

Corpus Juris Civilis

(Only portions mentioning prostitution)

BOOK XII.

TITLE V. CONCERNING THE ACTION FOR RECOVERY WHERE THE CONSIDERATION IS IMMORAL OR UNJUST.

3. *Paulus, On Sabinus, Book X.*

Where both the giver and the receiver are guilty of immoral conduct, we hold that suit cannot be brought for the recovery of the donation; as, for instance, where money is paid in order that an unjust judgment may be rendered.

4. *Ulpianus, On the Edict, Book XXVI.*

The same rule applies where money is paid in consideration of prostitution, or where a party who has been caught in adultery purchases immunity, as no action for recovery will lie; and this is the opinion of Sabinus and Pegasus.

(1) Moreover, where a thief pays to avoid being surrendered, since, in this instance, as both parties are guilty of immorality, no action for recovery will lie.

(2) Where, however, only the receiver is guilty of immoral conduct, Celsus says an action for recovery can be brought; for example, where I pay you to prevent you from injuring me.

(3) Money paid to a harlot, however, cannot be recovered, as Labeo and Marcellus state; but the principle is not the same, as the question is not whether there is immorality on both sides, but that it exists only on the part of the giver; as the woman acts in an immoral manner because she is a harlot, but she is not immoral when she accepts the money since she is a harlot.

(4) If I give you something in return for information, for example, in order that you may reveal the whereabouts of my fugitive slave, or tell me where a thief who has stolen my property may be found; suit cannot be brought for

what I have, because you, in receiving it, were not guilty of immorality. But if you accept money from my fugitive slave to prevent you from giving information respecting him, I can bring an action against you to recover said money, just as if you were a thief; and if the thief himself, or the companion of a thief, or of a fugitive slave, received money from me in return for information; I am of the opinion that there will be ground for an action for the recovery of the same.

BOOK XIII.

TITLE VII. CONCERNING THE ACTION ON PLEDGE AND THE COUNTER ACTION.

24. Ulpianus, On the Edict, Book XXX.

The nice question has been asked me; if the creditor has obtained from the Emperor a Decree that he shall have possession of the pledge, and has been deprived of it by a better title, will he have a right to a counter action on pledge? It seems to me that the obligation growing out of the pledge is terminated, and that there is a withdrawal from the contract; nay more, there is an equitable action arising from the purchase of which he can avail himself, just as if the property had been given up to him by way of payment, so as to satisfy him for the amount of the debt or of the interest he had in the matter; and the creditor would be entitled to a set-off, if an action on pledge, or one based on any other ground, should be brought against him.

(1) The question arises whether anyone who has paid the creditor in counterfeit money can bring the action on pledge, because the money has been paid? It is established that he cannot bring an action on pledge, nor will he be released from the debt because counterfeit money does not release the party who pays it; and, indeed, the money should be returned to him.

(2) Where a creditor sells a pledge for more than was due, but has not yet recovered the price from the purchaser, can he be sued in an action on pledge for payment of the surplus? Or must the debtor wait until the purchaser pays, or have a transfer of the rights of action against the latter made to him? I am of the opinion that the creditor should not be compelled to make payment, but that the debtor should wait, or, if he does not do so, that the rights of action against the purchaser should be assigned to him, but at the risk of the vendor. Where, however, he has already received the money he must surrender the surplus.

(3) Where the creditor has maltreated property which was pledged or has injured slaves, this must be taken into consideration in the action on pledge. It is evident, however, that, if he has employed force against them on account of their bad behavior, or has placed them in chains, or has brought them before the Prefect or the Governor; it must be said that the creditor is not liable to the action on pledge, therefore, if he has prostituted a female slave, or compelled her to perform any other improper act, the pledge of this slave is at once released.

BOOK XVIII.

TITLE VII. CONCERNING THE REMOVAL OF SLAVES, AND WHERE A SLAVE IS SOLD UNDER THE CONDITION OF BEING MANUMITTED, OR THE CONTRARY.

56. The Same, On the Edict, Book L.

Where anyone sells a female slave under the condition that she shall not be prostituted, and if this is violated he shall have a right to take her back; he will have power to do so, even if the slave has passed through the hands of several purchasers.

TITLE VII. CONCERNING THE REMOVAL OF SLAVES, AND WHERE A SLAVE IS SOLD UNDER THE CONDITION OF BEING MANUMITTED, OR THE CONTRARY.

6. The Same, Questions, Book XXVII.

Where a vendor takes security from a purchaser that he will not manumit a female slave, or subject her to prostitution, and, if any act is committed in violation of this provision she can be recovered by her master or considered free, and a penalty be demanded on the ground of a stipulation; certain authorities hold that an exception based on bad faith can be pleaded, but Sabinus thinks that this cannot be done. Reason, however, suggests that a stipulation cannot legally stand, if the condition, "That she should not be manumitted," is left out, for it is incredible that one should have intended to have manumitted a slave, and not have had in mind an act which would accomplish it.

