

Book IX.  
Title XLV.

As to the Turpillian senate decree.  
(Ad senatus consultum Turpillianum.)

Bas. 60.66; Dig. 48.16.

Headnote.

It was not permitted, as a general rule, to abandon a criminal accusation once brought; and if a case was abandoned by an accuser without an order permitting it, he became infamous and was punished in the discretion of the judge, under what is here stated to be the Turpillian senate decree. C. 9.45.2; C. 9.44.1. The law applied even where an accused was convicted and he appealed and the former failed to follow up the appeal. Dig. 48.16.1.14. A man who abandoned a prosecution could not commence another one thereafter. Dig. 48.16.2. But someone else was not prevented from bringing the same accusation. Dig. 48.2.11.2. A minor was not subject to this law. Dig. 48.16.1.10. Neither was a woman in the ordinary case. Dig. 48.16.4. But an exception existed, as will be found in the within title, where she took money for abandoning a prosecution. The Turpillian law, passed in the time of Nero, fixed a penalty of five pounds of gold. Dig. 47.15.3.3; Tac. Ann. 14.41. But this penalty was perhaps, generally, supplanted by that mentioned in law 2 of this title and the first two laws of the preceding title, although Dig. 48.19.5.1, contemplates that the original fine of five pounds of gold was still at times inflicted. See also note to C. 9.44.1. The only lawful method of abandoning a prosecution was to obtain an order of dismissal, which could not be obtained except for cause and not even then in certain cases. That subject is dealt with in C. 9.42.

Collusion.

Akin to the foregoing subject is that of collusion (*praevaricatio*) between the accuser and the accused, the former simply making it appear that he is prosecuting, but really giving the accused the advantage. It is shown in C. 9.2.11, as also in Dig. 48.15.3.1, that a person once acquitted of a crime cannot be prosecuted again, unless it is first shown that the accuser was in collusion with the accused, and a new accusation cannot be instituted unless that is done first. Such collusion was a crime under the Turpillian senate decree. The punishment is referred to in C. 2.7.1. It is stated in Dig. 47.15.6 that in connection with the so-called extraordinary crimes - that is to say, the crimes not included in the general laws then in existence - the penalty for an accuser guilty of such collusion is that which would have been visited, if convicted, upon the accused. In other cases the punishment was in the discretion of the judge. Dig. 47.15.2. And at least in the case where the crime was one of the so-called public crimes, such accuser became also infamous and he could not again become an accuser. Dig. 47.15.4 and 5. It is, however, stated in C. 9.9.10 that such person, accusing another of adultery and guilty of collusion, should be punished as for adultery; that is to say, he was to be punished by the same penalty as the accused would have been, if found guilty. But such *quid pro quo - talio*, as it was called in Roman law - was, in the opinion of Geib, not ordinarily dealt out, but that the punishment prescribed in general, which was in the

discretion of the judge, was visited upon such guilty person. Geib, Gesch. d. Rom. Criminal pr. 584.

9.45.1. Emperor Antoninus to Annianus.

He only appears to violate the senate decree who brings an accusation which is triable by public prosecution, and who, after all the preliminaries have been arranged, that is to say, after a complaint in writing has been duly filed, and a surety has been given for prosecuting the case, and the accused has been put into custody of the proper officer, abandons the prosecution of the case without having obtained the right to dismiss it.

9.45.2. Emperor Gordian to Appius.

If you became bondsman for the man who signed a written criminal complaint and he abandoned the prosecution, and a default exists in the terms of the bond, you are not liable for the greater amount than that mentioned in the stipulation. But the accuser who abandoned the prosecution will, nevertheless, be branded with infamy, and he will be summarily punished in the discretion of the judge.

Promulgated June 8 (239).

Note.

See note to C. 9.44.1 mentioning the penalty.

9.45.3. Emperors Valerion and Gallien to Arcadius.

Although the contract, in writing (made by you with the defendants) states that a dismissal of the case should first be asked, and that then the agreements (mentioned in the contract) should be carried out, still, even if your opponents do not perform their agreement, you cannot renew the accusation which you abandoned.

Promulgated July 6 (258).

9.45.4. The same Emperors to Patrophilus.

If the man concerning whom you supplicate recommenced, as you say, to prosecute an abandoned accusation against your parents, the defense of abandonment of the case may be set up against him in the court of the president.

Promulgated May 6 (269).

9.45.5. Emperors Diocletian and Maximian and the Caesars to Matrona.

If a woman brings a prosecution for intentional wrongs inflicted upon her and hers, and acknowledges that she abandoned the prosecution pursuant to a contract, forbidden by law, it is clear law that she has incurred the penalty under the Turpillian law.

Subscribed April 3 (294) at Sirmium.

9.45.6. The same Emperors and Caesars.

It seems to have been held in prosecution of crimes, that those (accusers) have abandoned it who have given up the intention of following up the accusation. Inasmuch, therefore, as your petition states that you had not yet come to the end of your revenge because of reasons other (than abandonment) or because of ignorance, you may lay aside

your fear of obstacles on account of a little delay<sup>1</sup>, finish the prosecution according to law, and carry off the revenge which you will prove to be due you.  
Promulgated June 29.

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<sup>1</sup> [Blume] The period of two years had not yet expired.