonses. But the play is, after all, a farce, and the point is not that justice be done, or even be seen to be done, but that the spectators be shown something they can laugh at. Our sympathies lie, more or less, with Pathelin: when he gulls somebody, the gullee is himself a rogue, and we are not particularly sorry for him; and we are not particularly sorry when Pathelin himself is the gullee, for once again the deceived person is a rogue. The play is another variant of the theme “A tricheur, tricheur et demi”, a comic motif in medieval French literature so well known that its moral message is unimportant and in any case immediately accepted. While the audience might not, on reflection, believe that a competent judge should be deceived by the shepherd’s “Bée”, the play

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54 Harvey, *op. cit.*, p. 147.

is not usually taken as a serious criticism of the judicial system, but rather as a
joyous romp, where the rascally Pathelin, although bilked of his fee, remains
fundamentally unvanquished, and can even admire the way he himself has been
deceived.

It is not to be supposed that playwrights of the French middle ages wrote in
order to reveal the nature of their justice to a distant posterity. The theatre is an art of
the present, and as such is often very topical. The writers offering representations in
monologue or dialogue form of scenes of litigation did so to two kinds of audiences:
the initiated and the uninitiated. In the former case, the writer could count on a
shared knowledge, so that few explanations were needed, and the humor, if there
was any, was generated by the treatment of a preposterous subject in a mock-serious
way. While these kinds of plays are very interesting to the legal historian as
memorials, however distorted, of some kind of interaction in the real courts, they are
hardly examples of seeing justice done. These plays are often described as causes
grasses, mock trials put on by law students and clerks for professional societies such
as the Basoche. Such people must have seen real justice, or indeed injustice, done
every day, and wanted something else for their entertainment.

An exception may perhaps be made here for the Condamnation de Banquet,
where a villain is seen to commit a crime on stage, and is subsequently accused and
confesses. The execution of Banquet does offer an opportunity to see at least that
much justice done, even if the style of the whole play is somewhat tongue in cheek,
and the character of the Fool suggests in clear terms that Banquet will not stay dead.
The plays for the uninitiated, the farces, seem more anecdotal and are
concerned not so much with a contrast between procedure and the subject of the suit
as with the struggle between the forces of justice and the forces of disorder:
scheming litigants and deceiving attorneys. In Pathelin, the uninitiated spectator can
quite easily follow the procedure. The schemes of M’ Pathelin and the shepherd
cannot be considered as standard legal procedure, but only as improvised, one-time-
only solutions invented by an unscrupulous defendant and/or his lawyer. If this
subterfuge worked once, it will never work again in the same circumstances. On the
other hand, the uninitiated public might have had a notion of justice, that was
probably satisfied by Pathelin and other plays like it. That notion was that the
deceiver can always be deceived in his turn. The French formulation is “A trompeur,
trompeur et demi”; and in this more primitive, less forensic mode the farce may
have been quite fully satisfying. The very agent of justice, the lawyer, was seen then
as now in a less than totally admiring way. In Trubert and in Pathelin, it is the
lawyer who is finally tricked by the faux naïf litigator. For the audience on the
public square watching a farce, it must have really seemed that they were seeing
justice done.

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