

Book IV.
Title XLIII.

Concerning fathers who have sold their sons.
(De patribus qui filios detraxerunt.)

4.43.1. Emperors Diocletian and Maximian and the Caesars to Aurelia Pipiniana.

It is plain law that children cannot be transferred by parents to another, either by sale, gift, pledge, or in any other manner, even though the receiver pretends ignorance (of the facts).

Given at Nicomedia November 16 (294).

4.43.2. Emperor Constantine to his provincials.

If anyone on account of poverty, want, and support shall sell a newborn (sanguinolentus) son or daughter, the sale shall be valid only in such cases and the purchaser shall be permitted to make him or her his slave. 1. But the person who sold or alienated the child, or anyone else, may reclaim it to its free-born condition, if he offers the price which it is worth, or a slave of equal value in its place.

Given at Serdica August 18 (329).

C. Th. 5.10 (8) 1.

Note.

While a father, in early times, had power of life and death over his children, it became a rule that he could not deprive them of liberty, either by sale or pledge. C. 2.4.26; C. 3.15.2; C. 4.10.12; C. 7.16.1; C. 8.16.6; C. 8.46.10; Paul, Sent. 5.1.1; D. 18.1.6 pr; D. 20.3.5. But the practice of selling or pledging them was not entirely suppressed, as may be seen by C. Th. 11.27.2, and Justinian was forced to forbid the pledge thereof. Nov. 134 c. 7. See 62 Z.S.S. 190 ff; Mitteis, R.R.U.V.R., 357 ff. The practice was not uncommon among the various nations in ancient times, pledges mostly being for a limited time, as, among the Frisians. (Tac. Ann. 4. 72); among the Thracians (Herod. 5.6); among the Phrygians (Philostrat., Vita Appoll. 8.7.12); among the Babylonians (Code Hammurabi § 117). Pledges sometimes included wives. Other ways of creating slavery were by sale of self (C. 7.18.1 note), and by exposing (casting out) young children. C. 8.51. At Thebes, children could not be cast out but could, in case of poverty, be delivered to a magistrate to be disposed of to another. Aelius, Var. hist. 2.7.