

Book IV.  
Title XXIX.

As to the Velleian senate decree.  
(Ad senatus consultum Velleianum.)

Bas. 26.7.65; D. 16.1.

Headnote.

The Velleian senate decree, enacted about 46 A.D., forbade women to undertake liability for others. Such undertaking was called intercession and applied whether she undertook a primary obligation for the benefit of a third party, or whether she became surety or guarantor or became liable for another in any other manner, as for instance by novation or by giving a mandate. D. 16.1.2; D. 16.1.13.2; C. 4.29.15. There were exceptions. Some of these will be noted in the laws of the foregoing title, or the notes thereto. Other exceptions were: If the creditor was a minor and the principal debtor was insolvent, or where the woman obligated herself to save her father from execution of a judgment, or where the liability was really in her own interest though she appeared as surety, the rule of senate decree did not apply. D. 4.4.12; D. 16.1.21.1; Buckland 445.

4.29.1. Emperor Antoninus to Lucila.

The senate decree comes to the assistance of women who have assumed or transferred to themselves another's obligation with the knowledge of the contracting parties. But, if they paid money for others when they were not obligated, and were not sureties, they have no right to recover it.<sup>1</sup>

Promulgated December 5 (291) at Carvium.

4.29.2. The same Emperor to Nepotiana.

You uselessly tried to use the defense of the senate decree, which was enacted concerning intercession (suretyship) of women, since you were the principal debtor. For the defense of the senate decree is only given to a woman when she herself is not the principal debtor, but intercedes with a creditor for another debtor. If, moreover, they have obligated themselves to another to take the place of their own creditor, or if they have permitted themselves or [their] own debtor[s] to be substituted (as debtor), they do not have the assistance of that senate decree.

Promulgated August 11 (213).

Note.

The Velleian senate decree prohibited women from interceding for another as surety, guarantor, etc. It did not prohibit women from entering into contracts on their own behalf and for their own interests. If she had made a contract affecting her own interests, then she might become indebted, as to the debt created by such contract, not only directly to the party with whom she dealt, but also to other parties. That is the gist of the foregoing rescript. Thus she might enter into a novation of the debt, obligating herself to pay the debt to some third party, instead of to her own creditor. She might permit herself to be "delegated" as a debtor to some third party, agreeing to pay him,

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<sup>1</sup> [Blume] If it was paid it was no longer intercession for another, but a gift. Bas. 26.7.65. See note to law 9 of this title.

instead of her original creditor. Delegation meant simply assigning a debtor to a new creditor by the old creditor, for the purpose of novation of the debt. C. 8.41.1 note. So is she had a debtor, she might permit such debtor to be delegated as a debtor to the creditor, or to someone else. All this meant simply shifting the original debt, and it made no difference whether she paid the original creditor or a new one, so long as she paid her own debt, and it made no difference that she paid such debt through her own debtor.

#### 4.29.3. The same Emperor to Servatus.

If your mother interceded for you when you received a loan, contrary to the decree of the noble order (senate), she is able to protect herself by setting up her defense. Promulgated August 11 (213).

#### 4.29.4. Emperor Alexander to Alexandria.

The senate decree applies, whether a woman transferred to herself, in whole or in part, an obligation resting upon another, or whether she makes herself the debtor from the beginning, though another has received the money; this has been applied also to obligations against her property, in favor of others.<sup>2</sup> 1. But if you sold your estates when you were over twenty-five years of age, and paid out the money for your husband, the aid of the senate decree fails you.

Promulgated December 27 (223).

#### 4.29.5. The same Emperor to Popilia.

If your things were pledged by your husband without your consent, they are not subject to the lien. And if you consented to the pledge with the knowledge of the creditor, you can (also) use the aid of the senate decree. But if you were indulgent, letting your husband pledge the property as his own, you wanted to deceive the giver of the loan, and you are not, therefore, aided by the senate decree, by which the infirmity, not the craftiness, of women is protected.

Given June 17 (224).

