

Book VII.
Title XX.

Concerning detection of collusion.
(De collusione detegenda.)

Dig. 40. 16; Bas. 48. 23.

Headnote.

Collusion to have a man declared free or free-born was not lawful, and made any decree rendered as a result thereof voidable. That was true also where there was no genuine master or patron opposing the claim to freedom or free-birth. D. 40.16.3. The Ninnianian senate decree, mentioned in the second law of this title, is probably the law passed in the time of Domitian, mentioned in D. 40.16.1. It is there stated that if any one proved that a slave had been made free and declared free-born by collusion, he had the right to claim the man as his slave. Some reward is referred to in C. 7.20.2, in case of collusion to have a freedman declared a free-born person. The character of the reward is not stated. In the not to this law in the Basilica (48.23.2), the reward is stated to be that the detector of such collusion has the rights of patronage as to such freedman. That this was formerly true appears from D. 2.4.8.1. But under C. 6.4.4.26, the right was confined to that of reverence. In C. 6.4.4.6, it is stated that where a freedman is permitted, by collusion of the patron, to be pronounced free-born, the patron loses his rights of patronage, although, as stated in C. 7.14.13, the freedman does not lose his rights as such. Generally speaking, such a decree, entered by collusion, must be attacked within five years after its rendition. D. 40.16.2. And no such decree could be attacked twice. D. 40.16.5.

7.20.1. Emperors Diocletian and Maximian to Theodora.

Since you state that a slave of your mother committed debauchery upon his mistress, and that, in collusion with her, he attempted, before a competent judge¹, to cover up this disgraceful connection by a fictitious claim of being free-born and having been in captivity (and redeemed therefrom), and since you (further) allege that your mother did not give him freedom, but only endeavored to support him in his claim of being free-born by a voluntary lie, it is plain that he is a slave, since the rescript of the diving Pius written concerning captivity - which you say did not exist - does not make him free, and (his) allegation that you, too,² gave you consent (to the foregoing proceeding) could not grant him the right of the status of a free-born person.³ Promulgated June 18 (290).

¹ [Blume] He bringing a suit claiming his liberty upon the grounds mentioned, the mistress, through collusion, agreeing to the correctness of the allegation. See Basilica, 48.23.1.

² [Blume] Evidently referring to a daughter of the mother.

³ [Blume] A woman who had anything to do sexually with her slave was visited with capital punishment. C. 9.11.1.

7.20.2. The same and the Caesars to Milesius.

That the status of a freedman cannot be changed by private contract is plainly declared by the Ninnianian senate decree which fixes a punishment against collusion and promises a reward to those who made the collusion known.⁴

Given November 27 (294).

⁴ [Blume] See C. 7.14.8.