But where it is provided that the slave shall not be subjected to prostitution, there is no reason why the penalty should not be sued for and collected, as

the purchaser would have brought disgrace upon the slave and impugned the intentions of the vendor at the same time; for, leaving the stipulation out of consideration altogether, it has been established that an action on sale will lie.

(1) Where a purchaser either commits, or does not commit an act contrary to the provisions governing the sale, we have sometimes decided that the vendor cannot bring an action on sale to have him punished, unless the vendor had a pecuniary interest in the matter, as, for example, because he himself had promised a penalty; but it is not expedient to believe that a good citizen would hold that it was to the interest of the vendor to have his rage appeased in this way. The opinion of Sabinus, however, induces me to hold the contrary, for he thinks that an action can properly be brought, as the slave seems to have been sold for a lower price on account of the condition.

9. Paulus, Questions, Book V.

Titius sold a slave on condition that if he remained at Rome he would be permitted to arrest him. The purchaser sold him to another party under the same condition, and the slave escaped from the second purchaser, and remained at Rome. I ask whether he could be arrested, and if this was the case, by whom? I answered, there was no doubt that, as he was a fugitive, nothing would be held to have been done contrary to the condition, as he had no right to leave his master; nor, merely because he was a fugitive, could he establish his residence at Rome. If, however, he remained there with the consent of the second purchaser, the party who imposed the condition should be preferred, and the second vendor is only held to have had recourse to it for the purpose of warning the purchaser, and releasing himself from liability; for he could, in no way deprive his vendor of the benefit given by the condition, as if he promised to pay a penalty he would be liable even though he himself had also stipulated for the same penalty. But where a penalty is promised, two actions will lie, and the slave can be arrested.

If, however, the first vendor made the sale under the condition that if the slave became a prostitute she should be free, and the second one that she could be seized; freedom will be preferred to the right of arrest. It is clear that if the first condition included the right of seizure, and the last one that of freedom, it must be held that the one granting her freedom will have the preference; since both conditions are added for the benefit of the slave, and,

as arrest by the vendor releases her from harm, so freedom produces the same effect.

BOOK XXI.

TITLE II. CONCERNING EVICTIONS, AND THE STIPULATION FOR DOUBLE DAMAGES.

34. *Pomponius, On Sabinus, Book XXVII.*

If you buy a female slave on condition that she shall not be prostituted, and if she is she shall become free, and you violate the condition of the sale, the slave will obtain her freedom, and you will be in the same position as if you had manumitted her, and therefore you will have no recourse against the vendor.

(1) Where proceedings have been instituted against me for the partition of property in a slave, and the latter is adjudged to my adversary for the reason that he proved that the said slave was held in common, I will be entitled to an action for double damages under

the stipulation, because it makes no difference by what kind of a judgment eviction is obtained, if I have no right to the property.

(2) A stipulation for double damages does not merely include eviction where anyone claims and recovers the ownership of property, but also applies where proceedings are instituted under the Servian Action.

BOOK XXII.

TITLE V. CONCERNING WITNESSES.

3. *Callistratus, Concerning Judicial Inquiries, Book IV.*

The integrity of witnesses should be carefully investigated, and in consideration of their personal characteristics, attention should be, in the first place, paid to their rank; as to whether the witness is a Decurion or a plebeian; whether his life is honorable and without blame, or whether he has been branded with infamy and is liable to censure; whether he is rich or poor, lest he may readily swear falsely for the purpose of gain; whether he is an enemy to him against whom he testifies, or whether he is a friend to him

in whose favor he gives his evidence. For if the witness is free from suspicion, either because his personal character is beyond reproach, for the reason that he is neither influenced by the expectation of gain, nor by any inducements of favor or enmity, he will be competent. Therefore, the Divine Hadrian stated in a Rescript addressed to Vivius Verus, the Governor of Cilicia, that he who hears a case has the best means of judging how much confidence should be reposed in witnesses. The following are the terms of the Rescript : "You are best qualified to ascertain how much faith should be placed in witnesses, who they are, what is their rank and reputation, whether they seem to speak sincerely, whether or not they have agreed upon and planned the same statements together, and whether they, without hesitation, return suitable answers to the questions put to them."

(1) Another Rescript of the same Emperor, addressed to Valerius Verus, on the subject of ascertaining the confidence to be placed in witnesses, is extant, and is in the following words: "It cannot be laid down with precision what evidence will be sufficient for the proof of any matter, just as it is not always essential to establish the existence of any fact by means of public documents, although this is frequently done. Otherwise, the number of witnesses, as well as their rank and authority, and their general reputation, would tend to confirm the proof of the subject under investigation.

"I can only say to you in general terms, that a judicial inquiry should not be confined merely to one kind of evidence, but that it is necessary for you to form your opinion as to what you believe to have been proved, or what you may think has not been satisfactorily established, through the exercise of your own judgment."

