

Book IX.
Title XLII.

Concerning dismissal of suits.
(De abolitionibus.)

Headnote.

This title deals with dismissals of prosecutions, and it will be noticed that none could be dismissed except for cause, and not even then in some cases, even with the consent of the accused. And it may be noted, that though a dismissal was ordered, this did not prevent anyone else from bringing the same accusation, any more than if the accuser had abandoned the prosecution without order of dismissal. Dig. 48.2.11.2. And accuser could not voluntarily abandon the prosecution without order of court in any event, and if he did so he was held guilty of what was called tergiversation, and subject to a penalty. This subject is dealt with in titles 44 and 44 of this book.

9.42.1. Emperors Diocletian and Maximian to Paterna.

If the president of the province finds that he granted the right (asked) to dismiss the suits in connection with all the various crimes, he will, by the intercession of his authority, see to it that the matters once ended are not brought up again. But upon supplication to the emperor (which is granted), an accusation once laid to rest by such dismissal may be renewed by the same person.

Promulgated November 17 (287).

9.42.2. Emperor Constantine to Januarius, City Prefect.

The right of dismissal of a suit must, in the presence of the parties, after investigation, be asked from the proper judge and not from the emperor; that is to say, in cases when the accusation was hastily made through error, rashness or in the heat of passion. When the accuser makes this plain, he has cause for dismissal. 1. But if, corrupted by the accused, by any agreement or by payment of money, he asks for a dismissal, the voice of a purchased pity shall not be heard, but proper punishment shall be visited upon the guilty defendant, after trial. 2. Parties, however, who sue because of intentional wrong (injuria) inflicted on them or theirs, and parties who have brought accusations against their relatives, are not forbidden to ask for dismissal.

Given at Serdica November 26 (319).

C. Th. 9.37.1.

9.42.3. Emperors Valentinian, Valens and Gratian to Probus, Praetorian Prefect.

Dismissal will not be granted to false accusers. And if a man has instituted an accusation with pure intentions, and the accused has suffered by reason of the filing of the written complaint, that is, if he either suffered incarceration, torture, lashes or chains, a dismissal may not be sought, unless, perchance, the person who suffered these things has given his consent for asking it. 2. But if the accused suffered no such things, a dismissal is permitted, even against the consent of the defendant, if asked for by the accuser within thirty days after the accused was delivered into custody. We direct that this time it shall not be granted, unless the defendant consents. 3. But if, for the purpose

of obtaining evidence, the bodies of free-born people, though plebeians, who were not accomplices or participants in a crime, were lashed or tortured, a dismissal sought even by the consent of both parties, shall be denied by the judge, and the accusation brought, the investigation of which had already been commenced through torture, shall be tried. 4. Even when no torture was applied to witnesses, a dismissal shall not be granted in cases of accusation for treason, attack on or betrayal of one's native city, embezzlement of public money, desertion from the army, and in all other cases mentioned in the ancient law. In these cases the judge shall compel the accuser to prove of what he complained, and the defendant to purge himself of what he denies.

Given at Treves October 14 (369).

C. Th. 9.37.2.3.4.