Book I.
Title XIX.

Concerning petitions to be addressed to the emperor and concerning which things it will be and will not be permitted to supplicate.
(De precibus imperatori offerendis et de quibus rebus supplicare liceat vel non.)

Headnote.

Title 14 of this book deals with general laws. The present and several subsequent titles deal with supplications addressed to the emperors and with what are commonly called rescripts, which were answers by the emperors to such supplications or answers to inquiries made by officials. These answers were generally prepared by the emperor's legal department, under the direction of the quaestor, who might be called attorney general, and who had as his assistants clerks from the imperial bureaus. This system, peculiar to the Roman empire, naturally took rise soon after the overthrow of the republic, and was one of the principal means whereby jurisprudence in the empire was developed along logical lines. The Code contains numberless rescripts. Diocletian alone is said to have issued over 1200 of them, but they decreased in number as well as in character after the time of Constantine. 3 Bethmann-Hollweg 210. Many of the letters of Pliny the Younger were addressed to the emperor on administrative as well as legal matters, and rescripts of the emperor Trajan in answer thereto are preserved for us. Reports on pending legal matters addressed to the emperor by magistrates will be more particularly treated in C. 7.61 and need not be mentioned here any further.

Petitions or supplications (preces, libelli) were frequently addressed to the emperor, who was the source of all law and practice, by private persons in regard to some legal matter. These supplicants and rescripts in answer thereto, were forbidden in suits already pending, as shown by C. 1.21.1 and 2; Nov. 113 to C. 1.22.6, and Novel 82, c. 13. But in other cases they were permitted, and if in proper form, they, according to a peculiar custom among the Romans, answered the same purposes, when properly filed as hereinafter mentioned, as a complaint in other cases, and in fact were, together with the rescript issued thereon, in some instances at least, the equivalent of the commencement of an action in other cases. (C. 1.20; C. 8.53.33), as for instance stopping the running of the prescriptive period, although in some cases the statute of limitations was apparently not tolled until notice had been given the adversary. C. 7.39.3; C. Th. 4.14.1.1. These supplications were addressed to the emperor by the parties, so that he might decide the matter in the first instance, or might assign a special judge to try and decide it, which was frequently done. At times the emperor would refuse to do so, but refer the parties back to the regular magistrate having jurisdiction in the case, generally with a statement of the law that should govern the matter. Many of these rescripts are contained in the code. Ammianus Marcellinus charges Valentinian with cruelty in this regard and says (27.7.8): "And besides this cruel conduct there was another circumstance horrible even to speak of, that if anyone came before him, protesting against being judged by a powerful enemy, and requiring that some other judge might hear his case, he always refused it; and however just the arguments of the man might be, he remitted his cause to the decision of the very judge whom he feared." But such a situation was generally considered just ground for asking the case to be tried by a special judge (C. Th. 1.19.2.1), and in fact, in C. 3.14.1 it is stated that if a minor or a widow in unfortunate circumstances should have a matter to be adjudicated, he would, especially if they should be in fear of some

powerful person, direct the adversaries to come before him for trial. But as a rule, the emperor did not hear a case personally, but directed it to be tried by a special judge appointed by him. [3] Bethmann-Hollweg 93, 350; see C. 1.19.1; C. 1.22.1 and 2; C. 3.11.2. This appointment was made by rescript which might contain a statement of the principles of law governing certain facts. [3] Bethmann-Hollweg 350; C. Th. 1.2.7. These principles, however, could not govern the case if contrary to general rules of law. C. 1.22.6 and Nov. 113. The rescript was directed to the supplicant in answer to the latter's petition. Inasmuch as his supplication served the same purpose, and took the place of, a complaint in other cases, it was required to contain a full statement of the facts, although the proofs were not necessary to be attached. C. 1.19.8. This petition, together with the rescript, [was] required to be made a matter of record. C. 1.23.3; C. 8.4.6; C. Th. 4.14.1; 4.22.2. Notice thereof was required to be given the adversary. Nov. 112, c. 3. The proceedings were conducted in the same manner as other proceedings, unless the emperor directed otherwise. [3] Bethman-Hollweg 351-352. And the defendant in the case was also given the opportunity to contradict the facts upon which the rescript was founded. C. 3.11.2. In fact the emperor Zeno provided that the rescript itself must contain that such opportunity was given. C. 1.23.7. An appeal from the final decision in such case was given the same as in other cases. C. 7.62.2. The method of commencing an action in the ordinary was is fully outlined in note to C. 2.2.4 where the method of commencing an action here outlined in mentioned with comment.

