

Book II.  
Title XIX (XX).

Concerning the acts done under force or fear.

Headnote.

Remedies were provided if transactions were entered into through force or fear by the acts of an intimidator or extortioner—for instance, if transfers of property were made or obligations entered into or released. A distinct action was created during the early part of the first century B.C. (Cicero in Verr, 2.3.65.52) under which the defendant, if condemned, was required to return fourfold the value of the property extorted. The penalty was not, however, incurred, if the defendant obeyed the provisional order, always made, to return the property (D. 4.2.14.1); and if the action was brought after a year, it was allowed only on cause shown and only simple damages could be recovered. L. 4 headnote. At first purely penal and given only against the extortioner (Paul, Sent. and interpretations; 43 Z.S.S. 220), the action came to be given also against the heirs of the extortioner, and at least in Justinian's time, even against third persons, though acting in good faith, to the extent of their enrichment. D. 4.2.14.5; D. 14.2.16.2. The penal character of the action was also modified by the rule that in case of several tortfeasors, satisfaction made by one was satisfaction as to all (D. 4.2.14.15), and the fourfold penalty came to be held to include the value of the property involved. L. 4 headnote. The fear was required to be substantial. D. 4.2.3.1; D. 4.2.4. D. 4.2.22. Mere money-threats were not enough. C. 2.4.13.

If a person put in fear, etc. was sued, he could set up the unlawful acts in defense, and this, too, came to be given against third persons. D. 44.4.4.33. Another remedy was restitution of rights, but that came to be largely supplanted by the special action, and came to be confined to few cases. 43 Z.S.S. 228 ff. See also L. 3 headnote note.

#### 2.19.1. Emperor Alexander to Felix.

It has been correctly answered that the right to pursue things which have been taken by force or theft remains undiminished, although they have perished subsequently.<sup>1</sup> Promulgated November 22 (223).

#### 2.19.2. The same emperor to Alexander.

Since you acknowledge that you not only promised, but also paid the money, it is hard to see upon what basis you ask that the money paid should be restored, as though you suffered force, since it is not likely that you hurried to make payment without instituting a complaint concerning the due-bill, as one extorted by force, unless you say that you also suffered force in making payment.

Promulgated June 26 (266).

#### 2.19.3. Emperor Gordian to Gaius.

If your grandfather was compelled to sell his landed estate by force or fear, (then), even<sup>2</sup> though the purchaser has gone so far as to sell it to another, nevertheless, if you are

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<sup>1</sup> [Blume] i.e., the value could be recovered if they perished.

<sup>2</sup> [Blume] [Regarding] maxime--Schulz considers the word not genuine. 43 Z.S.S. 253 note 4.

your grandfather's heir, you may—after it became the accepted opinion that also a real action<sup>3</sup> would lie—go before the president of the province and demand, according to the rule of the perpetual edict, that, upon the return of the price paid, the landed estate be restored to you, provided that the second purchaser is not protected by prescription of long possession (10 or 20 years<sup>4</sup>).

Promulgated August 8 (238).

#### 2.19.4. The same emperor to Primus and Eutyches.

If a sale was extorted from you by force, fear of death or bodily pain, and you did not afterwards voluntarily confirm it, then if the property is not restored, and you indeed, sue, in accordance with the provision of the perpetual edict, within a year, during which there is opportunity of suing<sup>5</sup> you will be awarded a condemnation for fourfold, you, of course, having returned to purchase price. But after the year,<sup>6</sup> the same action is permitted, after investigation, (but only) for simple damages. This investigation has as its object that this action will be given only if no other action lies.

Promulgated August 5 (239).

#### 2.19.5. The same emperor to Rufus, a soldier.

It makes no difference by whom the force was used toward your father and paternal uncle, whether by the purchaser or by another with the knowledge of the purchaser,<sup>7</sup> so that they were compelled, through force or fear, to sell their possessions. For if the were, by the application of force, compelled to sell their possessions for less than their value, they will, according to the tenor of the perpetual edict (*jurisdictionis*) obtain judgment that whatever was dishonestly done shall be restored to the former status.