(2) The Divine Hadrian also stated in a Rescript to Julius Rufinus, Proconsul of Macedonia, that he must pay more attention to the witnesses than to their evidence. The words of the Rescript on this point are as follows: "Alexander accused Aper of certain crimes before me, but he did not prove them, or produce any witnesses; but he desired to use evidence which I am unwilling to admit, for I am accustomed to examine witnesses, and I have sent him back to the Governor of the province that he may make inquiry with reference to the credibility of the witnesses, and unless he proves what he alleges, he shall be sent into exile."

(3) The same Emperor stated the following in a Rescript to Cabin-ius Maximus: "The weight to be attached to the oral evidence of witnesses who

are present is one thing, and that of written testimony which is to be read is another. Therefore deliberate carefully whether you desire to retain them, and if you do, allow them their costs."

(4) It is proved by the *Lex Julia* relating to violence, that those shall not be permitted to give testimony against a defendant who has been freed by him or by his father; or who have not yet arrived at puberty; or anyone who has been condemned for a public crime, and has not been restored to his former condition, or who is in chains, or in prison, or has hired himself out to fight with wild beasts; or any woman who openly prostitutes herself, or has already done so; or anyone who has been sentenced or convicted of having received money for giving or withholding testimony. For, indeed, certain persons should not be allowed to testify on account of the reverence due to their position; others on account of the unreliability of their judgment; and still others because of the notorious infamy of their lives.

(5) Witnesses should not hastily be summoned from a long distance, and still less should soldiers be called away from their standards or their stations for the purpose of giving evidence; and this the Divine Hadrian stated in a Rescript.

The Divine Brothers also stated in a Rescript that: "With reference to the summoning of witnesses, the judge should carefully ascertain what is the custom in the province over which he presides; for if it should be proved that witnesses are frequently summoned to another city for the purpose of testifying, there is no doubt that those can be summoned whom the judge may decide are necessary to be called in the case."

BOOK XXIII.

TITLE II. CONCERNING THE CEREMONY OF MARRIAGE.

41. *Marcellus, Digest, Book XXVI.*

It is understood that disgrace attaches to those women who live unchastely, and earn money by prostitution, even if they do not do so openly.

(1) If a woman should live in concubinage with someone besides her patron, I say that she does not possess the virtue of the mother of a family.

42. *Modestinus, On the Rite of Marriage.*

In unions of the sexes, it should always be considered not only what is legal, but also what is decent.

(1) If the daughter, granddaughter, or great-granddaughter of a senator should marry a freedman, or a man who practices the profession of an actor, or whose father or mother did so, the marriage will be void.

43. *Ulpianus, On the Lex Julia et Papia, Book I.*

We hold that a woman openly practices prostitution, not only where she does so in a house of ill-fame, but also if she is accustomed to do this in taverns, or in other places where she manifests no regard for her modesty.

(1) We understand the word "openly" to mean indiscriminately, that is to say, without choice, and not if she commits adultery or fornication, but where she sustains the role of a prostitute.

(2) Moreover, where a woman, having accepted money, has intercourse with only one or two persons, she is not considered to have openly prostituted herself.

(3) Octavenus, however, says very properly that where a woman publicly prostitutes herself without doing so for money, she should be classed as a harlot.

(4) The law brands with infamy not only a woman who practices prostitution, but also one who has formerly done so, even though she has ceased to act in this manner; for the disgrace is not removed even if the practice is subsequently discontinued.

(5) A woman is not to be excused who leads a vicious life under the pretext of poverty.

(6) The occupation of a pander is not less disgraceful than the practice of prostitution.

(7) We designate those women as procuresses who prostitute other women for money.

(8) We understand the term "procuress" to mean a woman who lives this kind of a life on account of another.

(9) Where one woman conducts a tavern, and keeps others in it who prostitute themselves, as many are accustomed to do under the pretext of employing women for the service of the house; it must be said that they are included in the class of procuresses.

(10) The Senate decreed that it was not proper for a senator to marry or keep a woman who had been convicted of a criminal offence, the accusation for which could be made by any of the people; unless he was prohibited by law from bringing such an accusation in court.

(11) Where a woman has been publicly convicted of having made a false accusation, or prevarication, she is not held to have been convicted of a criminal offence.

(12) Where a woman is caught in adultery, she is considered to have been convicted of a criminal offence. Hence if she is proved to have been guilty of adultery, she will be branded with infamy, not only because she was caught *flagrante delicto*, but also because she was convicted of a criminal offence. If, however, she was not caught, but was, nevertheless, found guilty, she becomes infamous because she was convicted of a criminal offence; and, indeed, if she was caught but was not convicted, she would still be infamous. I think that even if she should be acquitted after having been caught, she will still remain infamous, because it is certain that she was taken in adultery, and the law renders the act infamous and does not make this dependent upon the judicial decision.

(13) It is not mentioned here, as in the *Lex Julia* on adultery, by whom or where the woman must be caught; hence she is considered infamous whether she was caught by her husband or by anyone else. She will also be infamous according to the terms of the law, even if she was not caught in the house of her husband or her father.

