Book VII.
Title LII.

Concerning res judicata.[1]
(De rei judicata.)

Dig. 42.1; Bas. 9.3.71, etc.

7.52.1. Emperor Antoninus to Stallator.

Matters adjudicated must remain so. But if you can prove that the man who obtained judgment against you, received back what he seemed to have lost by theft (and for which the judgment was rendered), you can protect yourself by setting up fraud, if he sues you on the judgment.
February 18 (213).

Note.

Actio judicati.

Nowadays records of judgments are permanent. Execution is issued upon a judgment by the magistrate who enters it, or his successor, without calling upon the defendant to comply therewith, except in cases where the defendant is out of the reach and jurisdiction of the court, in which case a judgment is sometimes sued on in the jurisdiction in which the defendant resides. But for many years the records kept by the Roman magistrates were apparently private records, and for a long time were probably incomplete. We have evidence that during the empire official records were public property and were required to be kept in archives. Note C. 1.56.2. During the statute process and the formulary period the ordinary case - and in fact all cases for a money judgment - were referred to and tried by a referee and judgment was entered by him. Whether he transmitted the papers and records in the case after rendition of the judgment to the praetor or other magistrate who appointed him, is, so far as we know, unknown. In any event, judgments and the papers connected therewith were not, during the periods mentioned, in any such permanent and readily available form as with us. Partially, perhaps, for this reason, and partially because the judgment was not rendered by the magistrate, but by some one appointed by him, it was necessary to take steps additional to those taken with us, in order to enforce a judgment. During the statute process that was by manus injectio - laying on of the hand, seizing the defendant and taking him before the praetor. Later, during the formulary period, and action on the judgment was necessary, in which it was required to notify the defendant and bring him to court the same as in any other action. If he then admitted the judgment and the validity thereof, execution was immediately awarded. But he might question the existence of the judgment, or the validity thereof, or that he had paid it, and in such case a new trial was necessary, which was referred to a referee the same as any other trial, but in such case, if the defendant lost, he was ordinarily condemned in double the amount of the judgment. If he claimed that he was liable only for a limited amount, for instance that he had the benefit of competence, so as to be liable only for the amount which he could pay (C. 5.22.1 note), or his liability existed by reason of special property of a son or slave in his power, the

[1] [Blume] See C. 7.56, as to parties bound by judgment.

condemnation then was only for the amount for which he was thus found liable to pay and not for double. See C. 1.18.1; C. 1.22.4.

In the later period permanent records were kept, though that is not certain as to referees to whom cases might be referred. Probably most of the civil cases were so referred. Perhaps the reason for an action on a judgment did not exist to the same extent as in the earlier period. And it is disputed whether one was necessary. D. 5.1.75, and D. 42.1.27, still speak of it as a requisite to an execution. That is also indicated in the instant law and in C. 1.18.1, and C. 7.46.3. In any event it is not at all certain that this requisite was dispensed with. Of course, there was only an informal demand, and notice was directed to be given by the magistrate - for referees could not enforce a judgment. But it is doubtful, that, if there was another trial, the condemnation was in double the amount. In some cases at least, it was not. C. 1.18.1. The proceeding in any event, was probably rather summary in its nature. See 9 Pauly-Wissowa 2476-77; Wenger, Actio Judicati, who deals with the proceeding during the extraordinary procedure commencing with page 223. Bethmann-Hollweg, 2 C.P. 635, 694, 695, 724. 1 Wachter 570, says that there was an informal demand - in ploratio - and if this was resisted an actio judicati. See to the same effect 6 Sav., Sys. 411, note a.

7.52.2. The same Emperor to Pacatianus.

If a matter adjudicated were reopened under the pretext of (error in) computation, there could be no end to law-suits.
Promulgated at Rome (215).

Note.

The law is somewhat misleading. There is no doubt whatever that judges had the right to correct errors in computation. D. 49.8.1.1; C. 2.5.1. The present law evidently means that matters already adjudicated, not relating to errors of computation, should not be reopened. 9 Cujacius 1021. It would seem, however, in order that an error in a judgment might be corrected, it should be discernible by examination of the record. D. 49.8.1.1; See also C. 10.1.2; C. 2.5.1.

7.52.3. The same to Demetrius.

If you were ordered to pay, with penalty, the money which you embezzled by false entries on books and you did not appeal when you learned of the president's order, you must pay the full amount.

7.52.4. Emperor Gordian to Antoninus.

It is a bad example to reopen a matter once adjudicated on the pretense of the subsequent discovery of new documents.
Given March 9.

Note.

But new documents might be used in a public cause, according to a rescript of Marcus Aurelius. D. 42.1.35. And there was another exception. We saw, at C. 4.1.12, that an oath was at times tendered to a party, in doubtful cases, by which the case was decided. Now where the judge had required a party to take an oath and it was taken, and the judgment had been rendered in accordance with such oath, and new documentary evidence was thereafter discovered, the case might subsequently be reopened. But if the

oath had been taken pursuant to the action of the parties alone, this could not be done. D. 12.2.31. See C. 7.58 for cases of forgery and corruption.

7.52.5. Emperors Diocletian and Maximian and the Caesars to Valentinus.

A man who asks time for payment, clearly appears to have acquiesced in the decision, the same as one who acquiesces therein in any other manner. And the law does not permit a matter once adjudicated to be reopened.
Subscribed at Sirmium February 13 (294).

7.52.6. Emperors Honorius and Theodosius to Julianus, Proconsul of Africa.

We want transactions contained in public records[2] to have perpetual force. And the public credit (due thereto) should not perish with the death of the trial judge.
Given at Rome August 30 (414).
C. Th. 16.5.55.

[2] [Blume] Publica monumenta - Steinwenter, Beiträge z. Off. Urkundenwesen 9.