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## THE LEGISLATION OF HADRIAN

Every reader of the Institutes of Gaius, which were written under Antoninus Pius and Marcus Aurelius, must be struck by the frequency with which changes in the law, minute or considerable, are attributed to rescripts and edicts of Hadrian or to *senatus consulta* passed in his reign. The general impression infallibly retained is that of a busy legislator governing at a time when the rules of law were being subjected to active scrutiny. Gaius rarely mentions earlier emperors, and even those immediate successors under whom he wrote come in for less notice, probably because the effect of their enactments upon legal institutions, everywhere visible in the works of later jurists, had not yet been appreciated.

If we carry the search on through the Digest and the other principal records of Roman law, our first impression of the importance of Hadrian's *constitutiones* is confirmed and strengthened, while at the same time we obtain a more correct estimate of the part played in legal development by the Antonines.

Two possible sources of misunderstanding must be eliminated at the outset of our enquiry. In the first place, the most frequent type of document appearing under the name of Hadrian and his immediate successors is the rescript, and the rescript frequently purports to be nothing more than an application of existing law to a particular case. New rules are indeed often estab-

lished in this form, but much of our material is simply declaratory rather than creative of new law. That fact does not of course deprive it of its value. The removal of doubt or the authoritative settlement of a controversy may be as valuable as a positive amendment. And the imperial rescripts were constantly drawn into precedents. The jurist who can cite a particular decision by the highest authority applying his view of the law establishes that view, at least until a contradictory pronouncement is forthcoming. That is why the commentaries of the classical period of Roman law bristle with such references. Theoretically, no doubt, the authority of any decision or decree does not in the principate at least survive the ruler from whose chancellery it issued. But already Gaius, and still more Papinian and Ulpian, cite the concrete decision as settling the law.<sup>1</sup> Callistratus even quotes a rescript of Severus (D. 1, 3, 38) assigning the same force to a series of concordant judgments apparently by the private *judices*.

In the second place, the personal share of the Emperor in the particular decisions or general rules issued under his name was doubtless in most cases a small one. By Hadrian's time the imperial council, though varying in personnel, was well established, and included the distinguished jurists of the day. Spartianus informs us, in the eighteenth chapter of his *Vita Hadriani*, that Hadrian brought in "præcipue" Juventius Celsus, Salvius Julianus and Neratius Priscus. It was the beginning of the greatest age of Roman jurisprudence and most of the *constitutiones* were almost certainly the result of consultation among such juriconsults as these. Cuius<sup>2</sup> maintains that legal questions submitted for decision were dealt with by secretaries chosen among the most eminent lawyers, after reference in the most important cases only, to the council as a body. While therefore some of Hadrian's laws, such as those having to do with slavery, show the impress of personal character, our object is, not to ascertain

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<sup>1</sup> Gaius indeed declares in 1, 6, that there never has been any doubt that the emperor's decision, whether in the form of edict, decree or *epistula*, has the force of law in virtue of the *lex imperii* which follows his accession.

<sup>2</sup> *Institutions Juridiques des Romains*, 2, 28, n. 4.

his direct influence upon legislation, but to give a general view of the legislative product of his reign. In this respect the summary given by Spartianus, already mentioned, is interesting, but, as was to be expected in so brief a biography, inadequate, while the part assigned to the subject in modern studies, such as that of Gregorovius, is only a little less unsatisfactory.

The examination of the texts yields one general result which is perhaps worth noting here. Hadrian's reign was marked by a striking increase in what we may call this chancery legislation. The number of references in the Digest to his predecessor, Trajan, whose reign was of practically equal length, is in comparison a mere fraction. The increase continues up to the Severi.

A fair proportion of the *constitutiones* cited particularly in the last books of the Digest have to do with points of detail pertaining to administrative law, tax regulations, municipal duties and magistracies, the exemption of magistrates from civil and criminal process, management of public property and kindred matters. These are of minor interest and will be left out of account. Nor shall I do more than note here in passing that partial codification, the consolidation of the prætorian and ædilician edicts carried out by Salvius Julianus at Hadrian's command and made binding upon the magistrates by a *senatusconsultum* passed on his proposal. This was the measure for which Hadrian's reign is best known in the legal world, but the legislation involved was at most a prohibition to subsequent prætors and ædiles to depart from the text so established. The present article will confine itself for the most part to private law, with a glance at one or two of the more significant excursions into the criminal field.

