

Book IX.  
Title VIII.

As to the Julian law of Treason.  
(Ad legem Juliam magistatis.)

Bas. 60.36.14, et seq; Dig. 48.4.

Headnote.

This crime was held to be like that of sacrilege.

The following persons, among others, were guilty of treason: Whoever gave aid or comfort or information or counsel to the enemy, including persons who joined the enemy, through whose treachery the Roman army was betrayed, or the enemy was not delivered into the power of Rome, or by whose aid the enemy received weapons, horses, provisions or other support; whoever delivered a citizen, or betrayed a city or province, to the enemy; whoever was guilty of conspiracy against the government or to kill an official in power; whoever was guilty of sedition or causing soldiers to be seditious or to rebel; whoever induced another to take an oath to do something against the government; whoever carried on war or levied an army without the order of the emperor; a provincial governor who refused to deliver the government of the province to his successor, or a commanding officer who refused to deliver the army to his successor. Dig. 48.4.

Some acts which appear to be more of a private nature were classed under this crime, or were said to be similar to it, e.g. when a man released a confessed criminal thrown into chains; Dig. 48.4.4 pr, or when anyone knowingly falsified public records, Dig. 48.4.2; or when anyone possessed purple clothing, C. 11.9.4; or if a governor inscribed his own name on a work erected with public money, without mentioning the emperor; C. 8.11.10. Persons who were otherwise forbidden to bring accusations might bring one for this crime. Dig. 48.4.7.

Title 30 of this book deals specially with tumults and seditions which may be considered part of this title.

The penalty was death. Ins. 4.18.3. However, knowingly harboring an enemy was in one case punished by deportation, in another by relegation. Dig. 48.19.40. And the extreme penalty was, in any event, inflicted only on those who were guilty of high-treason, that is to say, of acts directly affecting the safety of the emperor or of the country. Dig. 48.4.11.

9.8.1. Emperor Alexander to Paulinus.

In other cases also the crime of treason does not apply in my time, let alone permitting you to accuse a judge of that crime, for the reason that he gave, as you say, judgment contrary to my constitution.  
Promulgated April 11 (223).

9.8.2. The same Emperor to Faustianus.

You formed a strange anxiety as to my ideas when you fear that you are guilty of the crime of treason because you ceased to be angry with your slave, when you had inadvisedly sworn, in the name of the emperor, that you would always be so.

Promulgated February 2 (224).

Note.

See headnote at C. 9. 22 on perjury.

9.8.3. Emperor Constantine to Maximus, City Prefect.

If anyone accuses another of the crime of treason, he may know that since a person convicted thereof is not protected from severe inquisition by reason of any privilege of rank, he, too, is to be subjected to torture, if he cannot prove his accusation by other, clear evidence. 1. And that is true not only in the case of the man guilty of such rashness (as to bring such accusation) but he too, must be subjected to torture, by whose counsel and instigation the accusation appears to have been made, so that the punishment provided by law may be visited upon all who have guilty knowledge of the crime.

Promulgated January 1 (314).

C. Th. 9.5.1.

Note.

See C. 9.41.

9.8.4. Emperors Valentinian, Valens and Gratian to Olybrius, City Prefect.

No one who, without our advice or knowledge is confronted with the torture with cords, should be forbidden to set up (in avoidance thereof), his service, birth or rank, except, nevertheless, in a case of treason, in which the status of all is equal.

Given July 8 (369).

C. Th. 9.35.1.

Note.

See C. 9.41.

9.8.5. Emperors Arcadius and Honorius to Eutychianus, Praetorian Prefect.

Whoever enters into a criminal conspiracy with soldiers, private persons or barbarians, or takes or gives the oath in connection therewith, (the object of which is) to kill men of illustrious rank who participate in our consultations in the imperial counsel, also senators - for they too are a part of use - or finally any person whatever in our service<sup>1</sup>, shall be stricken with the sword as one guilty of treason and his goods confiscated and given to our fisc, and we want to punish the intention of such crime equally with the effect thereof. 1. And their sons, whose lives we spare through special imperial leniency - for they ought to perish be the same punishment as their fathers, for it is to be feared that they will follow the paternal, that is hereditary, example - shall be strangers to the inheritance from their mother, grandmother, and all their relatives; they shall take nothing under a testament of strangers, and shall be perpetually needy and poor; the paternal infamy shall ever accompany them; they shall be admitted to no honors and no oaths of loyalty; they shall, finally, be such that, groveling in perpetual poverty, death shall be a solace and life a punishment to them. 2. We further order that all who attempt to intercede with us for such persons shall be infamous, without hope of pardon therefor. 3. The daughters (of such conspirators) whatever their number, shall only

