

Book I.
Title XXII.

If anything has been demanded or obtained contrary to law or public utility or by mendacity.

(Si contra jus utilitatemque publicam vel per mendacium fuerit aliquid postulatum vel impetratum.)

Bas. 2.5.

1.22.1. Emperors Diocletian and Maximian and the Ceasars to Gregorius.

Not any the less can he, to whom power to try is given by our rescript, adjudicate the matter simply because, as you allege, certain facts¹ were omitted in your complaint. Given May 3 (293).

1.22.2. The same Emperors and Constantius and Maximian, Caesars to States.

When the defense of deceit has been set up, whether such deceit consists of a statement of law or of fact or fraudulent silence, (nevertheless) the judge assigned should try the cause and give a decision, not according to the allegation of the party deprecator, but according to the demands of truth. Given at Sirmium December 1 (294).

Note.

It was said in law 1 of this title that so far as the trial of the case, commenced by petition to the emperor and rescript was concerned, it made no difference that some statements of facts in the supplication were omitted. That omission had no effect on the trial. So it is said in the instant rescript that the fact that the rescript may have been obtained through deceit, no matter of what the deceit consisted, still the trial should go forward. The truth or falsity was not decided by the rescript; that was determined by the trial judge, just as in any case commenced in the ordinary way by complaint and summons. See Perez on this title. In fact, the next law provided a punishment for a judge who refused inquiry into the truth or falsity of the allegations in the supplication to the emperor.

1.22.3. Emperor Constantine to Bassus.

We order the judges who have forbidden proof of the falsity of a petition to be punished by a fine of ten pounds of gold. Given October 1 (313).

Note.

As stated in the note to the preceding law, a judge could not bar inquiry into the truth or falsity of a supplication addressed to the emperor. Perez in considering the instant title and speaking of the instant law thinks that the allegations were presumed to be true, and that the burden to show them false was on the adversary. It may, however, be doubtful that such was the presumption. Ordinarily the plaintiff was required to prove his case. Headnote C. 4.19. Supplication to the emperor and the issuance of a rescript thereon was but one of the methods by which a case could be commenced, and no

¹ Blume penciled in “acts” above “facts” without striking the latter and added a question mark in the adjacent margin.

particular reason can be advanced why the order and burden of proof should be changed in such cases. By C. 1.23.7 it was provided that every rescript should contain a proviso that the truth should be investigated.

1.22.4. The same Emperor to Barbarus Pompeianus, Consular of Comperia.

Although not an investigation but execution has been ordered, still inquiry should be made into the truth of the supplication (to the emperor), so that if fraud has intervened, the whole transaction may be investigated.²

Given November 11 (333).

1.22.5. Emperors Theodosius and Valentinian to the Senate.

Although a deceitful petitioner has obtained an imperial rescript consonant with law, he shall nevertheless gain no benefit from the things granted, and if his dishonesty is found to be great, he shall also be subjected to judicial severity.

Given at Ravenna, November 6 (426).

1.22.6. Emperor Anastasius to Matronianus, Praetorian Prefect.

We warn all the judges of our whole state, whether in major or minor positions of administration, not to suffer any rescript, pragmatic sanction, or imperial notation which is contrary to the general law or adverse to the public interest to be brought forward in the trial of any case, but not to hesitate to follow in every respect the general imperial constitutions.

Given at Constantinople July 1 (491).

Note.

Sufficient has been said on this law at C. 1.14.4 and at C. 1.19.7. See also comments by Buckland 20-21. See Novel 113.

² [Blume] See C. 1.18.1 as to defense to execution.