Promulgated December 27 (239).

#### 2.19.6. Emperors Diocletian and Maximian and the Caesars to Polla.

No title of dignity should bring odium and damage upon anyone. Hence you understand that the senatorial rank of your adversary is not alone sufficient to establish the fear through which you say the contract was entered into.

Promulgated at Heraclea, April 29 (294).

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<sup>3</sup> [Blume] An action in rem against the original intimidator was always given, and what was intended to be expressed was that it became the accepted opinion that it was given also against the world. Hence the original text, instead of speaking of an “action” spoke, perhaps, of restitution of rights in rem—i.e., against the world. 43 Z.S.S. 254.

Originally, the action in rem was given only pursuant to a preliminary proceeding for restitution of rights to compel the transfer. But in Justinian’s time, and for some time previously, such preliminary proceeding was no longer necessary. Schultz, 43 Z.S.S. 200; C. 2.20 headnote.

<sup>4</sup> [Blume] C. 7.33.

<sup>5</sup> [Blume] Reference is made to the “judicial” year. See C. 2.50.1 note.

<sup>6</sup> [Blume] Reference is made to the “judicial year. See C. 2.50.1 note.

<sup>7</sup> [Blume] Knowledge or want of knowledge of the second purchaser made no difference in Justinian’s time. The phrase harks back to a time when the action for extortion (of which the rescript, as it stands, doubtless speaks), could not be brought against an innocent purchaser. 43 Z.S.S. 254, note.

2.19.7. The same emperors and Caesars to Catus.

If you can prove, after applying to the president of the province, that an instrument of gift, compromise, stipulation or any other contractual obligation was extorted through fear of death or bodily pain or dread or threats of death, the president will not, according to the perpetual edict, be permitted the instrument to be considered valid.<sup>8</sup>

Given January 6 (293).

2.19.8. The same emperors and Caesars to Trophinus.

Since you state that you made a sale of your house and garden with the hope of receiving back the document made by you concerning the grain or under the fear that you would be nominated for some municipal office,<sup>9</sup> and now demand the sale to be rescinded as though made through fear, you understand that fear of that kind is of no avail for considering the contract (sale) void.

Given at Viminacium, August 22 (293).

2.19.9. The same emperors and Caesars to Hymnoda.

It is agreed that fear is not proven by (mere) boasts or assertions but by the atrocity of an act.

Given December 1 (293).

2.19.10. The same emperors and Caesars to Faustina.

It is a dishonest request that a conveyance or promise should be rescinded because made through fear of an accusation instituted or to be instituted.<sup>10</sup>

Given January 27 (294).

2.19.11. Emperor Constantine to Evagrius, Praetorian Prefect.

If anyone, in fear of some oppression, transfers, by way of sale, to a man occupying even a minor official position, his property situated in the same province or place where the official holds his office, the property so bought shall be returned, and the money (paid) shall not, any the less, be retained by the seller. The same penalty shall be inflicted if any person, using the name of a wife or a friend, in fact,<sup>11</sup> acquires anything by plunder for themselves.<sup>12</sup>

Given September 22 (326) at Aquileia.

2.19.12. Emperors Honorius and Theodosius to the people.

We direct that all sales, gifts and compromises extorted by persons of power shall be held void.<sup>13</sup>

Given at Constantinople February 17 (415).

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<sup>8</sup> See C. 2.4.13.

<sup>9</sup> [Blume] It may be noted that at this period municipal offices had become burdensome and were shunned. See C. 10.32.

<sup>10</sup> [Blume] See L. 7 h.t.

<sup>11</sup> [Blume] Tamen

<sup>12</sup> [Blume] C. 1.53.1; see also C. 5.2.1; C. 5.4.6; C. 5.7.1; L. 12 h.t.

<sup>13</sup> [Blume] C. Th. 3.119.

