

Novel 77.

Note: Novel 77 which follows deals partially with unnatural crime of men, dealt with in law 30 of the foregoing title, and partially with blasphemy—the only Justinian law on the subject, and dealing with it severely. Novel 141 also deals with unnatural acts.

A constitution concerning punishment of those who swear in the name of the Deity and use blasphemy.

Preface. We think it is clear to all men of right mind that it is our earnest desire and wish that those entrusted to our keeping should live uprightly and participate in God's clemency, inasmuch as also God, in His love, does not seek the destruction but the conversion and safety of men, and He pardons those who have sinned but return to His ways. We accordingly exhort all to fear God and implore His clemency, and we know that all who love Him and await His grace, do so.

c. 1. And since we know that some men, in the fetters of the devil, are given to great dissoluteness and do things which are contrary to nature itself, we call also upon them to have the fear of God and the future judgment in mind, and to abstain from such devilish and unlawful dissoluteness, lest by reason of such impious acts, God, in His wrath, may destroy the cities and their inhabitants. For we are taught by the sacred scriptures that cities and the inhabitants thereof have perished by reason of such impious acts. **1.** And since some men, aside from the acts just mentioned, use blasphemies and swear oaths by the Deity, thereby inciting the wrath of God, we also call upon them to abstain from such blasphemies and from taking oaths by "the hairs" and "by the head" and by similar words. For if maledictions upon men do not remain unavenged, much more is he who blasphemes God himself worthy of punishment. We therefore exhort all such men to abstain from the sins mentioned, to have in mind the fear of God and to imitate those who live uprightly. For famine and earthquakes and pestilences are caused by such sins, and we therefore admonish them to refrain from the crimes mentioned, lest they lose their souls. And if there are any who persevere in such iniquity after this, our admonition, they in the first place show themselves unworthy of the clemency of God, and they will, in the next place be subjected to the punishment fixed by law. **2.** For we have ordered the glorious prefect of this imperial city to arrest those who after this, our warning, persist in such unlawful and impious acts, and inflict the punishment of death upon them, lest by disregarding such sinners, the city and the republic may be injured by reason of their impious acts. And if any one finds any such men after this, our warning, and conceals them, he, too, will be condemned by the Almighty God. And if our glorious prefect discovers any men committing such sins without subjecting them to the punishment according to our laws, he will, in the first place set himself liable to God's judgment, and will, in the next place, encounter our indignation.

Note.

The severe penalty attached to blasphemy was imposed because of the possibility that thereby the empire might be destroyed by the wrath of God. This theory of punishment, however—rightly considered a blot on Roman criminal jurisprudence—was not confined to the period after Christianity was adopted as the religion of the state. As will be noted in title 23 of this book, anyone who, in writing a testament of another, wrote out a disposition in his own favor, even at the request of the testator, was guilty of the crime of falsification. The possibility of a forgery sufficed in this case to entail a criminal punishment. So those who possessed an unusual quantity of weapons were punished, as was one who merely was abroad to kill someone. C. 9.16.6. So a person who caught his wife in the act of adultery and did not immediately divorce her was guilty of pandering—because of the possibility that he might be engaged therein. The laws regarding soothsayers may be referred to this same idea.