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<sup>1</sup> [Blume] i.e. Chiefs of the offices of the police and provincial governors, civil and military. Gothofredus ad. Th. 9.14.3.

receive the Falcidian portion<sup>2</sup> from the property of the mother, whether she dies testate or intestate, so that such daughters may have a moderate support, rather than the full advantage and name of heirs. For daughters, who, we are confident, will be less daring, on account of the infirmity of their sex, should not be dealt with as severely (as the sons). 4. Emancipation of sons or daughters, made by such conspirators after the enactment of this law, shall not be valid. Dowries or gifts or finally alienations of any kind of property, which appear to have been given or made, fraudulently or legally, after the time when such persons first thought of entering such conspiracy, shall be of no force.<sup>3</sup> 5. Wives of the aforesaid man may, of course, recover their dowries. If they are so situated that whatever they have received from their husbands as a gift must be preserved for their children (as would be the case if e.g. she remarried), everything which according to law would (otherwise) go to the sons, will go to the fisc from the time that the usufruct (of the wife) ceases. The Falcidian portion in such property shall be given to the daughters but not to the sons. 6. The provisions made as to the aforesaid persons and their sons, shall apply with equal severity to their guilty satellites and servants and their sons. 7. But if anyone of these, actuated by the zeal for genuine praise, betrays the conspiracy in the beginning thereof, he will be rewarded and honored by us. But a man who enters the conspiracy and makes a late disclosure of the still undiscovered secrets of conspirators, shall be considered worthy only of absolution and pardon. Given September 4 (397) at Ancyra. C. Th. 9.14.3.

9.8.6. Paulus in his work on public prosecutions wrote:

It must be remembered that if anything is said to have been done against the majesty of the emperor, it is usually required even after the death of the accused, since the time that the Divine Marcus ordered the property of Depitianus, a senator who was an accomplice of the conspiracy of Cassianus, to be confiscated to the fisc after his death; and in our time (property) is often taken from heirs. 1. Likewise, slaves are put under torture, as against their masters, in cases of lese majesty. Marcianus, in the first book concerning public trials on the Julian Law against treason, (says): 2. We commenced to use the right after the constitution of Marcus, that this accusation may be brought even after the death of the guilty persons, so that if the decedent is convicted, his memory will be condemned and his property taken from his successors; for from the moment that a man plans a dastardly crime, he is, as it were, punished by his own conscience. 3. So the Divine Severus and Antoninus also decreed that a man could made no alienation or manumission from the time that he began his crime; and Magnus Antoninus wrote, that no debtor could rightfully pay him. 4. In a case of that kind, that is to say, in a case of

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<sup>2</sup> [Blume] One-fourth - later increased. See index.

<sup>3</sup> [Blume] This provision seems to belie the principle stated in the headnote to this book that no one is punished for his thoughts alone, and further shows the somewhat indefinite character of acts which constituted a crime under the Roman law. The provision probably means that the acts specified would be void from the time of the commencement of the conspiracy. The commencement, of course, was in the thought thereof, and that could not be shown except by the circumstances, unless, perchance, statements under torture should disclose it definitely.

lese majesty, slaves are put under torture as against their masters. If a man has died and he is accused of complicity in a case of lese majesty, his property is put into custody on account of the uncertainty of his successor, as Severus and Antoninus wrote in a letter to their fiscal agents (rationales).

Note.

See C. 7.2.2 and note.

Dig. 48.4.11 says that generally a crime dies with the death of the guilty party, but that the crime of treason is an exception, and that the fisc receives the inheritance, unless the decedent is shown not to be guilty. That this is true, however, only in case of those guilty of high treason (perduellio), that is to say, those "who are animated by a hostile intent against the country or the emperor." It is clear, therefore, that in many cases, generally classed as treason, this penalty does not apply. See also title 6 of this book.