1.19.1. Emperors Diocletian and Maximian to Firmina.

Although the status of slavery is hardly fitted to address a supplication (to us), still the atrocity of the crime committed and the example of our laudable faithfulness to have the murder of your master punished, has been an inducement for us to execute an order contained in the annexed annotation, asking the praetorian prefect before whom you must go, to listen to the matters contained in your petition, investigate the guilty and demand the severest punishment prescribed by law.
Given October 8 (290).

1.19.2. Emperor Constantine to Severus, City Prefect.

The right of supplication exists whenever the question involved—in a rescript—is a defense for delay. But the right which destroys inquiry into the whole transaction and takes away the vitality of the main transaction itself, cannot be granted without grave damage of the other party. Hence no relief by way of a defense in bar may be sought.
Given at Nicea May 23 (325).
C. Th. 1.2.5.

Note.

The translation unquestionably states the meaning of the rescript, although the grammar of the Latin and some of the words were not happily chosen. A defense for delay was one which prolonged the cause. In this case, a number of days of grace were sought at the hands of the emperor. A defense in bar destroyed the main cause. Such defense could not be granted by the emperor, while delay in suit might be granted, provided that, as stated in law 4 of this title, suitable guaranty for payment was given.

1.19.3. The same Emperor to the people.

Nothing should be asked which is hurtful to the fisc (imperial treasury) or contrary to law.

Promulgated at Rome September 24 (329).

1.19.4. Emperors Gratian, Valentinian and Theodosius to Florus, Praetorian Prefect.

Every rescript promulgated concerning the granting of delays in causes of debtors shall be of no force, unless a suitable guaranty for the payment of the amount due is given.

Given at Constantinople February 22 (382).
C. Th. 1.2.8.

1.19.5. Emperors Valentinian and Valens to Valusianus, Praetorian Prefect.

If anyone shall deem it advisable to address a supplication to us against the decisions of the praetorian prefect, and he shall finally be defeated, he shall have no further right of supplication in regard to the same matter.

Given at Rome September 17 (365).

Note.

The praetorian prefect was the highest judicial officer of the empire. No appeal lay from his decision. But the right of supplication against it existed, which, in the later times, seems to have taken the course of a petition for a rehearing, such petition being heard by the praetorian prefect in conjunction with the quaestor. The time limit was two years, according to C. 7.42.1. Novel 119, c. 5 limited the time for a petition for a rehearing to ten days, but it may be that this provision applied only in order to effectuate a stay of execution. See C. 7.42. and C. 7.62.35, and Nov. 119, c. 5.

1.19.6. Emperors Honorius and Theodosius to Isidorus, City Prefect.

We make this remark for the benefit of all at the same time, that if a rescript has been granted to either a free person or a slave[1], no inquiry shall be made as to who laid the petition before us.

Given at Constantinople September 4 (410).

Note.

In law 1 of this title it was stated that a slave was hardly a suitable person to address a supplication to the emperor. The instant rescript states that when a rescript was once granted, it should be valid, whether the supplication was made by a free person or slave. That is the gist of the rescript.

1.19.7. Emperors Theodosius and Valentinian to the Senate.

We direct that rescripts elicited, which are contrary to law, must be ignored by all the judges, unless perchance in a matter not hurtful to another but advantageous to the petitioner, or unless it grants pardon for a crime.

Given at Ravenna November 6 (426).

Note.

In C. 1.14.4, it was stated that the emperor submitted himself to general laws, intimating that rescripts contrary to such general laws should be void. But the emperor's

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[1] The typewritten original reads "obtained either by a free person or by a slave." Blume lined out "obtained" and wrote "granted to" above it without also lining out "either by" and the "by" preceding "a slave." I have done that here to have the sentence read properly.

word was law, and it was, accordingly, a delicate question for a judge whether to follow a rescript or not. He was placed, as it were, between an upper and nether millstone.

1.19.8. The same Emperors to Florentius, Praetorian Prefect.

It shall be of no advantage to annex to petitions copies of instruments, but it is necessary to state the substance thereof in the petition itself, so that the petition makes the matters to be investigated plain to the emperor expected to give an answer. When necessity demands, the words, and only the words, shall be inserted in the petition, the meaning of which is disputed by the parties and hence require our determination.