## I. LAW OF PERSONS

### (a) *Slavery, Manumission and Patronage*

Hadrian's legislation shows a marked tendency on the one hand to determine doubtful cases of status in favor of liberty and on the other to better the lot of the slave. Thus Gaius informs us in I, 84, of a provision of the *Senatusconsultum Claudianum*, which had permitted a woman to cohabit with a slave by agreement with his master, herself remaining free, but the chil-

dren of the union being slaves of the master. This was a derogation from the so-called *jus gentium*, which provided that the child should, in the absence of lawful marriage, follow the condition of the mother. Hadrian restored the old rule. He was also the author of a rescript (D 48, 19, 28, 6) to the effect that condemnation to a limited term in the mines should not make the convict a slave, and of another (D 1, 5, 18) providing that in all cases where a free woman was condemned to death, her offspring after sentence should be free.<sup>3</sup> In the case of a woman lawfully married this would follow from the common law rule laid down by Gaius in 1, 89, that the status of legitimate children is determined at the moment of conception; but the child of an unmarried mother would in such circumstances have been a slave, for the condition of an illegitimate child is determined at birth.

Further, he rescued those slaves who were in danger of losing the liberty granted them in their master's will by the refusal of the instituted heir to accept the succession. Here the heir could be compelled to accept (D 26, 5, 13, pr. 28, 5, 84, 1). Another rescript in the same direction is that mentioned in D 40, 7, 20, 4, which permitted the slave granted his liberty by will on condition that he made a specified payment to the heir or a legatee to secure his liberty by payment to the heirs of such heir or legatee in the event of their death. Finally, Tryphoninus reports in D 27, 14, 23, 1, a rescript of our Emperor to the effect that the heir who manumits slaves of the estate as a result of *fideicommissa* in codicils which are subsequently shown to be forged cannot annul the gift of liberty. The manumission remains good, though the freedmen must pay the heir their value as slaves.

On the other hand, Hadrian himself enacted, or at any rate confirmed, the law that a freeman, major, who allowed himself to be sold as a slave in order to share the price and afterwards establish his liberty, should be refused the *libertatis proclamatio* and must remain a slave. This was a useful check on a fraudulent practice, but something of the kind appears to have been known to Quintus Mucius Scaevola (D 40, 12, 23, pr.), author of

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<sup>3</sup> This rescript records, as already established, the custom of postponing execution until after the birth of the child.

a commentary on the civil law in the first half of the first century B. C., and to have been confirmed by subsequent *senatusconsulta*, though Saturninus (D 40, 14, 2, pr.) ascribes the rule to a *constitutio* of Hadrian. Further enactments restrictive rather than in favour of liberty were those annulling manumissions designed to defeat criminal prosecution of slaves (D 40, 1, 8, 3) and extending to peregrines the clause of the Lex Aelia Sentia which prohibited manumissions in fraud of creditors. (G. 1, 47.)<sup>4</sup>

As for the amelioration of the condition of the slave by limitation of the powers of his master, this movement, already apparent under the earliest *principes*, was carried on by Hadrian. Spartianus affirms that he forbade the killing of slaves except after judicial condemnation. But this prohibition may already have formed part of the Lex Petronia, mentioned by Modestinus in D 48, 8, 11, 1, which Girard<sup>5</sup> is disposed to identify with a Lex Junia Petronia of 19 A. D. On the other hand, we have it on Ulpian's authority (D 1, 6, 2 and Coll. 3, 3, 4) that Hadrian banished for five years a certain matron who was indulging in capricious maltreatment of her slaves, while both he and Paul (D 48, 8, 4, 2; 5) refer to rescripts of the same reign forbidding mutilation even with the slave's consent. In D 29, 5, 1 and D 48, 18, 1, both extracts from the works of Ulpian, there is frequent mention of rescripts, issued by Hadrian, the general upshot of which was to restrict the examination of slaves under torture in criminal prosecutions to cases where their evidence was considered necessary to conviction, and to permit the examination only of those reasonably thought likely to have knowledge of the crime.<sup>6</sup>

#### (b) *Civitas, Potestas and Status Generally*

Gaius in 1, 80, and Ulpian in *Regulæ* 3, 3, mention an interesting *senatusconsultum* of Hadrian's time. The child of a Latin by a Roman mother is always to be a Roman citizen. The com-

<sup>4</sup> Mommsen & Kuebler delete "*senatus ita censuit ex auctoritate Hadrian*" from G. 1, 47.

<sup>5</sup> *Manuel de droit Romain*, 6th ed., p. 100.

