

Book VII.
Title LXI.

Concerning reference to the emperor.
(De relationibus.)

Dig. 49.1; Buckland 665.

Headnote.

Such constitutions of the emperor, except in unimportant cases, were not only permitted (Nov. 82, c. 14; Nov. 113, c. 1) till 543 A.D., but were in fact required in some cases against persons of rank before a severe penalty could be inflicted upon them. C. 3.24.3; C. 12.1.16; 3 Bethmann-Hollweg 91. The proceeding was substantially as follows: "After the case was fully tried, the judge declared that he would report the case to the emperor for consultation and advice, after which he could not himself decide the case. C. 7.61.1; C. 7.62.13; C. Th. 11.29.5; 11.30.1, 5 and 8. He thereupon prepared a full report, which included the record in the case, gave a copy thereof to the parties who could then make a counter-report (*refutatorii libelli*) containing additional facts, if any, or refuting the facts as stated by the judge. Both reports were then transmitted to the emperor by a messenger. The matter was investigated by the quaestor, the legal adviser of the emperor, and two persons of illustrious rank. C. 7.62.34. The interested parties had a right to be present and defend their claims - although formerly they had not been permitted to follow up their case until after the expiration of a year. C. Th. 11.30 laws 34, 47, 54, 66. The decision was made by the emperor, and was doubtless generally based on the report made to him by the persons to whom the case had been referred. The decision was issued in the form of a rescript, prepared by the quaestor with the assistance of the master of the imperial bureau of letters (*epistolarum*) and his assistants. Nov. 114; C. 1.23.7; 3 Bethmann-Hollweg 91. The decision of the emperor was then transmitted to the trial judge, through the quaestor, and the decision was final. C. 7.62.34; C. 1.14.2; Nov. 113, c. 1; 3 Bethmann-Hollweg 92. The whole proceeding was abolished in 543 A.D. (Nov. 125) and judges were directed to decide the cases themselves. Only appeals were permitted thereafter. We have already, at headnote to C. 1.19, referred to the fact that officials frequently made reports to the emperor and were answered by what is commonly called a rescript. The frequency of these reports and rescripts is attested by what we learn in the letters of Pliny, the younger, and of Symmachus. In 313 A.D. Constantine wrote to a governor of a province not to refer any matter to him that was not important or difficult, in order not to interrupt his imperial labors, litigants having, in any event, the right of appeal. C. Th. 11.29.1. In 321 A.D., he wrote that his advice should be asked only in important and not in trifling matters. C. Th. 15.1.2. A similar rescript was issued by Honorius in 96 A.D., in which he stated that civil cases, which were not in need of imperial advice, should, after trial, be decided without resorting to a reference to the emperor; that it was not right that the courage of the judge should be weakened or that the decision should be delayed by a would-be appellant and so keep a litigant in suspense during the time of reference. C. Th. 11.30.55. On the other hand, the emperors of 377 A.D. wrote that reference of vicars - some of them evidently having been made to the praetorian prefect, which the emperors evidently did not like - should be made to them,

and they said: "We gladly hear the reports of judges, lest the influence of their administration decrease, if we should repel their consultations from our shrine like the prayers of the profane." C. 1.38.2.

The present title of the Code deals with reports (relationes or consultationes) of judges to the emperor before the decision in a case, and must not be confused with those made after a decision from which an appeal was taken.

7.61.1. Emperor Constantine to Profuturus, Prefect of Food Supplies.

If any judge thinks that any question ought to be referred to the emperor, he must render no decision between the parties, but should consult us as to the point on which he hesitates. But if he has given a decision, he must no afterwards deter litigants from taking an appeal by promising to refer the matter to us, knowing that if he does so, the appeal shall, nevertheless, be heard. 1. No reference to us must be made which lacks a complete report. 2. Whenever the judge promises to refer a matter to us, he must direct by an order made of record that a copy of the consultation (consultatio) be immediately furnished to the litigants, so that if the report appears to anyone not to be complete or wrong, he may, without delay, offer refutatory statements to be made of record.¹

Given at Sirmium February 10 (319)

C. Th. 11.29.2.

7.61.2. Emperors Valentinian and Valens to Viventius, Praetorian Prefect.

Rectors of Provinces must not undertake to refer cases of tort of provincials to us, unless they first furnish a copy of the consultation, for the report is only complete when the statements therein are either denied or, through silence, approved.

Given at Treves, December 30 (368).

C. Th. 11.29.3.

7.61.3. The same Emperors to Apodemium.

If it should appear advisable or necessary in some suits that our advice be sought and our response be awaited, the report of reference must embrace every point fully, so that, after reading the consultation which is to be referred, an examination of the records is almost unnecessary. But the records must necessarily be attached.

Given at Treves May 10 (369).

C. Th. 11.29.4.

¹ [Blume] According to Th. 11.30.1, the copy of the inquiry was to be given and placed of record within ten days; anyone dissatisfied might furnish for the record refutatory statements within five days thereafter.