

Book VII.
Title LXXI.

Those who may make assignments of their property for the benefit of creditors (may go into voluntary bankruptcy).
(Qui bonis cedere possunt.)

Dig. 42.3; Bas. 9.5.

Headnote.

The Julian law, enacted probably by Augustus (law 4 ht), provided for an assignment of his property by a debtor for the benefit of his creditors, thereby permitting the debtor to escape imprisonment. See C. 7.53 h.n. That law was, about 68 A.D., construed by an Egyptian prefect (Bruns, *Fontes* 243) as applying to all private debtors, and it has also been construed similarly by many modern authors. That view is doubtful, since it leaves unexplained the fact that imprisonment for debt continued to be the rule up to Justinian's time. C. 7.53 h.n. L. 5 h.t. of Diocletian's time shows that such assignments were not favored. C. Th. 4.20.1, dated 379 A.D., provided that only persons who lost their property through shipwreck, fire, robbery or other unfortunate circumstances should be permitted to make such assignment, and it is not unlikely that his law merely made a new announcement of a rule applicable since the time of Augustus, 43 Z.S.S. 509. Ordinarily such assignments could be made only by persons who had something to assign. 43 Z.S.S. 520. Hence the Julian law gave relief to comparatively few people. But Justinian gave the right to make such an assignment to person who had no property. Law 7 h.t. And it may be gathered from Nov. 135, which, as a whole, is very obscure, that a debtor could not be subjected to incarceration, and bodily abuse, if he made oath that he had nothing with which to pay. From that time on, evidently, a debtor could evade imprisonment. That did not, however, apply to public debtors. C. 7.53 h.n.

An assignment of property as above mentioned inured to the benefit of all creditors (D. 42.5.12 pr), leading to proceedings in bankruptcy. C. 7.72.10; Gaius 3.78. It did not make the debtor infamous. C. 2.11.11.

7.71.1. Emperor Alexander to Irenalus.

Persons who have assigned their property are not released unless the creditor received his debt in full. For this (assignment) is a benefit to them only to the extent that they may not be thrown into prison as judgment debtors.¹
Promulgated November 22 (223).

7.71.2. Emperor Philip and Caesar Philip to Abascantus.

If you are ready to pay the amount which you owed and you were condemned to pay (though to a city), you need not fear that your declaration making an assignment of your property for the benefit of creditors, made hastily, can, by any rules of law, deprive you of such property, when it has not yet been sold.

¹ [Blume] See C. 9.4.6.

Promulgated January 17 (245).

7.71.3. Emperors Valerian and Gallien and Caesar Valerian to Lenilla.

If your father assigned his property for the benefit of creditors by reason of what he owed the city, an investigation must be made of what he owns, but the property which you say you acquired after emancipation must not be disturbed. You should implore the assistance of the president to that end.

Promulgated November 19 (259).

7.71.4. Emperors Diocletian and Maximian and the Caesars to Chilo.

It is well known that the benefit of the Julian law concerning assignment of property for the benefit of creditors has been extended to the provinces by the constitutions of our divine parents, so that an assignment of property will be permitted. Creditors may not divide the property of their own motion and hold it as owners, but they may pay themselves, as far as they can, by a sale of the property. 1. Since you therefore hold, contrary to law, the property of the man who assigned his property and whose creditor you say you are, it is clear that the claimant cannot be defeated by prescription of a long time² (ten or twenty years). But if it is shown that the owner did not assign his property for the benefit of creditors but gave it to you in payment, the president of the province will not refuse you a hearing concerning your title.

7.71.5. The same to Myro.

The odious assignment of property for the benefit of creditors will not be permitted to be made to escape municipal honors or burdens (*munus*), but those who are subject thereto, must manage these places according to their means.³

7.71.6. The Emperor Theodosius, stated in open court, (*apud acta*):

The technical requirement of former laws are abolished in connection with an assignment of property (which may be made for any reason for the benefit of creditors), and a declaration to that effect alone is necessary. He also stated: A statement of intention alone suffices to make such assignment.⁴

Given May 1 (386).

C. Th. 4.20.3 (2).

7.71.7. Emperor Justinian to Julianus, Praetorian Prefect.

Since unemancipated sons may have property, which is forbidden to be acquired for the benefit of their fathers and they may also have special property, either special military property or property - which they possess by consent of their father - why should the right to make an assignment of property for the benefit of creditors be denied them? Although descendants in the power of their parents, have no property which they absolutely own and control (*nihil in suo censu habeant*)⁵ still, the right to make such

² [Blume] Because not held by any just title.

³ [Blume] See as to the burdens of decurions C. 10.32 and subsequent titles.

⁴ [Blume] See D. 42.3.9 - a letter sufficed.

⁵ [Blume] Literally registered as their own on the tax lists.

assignment should be permitted in order that they may not suffer any injustice.⁶ For if a head of the house, in fear of outrage against him, is permitted to resort to the lamentable aid of such assignment, why should we deny such right to unemancipated children of either sex, particularly since the law is clear, both in case of a head of the house as well as in that of persons in another's power, that, if they come into better circumstances thereafter, in a lawful manner, to the extent of the debt.⁷

Given at Constantinople February 20 (531).

7.71.8. The same Emperor to Johannes, Praetorian Prefect.

Our Majesty is besought in the usual manner, to grant the merciful aid of making an assignment for the benefit of creditors and that creditors be required to elect either to grant them a respite of five years or to accept an assignment of the property, leaving them their good name and exempting them from corporal punishment. It was continuously doubted whose wish should be granted, if some of the creditors wanted to give the five years' respite, while others wanted to accept an immediate assignment. 1. In such a dispute, we do not have no doubt whatever as to what to think, and we give preference to the more merciful instead of the harsher opinion. And we ordain that the point shall be decided by the amount of the debt or the number of creditors. 2. If there is one creditor to whom a debt is owing larger in amount than that owing to the others, so that if the debts of the others are united and computed, his exceeds the others, his opinion shall prevail, either in granting time or accepting the assignment. 3. If there are several creditors, each with a different amount, the greater amount of debt shall have an influence greater than that of the less, whether the number of creditors is equal or unequal, since the point shall be decided, not by the number of creditors, but by the amount of debt. 4. If the amount of the debt (on each side) is equal, but the number of creditors unequal, then the greater number of creditors shall prevail, and whatever they want, shall be done. 5. If there is equality, both in point of debts as well as in the number of creditors, the parties who are more merciful and are in favor of giving respite instead of demanding an immediate assignment, shall prevail. 6. There shall be no difference in making the choice, between lien-creditors and other creditors. But each creditor shall have such right in the property, which is to be directed by the judge, as the law gives him. 7. The five years' respite shall not prejudice any creditor in connection with the period of prescription.

531-532.

⁶ [Blume] Being e.g. put in prison for debt.

⁷ [Blume] This shows that an assignment of property did not release the debtor. But he then had what is called the benefit of competence (C. 5.18.8 n), that is to say he was permitted to retain enough which would support him. C. 7.72.3; D. 42.3.6.