<sup>6</sup> Freedmen also benefited by an improvement of status under the laws of Hadrian. See, for example, G. 3, 73; D 38, 1, 7, 4, 40, 10, 6.

mon law would have made the child a Roman only if the Latin father had not *conubium* or where, for some other reason, *justæ nuptiæ* did not exist between the parties, for where there was lawful marriage the child took the status of the father. There was already a special method, provided by the Lex Aelia Sentia, whereby Latini Juniani could acquire the *civitas* for themselves and their offspring—the *annuculi* or *erroris causa probatio* described by Gaius, 1, 29-32 and 70, and by Ulpian, *Regulæ*, 3, 3, but the *senatusconsultum* just mentioned apparently applied to all Latins.

Citizenship was frequently granted to individual aliens, *peregrini*, and their children. The natural thing to expect in such cases would have been that the children would at once fall under the *patria potestas* of their father. Hadrian lays it down that they shall not do so unless careful investigation by the emperor shows that it will be for their benefit. His rule applies even where the child is born after the grant of citizenship to an alien and his wife, provided conception has taken place before the grant. (G. 1, 55 and 93-94.) Two enactments in the same general connection show that Hadrian recognizes the marriage *jure gentium*, for he admits (G. 1, 77) that the child of a marriage between a Roman woman and a peregrine without *conubium* is *justus filius* of the peregrine, though the marriage is void by the civil law, and that the child of a marriage between peregrines becomes a Roman citizen if his parents acquire the *civitas* (G. 2, 92). An express grant to the children was, then, unnecessary, though, as we have seen, they only came under *potestas* by specific authority.

The prætorian *Edictum Carbonianum* gave to the minor child claiming a succession immediate *bonorum possessio* in spite of the denial of his filiation by other interested parties. The dispute as to his descent was postponed until he reached the age of puberty and could defend himself.<sup>7</sup> But the delay might prejudice his case by the death or disappearance of witnesses. The question therefore presented itself whether the *Edictum Car-*

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<sup>7</sup> Cf. the rescript of Hadrian regarding the woman's application for possession on behalf of the child in the womb. D 43, 4, 3, 3.

*bonianum* made postponement compulsory. Ulpian reports, in D 37, 10, 3, 5, a rescript of Hadrian which probably established a general rule for cases of delay until puberty. It points out that the postponement of questions of status is designed as a protection of the minor's interests and must not be used against him. Therefore, if the delay involves danger and he has suitable defenders, the dispute must, on their application, be dealt with at once.

The *epistula* of Hadrian reproduced by Bruns (*Fontes*, 1, 421) and by Girard (*Textes*, 194) from a document in the Royal Museum at Berlin, proves a long-disputed point, *viz.*, the illegality of the marriage of soldiers on service. In terms, the enactment is an amendment of the earlier law to the extent that it allows *bonorum possessio unde cognati* to the children of a soldier begotten during his service although, the text continues, they are not legitimate heirs of their father.<sup>8</sup>

### (c) Capacity

Changes in this part of the law are effected by the *senatus-consultum* reported in Gaius 1, 115a and 2, 112, which enables women to make wills with the *auctoritas* of their tutors but without *cæmptio fiduciaria*, a considerable step towards their emancipation from the economic consequences of the family bond; and by the relief of *civitates* from their incapacity as *incertæ personæ* to receive legacies and *fideicommissa* (Ulpian, *Regulæ* 22, 5 and 24, 28). Equally important are the enactments relating to the powers of *filiusfamilias* over *peculium castrense*, for the effect of these was to place him finally, as far as this *peculium* was concerned, in the position of a *paterfamilias*. It was Hadrian who decreed that the *filius* should be allowed to make a will of his *peculium castrense* even after discharge from service (*Inst.* 2, 12, pr.); to manumit slaves belonging to it, constituting them his own

<sup>8</sup> Further *constitutiones* relating to status are recorded in D 40, 15, 1, 2 (extension of the rule prohibiting enquiries into a man's status more than five years after his death); D 40, 12, 27, 1 (judgment of *ingenitas absente adversario*); D 25, 3, 3, 1 (extension of sc. Plancianum to children born during marriage); D 40, 12, 23, 2 (postponement of suit relating to child's liberty until judgment as to the mother).

freedmen (D 37, 14, 8. 38, 2, 3, 9; 22. 49, 17, 19, 3); to include in it the estate of his deceased wife (D 49, 17, 16, pr.). These measures were essential to the establishment of *peculium castrense* as an independent patrimony at the disposal of the son after, as during, his military career. They were probably manifestations of a general policy of privilege to the soldiery, like the custom, confirmed by Hadrian (D 28, 3, 6, 6) of allowing a soldier under capital sentence to make a will, though a *servus poenæ*.<sup>9</sup> The correlative desire to protect the soldier from the evils that beset his calling is shown in the decision that, in spite of the remarkable testamentary latitude allowed him, no *turpis mulier* could take under his will (D 29, 1, 41, 1).