47. *Paulus, On the Lex Julia et Papia, Book II.*

The daughter of a senator who has lived in prostitution, or has exercised the calling of an actress, or has been convicted of a criminal offence, can marry a freedman with impunity; for she who has been guilty of such depravity is no longer worthy of honor.

BOOK XXIV.

TITLE III. IN WHAT WAY THE DOWRY CAN BE RECOVERED AFTER THE MARRIAGE HAS BEEN DISSOLVED.

47. *Scævola, Questions, Book XVII.*

Where a woman commits adultery through the agency of her husband, he can retain none of her dowry; for why should a husband disapprove of acts which he himself either previously corruptly caused, or subsequently assented to? If, however, anyone should maintain that, according to the spirit of the law, a husband who afforded an opportunity to his wife to prostitute herself cannot accuse her, his opinion must be held to be correct.

BOOK XXV.

TITLE VII. CONCERNING CONCUBINES.

1. *Ulpianus, On the Lex Julia et Papia, Book II.*

Where a freedwoman is living in concubinage with her patron, she can leave him without his consent, and unite with another man, either in matrimony or in concubinage. I think, however, that a concubine should not have the right to marry if she leaves her patron without his consent, since it is more honorable for a freedwoman to be the concubine of a patron than to become the mother of a family.

(1) I hold with Atilicinus, that only those women who are not disgraced by such a connection can be kept in concubinage without the fear of committing a crime.

(2) Where a man keeps in concubinage a woman who has been convicted of adultery, I do not think that the *Lex Julia de Adulteriis* will be applicable, although he will be liable if he should marry her.

(3) If a woman has lived in concubinage with her patron, and then maintains the same relation with his son or grandson, I do not think that she is acting properly, because a connection of this kind closely approaches one that is infamous, and therefore such scandalous conduct should be prohibited.

(4) It is clear that anyone can keep a concubine of any age unless she is less than twelve years old.

2. *Paulus, On the Lex Julia et Papia, Book XII.*

Where a patron, who has a freedwoman as his concubine, becomes insane, it is more equitable to hold that she remains in concubinage.

3. *Marcianus, Institutes, Book XII.*

The freedwoman of another can be kept in concubinage as well as a woman who is born free, and this is especially the case where she is of a low origin, or has lived by prostitution; otherwise if a man prefers to keep a woman of respectable character and who is free born in concubinage, it is evident that he can not be permitted to do so without openly stating the fact in the presence of witnesses; but it will be necessary for him either to marry her, or if he refuses, to subject her to disgrace.

(1) Adultery is not committed by a party who lives with a concubine because concubinage obtains its name from the law, and does not involve a legal penalty; as Marcellus states in the Seventh Book of the Digest.

4. *Paulus, Opinions, Book XIX.*

The woman must be considered a concubine even where only the intention to live with her is manifested.

5. *The Same, Opinions, Book II.*

An official who is a resident of the province where he administers the duties of his office can keep a concubine.

BOOK XXXVI.

TITLE I. ON THE TREBELHAN DECREE OF THE SENATE.

5. *Marcianus, Trusts, Book VI.*

Where a man of exalted rank or authority is charged to transfer an estate by a gladiator, or by a woman who lives by prostitution, he will be compelled to do so.

TITLE XII. CONCERNING PRAETORIAN POSSESSION WHERE A SON HAS BEEN MANUMITTED BY HIS FATHER.

3. Paulus, On Plautius, Book Vill.

Paconius says that if a son who had been emancipated and manumitted by his father should appoint some disreputable persons his heirs (as, for instance, prostitutes), possession of his entire estate contrary to the provisions of the will shall be given to his father; otherwise he would be entitled to only half of the estate, if a disreputable heir had not been appointed.

(1) If an emancipated son should pass his father over in his will, or should appoint him his heir, the father will not be obliged to execute any trust, so far as the share of the estate to which he is entitled is concerned, even if he enters upon it. Where, however, a daughter or a granddaughter is manumitted, and the father or grandfather, having been passed over in the will, demands praetorian possession of the estate, the same rule will apply as in the case of a son.

BOOK XXXVII.

TITLE XIV. CONCERNING THE RIGHT OF PATRONAGE.

7. Modestinus, On Manumissions.

The Divine Vespasian decreed if a female slave had been sold under this law upon condition that she should not be prostituted, and she should be prostituted, that she would become free; and that if she afterwards came into the possession of another purchaser, without this condition, that she should be free by virtue of the sale, and become the freedwoman of the former vendor.

(1) It is provided by the Decrees of the Emperors that the governors of provinces, who have jurisdiction over the complaints of patrons, should impose penalties upon their freedmen in proportion to the gravity of their offences. These penalties are sometimes required in the case of an ungrateful freedman, and he is either deprived of a part of his property which is given to his patron, or he is scourged with whips, and then discharged.

BOOK XXXVIII.

TITLE I. CONCERNING THE SERVICES OF FREEDMEN.