#### Note.

Similar is C. 8.27.11 which says that though a woman specially gives a pledge for another, the creditor has no right to sell it, unless she imposed on an innocent creditor through dissimulation, while the husband pledged the property as though it were his own. See also law 18 of this title. A husband had no right to mortgage his wife's property, not even the dowry property which the woman had brought him. C. 5.13.1.15b.

#### 4.29.6. The same Emperor to Torquatos.

If your mother, while managing the property of her sons, promised their guardian protection against loss, and furnished a surety or gave pledges, neither she nor her surety furnished by her nor the things pledged by her are aided by the senate decree, since she appears, in a manner, to have carried on her own business.

1. But if the guardian wanted to excuse himself (from acting as such) and she promised him indemnity, she is not forbidden to employ the defense given by the senate decree.

2. And if, when she asked for the appointment of guardians, she voluntarily undertook the risk, she is nevertheless, protected by the law.

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<sup>2</sup> [Blume] C. 8.27.11.

Promulgated October 10 (228).

Note.

If a woman wanted to act as guardian, she was required to renounce the benefit of the Velleian law, and was liable for maladministration the same as a man. Novel 94, c. 2, and Novel 118, c. 5.

4.29.7. Emperor Gordian to Vivianus.

If a creditor knowingly receives, from a husband, on account of the latter's debt, property of a woman in pledge, though with her consent, he could not, on account of the protection of the senate decree, deprive her of her ownership by selling it, nor is it necessary for you, if you become the woman's—your mother's—heir, to tender the price in order to recover it.<sup>3</sup>

Promulgated September 20 (238).

4.29.8. The same Emperor to Tryphonus.

If not only sons but also emancipated daughters have assumed their father's obligation, (then) although the daughters are exempted from their part of the obligation on account of the protection afforded by the Velleian senate decree, there is no doubt that the sons are liable on their part of the undertaking, and since the daughters are exempted, the father can be sued for what he would be sued for had the daughters not interceded. 1. Nevertheless, the pledges of the father, although taken in connection with the (intended) subsequent obligation (of the daughters), are without question liable, and those given in connection with the obligation (of the father) from the beginning, will be liable in so far as that obligation falls back on the father through an action for restoration to the creditor of his former right.<sup>4</sup>

Promulgated October 7 (238).

4.29.9. The same Emperor to Proculus.

Although a woman can pay money for another, nevertheless she may reclaim it if she, not knowing that she is protected by the senate decree, paid it by reason of a prior obligation which the senate decree on intercession (by women) does not permit to be valid.

Promulgated July 7 (239).

Note.

At law 1 of this title, it is stated that a woman paying another's obligation cannot recover what she paid. The foregoing law deals with an obligation of the woman herself who paid it in ignorance of the Velleian law. Ignorance of law ordinarily excused no one, and payment made in such ignorance could not ordinarily be recovered. C. 1.18.10. In some cases, however, women were excused and could be relieved from a mistake of law. D. 22.6.9 pr. And in accordance with the foregoing law, if she paid an obligation incurred by her, but from which she was relieved, and paid it in ignorance of the Velleian law, she could recover the money paid. The burden of proof that she paid with knowledge was on the creditor. This favor was extended to the woman on account of her sex, just as such favor was extended to a minor and to people of rural simplicity. D. 22.3.25.1.

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<sup>3</sup> [Blume] Note to law 5 of this title.

<sup>4</sup> [Blume] See law 16 of this title.

4.29.10. Emperor Philip and Caesar Philip to Tryphaena.

If your opponent transacted business not with your husband but with you, you cannot, on the ground that the obligation is such (as is forbidden by the senate decree), refuse to pay the arrears of rental which you say was contracted (to be paid). But if he leased the property to your husband, instead of to you, but wanted to hold you because you are able to pay, you can protect yourself through the benefit granted by the senate in the enactment concerning intercession of women.<sup>5</sup>

Promulgated August 25 (244).

4.29.11. The same Emperor to Theodora.

The law is plain that even while the marriage is subsisting, rights of the wife to mortgages and pledges (given by the husband to secure her dowry) may be released to the husband.

Promulgated September 24 (244).

Note.

