

Novel 124.

Concerning Litigants.

Emperor Justinian to Peter, pretorian prefect.

Preface. We enact the present law so that the integrity of the judges may be made apparent and so that litigants may not be able to circumvent the laws by bribery.

c. 1. We therefore ordain that whenever a suit is commenced or appeals are examined, the principals of the litigation or those, to whom, in the meantime, as happens, the cause is transferred, must first of all take an oath in the presence of the judge, and in touching the holy gospels, that they have not given or promised anything, for the sake of favoritism, to the judges or ~~for~~ any other purpose, and that they will not give anything in the future, either in person or through another, except what they shall pay to their attorneys for assistance, or to other persons to whom something must be given according to law. This shall also be done in the imperial consistory whenever appeals by consultation are brought before it and the aforementioned oath shall be taken in the presence of the senate. If some of the litigants cannot come before the judge, then those that are present shall take the oath, and some of the court officials shall, together with such parties that are present, go to those that are absent, so that the latter may take the same oath in the presence of the former. If the litigant is a woman who, thru modesty, does not usually show herself to strange men, then the court officials who are sent to her may take her oath in the absence of the adversary. If one or all of the parties are absent in other places, then such absent party shall take the oath in the manner aforesaid, which shall be made

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a matter of record, before the president or the defender of the city in the province in which he lives. And it is to be observed in general, that if any litigant, absent or present, refuses to take such oath, and this is made known to the judge, then, in case of the plaintiff, he shall lose his case, and if it is the defendant, he shall be condemned, in either case by decision of the judge.

c. 2. If any litigant states that he has given or promised something to anyone, names the person and proves his statement, he shall not suffer the punishment of losing his case. The person convicted of having accepted a gift or promise, shall, if the case is a civil case, pay three-fold of what was given or double the amount that was promised, to be collected by the count of the Crown Domain, and shall in either case be shown of his title or magistracy. If the case is a criminal case, he shall suffer confiscation of his property and shall be sent into exile, as, by accepting bribery, he strove to shift the crime of another onto himself. But if the litigant cannot prove the gift or promise, the person said to have received a gift or promise shall take an oath that he neither personally or thru another has been given or promised anything, and if this oath is taken, he shall be free, but the litigant who cannot prove his statements, shall, in a civil case, pay an amount equal to that in litigation, to be collected by the count of the Crown Domain, but the case shall take its accustomed course; in a criminal case he shall suffer confiscation of his property, and the case shall be terminated before competent judges in the manner provided by law. But if the person, so mentioned by the litigant, refuses to take the aforesaid oath, he shall be subjected to the above mentioned punishment, whether it is

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in a criminal or a civil case. If a litigant swears that he has not given or promised anything, but it shall be proven within four months after the rendition of the judgment that he has received or has been promised anything, the punishment above mentioned shall be meted out both to the giver and the receiver. In cases carried on by guardians or curators, these persons shall take said oath, and if the occasion arises that punishment should be inflicted on account of such oaths, it shall be inflicted upon such guardians and curators, and the persons under guardianship or curatorship shall not be prejudiced thereby.

c. 3. We also direct that judges, both military as well as civil, shall take care in every place of our republic that neither the agents of the master of offices^(a), nor those of the prefect or any other person acting in the capacity of court officer in the nature of a bailiff, receive any fees from anyone beyond the amount fixed by law, not even when they carry an order of Our Majesty. If they, the former, learn that anyone has demanded more, they shall have power to seize and incarcerate him and collect from him fourfold the amount thereof, one-fourth to be repaid to the payer and three-fourths to the fisc. And if a magistrate, civil or military, learns thereof, either through someone appearing before him or in any other way, and he neglects to avenge the person suffering damage thereby, the fourfold amount thereof shall be made good, in the manner aforesaid, out of his own property. The same penalty shall be collected from judges by the count of the Crown Domain, if the former learn that any bailiff, belonging to their staff, has demanded any fees contrary to law and neglect to punish him. We authorize persons who are summoned to refuse to give

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bailiffs any greater amount than that fixed by law, and if any more is demanded from them, to resist such bailiffs.

Note.

(a) Magisteriani - agentes in rebus - secret service men.

c. 4. Since, moreover, a law of our father, of blessed memory, as well as a law of Our Serenity, declares that judges shall not set forth in their decisions, that they were commanded by an oral imperial order to cause certain persons to be brought into court, and further that our worshipful referendaries should make our orders known in a becoming manner, we, confirming this law, direct that the worshipful referendaries shall not have the power in cases which they, in person or through assistants, lay before or report to Our Serenity, to arrest anyone, compel anyone to give surety or to demand anything, either personally or through another, or compel anyone to compromise or make any agreement with any adversary, or to meddle in the cause in any manner whatever. Nor do we permit them to do anything else except to communicate to the regular or assigned judges the orders which we have given, either in writing or without writing. If one of them dares to do anything contrary to this law, the person suffering any damage, or defrauded, in his matters, shall not be prejudiced in his rights, and the former shall be compelled by the proper judge to indemnify the latter for all the injury sustained by him, and shall further lose the girdle of his office and his titled position. These provisions shall apply not only in future cases, but also in those which have already been commenced but not yet terminated.

Epilogue. Your Sublimity will take care that the present and ever-enduring law be brought to the notice of all by edicts published in this imperial city, so that all may know what we have decided for their common benefit.