38. *Callistratus, On the Monitory Edict, Book III.*

Services are only understood to be properly imposed where they can be performed without disgrace, and without danger to life. For if a slave, who is a prostitute, should be manumitted, she ought not to render the same services to her patron, although she may still profit by the sale of her body; and if a gladiator should be manumitted, he does not owe his patron the same services, because these cannot be performed without danger to life.

(1) Where, however, a freedman is employed in some trade, he should give his services relating thereto, even if he has learned the trade after his manumission. If he ceases to exercise that trade, he should contribute such services as are not inconsistent with his rank; as, for example, he can live with his patron, travel with him, or transact his business.

BOOK XL.

TITLE VIII. CONCERNING SLAVES WHO OBTAIN THEIR FREEDOM WITHOUT MANUMISSION.

6. *The Same, On the Hypothecary Formula.*

If anyone purchases a slave, who has been hypothecated, under the condition that he will manumit him, the slave will be entitled to his freedom under the Constitution of the Divine Marcus, even though the vendor may have hypothecated all the property which he had then, or might acquire in the future.

(1) The same must be said if he buys a female slave on condition of not subjecting her to prostitution, and he prostitutes her.

7. *Paulus, On Grants of Freedom.*

Our Emperor and his Father decided that a female slave would become free if the person in possession of her could have kept her from prostitution, but sold his right over her for money; as there is no difference whether you lead her astray and prostitute her, or whether you permit this to be done, and receive money therefore, when you can prevent it.

BOOK XLVIL.

TITLE II. CONCERNING THEFTS.

84. *Paulus, Opinions, Book II.*

A fuller or a tailor who receives clothing for the purpose of cleaning and repairing it and makes use of it is, by doing so, considered to have committed a theft, because the clothing was not received by him for that purpose.

(1) Where crops are stolen from land, the tenant, as well as the owner, can bring the action for theft, because it was to the interest of both of them to recover the property.

(2) Anyone who steals a female slave, who is not a prostitute, for licentious purposes, will be liable to an action for theft; and if he conceals her, can be punished under the Favian Law.

(3) Anyone who steals accounts or notes is liable to an action for theft, for the amount contained in them. It does not make any difference whether they have been cancelled or not, because, by means of them it can be proved that the debt was paid.

TITLE X. CONCERNING INJURIES AND INFAMOUS LIBELS.

15. *Ulpianus, On the Edict, Book LXXVII.*

The question is also asked by Labeo, if anyone should alienate the mind of a person by drugs, or by any other means, whether there will be ground for the action for injury. He says that the action for injury can be brought against him....

(15) If anyone should speak to young girls who are attired in the garments of slaves, he will be considered to be guilty of a minor offence; and still less, if they are dressed as prostitutes, and not as respectable women. Therefore, if a woman is not dressed as a respectable matron, anyone who speaks to her or takes away her female attendant will not be liable to the action for injury.

BOOK XLVIII

TITLE II. CONCERNING ACCUSATIONS AND INSCRIPTIONS

4. *Ulpianus, On Adultery, Book II.*

A man who has been condemned in a criminal prosecution has no right to accuse anyone himself, unless, under the terms of the decision he is authorized to institute criminal proceedings for the death of his children or his patrons, or the loss of his own property. The right of accusation is also taken away from those who have been rendered infamous on account of malicious prosecution, as well as from those who have entered the arena for the purpose of contending with wild beasts, or who follow the profession of buffoons, or keep women for prostitution, or have been convicted of prevarication or calumny, or of having received money in consideration of their accusing anyone, or injuring his business.

TITLE V. CONCERNING THE JULIAN LAW FOR THE PUNISHMENT OF ADULTERY.

29. Ulpianus, On Adultery, Book IV.

The law punishes the pandering of a husband who retains his wife, after she has been surprised in adultery, and permits the adulterer to depart. For the husband should be angry against his wife who has violated her marriage vow, and he ought also to be punished when he cannot excuse his ignorance, or conceal his indifference under the pretext that his information is incredible. Therefore, the law says he "shall permit the adulterer surprised in his house to depart," because it wishes to punish the husband who caught her in such an infamous act.

(1) When the law says that anyone who marries a woman who has been convicted of adultery shall be legally liable, let us see whether this refers to fornication? The better opinion is that it does, for if the woman was condemned for any other reason under that law she could be married with impunity.

(2) He also is punished who accepts money on account of the fornication which he detected, and it does not make any difference whether the husband himself or someone else receives it, for he who accepts compensation for concealing his knowledge of fornication should be punished. The law, however, does not apply to him who keeps the secret gratuitously.

(3) Anyone who has pecuniarily profited by the adultery of his wife shall be punished; for he who acts as his wife's pander does not commit a trivial offence.

(4) A man who receives anything in consideration of the adultery of his wife is held to have received it in order that she might commit adultery; and whether he has obtained it frequently or only once, he ought not to be exempt from punishment. He is correctly said to have profited by the adultery of his wife, who accepts something in order that she may be permitted to be debauched, as prostitutes are. Where, however, he permits his wife to commit the offence, not on account of gain, but through negligence, his own fault, or a certain degree of indifference, or excessive credulity, he is considered to have been placed outside the law.