Husbands frequently gave a mortgage or pledge to a wife, in order to insure the return of the dowry. Now while the giving of a pledge by a wife for the benefit of someone else was intercession in violation of the Velleian law, a release of a pledge or mortgage given to her by someone else was not, and that was rue whether her debtor was her husband or some other person. D. 16.1.8 pr. Again, gifts between husband and wife were generally forbidden. C. 5.16. And the release of a pledge or mortgage might well be considered in the nature of a gift. But according to the foregoing rescript, such release did not violate the law.

4.29.12. Emperors Valerian and Gallienus to Sepiduca.

If you gave a lien on your property to your son-in-law, in order to give a dowry to your daughter, you are in error in thinking that you are entitled to the benefit of the senate decree. It has been the opinion of men learned in the law that the benefit of the decree should not apply in such case.

Promulgated February 21 (258).

4.29.13. Emperors Diocletian and Maximian to Condiana.

If a loan was in fact made to you by a creditor, (then) whether all or part of it is stated to have been used for the benefit of your husband, you are not aided by the decree of the fathers, even though the creditor was not unaware of the reasons of the contract (namely that your husband needed it).

Given August 30 (290).

4.29.14. The same Emperors to Basilissa.

The law provides that a woman cannot intercede to pay the debt of another, contrary to the authority of the Velleian senate decree, and that her surety can make use of the same defense. Hence, if your mother was not an heir of her erstwhile husband, she is protected by a sufficiently suitable defense.

Promulgated at Byzantium March 25 (294).

Note.

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<sup>5</sup> [Blume] Note to law 2 of this title.

If the mother was heir of her husband, she was compelled to pay the debt because of that fact; that is to say, she was compelled to pay in the same proportion in which she inherited from her husband. Headnote to C. 6.30. Where a wife had a defense under the Velleian senate decree, then, as stated in this and the next law, her surety had the same defense.

4.29.15. The same Emperors and the Caesars to Agrippinus.

If a wife, about to intercede to pay the debt of her husband, contrary to the senate decree, asked you to become surety by giving a mandate for her, the protection against your obligation attached from the beginning of your contract, through the benefit of a defense (under the senate decree), and you can use the defense if you are sued. Given at Sirmium May 18 (294).

4.29.16. The same Emperors and the Caesars to Rufinus.

If a woman assumed another's obligation, then, since she is protected by a defense under the Velleian senate decree, the creditor is given an action against his former debtors to be restored to his right. Promulgated at Sirmium January 16 (294).

Note.

The woman in this case assumed, perhaps through novation, the obligation of another. That cancelled the obligation. But the woman was not liable on the new obligation. Hence, the creditor had a right to rescind the transaction and have the old obligation restored. The same or similar principle is mentioned in law 8 of this title. As to simulated [illegible] actions see headnote C. 4.22.7. Sav. Sys. 238 note maintains that the action was instituted by operation of law. See also [illegible].

4.29.17. The same emperors and the Caesars to Alexander.

If your father received a loan from Callistratus, but an instrument was executed as though his wife had received it, it is not even necessary to ask for the protection under the senate decree, since she is protected by what was actually done rather than what was pretended to have been done. March 13 (294).

Note.

In order that an agreement to pay a loan might be valid, it was essential that the money agreed to be lent was in fact paid over to the party who agreed to repay it, as fully shown in the next title of this book. See also C. 4.2. A defense, however, that the money agreed to be lent was not in fact paid, was good only for the period of two years. C. 4.30.14.4. If the woman, who, in the foregoing case, agreed to pay a loan not made to her, did not raise that objection within such time, she could, nevertheless, fall back on the defense under the Velleian senate decree.

4.29.18. The same Emperors and the Caesars to Zoticus.

Women who in any manner assume another's obligation, old or new, are protected, unless the creditor was in some way deceived by the woman; for he may then, as has been ordered, meet the defense under the senate decree by a replication of fraud.<sup>6</sup> Given at Antioch November 8 (294).

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<sup>6</sup> [Blume] See note to law 5 of this title.

