

Book VII.
Title XLIX.

Concerning punishment of a judge who adjudges corruptly or of the man who has caused a judge or an opponent to be corrupted.

(De poena iudicis qui male iudicavit, vel ejus, qui iudicem vel adversarium corrumpere curavit.)

7.49.1. Emperor Antoninus to Gaudius.

It is well known that if any money is given in any case, private or public or fiscal, either to a judge or an opponent, the man who in mistrust in a just decision places his hope in corruption by money, loses his action.

Given December 19 (212).

Note.

C. 9.27 deals at length with official corruption and bribery of judges, and Nov. 124, provided that a litigant must take an oath that he had not given any money for corruption; that if he had given such money and told the facts, the penalty of losing the suit should not be imposed.

The prohibition against bribery of an opponent applied doubtless mainly in criminal cases. The present law did not prohibit legitimate compromises. D. 3.6.1.3 says: "Moreover, an enactment of the present emperor, addressed to Cassius Sabinus (C. 7.49.1, addressed to Gaudiu is intended) forbids the giving of money to the judge or to the other party, whether the case is public, private or fiscal, and where such an act is done, it lays down that the right to proceed is lost. It is, no doubt, a fair question, supposing the other party took the money by way of compromising the case and not vexatiously, whether the enactment still applies; and I should say it does not, just as the above action itself is gone; that is not prohibition of compromises, but only of vile acts of extortion. A man will be deemed to have received money even where he received something else instead of money."

7.49.2. Emperor Constantine to Felix, President of Corsica.

A judge who gives a wrong decision as a result of bribery or favoritism, shall, in punishment, not only lose his good name, but he will also be liable to the party whom he injured for the risk involved in the litigation.¹

Given at Sirmium October 25 (319).

C. Th. 1. 16. 3.

Note.

If the judge gave a judgment corruptly or through favoritism, he lost his good name, that is to say, became infamous and was also liable to the losing party for his

¹ This last phrase appears to be what Blume intended. His original read "for the amount involved in the litigation." Blume crossed out "amount" and penciled in above it "risk of," while also apparently putting parentheses around "involved in"—which he later erased—and a question mark in the margin. He also added this note: "See 2 Cujacius 438; Perez 642. German translation different." Inside the back cover of this manuscript volume, probably before the changes noted above, he wrote: "C. 7.49.2—doubtful."

damages. A judgment given by reason of the corruption of the judge was totally void. C. 7.64.7.

In other cases, too, the judge was responsible to the losing parties for the damages, namely, in cases where he made the "cause his own." D. 5.1.15 says: "A judge is said to make a case his own where he maliciously pronounces judgment in fraud of a statute; and he is held to pronounce maliciously when plain proof is given of favor of spite, or, it may be, some corrupt motive on his part. The result is that he is compelled to pay the value of the matter in litigation." D. 50.13.6 states that a judge was considered as making a cause his own also in case he gave judgment through imprudence.²

² [Blume] It is thought that these laws did not apply to magistrates, but to the referees or arbitrators appointed by them to try cases; that the magistrates themselves were, however, liable criminally and in an action for willful wrong (*injuria*). *Usteri judex qui litem suam facit*, § 12.