

Book IX.  
Title XXVII.

On the Julian law concerning official maladministration.  
(Ad legem Juliam repetundarum.)

Bas. 60.43.11; Dig. 48.11.

Headnote.

The law dealt with in this title was aimed at official corruption generally, not only to prevent judges from giving or not giving decisions out of favoritism, or partiality or because of bribery, but also to suppress every sort of official extortion and plunder of the people. A lurid picture of extortions and plunder of officials in the fourth century of our era is painted by Dill in "Roman Society law century of the western empire," 270-281, and the conditions in Justinian's time were doubtless as bad. Colquhoun in his work on the Roman law, § 2408, says that official extortion was carried on to an extent equally as great as it is now practiced in the same provinces under the Othoman rule. He is led to remark, that after so long a continuance of the abuse, provincial inhabitants have been long since wont to look upon it as a thing of course, and would perhaps, miss its total suppression. That was, perhaps, also true of Roman times, since we know that this practice had been carried on by Roman governors since at least the latter years of the republic.

The Code and the Justinian Novels teem with references to official corruption, aside from the laws under the present title. Thus in C. 1.40.3, the inhabitants of the provinces are given permission to complain against the governors. C. 1.40.3 provides that if a rector commits any theft or other crime, his safety and his property is imperiled. In C. 1.40.10, the presidents are forbidden to injure tax payers under the penalty of being compelled to make good all the damage. In C. 1.26.3, the praetorian prefect is directed to punish a rector who steals - extorts money - without first reporting that fact to the emperor. In C. 12.1.12, it is stated that judges convicted of extortion or other crime shall be deprived of their office, shorn of their honor and considered among the lowest of men.

But the references are not confined to governors of the provinces. Thus the term of certain officers is limited by the law under the previous title, as is true also in C. 1.51.4; 12.25.1 and other laws, which, doubtless was at least partially for the purpose of preventing continuance of plunder upon the inhabitants. So extortion is forbidden from shippers. C. 12.44.1. Various officials are prohibited from asking for food or other supplies. C. 12.40.1.5 and 12; 12.41.1. Policemen are warned against extorting money. C. 12.57.1. Accountants under the rectos are threatened with torture and lacerations for fraudulent acts; C. 12.49.1; and their time of service is limited to three years. C. 12.49.2. In C. 12.61.3, collectors of taxes are directed to be punished for plundering. Fees larger than permitted by law are forbidden. C. 12.57.1; C. 12.63; C. 1.27.1.17.

Other laws, too, were designed to suppress this practice. Thus it was enacted several times, as, in C. 1.49.1; Nov. 8, c. 9; Nov. 95, c. 1, that provincial governors must not leave their province until fifty days after the expiration of their office, and similar provisions were made as to their assessors and private secretaries. C. 1.51.3. Officials are further forbidden in C. 1.53.1, and C. 10.55.2, to receive any property by gift or

purchase in the province, except for necessities, and that such gifts and purchases should be invalid for a period of five years. The prohibition, however, did not extend to small presents. Dig. 1.16.6.3. Nor were presents from relatives forbidden. Dig. 48.11.1.1.

The penalty for the crime here treated was in the discretion of the judge, and generally consisted of exile, and sometimes of a heavier penalty, but was never as severe as death. Dig. 48.11.7.3; Inst. 4.18.11. Restitution was always to be made, as appears particularly in many of the Novels. Novel 8 shows that governors of provinces, for a time at least, had to purchase their office. They accordingly endeavored to get the purchase money back, but seldom stopped with that. Many other constitutions and novels, particularly those especially dealing with the various officials, treat of this subject to a more or less extent. See specially in C. 1, title 38, and C. 1, title 40, and the novels appended thereto. Novel 124, relates to the same subject.

9.27.1. Emperors Gratian, Valentinian and Theodosius to Matronianus, Duke and President of Isauria.

That the punishment of one may inject fear into many, we direct that the duke who governed badly shall, under proper guard, go back to the province which he- shall I say- stripped, and shall, against his will, repay fourfold, not only what his private secretary, his attendant (ordinary) and personal servant received, but also what he himself robbed from our provincials and carried away.

Given June 12 (382) at Constantinople.

C. Th. 9.27.3.

9.27.2. The same Emperors to Florus, Praetorian Prefect.

The judges may know that the penalty for their offenses will be exacted from them or their heirs.

Given August 23 (382).

C. Th. 9.27.4.

Note.

Action to recover extorted money brought against the heirs must be brought within a year after the death of the guilty party. Dig. 48.11.2. The action against the original offender was also limited to one year after relinquishing office. C. 9.27.5.

9.27.3. The same Emperors to Marcellinus.

All examiners (judges) and referees shall keep their hands off of money and property (of others), and must no consider another's quarrel the object of his prey. For a judge of private lawsuits, who is at the same time a vendor (of justice), will be compelled to suffer the penalty fixed by law.

Given at Milan April 4 (383).

C. Th. 9. 27. 5.

9.27.4. The same Emperors and Arcadius - and edict to the provincials.

We order, we exhort, that if perchance any nobleman, decurion, land-owner, colonist (serf), or anyone else, shall have been in any manner oppressed by a judge; if anyone knows that a judicial decision was sold; if a penalty was remitted for a price, or inflicted through avarice; if anyone, in a word, can prove that a judge has for any reason

been dishonest, let him come forward either while such judge still occupies the office or thereafter, and bring his accusation, prove it, and thus carry back victory and glory.

Given at Constantinople June 22 (386).

C. Th. 9.27.6.

9.27.5. Emperors Valentinian, Theodosius and Arcadius to Severinus, Count of the Crown Domain.

Every procurator, provost of a weaving house (gynacei), accountant (tabularius), collector (susceptor), colonist (serf), or anyone else, who remembers that he suffered extortion at the hands of the count of the imperial domain (comes domorum), may, when the count, to whom he paid the extorted money, has quit his office, come before the court of Your Worship within a year, in order to reclaim whatever he had so paid, so that whatever amount may be recovered from the count may be credited to the payments due from them. 1. But when the time stated, after the count quitting his post, has passed, no further charge of extortion may be made, but the procurators, the provosts, the colonists, accountants and collectors shall be compelled to pay (what is shown to be due from them).

Given at Milan June 4 (390).

C. Th. 9.27.7.

9.27.6. Emperor Theodosius and Valentinian to Florentius, Praetorian Prefect.

We order that that class of men shall be appointed to govern provinces, who earn the insignia of honor not by corrupt solicitation or bribery, but by the testimony of an honorable course of life, and by the approval of Your Amplitude, and so, of course, that the men upon whom these honors are bestowed by you or us shall take an oath, to be made a matter of record, that they have not given and will not thereafter, at any time, give anything for the appointment, either personally or through an intermediary selected to circumvent the law and the oath, either under the pretence of gift, sale or any other contract; and that they will not accept, in connection with such position, which they received gratuitously, anything except their salary, either while actually administering the post or after their term of office, for any beneficial act performed by them during their administration. 1. And though we do not think that anyone is unmindful of his oath and is disdainful of the fear of God, placing profit above his own safety, still, in order that the inevitability of peril may heighten the solicitude for personal safety, (we ordain that) if anyone dares to neglect the oath which he took, then we give permission to all to accuse as of a public crime, not only the receiver, but also the donor (of any such gift), and the convicted party shall be punished by a fine fourfold (the amount given or received).<sup>1</sup>

Given at Constantinople November 26 (439).

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<sup>1</sup> [Blume] See C. 4.3.