

Book II.  
Title VII.

Concerning the advocates of the different courts.

Headnote.

During the republic the profession of the law was free to all. It probably arose out of the relation of patron and clients, and was an honorable profession. It came more and more under magisterial control under the empire and finally came to be organized into guilds, colleges or corporations, each guild having its chief. The first real law school seems to have been established by Sabinus, who lived in the time of Augustus. Toward the end of the second century of our era, there were many fixed places at Rome where law was studied. Justinian suppressed all law schools except those at Rome, Constantinople and Berytus. A course of study occupying five years had been introduced in the course of time. Justinian continued this, but rearranged the subjects. The first year's study was occupied with the Institutes and part of the Digest; the second year's study principally with advanced procedure, pleading, real property and portions of the law of guardianship, wills and legacies; the third year was devoted mainly to the study of contracts, loans, sales, partnership, pledges, agency, suretyship and other like subjects; the fourth year to domestic relations, rights of minors, wills, legacies and trusts. The fifth year completed the course by the study of the law on crimes, injunctions, intestate succession and other subjects not theretofore studied, as well as by the study of the Justinian Code. In order that a man might be admitted as a member of the bar, he was required to exhibit a certificate from his professor or instructors attesting his legal learning. C. 2. 7. 11. Const. Omnem.

Our sources of knowledge are too limited to make an accurate estimate of the number of lawyers who practiced during the time of the empire. We have some information, however, and may get some approximate idea by applying it as near as may be to the empire before it was finally divided, toward the end of the fourth century, between East and West. There were, roughly speaking, four prefectures within which were thirteen dioceses, and at the head of these divisions each had his own court, the court of the governor of the province constituting, generally speaking, the court of first instance with plenary jurisdiction. (See headnote C. 3.13.) The advocates of the courts of the praetorian prefects of the East and of Illyria numbered at one time, and were limited, to 150. Figuring 150 for each prefecture, makes 600. There were two city prefectures, one at Constantinople, one at Rome, the advocates at the court of the former being limited to 80 (C. 2.7.26), or, say, 160 for both. The advocates of the court of the Augustal Prefect at Alexandria numbered and were limited to 50 (C. 2.7.13), and the advocates at the court of the Count of the Orient numbered and were limited to 40. Taking the Augustal Prefect and the Count of the Orient as representative of the governors of dioceses, and striking an average of 45 for each diocese, makes 585 for all. We have a record of the lawyers of one provincial court (C. 2.7.24), where thirty advocates were permitted to practice. Taking this as an average would make 3,480 for all the provincial courts, or a total of 4,825 for all the high courts of the empire. The average above mentioned may be somewhat high. Thus Nov. Valent. II. 2.2 states that if there were 16 or more at a provincial court, one might be permitted to go to Constantinople. This was in 442 A.D. Nov. Valent. 32, of 451 A.D. permitted provincial lawyers to go to Constantinople, if there were four lawyers at the provincial court, and these were deemed

sufficient. These Novels were enacted after many ravages had been committed by the barbarians.

In addition to the advocates above mentioned, there were supernumeraries, persons on the waiting list who were admitted to the regular number only when vacancies occurred. We do not know their number. Nor do we know whether there were not some belonging to neither the supernumeraries nor to the regulars. Here were courts other than those mentioned. Thus there were other judges besides the Augustal Prefect in Alexandria, before whom lawyers not of the regular number could practice. Law 13 headnote. C.1.57. The prefect of food supplies at Rome had jurisdiction in many cases, and so had the prefect of the watch, though apparently only of cases of minor importance. Bethmann-Hollweg, 3 Civilprozess 64-6. That lawyers practiced before the latter appears from C. Th. 2.10.1 and 2. Comptrollers (rationales) of the imperial exchequer and of the Crown Domain (res privata) must have tried numberless cases involving fiscal matters. C. 3.26. Again, many cases were delegated to petty judges or referees—lawyers being able to serve as such. C. 3.3. Municipal courts, too, had jurisdiction in certain cases. It is not safe to assume that cases tried before any of these tribunals were ordinarily tried without the assistance of lawyers. And while it is uncertain, there is at least some indication, in C. 2.12.27, that lawyers not of the regular number above mentioned appeared therein. Whether these were the supernumeraries or others is also uncertain. If we may make a bold conjecture, it is not probable that these exceeded 25 to 50 per cent of the lawyers regularly practicing in the higher courts, making the total number of practicing lawyers in the empire, in its hay-day, not to exceed approximately 6,000 to 7,000, although, doubtless, there were more persons than that educated in the law, since many lawyers, aside from judges and assessors, were called to other positions in the empire.

