

Objection 1. It would seem that the accuser who fails to prove his indictment is not bound to the punishment of retaliation. For sometimes a man is led by a just error to make an accusation, in which case the judge acquit the accuser, as stated in Decret. II, qu. iii.* Therefore the accuser who fails to prove his indictment is not bound to the punishment of retaliation.

Objection 2. Further, if the punishment of retaliation ought to be inflicted on one who has accused unjustly, this will be on account of the injury he has done to someone—but not on account of any injury done to the person of the accused, for in that case the sovereign could not remit this punishment, nor on account of an injury to the commonwealth, because then the accused could not acquit him. Therefore the punishment of retaliation is not due to one who has failed to prove his accusation.

Objection 3. Further, the one same sin does not deserve a twofold punishment, according to Nahum 1:9†: “God shall not judge the same thing a second time.” But he who fails to prove his accusation, incurs the punishment due to defamation‡, which punishment even the Pope seemingly cannot remit, according to a statement of Pope Gelasius§: “Although we are able to save souls by Penance, we are unable to remove the defamation.” Therefore he is not bound to suffer the punishment of retaliation.

On the contrary, Pope Hadrian I says (Cap. lii): “He that fails to prove his accusation, must himself suffer the punishment which his accusation inferred.”

I answer that, As stated above (a. 2), in a case, where the procedure is by way of accusation, the accuser holds the position of a party aiming at the punishment of the accused. Now the duty of the judge is to establish the equality of justice between them: and the equality of justice requires that a man should himself suffer whatever harm he has intended to be inflicted on another, according to Ex. 21:24, “Eye for eye, tooth for tooth.” Consequently it is just that he who by accusing a man has put him in danger of being punished severely, should himself suffer a like punishment.

Reply to Objection 1. As the Philosopher says (Ethic. v, 5) justice does not always require counterpassion, be-

cause it matters considerably whether a man injures another voluntarily or not. Voluntary injury deserves punishment, involuntary deserves forgiveness. Hence when the judge becomes aware that a man has made a false accusation, not with a mind to do harm, but involuntarily through ignorance or a just error, he does not impose the punishment of retaliation.

Reply to Objection 2. He who accuses wrongfully sins both against the person of the accused and against the commonwealth; wherefore he is punished on both counts. This is the meaning of what is written (Dt. 19:18-20): “And when after most diligent inquisition, they shall find that the false witness hath told a lie against his brother: then shall render to him as he meant to do to his brother,” and this refers to the injury done to the person: and afterwards, referring to the injury done to the commonwealth, the text continues: “And thou shalt take away the evil out of the midst of thee, that others hearing may fear, and may not dare to do such things.” Specially, however, does he injure the person of the accused, if he accuse him falsely. Wherefore the accused, if innocent, may condone the injury done to himself, particularly if the accusation were made not calumniously but out of levity of mind. But if the accuser desist from accusing an innocent man, through collusion with the latter’s adversary, he inflicts an injury on the commonwealth: and this cannot be condoned by the accused, although it can be remitted by the sovereign, who has charge of the commonwealth.

Reply to Objection 3. The accuser deserves the punishment of retaliation in compensation for the harm he attempts to inflict on his neighbor: but the punishment of disgrace is due to him for his wickedness in accusing another man calumniously. Sometimes the sovereign remits the punishment, and not the disgrace, and sometimes he removes the disgrace also: wherefore the Pope also can remove this disgrace. When Pope Gelasius says: “We cannot remove the disgrace,” he may mean either the disgrace attaching to the deed [infamia facti], or that sometimes it is not expedient to remove it, or again he may be referring to the disgrace inflicted by the civil judge, as Gratian states (Callist. I, Epist. ad omn. Gall. episc.).

* Append. Grat., ad can. Si quem poenituerit. † Septuagint version ‡ Can. Infames, caus. vi, qu. 1 § Callist. I, Epist. ad omn. Gall. episc.