4.29.19. The same Emperors and the Caesars to Faustina.

Since it is declared by the perpetual edict that the decree of the fathers (senate) enacted concerning intercession of women, applies also to obligations against women which originated through a creditor's craftiness, you have, according to what you say, a defense against the claimants, when the creditor, who had intended to contract with another chose the woman as his debtor.

Given at Nicomedia December 18 (294).

4. 29. 20. The same Emperor and the Caesars to Theodotianus.

There is no doubt that the heirs also of a woman can use the defense against creditors which was granted by the senate decree.

Given December 24 (294).

4.29.21. Emperor Anastasius to Celeres, Master of Offices.

We order that women may voluntarily renounce their rights to a lien as to one contract or certain contracts, or as to one person or as to certain persons or things, and whatever is done in that respect, shall, by this authority, be valid. Provided, however, that if they voluntarily have made or shall have made such renunciation, in connection with one contract, as has been said, or certain contracts, or as to one thing or person or certain things or persons, such renunciation shall be limited to the contracts or things or persons in connection with which they have given or shall have given their consent and shall not apply to any other contract brought forward, to which such consent has not or shall not have been given. These provisions which we have made in the present well considered law, shall apply also to all past contracts, transactions, and controversies, which have not yet been settled by compromise or by final judicial decision or in some other legal manner.

Given April 1 (517).

Note.

We saw at law 11 of this title that a woman might release her pledges and mortgages. But a release to one debtor, did not also effect a release to another debtor. So if property was pledged, for say a loan and also dowry, a release of the pledge as to the loan did not also effect a release as to the dowry.

4.29.22. Emperor Justinian to Julianus, Praetorian Prefect.

We ordain, in order to settle the differences in the laws, that if a woman of full age, after interceding to pay the obligation of another, has given her due bill in writing, or has given a pledge or furnished a surety, and she within the period of two years after she gave her first due bill, has in the same matter again given a due bill, a pledge, or a surety, she shall not be prejudiced by that fact that she incurred the second danger of loss through her weakness. 1. But if she did this after the expiration of two years, she must hold herself responsible for voluntarily confirming what she could often consider and avoid, but which she failed to do; for she seems then, after the passing of so long a time, to bind herself, not for another's obligation, but for her own sake, and to make herself liable in the second contract to pay according to the terms thereof, and to give with effect whatever pledge or surety she gives.

Given March 18 (530).

#### Note.

Justinian made a number of changes in the former laws concerning defenses arising under the Velleian senate decree, as will be noticed in this and the succeeding laws in this title, and in Nov. 134, c. 8. Under the foregoing law a woman was liable on her intercession if she renewed her agreement after the lapse of two years subsequent to her original agreement. Novel 61 limited the force of this provision to some extent and provided that where a wife gave her consent to the pledge or alienation of a prenuptial gift or dowry property, and renewed her agreement two years thereafter, she should be bound, provided, however, that her husband had sufficient property left so as not to prejudice her rights. The limitation, as noted, applied to wives only. Again, by Novel 134, c. 8 it was provided that no intercession by a wife in behalf of her husband should be valid, however often confirmed.

#### Novel 134.

Chapter 8. We think that we should also make the following correction for the benefit of our subjects, namely, that if a woman consents to an instrument evidencing a debt made by her husband, or subscribes it, and makes her own property or herself individually liable, such act shall be void, whether she does so once or often in connection with the same matter, and whether the debt is private or public, but a writing to that effect shall be as void as though not executed unless it is clearly shown that the money was used for her own benefit.

#### 4.29.23. The same Emperor to Julianus, Praetorian Prefect.

To untie the nets and difficult knots of ancient law, and desiring to abolish all useless distinctions, we ordain, that if a woman has interceded (as surety) upon receiving a consideration for such intercession at the beginning or subsequently so as to be responsible, she is fully bound and is not protected by the Velleian senate decree, whether she intercedes in writing or without writing.

1. If she acknowledged in the document of intercession itself that she has received something and so has interceded, and such document was executed publicly and attested by three witnesses, the fact that she received the money or other things mentioned shall be taken as true and she cannot resort to the protection of the Velleian senate decree.