#### (d) *Domicil*

The mere fact of residence did not subject a man to municipal duties nor entitle him to vote. . But domicil, according to Hadrian's edict (C 10, 40, 7) makes him an *incola* and *incolæ* are eligible for office and bound to municipal burdens. An *epistula* of his, given in C 10, 40, 2, pr., reveals that his conception of domicil was already nearly that of the modern common law. It states that students acquire no domicil in the place to which they have come for the purpose of study, unless, having spent ten years there, they have made it their home. By the time of Diocletian, the modern definition is established. His constitution (C 10, 40, 7) which recites the edict of Hadrian cited above, goes on to define domicil as the place which a man has chosen as the centre of his activities, where he has established is *lar* with the intention of remaining permanently unless unexpected circumstances call him away.

#### (e) *Tutorship*

Hadrian was responsible for a number of additions to the offices and callings which excused the tenant from the duty of

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<sup>9</sup> Note, however, that as with civilians, his will is made void by suicide to escape punishment. Suicide on other motives leaves any will valid. (D 28, 3, 6, 7. 29, 1, 34 pr.)

guardianship (Fragmenta Vaticana 141, 222, 235), and he also appears to have allowed any nominee to plead inability, ignorance or "domesticæ lites" (D 27, 1, 6, 19. Frag. Vat. 244). On the other hand he did not admit minority as a sufficient excuse if the ward was a relative and the tutor-elect had the use of any property belonging to the estate. (Frag. Vat. 151, 223.)

In D 27, 1, 15, 17, there is a decision of some importance on the security to be provided for a *filiusfamilias* entering upon the office of guardian. If the father, desiring to have the son excused, refuses to go surety for him, he will be compelled to act as joint tutor. The decision was given in a particular case, and the language of Modestinus suggests that was simply an application of existing law.

Ulpian refers in D 27, 8, 1, 8-9 to rescripts of Hadrian which show appointments of tutors being made by municipal magistrates in the provinces—*duoviri*. There is an *actio subsidiaria* against them if they fail to see that their appointee provides good and sufficient security. An agreement between them that tutors shall be appointed at the risk of one only does not absolve the other. He is still liable to the *actio subsidiaria*, for "the public law cannot be altered by agreement between *duoviri*."

The validity of the tutor's act in entering into any transaction on behalf of his ward depends upon his good faith. Given good faith, an alienation is good against the ward, who may not revendicate the object sold, but a sale in bad faith is void. The honest act of the tutor must be taken as final, otherwise the pupil's interests will suffer by the refusal of others to deal with his representative. For these rules, Paul cites rescripts of Trajan and Hadrian (D 26, 7, 12, 1).

## 2. THE LAW OF REAL RIGHTS

Under this heading come a number of Hadrian's better known enactments, such as the *senatusconsultum Tertullianum* (Inst. 3, 3) permitting a mother to succeed to her children in preference to agnates beyond the second degree; the *senatusconsultum Juventianum* (D 5, 3, 6) enabling the claimant in a *petitio hereditatis* to recover the value of things disposed of by

the *mala fide* possessor *pro herede*; the unnamed *senatusconsultum* on the rescission of usucaption *pro herede* (G. 2, 57); the rule assigning half of the treasure found on another's land to the land owner (Inst. 2, 1, 39 and Spartianus, c. 18); the two *senatusconsulta*, likewise anonymous, invalidating *fideicommissa* to *incertæ personæ* (G. 2, 287, repealed by Justinian C. 6, 48; 1) and assigning to the *fiscus* those addressed to *peregrini* (G. 2, 285); the definition, following the Proculian view, of *legatum per præceptionem* as *per vindicationem* (G. 2, 221); the grant, in a particular case, of *in integrum restitutio* to a major heir who discovered large debts after acceptance, subsequently generalised (G. 2, 163. Inst. 2, 19, 6). All of these are too familiar to require examination here. There are, however, some others of considerable significance, in particular with regard to wills, to which attention is not so commonly drawn.