(5) The division of the six months is made as follows: in the case of a married woman, the time is computed from the day of the divorce; in the case of a widow, from the day when the offence was committed. This seems to be indicated by a rescript addressed to the Consuls Tertyllus and Maximus. Moreover, if sixty days have elapsed since the divorce, and the term of five years has passed since the day when the crime was perpetrated, it must be said that the woman cannot be accused; so that when six available months are granted, this should be understood to mean that the accusation, having been extinguished by the uninterrupted period of five years, cannot be renewed.

(6) The legislator intended that this term of five years should be observed, when either of the defendants was accused of fornication, adultery, or pandering. Therefore what ought to be done if another crime derived from the Julian Law should be pleaded as a defence, as in the case of those who lend their houses for the purpose of fornication, and of others like them?

The better opinion is, that all of the offences included in the Julian Law are prescribed after the lapse of five years.

(7) Moreover, the five years must be reckoned from the day when the crime was committed to the one on which the party was prosecuted, and not to that on which the judgment for adultery was carried into execution.

(8) It was also added in the Decree of the Senate that if several persons should prosecute the same defendant, reference must be had to the date of the information of the one who persevered in the prosecution; so that he who brings the accusation may rely upon his own information, and not on those of the others.

(9) There is no doubt that anyone who has committed fornication by means of force employed against the man or woman in question can be prosecuted without reference to the above-mentioned term of five years; for there is no doubt that he has committed a criminal act of violence.

BOOK IV.

TITLE VII. CONCERNING THE ACTION FOR RECOVERY ON ACCOUNT OF A DISHONORABLE CONSIDERATION.

5. The Same, and the Csesars, to Bichoporus.

Since you acknowledge that your wife led the life of a prostitute, you understand that your petition contains the confession that you have acted as a pander, and therefore no ground will exist for the recovery of a sum of money paid for such an infamous consideration. For although baseness may have existed on both sides, and the money paid cannot be recovered, still, it is established by the authority of the law that actions based upon a stipulation entered into contrary to good morals should be refused.

Given on the *Ides* of May, during the Consulate of the Caesars, 294.

TITLE LVI. WHERE A SLAVE HAS BEEN SOLD ON CONDITION THAT HE SHOULD NOT BE PROSTITUTED.

1. The Emperor Alexander to Socrates.

Our friend, the Prefect of the City, will grant the power of arrest to anyone who is entitled to it, in accordance with the Constitution

of the Divine Hadrian, where a slave has been sold under the condition that he or she should not be prostituted, and this has been done. If the Prefect should ascertain that the vendor, in violation of the condition which he himself prescribed, permitted the woman to obtain dishonorable gain in this manner, as she is entitled to freedom by the Constitution of the same Emperor, she should be brought before the Prsetor having jurisdiction of cases involving liberty, and he shall order proceedings to be instituted for that purpose at once; for the force of the condition after it has once been made is not lost because the ownership of the slave may have passed through several purchasers to the first one who prostituted her, without prescribing a similar condition.

2. The Same to Severus, Prætorian Prefect.

It is necessary for the woman, whom you allege was sold under the condition that she should not be prostituted, and in case this took place, she was to become free, to be legally produced before the tribunal; and if any controversy should arise with reference to the agreement (under which, if it is genuine and the condition has been fulfilled, the woman will be entitled to her freedom), the case shall proceed before the magistrate having jurisdiction of the same. This condition, however, although it may not have been inserted in the bill of sale, will be valid, if it is proved to have been made in a letter, or even if it has not been reduced to writing.

3. The Same to Aurelius.

A female slave, who has been sold under the condition that she does not make a shameful commerce of her body, must not prostitute herself in a tavern under the pretext of serving therein, in order to avoid a fraudulent evasion of the condition prescribed.

BOOK V.

TITLE V. CONCERNING MARRIAGES WHICH ARE INCESTUOUS AND VOID.

7. The Emperors Valentinian and Martian to Palladius, Prætorian Prefect.

We do not understand a low or abject woman to be one who, although she may be poor, is descended from freeborn parents. Therefore We have decided that Senators and persons of the highest rank can marry women who are the children of freeborn parents, even though they are poor; and that no distinction exists between freeborn women and those who are more opulent, on account of the good fortune of the latter. We only consider those women to be low and abject persons who are slaves, the daughters of slaves, freedwomen, and the daughters of freedwomen, actresses, and their daughters, the daughters of tavern-keepers, of proprietors of houses of prostitution, and of gladiators; or women who make their bodies articles of merchandise; therefore it is only proper for Us to forbid the marriage of Senators with women belonging to the classes which We have just enumerated.

Given at Constantinople, on the day before the *Nones* of April, during the Consulate of Jstius, and Asterius, 454.

BOOK IX.

TITLE IX. ON THE LEX JULIA RELATING TO ADULTERY AND FORNICATION.

