

decreed and superintended the evacuation of the city, the embarkation and support of the people, the Areopagus itself fled to Salamis, there passing the decree, aimed especially at Aristides, permitting exiles to return. A statement is made that the money paid out by the Areopagus on this occasion was taken from the public treasury in the Parthenon, but no proof can be found. This action of the Areopagus was not ordered by public decree, but was an independent act (step), taken primarily to save the state. The court was bound by its religious character to guard save the state of Athens. In consequence of its prompt and adequate action,

the court regained in great part for many years its former honor and power. Antiphon, after he had been acquitted by the popular assembly, was by Demosthenes before the Areopagus, tried, convicted, and executed at once on the charge of having plotted against the safety of the state.<sup>2</sup>

Case of homicide.

The jurisdiction of over cases of homicide, which is usually thought very important in connection with this court, is considered of small account by Thunser, who says: 'it was, relatively speaking, the least important, because, when it lost the other powers, the Areopagus became politically dead.'<sup>3</sup>

This power was the first it possessed and the last which it lost.<sup>4</sup>

<sup>1</sup> Hist. Ath. Const., ch 23, l. 3. <sup>2</sup> Demos., 1<sup>st</sup> the Crown, sic/69-70.

<sup>3</sup> Thunser, ancient States I 2 p 347.

<sup>4</sup> Oman, Hist. of Greece III 320-4.

From immemorial times, the hill had been sacred to the Eumenides, a place noted for the conflict of Ares and Poseidon. We have no historical proof of the legends of the trials of Ares and Orestes. Aristotle<sup>1</sup>, Demosthenes<sup>2</sup> and others testify that the court always had jurisdiction over homicide. The law as quoted by Demosthenes is: 'The Boule of the Areopagus shall have cognizance of homicide, assault with intent to kill, arson, and poisoning, where one person kills or attempts to kill another by poison.'<sup>2</sup>

Anterior to the democracy, alone in its life-tenure, traditionally, its cognizance of homicide was both religious and judicial.<sup>3</sup>

The prosecution of a homicide was at first the privilege and

1. Arist., *Atto. Const.*, ch. 57, 14.

3. *Ibid.*, V. 214.

2. Demosth., *Against Aretos*, sec. 24.

duty of the victim's relatives.<sup>1</sup> Only in later times could any citizen appear as prosecutor, and in such cases the procedure was different from that in the so-called blood-avenging cases.<sup>1</sup> The guilty man could not be prosecuted, if the victim before dying had pardoned him. A summons from the Areopagus must be obeyed. The cases were conducted with all solemnity.

The plaintiff must take oath as to the truth of the charge, and his relationship to the murdered man, with terrible imprecations on himself, his household and all his family; while taking this oath he stood on the entrails of a boar, a ram and a bull, which (that) had sacrificed to the Eumenides and infernal gods with proper rites.<sup>2</sup>

1. Thunissen, *Ancient Fates*, p. 35.

2. Demos., *Against Neoptoles*, see 65.

The Areopagite judges were considered priests of the Eumenides.<sup>1</sup> Witnesses must take oaths similar to the plaintiff's.<sup>2</sup> The complaint could not be made till the victim was buried.<sup>3</sup>

As soon as complaint was entered, a proclamation was issued forbidding the accused to visit public places for his approach to the altars with presumably bloody hands was a sacrilege.<sup>3</sup> Then three investigations were made in as many months, and the archon Basileus, (king archon) had to decide to which court the case belonged. Cases of accidental homicide went to the Palladium, cases of defence of one's self or one's rights to the Delphinium, all of exiles accused of a second crime to the Phreatys, while

1. Aetna, II 420-1.

2. Aetna, I 324.

3. Thucyd. I 368.

animals and inanimate objects were judged at the Prytaneum. All cases were tried in the open air to avoid contamination of the judges by too close association with the guilty person; they held such trials, too, in the last three days of the month, because those days were sacred to the infernal gods to whose cult the whole proceeding belonged.<sup>1</sup>

The trial <sup>before the people</sup> could be broken off at the end of the first session if the king-archon who presided laid aside his wrath then.

