

2. Alleviation of Debtors.

First of all let me refer to the subject of alleviation of debtors.

In 528 Justinian lowered and fixed rates of interest, and forbade interest to be collected on interest.⁽⁵⁹⁾ In 531 he doubled the time of the respite previously given to a debtor, in which he might pay a judgment.⁽⁶⁰⁾ In 532 the emperor gave as long as four years for the sale of a bankrupt's property.⁽⁶¹⁾ And I might mention in that connection that three years later, he provided that debts might be paid with land, though gracious enough in that case to give the creditors the right to choose the best of it.⁽⁶²⁾ And nine years later than that, he provided that if religious organizations were in financial difficulties, their debts, too, might be paid in land, but in such case the creditor did not have the right to take his choice.⁽⁶³⁾ In 530 Justinian enacted a law relating to the sale of mortgaged property.⁽⁶⁴⁾ It is a rather remarkable law, shedding light upon the economic conditions of the times.

(59) C.4,32,28.

(60) C.7,54,3.

(61) C.7,72,10.

(62) Nov.4, c.3

(63) Nov.120, c.7

(64) C.8,33,3; See Dernberg, Pfandrecht 2, 139, 241; Felsentraeger, Loesungsrecht 94.

He recites that formerly it was customary, in case a mortgagee wanted to acquire the mortgaged property, to offer it at public sale and that then a year was given for time of redemption, but that no property was being offered at public sale, and that the only thing he knows of such custom is what he has read in the books. He then provides that unless in the case of a contract otherwise providing, the mortgagee should wait two years after notifying the mortgagor of his default, before he could offer the property for sale. If no purchaser was found, which apparently was not possible, the mortgagee should again notify the mortgagor to pay; if he could not be found, a time should be fixed by the governor within which payment was to be made; if payment was not made, then the mortgagee could turn to the emperor and receive ownership, which, however, was subject to redemption for a period of two years. The ownership granted by the emperor was not absolute; if the property was of greater value than the debt, the debtor retained an interest in the property. Other laws relate to assignments for the benefit

of creditors. Debtors were permitted to make such assignments under the so-called Julian law, probably that of Augustus.⁽⁶⁵⁾ The law was possibly or probably intended to permit debtors to escape imprisonment, so commonly permitted in ancient times and even up to comparatively modern days.⁽⁶⁶⁾ The law fell into disfavor by the time of Diocletian.⁽⁶⁷⁾ In any event, ordinarily such assignments could be made only by persons who had something to assign.⁽⁶⁸⁾ Hence the Julian law gave relief to but comparatively few people. But it is reasonably clear that by the time of, or under, Justinian, a person without anything at all could make such assignment and thus escape imprisonment.⁽⁶⁹⁾ Other measures were taken against imprisonment for debt. We may note in this connection the oncoming of feudal times with its ravages. Persons of power had private prisons. The emperor Zeno in 486 forbade them, threatening violators with the charge of treason.⁽⁷⁰⁾ That this law was not wholly successful, if successful at all, is shown by a law enacted by Justinian at some time before the second

(65) C.7,71,4; Gaius 3,78.

(66) See the writer's article in United States Law Review, November, 1930, p.581 ff.

(67) C.7,71,4; also C.Th.4,20,1.

(68) Woess in 43 Z.S.S. 509.

(69) C.7,71,1 and 7; Nov. 135; Woess, supra, 528.

(70) C.9,5,1

edition of the Code,⁽⁷¹⁾ again forbidding the keeping of private prisons, under threat of punishment, and the loss of the creditor's claim against the debtor. The officials neglecting to enforce the law were threatened with the loss of their property. The emperor went further. He provided in 529⁽⁷²⁾ that the bishops should visit the various prisons one day each week and inquire into the cause of the detention of prisoners. If a free person was detained therein on account of a debt, he was permitted to give sureties, and if he could not give sureties, the cause was directed to be tried within thirty days and the prisoner released.

Still other laws were intended for the alleviation of debtors or poor persons. Here belongs, I think, the modification of the rule that an heir who would accept an inheritance was responsible for the debts against it, whether the property was sufficient to pay them or not. For the first time in Roman law Justinian provided that the heir might make and file an inventory

(71) C.9,5,2.

(72) C.9,4,6.

of the estate, and if he did so, he should not be responsible beyond the amount of the value of the estate.⁽⁷³⁾ Here too, it may not be amiss to mention a law⁽⁷⁴⁾ which, while dated in 285, was altered by the compilers, and which reads as follows:

"If you or your father sold property for less than its value, it is just that you should receive it back. * * * A price is considered too little, if one half of the true value is not paid."

This law was undoubtedly made for the benefit of the poor and the oppressed.

Again, laws were passed by Anatasius and Justinian that an assignee of a debt could not recover more than he paid for an assigned debt, except in a case where it was given to him.⁽⁷⁵⁾ The reason for these and other laws is not far to seek. Feudalism began to stalk abroad in the land. Potentates took assignments, protecting others for their personal advantage. As early as the time of Claudius in the latter part of the third century, the emperor had to issue a law threatening persons with the loss of their claims, if they called such

(73) C.6,30,22,2.

(74) C.4,43,2.

(75) C.4,35,22-24.

potentates to their aid. And Diocletian wrote to one of his officials that "since it is important to all generally and especially the poor who are often oppressed by the grievous intercessions of dignitaries" the law made by Claudius should be rigorously enforced. ⁽⁷⁶⁾

Later in 422 A.D. the emperors wrote: "If obligations of any kind have been transferred to dignitaries, the creditors shall be punished by the loss of their debt, for it seems to be plain greediness of creditors, when they purchase others as collectors of their rights of action." ⁽⁷⁷⁾ I might, however, further mention that others also made use of dignitaries and potentates, as shown by the Code. The use of placards, put up on land, was very common. ⁽⁷⁸⁾ And they were not illegal, if honestly used. But we can trace in the Code their illegal use, commencing with at least 400 A.D., as evidenced by a law of that year, enacted by Arcadius and Honorius. Debtors afraid of the invasion of their property put placards on their places indicating that the property did not belong to them, but to some powerful individual.

(76) C.2,13,1.

(77) C.2,13,2.

(78) C.2,14,1.

Those who did so were threatened with the loss of their land, and dignitaries who permitted their names to be so used were directed to be scourged with leaden balls, and to be sent into perpetual exile into the mines. In 468 A.D. the emperors Leo and Anthemius⁽⁷⁹⁾ provided that if anyone put himself under the patronage of another, for the purpose of evading taxes, either by way of pretended sale or lease of his place, the transaction should be void; the persons who took such persons under their patronage were to be fined 100 pounds of gold, and scribes drawing up documents in that connection with the loss of their property. Later, another law⁽⁸⁰⁾ was enacted providing that no one should promise patronage to peasants or take peasants under his protection, under threat of punishment. Peasants, if slaves, were to be chastised, and free men were to be fined by 20 pounds of gold.

(79) C.11,54,1

(80) C.11,54,2