

Novel 135.

That no one shall be compelled to make an assignment of his property.
(Ne qui cession uti cogantur bonorum.)

Preface. We strive that whatever urges us on to obtain the divine favor, should be promoted by, and shine among, our subjects. One Zosarius, a native of the province of Mysia has supplicated us in tears and has shown that he had been mistreated by the honorable president of the province out of sheer arrogance because of some public an private debts, and who would not grant him a right of action to recover his property,^a which is most unjust and harsh. For how can it be right that a man who has lost his property by fortuitous circumstances and not through negligence, should finally be compelled to embrace in ignominious life and be deprived of daily sustenance and covering for his body.

a. I.e. the president was attempting to force him to make an assignment of his property, apparently through the refusal of granting him any rights to recover his property.

c. 1. Having learned this, and desiring to make a bad situation better, so that the good God of all may be palliated and nothing iniquitous be done in our times, we ordain that no one of our glorious and magnificent magistrates shall be permitted, in order to obtain an assignment of property, to force into straits anyone of those who are sued for public or private debts, or use such pretexts for such insults, so that they (the debtors) would prefer to avoid bodily punishment, to lose their property rather than be oppressed to death by want, aided by insult. He shall, however, take an oath on the holy gospel, that he has no property or money with which to pay the debt. But if he has, under the law, any rights in any inheritance or gift of a relative in any movable or immovable property, and has not yet taken possession thereof, but which seem to belong to him, and the creditors are able to collect part or all of their debt out of it—excepting the property of the wife, if it really belongs to her—this may be done, and the creditors shall have the right to claim the rights of action which he has, and bring suits in the name of the owner thereof whether present or

absent, and to state it simply, be substituted for him in such action or in any action in rem to recover the property.

Epilogue. Your Magnificence, careful and a lover of virtue, will watch over the observance of this our pious will, and will impose a penalty of ten pounds of gold upon anyone who dares to violate any of the provisions here made by us. Nor will those be without peril, but the safety of their life will be in danger, who merely plan to thwart those provisions which are justly made by this imperial law.

Given February 24 [year not given]

Note.

This Novel is in some respects entirely unexplainable, and apparently contradictory. 3 Bethmann-Hollweg 325, who recognizes this fact, says that too much importance has been attached to it. He attempts to explain it, so far as its bad composition permits, in the following manner: “Zosarius, made poor by unfortunate circumstances, and being a debtor of the fisc and of private parties, complained to the emperor of a double wrong inflicted on him by the president, namely (1) of personal mistreatment, in order to compel him to make an assignment of his property and (2) of refusal to grant rights of action which he had against third parties. He probably refused to give up property subsequently inherited by him, and it was sought, by the means taken, to compel him to do so. The emperor directs (1) as against the president” “Whoever makes an assignment of his property shall not also suffer personal mistreatment and infamy; (2) as against the petitioner; that he should swear that he had given up everything that he had, and that the creditors could, pursuant to an assignment of property, also claim the inheritances, gifts and so forth which the debtor subsequently received, without the necessity on his part to accept them and then set them over.”

Whether this is a correct partial solution of the meaning of the Novel, it is difficult to say. One thing which this explanation seems to overlook is the fact that in the title of the Novel it is expressly stated that a person shall not be compelled to make an assignment of his property to creditors, whereas the explanation aforesaid assumes that such assignment was required—the exact opposite. 2 Cujacius 904, in

speaking of Nov. 4, says that there was something hurtful in such assignment, despite the fact that the maker thereof was not subject to incarceration and did not become infamous. He does not say what this something "hurtful" was. He takes the position in discussing the present Novel, that the debtor was thereby released from both punishment and the making of an assignment for the benefit of creditors, by simply taking an oath that he had nothing wherewith to pay. Such assignment did not release a debtor from paying any balance remaining due on his debts, except to a limited extent. Headnote C. 7.71. When all the debtor's property, on the other hand, was seized and sold, he was, according to the opinion of some, released from all debts for which the property was seized. See headnote C. 7.53. And when the present Novel speaks of the dire consequences of an assignment, as clearly shown in the preface, it would seem to indicate that the debtor wanted to be in as good a position as the person whose property was seized and sold, as just mentioned, without at the same time becoming infamous or subject to any further obligations by reason of his debts. And it may be possible that this is what the Novel grants, subjecting to the payment of the debt, however, to the extent of the property he then had.