Accuser and defendant took their places on two marked stones, the plaintiff on that of ἀσίδεια [unreconcilableness], the defendant on that of ὕβρις, [wantonness]. Two speeches, without any rhetorical digressions were permitted each person.<sup>2</sup> (of the 170)

<sup>1</sup> *Athenaei, Deipnosophistae*, p. 368-7.    <sup>2</sup> *Lucian, Anacharsis*, sec. 14.

No irrelevant or unimportant matter was allowed.<sup>1</sup> After the first speech the defendant could escape punishment by going voluntarily into lasting exile, his property being confiscated by the state.<sup>2</sup> This means of escape, however, was not open to parricides.<sup>3</sup>

The two stones for the persons concerned were near the altar of Athene Aea [Diproeatrix], which Orestes was said to have erected in gratitude to Athene. Near this were other altars, dedicated to Pluto Earth, Hermes, and the Eumenides, [these had a temple also] in which (when) those who were acquitted (or victorious) offered sacrifice.<sup>4</sup>

If the homicide was involuntary, the property of the exile was not confiscated.

1. Lucian, *Quæstiones*, vi. 19. 2. Pollux VIII 117.

3. Thucydides, p. 569 70. 4. Pausanias I 26.

If the victim was not a citizen, the penalty was exile, not death. Only through lasting exile could the guilty murderer of a citizen escape death! The property of such exiles was listed for a year, then sold like that of debtors of the state.<sup>2</sup>

The relatives of the victim could let the murderer go free; sometimes the case would be settled by the payment of money.<sup>3</sup> Hostages to the number of three could be demanded from the murderer's (accused's) family, to be held till the guilty one was found and tried.<sup>4</sup> If an equal number of votes were cast, the defendant was acquitted.<sup>5</sup> Athenê, in Iphigénia en Aulide, reminds Orestes that she freed him by casting her ballot for acquittal, making the numbers equal

1. Thucyd., p. 372.

4. Demos. Against Aristoc. sec. 96.

2. Aesop. Ath. Laws, ch. 47, l. 2.

5. Silius I. 226, Eurip. Iphigénia, l. 1470.

3. Hypocriton.



to that for conviction<sup>1</sup>. This last pebble was called the 'vote of Athené' to commemorate her share in its founding.

Legal certainty did not so much determine the decision, as the moral conviction of the judges who could themselves be called as witnesses. Appeals for new trials are not mentioned, but false witnesses were watched for and punished.<sup>2</sup> If any one had intentionally slain an Athenian citizen wantonly, death was the penalty which the Areopagus must inflict.<sup>3</sup> If it was a case of assault with intent to kill, each must swear to or against the guilt of the defendant in regard to the particular facts before the court.<sup>4</sup> Anyone was permitted to lay an accusation before the Areopagus, stating on what law

<sup>1</sup> Aristotle I 326; Aesch. Sph. in Tan., l. 1770. <sup>2</sup> Demosth. *Ag. Alcibiades*, sec. 69.

<sup>3</sup> Thucydides p. 269.

<sup>4</sup> Jebb. *Ath. Const.* I 270; *Lycurgus On Mourning* - see 4.

he based his complaint.<sup>1</sup> The defendant could demand of the plaintiff under what law he was accused. Assault with intent to kill, was punished by exile, not death. A case of poisoning is reported which the king-archon sent to the Areopagus for trial.<sup>2</sup>

c. As a guardian of morals and general life

The almost unlimited power of the Areopagus as a censor and guardian of morals can hardly be overestimated. It was subject to no authority, under no restraint, its will was law, a summons to appear before the Areopagus was feared, while a reprimand from it was a lasting disgrace.<sup>3</sup> It could inquire into the private life of any citizen or resident of Athens, and inflict fines and penalties on any whose conduct was displeasing.

1. Potead Att. Const. p. 145.

2. Jebb Attic Orators I. 2.

Att. . . . ch. 4, sec. 25.

3. Curtius, II. p. 425.