

Book V.  
Title VIII.

If marriage is sought by rescript.  
(Si putiae ex rescripto petantur.)

Bas. 28.5.40.

5.8.1. Emperors Honorius and Theodosius to Theodorus, Praetorian Prefect.

Some persons, overlooking the provision of ancient law, stealthily ask a rescript from us granting them permission for a marriage which they know they should not enter into, often pretending to have the consent of the girl. We therefore, forbid by the provision of the present law, betrothals of that kind. 1. If any person is, in violation hereof, granted permission to marry pursuant to a stealthy petition, he need entertain no doubt that he will be punished by confiscation of his property and by deportation; that with the loss of the right, the marriage which he contracted unlawfully will be void;<sup>1</sup> that the children born of such marriage will be illegitimate, and that the permission which he asked for and which was granted him by rescript or imperial notation is of no effect. Excepted herefrom are persons who wish to carry into effect the promise of parents as to the marriage of their daughters, and persons who ask the return of betrothal money, that is to say, earnest money, together with the lawful penalty.<sup>2</sup>

Given at Ravenna February 1 (409).

C. Th. 3.10.1.

5.8.2. Emperor Zeno to Basilius, Praetorian Prefect.

We entirely forbid in the present imperial sanction the nefarious crime of marriage with the daughter of a brother or a sister, which has been condemned in an imperial constitution under threat of the heaviest penalty. 1. We also deny all right to ask permission to enter into any such alliance, or rather contagion, and every one may know that no permission, which it is unlawful to ask, will hereafter be any defense, though it was secretly obtained.<sup>3</sup>

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<sup>1</sup> Blume underlined this clause and placed a question mark in the adjacent margin. Scott renders this: "...the marriage which he has made by such forbidden means having been annulled..." 6 [13] Scott 161.

<sup>2</sup> [Blume] As to rescript generally, see C. 1.23.

<sup>3</sup> [Blume] C. 5.4.17; C. 5.5.9.