The prætor had already come to the relief of persons defrauded of legacies or *fideicommissa* owing to the refusal of the instituted heir, who is also *heres ab intestato*, to accept under the will and his consequent acquisition of the succession *ab intestato* free of testamentary diminution. But even the instituted heir who had no rights *ab intestato* could benefit by the succession without binding himself to pay legacies and *fideicommissa*, by arranging with intestate heirs, for a consideration, to refuse the succession and allow it to devolve *ab intestato* upon them. Hadrian decreed (D 29, 4, 2, pr.) that the instituted heir who thus in effect sold the inheritance should be in the same position as the heir who chose to accept *ab intestato* rather than under a will, that is to say, he must pay legacies and *fideicommissa*, the actions for which lay against him just as if he had accepted.

Paul reports, in D 5, 2, 28, a *decretum* of Hadrian which seems to have been drawn into a precedent. A mother, falsely informed of her son's death, instituted other heirs in her testament. Hadrian decided that the son should take the estate, without prejudice however to manumissions and legacies. The will was not treated as void owing to error or undue influence, nor yet as *inofficiosum*, otherwise the manumissions and legacies would have fallen with it. The text speaks only of *miles*, and this was prob-

ably another disposition in favor of the army; there is nothing to show that the same remedy was available to the *paganus*. But something resembling a case of undue influence, though the text speaks of prevention and fraud rather than mere influence, is treated in D 29, 6, 1. A person who prevents a will being made or changed, in order that he may obtain the inheritance, loses all legal recourse for securing possession. The estate may even be confiscated. A constitution of Zeno (C 6, 34, 4) in similar circumstances specifically declares the offender bound to compensate anyone losing by his interference, anything left over from the succession going to the State, while he is punished with perpetual exile.

The birth of a *suus heres* after a will has been made omitting him invalidates the will even, as far as the civil law is concerned, where such *suus* dies before the testator. Strict legal logic here led to a total defeat of the testator's plans for the devolution of his estate though, in the circumstances, there was no person living at the opening of the will who had any claim based upon *præteritio*. Hadrian decreed that the instituted heir should be granted *bonorum possessio secundum tabulas* (D 28, 3, 12, pr.).<sup>10</sup> With this rescript may be compared a *senatusconsultum* of the same reign which preserved a will against the quasi-agnation resulting from *causæ probatio* after the father's death, provided the child so constituted a *suus heres* had been either instituted or disinherited (G. 2, 142-143).

These amendments of the law of wills all point in the same direction, *viz.*, to the establishment of the general principle, effectively preached by Julian and Papinian, that the terms of a testament should be given effect to in accordance with what can be ascertained of the testator's intentions, rather than as required by the strict rules of law.<sup>11</sup>

<sup>10</sup> Defeasible only by children, if any, disinherited in the will, the *exceptio doli* which met the claim of any other intestate heirs not being available here against *liberi exheredati*, D 44, 4, 13.

<sup>11</sup> Other constitutions by Hadrian relating to points of detail in the law of real rights are reported in D 35, 2, 93. 36, 1, 31, 5. 36, 1, 60, 3, 5, 2, 8, 16, 12, 6, 2, 1, 12, 6, 4, 31, 8, 5, 31, 57. 34, 1, 14, 1, 24, 1, 72. 5, 3, 5, 1, 11, 7, 37, 1, 30, 41, 1. C. 6, 23, 1. Inst. 2, 10, 7. C. 6, 33, 3.

### 3. OBLIGATIONS

In the matter of obligations there is singularly little to report. Imperial rescripts and decrees are in general comparatively rare in the field of contract, which was left for development for the most part to the prætorian edict and the doctrine of the jurisconsults. The *pacta legitima* were indeed provided with their actions by late imperial enactments, but their importance is small. As for Hadrian there is, apart from the familiar *epistula* granting the *beneficium divisionis* to joint *fidejussors* (G. 3, 121-122; Paul, Sent. 1, 20. Inst. 3, 20, 4), little trace of any desire to reform the law of obligations. Another *constitutio* issued by him on the subject of *fidejussores* is, however, recorded in D 14, 6, 9, 4. It has to do with the *senatusconsultum Macedonianum*, and provides that persons going surety for a loan to *filiusfamilias* without the consent of *paterfamilias* cannot recover if they have once paid the lender, though, like the *filius*, they can meet an action on the debt by the *exceptio* accorded under the *senatusconsultum*. If they became sureties with the father's consent, the whole transaction was regarded as approved by him and accordingly enforceable against the son or his *fidejussores*. Finally, to Hadrian is ascribed (D 48, 10, 21) a curious decree imposing the penalties of that very miscellaneous statute, the *Lex Cornelia de Falsis*, upon persons convicted of selling the same object, by two separate sales, to different purchasers. This type of fraud was doubtless encouraged by the fact that the Roman law, which did not make the contract itself translativum of property, permitted the sale of a *res aliena*.

