

Book III.
Title XI.

Concerning postponements.
(De dilationibus.)

Bas. 7.17; D. 2.12.

3.11.1. Emperors Diocletian and Maximian and the Caesars say:

Since it often happens that a judge is necessarily compelled to grant postponements by reason of (the absence of) documents or persons, it is proper that the time for procuring proof be fixed.

1. We think that this should be regulated as follows: if the persons or documents sought are in the same province when the suit is pending, a postponement not exceeding three months should be given; if they are in an adjoining province, it is just that a delay of six months be granted; if they are in a transmarine province, a period of nine months should be allowed.

2. The judges should construe this to mean not that in this way (*hac ratione*) they understand that they have the power to grant postponement at will, but that they should allow a delay only for the most urgent reason and when the necessity of the desired proof requires it, nor should it be readily granted more than once, nor for the purpose of dragging out the suit.

Given March 18 (294).

Note.

In D. 5.1.36, it is said that the divine brothers stated the rule as to postponements as follows: “Humanity requires that a postponement should be allowed on the ground of accidental misfortunes, for example where a father who is a party to an action has lost his son or daughter, or a wife her husband, or a son his parent, and that in other cases of the same kind the inquiry should be postponed, within certain limits.” See also D. 5.1.45 pr. In C. 3.1.11, above set out, it is stated that not more than one postponement be granted, presumably referring to civil cases. In D. 2.12.10, it is said: “In civil cases only one adjournment can be allowed in each separate case; in capital cases three adjournments may be given the accused and two to the accuser; but on both sides, only on cause shown.” A strict rule was directed to be followed in cases of adultery. D. 48.5.42. Notwithstanding, however, the foregoing statement that only one postponement could be granted in civil cases, it is said in D. 2.12.7: “It is no doubt set down in the address of the divine Marcus that an order giving further time for the production of documents is not to be had more than once; at the same time, for the convenience of the litigating parties, on cause shown, a second order for further time is commonly granted, whether the documents are in the same or a different province, subject to regulations depending on the situation; and this is especially done in the case of some unforeseen occurrence.” We think we may conclude that more than one postponement was possible in civil cases, and this is the view taken by 6 Donnellus 247. The time of postponement is fixed in C. 3.11.1, which is somewhat different for the special cases mentioned in Novel 69—cases in which an agent was sued, who was directed to produce his principal.

3.11.2. Emperor Constantine to Ursus, Vicar.

If anyone at any time brings an imperial rescript before a special (extraordinary) judge, he shall be entirely denied the right to have the case adjourned. But a person who is summoned to appear in court must be granted time to prove the falseness of the complaint or to produce documents or witnesses, since he could not be prepared when he was unexpectedly dragged into a foreign court.

Given March 6 (314).

C. Th. 2.7.1.

Note.

3 Bethmann-Hollweg 194 takes the view that no postponement was granted to a plaintiff in a civil case, citing the foregoing law, which, however, being limited to special cases, is not authority for that view. The author, in 3:274, however, seems to take the position that postponements might be given a plaintiff, though not as readily to the defendant, which, doubtless, was true.

Cases, however, could not have been infrequent where it would have been gross injustice to refuse plaintiff a delay, and that such injustice was not permitted may be inferred from D. 5.1.36, quoted in note to law 1 of this title. It was, in any event, granted to the government in fiscal cases. C. 3.11.6. See also C. 10.1.11.

3.11.3. The same emperor to Profuturus, Prefect of the Food Supply.

Whether only a part or the whole time permitted for postponement is granted, the judge must refrain from doing anything further in the case till the time given has passed. Holidays, however, whether extraordinary or usual, shall not be excepted from the time of the postponement, but shall be included therein.

Given at Sirmium February 7 (318).

3.11.4. The same emperor to Catullinus, Proconsul of Africa.

No postponement should be asked from a judge when he is leaving to go out, although it is granted in the presence of both parties, since it cannot be given except after investigating the reasons therefor, and such investigation can legally be considered not upon request made while the judge is off the bench, but only while he is on the bench, and, if the claim for postponement is perchance rejected, the suit that is begun may be decided by decision of the judge (soon after denial of postponement).

Given at Sirmium February 9 (318).

3.11.5. The same emperor to Maximus.

When we have issued a rescript either in an appeal or on a consultation, no postponement, whether asked for in the court of first instance and refused or not asked for at all (in that court), shall be granted to anyone, for the same reason that no postponement is customarily granted even in cases tried before, and decided by us.

Promulgated at Rome March 25 (322).

Note.

No delay or postponement was granted in cases tried before the emperor, since the parties were required to be ready. Bas. 7.17.15. So, too, if the emperor had issued a rescript in reference to an appeal or in answer to a petition for advice, directing a judge of appeal, or the trial judge, asking for advice, to proceed, no postponements could be granted whether asked for, or on the judge's own motion.

3.11.6. Emperors Constantius and Constans to Petronius, Vicar of Africa.

If an action is brought between private persons and the fisc, opportunity to ask for postponement through the advocates (defensores) shall be denied to neither party, if good reasons require it.

Given April 9 (340) at Aquileia.

C. Th. 2.6.5 (7.3).

3.11.7. Emperors Arcadius and Honorius to Messala, Pratorian Prefect.

A delay of more than nine months shall not be given, even in order to procure evidence across the seas, to litigants who litigate concerning personal status or concerning property.

Given November 20 (399).

C. Th. 2.7.3 (4).