1a. If she interceded without writing, or by a document not thus executed, but the payee of the stipulation can show that she received money or other property and thus assumed the obligation, she cannot have the benefit of the senate decree.

1b. But if he has failed to show that fact, she shall have such benefit and the ancient action against the person for whom she interceded is open to her, or one shall be given her (to recover it, if she has already paid).

1c. Even if a person has given money or other property to a woman who is not in good circumstances, in order to get her to obligate herself for him, such woman, who in fact has received such money or property, shall not have the benefit of the senate decree, but the creditor may sue her, get from her what he can, and sue the first debtor for the balance; (that is to say), either a part, if he can collect anything from her; or the whole, if she is entirely in want of property.

2. Lest, however, women intercede for others wrongly, we ordain that they cannot otherwise become liable for others in connection with such contract unless men receive from a woman on behalf of others by an instrument publicly executed and subscribed by three witnesses; then only shall they be liable and all enactments of the ancient laws

concerning the intercession of women, and all provisions introduced by imperial authority shall be treated in that manner.

3. But if any had accepted the intercession of women without observing the foregoing provisions, the obligation whether in writing, or without writing, shall be null and void as if it had not been written or made, nor will it be necessary to ask the protection of the senate decree, but she shall be as free and absolved as if the transaction had not taken place at all.  
(530).

Note.

The foregoing law made an intercession by a woman valid (1) where she received a consideration for doing so; (2) where she acknowledged in a publicly executed instrument that she was paid.<sup>7</sup> This, as remarked by Buckland 445, made the rule itself useless at the expense of falsehood. It shows the importance attached by Justinian to written documents. See C. 4.20.1 note.

In some respects the law is contradictory and has given rise to much dispute. Buckland supra. In the first portion of the law it is provided that intercession should be valid in case the woman received a consideration therefor, even though not in writing. The later part of the law provides that a publicly executed instrument, signed by three witnesses, should be necessary to bind the woman.

Finally, it was provided that if the intercession were not made as provided, it should be invalid by operation of law. Under the former rule, advantage was taken of the law by setting up the non-liability by way of defense. Buckland 444.

Further exceptions were made by Justinian in the two laws immediately following, namely, (1) if the woman obligated herself to pay a manumittor for manumitting a slave; for Justinian favored manumissions; (2) if she obligated herself to give a dowry for anyone; law 12 of this title provided that a woman should be liable if she obligated herself to give a dowry for her daughter. This principle was extended, since Justinian favored the giving of dowries, in order that marriages might not result in divorce.

4.29.24. The same Emperor to Julianus, Praetorian Prefect.

Deciding the doubt of the ancients, we ordain that if a person has received the obligation of a woman for a certain amount for manumitting a slave, and he has greed the slave, the woman is liable, whether she obligated herself as principal or on behalf of the slave, directing that the Velleian senate decree shall, properly, in such case be silent. 1. For it would be harsh and contrary to the principles of honesty, that a master of a slave should rely upon a woman, either on her alone or after the slave had also given his promise, and give freedom to and lose his slave and then not receive what was promised and in reliance of which freedom was given.

Given August 1 (530).

4.29.25. The same Emperor to the people of the city of Constantinople and to all the provincials.

We ordain, generally, that if any person over twenty-five years of age, male or female, has promised a dowry for a woman with whom matrimony is permitted, or has

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<sup>7</sup> Blume penciled a question mark into the margin here.



become sponsor for the payment thereof, such person shall be compelled to fulfill his agreement at all events.

1. For it would be intolerable that, through a fortuitous circumstance, a woman should be without dowry and thus be, perhaps, repudiated by her husband, and the matrimony be dissolved. For since we know that through favor for dowries, the ancient founders of the law often soften the rigor of the law, we too justly come to make a law of that kind.

2. For if a person voluntarily extends his liberality in the first place, he or she should perform the promise, so that what was voluntarily written or promised in the beginning, should afterwards be performed even by the unwilling, and the protection afforded by the Velleian senate decree shall have no application in such case.

Given at Constantinople November 1 (531).