20. The Same Emperors and Cassars to Didymus.

The laws punish the detestable wickedness of women who prostitute their chastity to the lusts of others, but does not hold those liable who are compelled to commit fornication through force, and against their will. And, moreover, it has very properly been decided that their reputations are not lost, and that their marriage with others should not be prohibited on this account.

Published on the third of the *Nones* of October, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

22. The Same Emperors and Cassars to Oblimosus.

If a woman whom you have carnally known indiscriminately sold herself for money, and prostituted herself everywhere as a harlot, you did not commit the crime of adultery with her.

Published on the twelfth of the *Kalends* of November, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

BOOK XI.

TITLE XL. CONCERNING EXHIBITIONS, ACTORS, AND PROCURERS.

6. The Emperors Theodosius and Valentinian to Florentius, Prsetorian Prefect.

We do not suffer either fathers or masters who, acting as procurers, impose upon their daughters or female slaves the necessity of prostituting themselves, to enjoy the right of ownership of property, or to claim immunity for such a crime. It is therefore decided that, as the result of Our indignation, they shall not possess any authority over their daughters or slaves, and that nothing can be acquired for them by their instrumentality; and any slaves and daughters, whom poverty has reduced to such an humble condition, shall be permitted to implore the aid of bishops, judges, and defenders of the city, if they desire to do so, in order to be released from the necessity of pursuing this wretched calling.

If their procurers aforesaid should think that they have the right to compel or require them, against their will, to continue in their disgraceful occupation, they shall not only lose the power which they had over them, but their property shall be confiscated, and they shall be sentenced to the public mines.

This penalty is less severe than that imposed where a woman is forced by a procurer to indulge in promiscuous sexual intercourse without her consent.

Given on the eleventh of the *Kalends* of May, during the Consulate of Felix and Taurus, 428.

AUTHENTIC OR NEW CONSTITUTIONS OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.

THIRD COLLECTION.

TITLE I. CONCERNING PANDERS.

FOURTEENTH NEW CONSTITUTION. The Emperor Justinian to the People of Constantinople.

PREFACE.

The name and calling of procurer was so odious both to the ancient laws and to those of the Empire that many legal enactments have been published against persons committing offences of this description. We, Ourselves, have already promulgated a constitution increasing the penalties against those who are guilty of such wicked deeds, and We have, in addition, supplied by other laws what Our predecessors omitted, and have by no

means lost sight of this matter, for We have very recently been informed of the evil consequences which such traffic has caused in this great city.

We are also aware that certain persons are accustomed to employ cruel and odious means for the purpose of obtaining wealth; making a practice of traveling through the provinces and other places, in order to deceive young girls by promising them clothes, and, after having obtained possession of them, they bring them to this Most Fortunate City, place them in their houses, provide them with wretched food and clothing, and deliver them up to others for the purpose of debauchery, they themselves' taking the entire profit of this wretched trade obtained from the bodies of their victims; and that they also draw up contracts by means of which the girls aforesaid are compelled to continue their wicked criminal life as long as those who have possession of them may desire.

Some of them, indeed, require sureties to be furnished, and to such an extent are their illegal acts carried, that they are perpetrated in almost all this Imperial City, as well as in the countries beyond seas; and (what is worse) houses of this kind exist in close proximity to holy places and religious establishments; and at the present time this wickedness is so prevalent that any persons who wish to withdraw these unhappy girls from the life that they are leading, and legally marry them, are not permitted to do so.

Some of these wretches are so unprincipled as to deliver over to corruption girls who have not yet reached their tenth year, and in order to ransom these unhappy beings for the purpose of contracting lawful marriage, great sums of money are exacted. Ten thousand means of effecting their ruin exist which are not susceptible of being

described in words; and the resulting evil is so great, and the cruelty so widespread that, while it was first confined to the most remote parts of the Capital, it now not only extends over the city itself but also over all its suburbs.

Persons informed Us of this condition of affairs some time ago, and recently the Praetors have been directed by Us to make inquiry concerning it, which they have done, and made their reports to Us, and We immediately afterwards deemed it necessary to implore the assistance of God, and purge the city quickly of this iniquity.

(1) Therefore We direct all persons to live as chastely as possible, which, with confidence in God, can alone profit the souls of men. As there are many weak women, We absolutely forbid that any attempt should be made by fraud, artifice or compulsion to lead them astray, keep them in a house to be prostituted, or buy them for any other purpose. We also forbid all persons from drawing up contracts with these objects in view, of requiring sureties to be given, or of adopting any means by which they may force these wretched beings to lose their chastity against their will.

Nor shall it hereafter be lawful to deceive young girls, and induce them to prostitute themselves by promising them clothing, food, and ornaments.

We strictly prohibit all these things; and, after having considered the subject carefully, We direct that any bonds which may have been executed to secure the performance of such contracts shall be of no effect; and that those who are guilty cannot recover any gifts which they may have made to the girls with whom the said contracts were made; and that they themselves shall be expelled from this Most Fortunate City as pestiferous persons, and destroyers of public morals, because of having reduced free women to slavery by requiring them to lead a licentious life, deceiving them, and bringing them up for promiscuous debauchery.