### 4. CRIMINAL LAW

In the Roman as in modern systems of law, the legislative definition of crimes and of the punishments to be meted out therefor plays a large part, and we are accordingly not surprised to find a comparative abundance of *constitutiones* of this nature. Those of Hadrian cover a multitude of points—the penalty for driving off cattle, for removing boundary marks, for peculation of municipal funds, for the use of false measures, for attempted

suicide by soldiers; the prohibition of life sentence to chains; the disposal of the convict's property.<sup>12</sup> In regard to the last matter, Spartianus attributes to Hadrian the humane provision that one-twelfth should be left by the *fiscus* to children of the condemned. Callistratus and Paul, in dealing with this subject (D 48, 20, 1 and 7), fail to mention the fraction or Hadrian's connection with the rule. Paul indeed says that where there were several children the *fiscus* had in some instances allowed them to take the whole estate and cites a specific grant of this nature by Hadrian.

Apart from details such as these, there is a general statement worth considering in D 48, 8, 1, 3-4 (Coll. 1, 6, 1-4 and 1, 11, 3). Here we find a careful distinction between voluntary and involuntary homicide and recognition of the legality of defense against violence. In application of the principle also propounded by him—in *maleficiis voluntas spectatur, non exitus* (D 48, 8, 14)—Hadrian lays it down that the man who kills without the intention of doing so may be acquitted, as also he who kills to prevent an indecent assault upon himself or a member of his family, whereas he who attempts to kill and only succeeds in wounding may be condemned as for homicide. The question of premeditation is also dealt with; the punishment is to be tempered if death was inflicted in a sudden quarrel. Of course the principle that the guilty mind is a necessary condition of crime is not a new one; it is already recognized, though in a limited measure, by the Twelve Tables.<sup>13</sup> Nor is the decision that the evil intention makes the unsuccessful attempt as criminal as the completed act original. The rescript is declaratory; indeed, in the form in which it appears in the *Collatio*, it goes on to apply the rules stated to a specific case arising in one of the provinces. For all that it remains one of the clearest expositions of these fundamental principles in the criminal law of Rome.

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<sup>12</sup> D. 47, 14, 1. Coll. 11, 7; 8, 1. D. 47, 21, 2. Coll. 13, 3. D. 48, 13, 5, 4. 47, 11, 6, 2. 48, 10, 32, 1. 49, 16, 6, 7. 48, 19, 35. 48, 20, 2 and 6 and 7.

<sup>13</sup> Mommsen, *Römisches Strafrecht*, p. 85.

## 5. PROCEDURE

Hadrian maintained the formal equality of the senate as a criminal court against the growing preponderance of the imperial tribunals. In an edict cited by Ulpian in D 49, 2, 1, 2, he ordained that there should be no appeal from the senate's decision to the Emperor.<sup>14</sup> He also settled a point regarding the sanction of *in jus vocatio* on which some doubt appears to have been left by the praetorian edict—the plaintiff in a real action may be put into possession of and eventually sell the property of a defendant who prevents the suit from proceeding by hiding himself (D 42, 4, 7, 16). This confirms an opinion of Neratius. Here also, however, one group of *constitutiones* stands out beyond all the rest, namely those dealing with witnesses, the mode of their examination and the appreciation of their evidence (D 22, 5, 3, 1-2; 3, 3-4). The judge of first instance must determine the value of the evidence presented, whether personal or circumstantial. No rules can be laid down as to credibility; the judge must weigh these matters for himself. Hadrian himself refuses to consider depositions, he insists on personal examination, a far more certain way of getting at the truth. Number is not the deciding factor, nor yet coherence of narrative; that may have been arranged in advance. Dignity and authority must be considered. The passage concludes with the statement that witnesses are not to be summoned from great distances or from active service in the army.

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The limits of an article of this kind have made it necessary to pay scant attention to minute points of detail often interesting in themselves. It is hoped, however, that the summary given omits little of importance in the available records and will at least provide the basis for a just estimate of the law-making activity of one of the greater Roman Emperors.

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<sup>14</sup> Cf. Mommsen, *Strafrecht*, 252, n. 5.