

Book IV.
Title XXVIII.

As to the Macedonian decree of the Senate.
(Ad senatus consultum Macedonianum.)

Bas. 18.4; D. 14.6.

Headnote.

The Macedonian senate decree was in this form: “Whereas Macedo, to the other causes of wickedness which nature bestowed upon him, added also indebtedness, and (to say no more) one who lends money on dubious obligations often provides evil dispositions with means of ill-doing, it is enacted that to one who has lent money to a house-son, no action or claim be given even after the death of his parent, so that those who setting a most evil example, lend money at interest, may know that no acknowledgement of a house-son can be made a good claim by waiting till the death of the father.”¹ D. 14.6.1 pr. It made no difference that the house-son occupied a high official position; even though he had been made consul, the senate decree applied. It did not, however, apply to a soldier, to the extent of the special military property possessed by him.² D. 14.6.1.3; D. 14.6.2. Loans to women under paternal power were included in the prohibition. D. 14.6.9.2. The defense given by the senate decree was available to the son, father, and surety. D. 14.6.9.3. The successor of the lender was barred the same as the latter. D. 14.6.7.4.

4.28.1. Emperor Pertinax to Atilius.

If a son, while in his father’s power, received a loan, alleging that he was sui juris, and you can show that you reasonably gave credence to his statement, the defense (under the Macedonian senate decree) will be denied him.
Promulgated March 23 (193).

Note.

If a person believed and had good reason to believe that the person to whom money was lent was sui juris, and he was not misled by mere foolishness or ignorance of the law, but because the borrower appeared as a person sui juris publicly, to people generally, and was in the habit of acting, contracting and executing the duties of offices, as such, the senate decree did not apply. That was true, for instance, where a person was in the habit of farming the public revenues. D. 14.6.3 pr. and 1. If there were two lenders, one of whom was chargeable with knowledge that the borrower was a house-son, and one was not, both were chargeable. D. 14.6.7.7.

4.28.2. Emperors Severus and Antoninus to Sohphia.

If Zenodorus appeared in public as sui juris, or contracted with the consent of his father, or expended the loan on his father’s debts, or if, having become his own master, he executed a novation, pledging his credit or otherwise acknowledging the debt, it is clear that resort to the decree of the noble order (Senate) cannot be had.
Promulgated February 25 (198).

¹ In the adjacent margin, Blume wrote “read L. 6.”

² Blume penciled a question mark into the margin here.

4.28.3. The same Emperors to Macrinus.

If an unemancipated son buys anything and stipulates to pay the price, together with interest, to the seller, there is no doubt that the senate decree which forbids unemancipated sons to borrow money on interest has no application. The origin of the debt rather than the name of the action is to be considered.

Promulgated March 13 (198).

Note.

It was only one who had lent money to a house-son (unemancipated son) who offended against the senate decree, not one who had contracted otherwise, unless another contract was made by way of evasion. For instance, one who had sold or let on hire did not violate the senate decree; it was the giving of money that was considered dangerous to parents. D. 14.6.3.3. Thus the senate decree did not apply to a guaranty given by the son. D. 14.6.7 pr. So, too, if the son borrowed money to pay someone a debt contracted without violating the senate decree, it did not apply to such a loan. D. 14.6.7.14. If a house-son borrowed money for the purpose of giving it as a marriage portion on behalf of his sister, the father was liable therefor. D. 14.6.17.

4.28.4. The same Emperor to Cyrilla.

If you made a loan to an unemancipated house-son with the father's permission, the authority of the senate decree does not apply, and the right to follow up the pledge into the father's possession will not be denied, especially since the son became his father's heir; provided, however, that no one else has by agreement a prior right in time and order than you.

Promulgated April 20 (291).

Note.

The father's consent barred defense under the senate decree. That consent might be implied, as where the father appointed his son a managing agent of a store, or where he permitted him to engage in business with his special property (peculium).D. 14.6.7.11.

4.28.5. Emperor Alexander to Septimia Musa.

The authority of the Macedonian senate decree does not prevent suit for money which was loaned to an unemancipated son while he was a student or ambassador living in another place, for necessary expenses, which the father's affection would not deny him.

1. But by reason of the contract, an action against the father to recover the son's special property (peculium) lies after the son's death only if a judicial year has not elapsed.

2. Of course, if it is shown that the loan was made by order of the father, it is not necessary to inquire as to whose benefit it accrued, and a perpetual right of action³ lies against the father although the son may be dead.

Promulgated February 28 (230).

4.28.6. Emperor Philip and Caesar Philip to Theopomus.

³ [Blume] I.e. one not barred in a year.

If your son, while he was in your power, borrowed money contrary to the Macedonian senate decree, an effective action for the special property (peculium) cannot be brought against you on that account. 1. The help of this senate decree, although it (only) mentions an unemancipated son, applies to grandsons and great-grandsons. Promulgated March 2 (245).

4.28.7. Emperor Justinian to Julianus, Praetorian Prefect.

In deciding a doubt of the ancients, in case an unemancipated son received a loan without the order, mandate, or consent of his father, and the latter afterwards ratified the contract, we ordain that as in the case when the son had received the loan in the beginning with the consent or upon order of the father, the latter has been held liable, so if he afterwards ratified the contract, it shall be valid, since it is unjust to reject the father's ratification, for such ratification is necessarily similar to consent and order of the father given in the first place, as is shown by a recent general law⁴ in which every ratification is declared to operate in the past, confirming subsequent acts as valid from the beginning. These provisions are made concerning persons in private station. 1. But if an unemancipated son who is a soldier received a loan, whether without the order, consent, wish, or ratification of the father, the contract should stand, without reference to the reason for which the money was loaned, and regardless of where it is used. For in many points of law, an unemancipated son who is a soldier is not considered much different from a man who is sui juris, and every soldier must be presumptively considered as having received and expended the money for no purpose other than military. Promulgated July 21 (530).

⁴ [Blume] C. 5.16.25.