Hence We decree that if anyone should hereafter remove a girl against her will, and compel her to remain with him, and, without providing her with sufficient food, appropriate for himself the wages of her prostitution; he shall be arrested by the respectable Prsetors of the People of this Most Fortunate City, and condemned to death. We have already entrusted the Praators of the People with the prosecution of persons guilty of pecuniary theft and robbery; and is there not much more reason for Us to do so where crimes against chastity are concerned? If any owner of a house should rent it to a procurer for this purpose, and, knowing who he is, should not eject him; he shall be sentenced to pay a fine of a hundred pounds of gold, and his house shall be confiscated. If anyone hereafter should draw up an agreement in writing as evidence of a contract of this kind, and receive a surety with reference to the same, he is hereby notified that he will not be benefited in any way either by the obligation of the girl, or by that of her surety; for as her agreement is void in every respect, her surety will, under no circumstances, incur any liability. The guilty person shall, as We have already stated, undergo corporeal punishment, and shall be expelled far from this great city. We exort the women of Our Empire to remain chaste, and not

allow themselves to be persuaded or compelled to embrace a life of debauchery; We absolutely prohibit panderism, and when it is committed, We shall punish it.

These provisions apply to this Most Fortunate City and its environs, as well as to the adjoining provinces, which, from the beginning, have been subject to Our government, and especially those which have been donated to Us by God, for the reason that We desire to retain pure and without blemish the gift which He has seen fit to confer upon Our Empire, for We believe that the present law, enacted in the interest of chastity, will be acceptable to God, and be of great benefit to Our government, and that as a reward for it God will bestow all manner of blessings upon Us.

TITLE VI.

WHERE PROSTITUTES FURNISH SURETIES, OR TAKE AN OATH TO CONTINUE TO PURSUE THEIR EVIL LIFE, THEY CAN VIOLATE THEIR CONTRACTS WITHOUT ANY RISK TO

THEMSELVES.

FIFTY-FIRST NEW CONSTITUTION.

The Emperor Justinian to John, Praetorian Prefect, Twice Consul and Patrician.

PREFACE.

We know that We have already published a law prohibiting sureties from being required of women kept in houses of prostitution to insure their remaining and pursuing their infamous calling. This law does not afford any opportunity for repentance to persons who exact such security, but it even threatens them with severe punishment, and it also provides that the sureties shall not be responsible, and that there is no necessity for them to represent the women for whom they have become bound. But We have ascertained that, at the present time, a cruel and intolerable fraud has been committed against chastity, which is something greatly revered by Us; for, as We have forbidden sureties to be taken, a much more abominable method has been devised, and those who profit by the vile profession of prostitutes compel them to swear that they will never abandon their base and wicked life; and these wretched women, influenced in this way, think that they are acting

honorably if they remain, and they keep their oaths to the destruction of their chastity, when they should be aware that such transgressions are more agreeable to God than the observance of such oaths. For if anyone has, at the instigation of another, sworn, for instance, to kill, to commit adultery, or to commit any other unlawful act, this oath need not be observed, as it is base and unlawful, and leads to perdition. Therefore, even though a woman may have taken such an oath, she shall be permitted to violate it, and to live chastely without danger of prosecution for perjury (if, indeed, the penalty applies to a case of this kind), for it is more acceptable to God that punishment should be inflicted upon him who required the oath to be taken.

CHAPTER I.

Wherefore We impose the penalty of ten pounds of gold upon anyone who presumes to exact and receive an oath of this kind, as soon as it is tendered. We order that this sum shall be collected by the Governor of the province, and given to the unfortunate woman to assist her in leading a virtuous life. Governors are hereby notified that if they should be negligent in this respect, they themselves will be required to pay it at the end of their administration; and that their heirs and successors, as well as their estates, will be liable for it, because they have neglected to perform a meritorious act.

(1) If, however, the Governor of the province should himself exact such an oath, he shall be compelled to pay the said fine of ten pounds of gold; and if there is a military magistrate in the province it shall be his duty to collect it, and, as We have already stated, it shall be given to the woman. But where there is no military magistrate, the money shall be collected by the metropolitan bishop of the province, who shall refer the case to Us, if it becomes necessary; or the matter shall be attended to by the superior magistrate of the adjoining province.

Anyone who commits an act of this kind in any place, whether he be a magistrate or a private individual, shall be punished as above stated, and shall pay the amount to the woman without which she cannot live in chastity, and she shall not be considered to have perjured herself.

EPILOGUE.

Your Highness will, by suitable proclamations, communicate to all persons what we have pleased to enact by the present law, in order that the subjects of Our Empire may be aware of Our zeal for the preservation of chastity.

Given on the *Kalends* of September, during the eleventh year of the reign of the Emperor Justinian, and the second year after the Consulate of Belisarius.

(S.P. Scott, *Civil Law*, (1932))