We do not know the population. A modern historian believes that at the lowest estimate it must have been fifty millions. Bury, 1 History of the Later Roman Empire 53. Accepting this estimate, we would find no more than about one lawyer to a population of over 7,000 people, as contrasted with one lawyer for about 700 people or less in the United States. But we must bear in mind in this connection that the drawing of documents was, in general, entrusted to notaries, who, accordingly, in a measure, performed much of the work frequently performed by attorneys in our country. See C. 4.21.17 note, and Nov. 44. We have no knowledge of their number.

For a long period of time, lawyers were divided into two classes; those that acted as orators in the case, and those who gave legal advice. The latter were the jurists.

Augustus gave some of them important legal standing, by licensing them to render legal opinions citable as authority in court and binding upon judges, unless a conflicting opinion of another licensed jurisconsultant was submitted. This peculiar custom was continued for over two centuries and the opinions of these men became one of the great sources of the Roman law. By the time of Diocletian (Wenger, 3120, jurisconsultants had disappeared as a class, and the lawyers acted as legal advisers as well as orators. In Justinian's time, they generally acted not only as lawyers, but also as procurators, or agents, in lawsuits. C. 2.12.27 and note. See generally, Zimmern, R.R.G., sections 53-70; Amos, Roman Civil Law 376-378; Buckland, Textbook 21 ff; P. Van Wetter, Pandects 55-82; Esmark, R.R.G. 208-209, 392-406; Pauly-Wissowa, under Jurisprudentia; Smith, Dictionary of Greek and Roman Antiquity under Jurisconsulti; Cuq., Manuel Inst. 33 ff; Bethmann-Hollweg, 3 Civilprozess 161-168; Wenger, Zivilprozess 312.

### 2.7.1. Emperor Antoninus to Dolon.

If you think that your advocate has been guilty of collusion with the opposite party, and you prove the accusation, condemnation of him for the temerity of his crime will not be lacking, and the principal cause will then be tried anew. But if you do not prove such collusion, you will be branded as one guilty of false accusation,<sup>1</sup> and the adjudication in the main suit, from which no appeal has been taken, will stand. Promulgated September 29 (213).

### 2.7.2. Emperors Valens, Gratian and Valentinian to Antonius, Praetorian Prefect.

We do not want those who necessarily owe public service to the municipality of their native city and belong to the decurions, to leave. We permit them, however, to perform, in lawsuits, the function of an advocate, and assume the offices of a decurions in their native city, provided that they do not appear against the public interest in the city in which they obtain such honor.

Given at Ravenna, August 18 (378).

#### Note.

Persons who were members of a municipal senate (decurions or curials) were bound to fill certain offices and perform certain duties in the city. C. 10.32.35. They were not, however, barred from acting as advocates. They were forbidden, as stated in the instant law and in D. 3.1.10 to appear in a case against their own municipality.

### 2.7.3. Emperors Arcadius and Honorius to Africanus, City Prefect.

No person belonging to the guild of advocates (togatorum), least of one bound by any curial duties, shall undertake any provincial functions, so that, forsooth, the door thereto is shut against those who corruptly strive to do so, and no necessity to do so may be imposed upon the unwilling.

Given at Constantinople, August 3 (396).

#### Note.

The instant law was originally enacted (C. Th. 12.1.152) concerning the advocates in the city of Constantinople, but was made a general law in the compilation of the Justinian Code. The policy was adopted that advocates who were members of a municipal senate—curials—should not fill any public position in the province, except that of governor, as mentioned in C. 9 headnote. In C. 9 headnote are enumerated a number of offices from which they were exempt and which they could not fill, according to the instant law.

### 2.7.4. Emperors Honorius and Theodosius to Eusthachius, Praetorian Prefect.

Whatever the advocates of the court of Your Highness and of all the other courts shall acquire or have acquired out of their profession, or in connection therewith, they shall have as their own special property (peculium) after the death of their father, in pattern of the special property of the soldiers (military peculium).

Given at Constantinople March 23 (422).

#### Note.

Taken from C. Th. 2.10.6. Originally all of a son's property belonged to his father who had paternal power over him, without reference to the age of the son. C.

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<sup>1</sup> [Blume] Calumnia. See C. 2.58 headnote.

8.46.2 note. In the course of time, exceptions were made. See also laws 7 and 8 of this title, and C. 1.51.7.

2.7.5. Emperors Theodosius and Valentinian to Cyrus, City Prefect.

The advocates of the illustrious city prefecture may know that all whatsoever we, through esteem for learning, have with liberality and in a spirit of princely munificence granted to the advocates of the eminent prefecture of the Orient, is by the present sanction granted to them also.

Given at Constantinople December 26 (426).

2.7.6. The same emperors to Florentius, Praetorian Prefect.

We ordain that no charge whatever be enjoined upon the advocates who will conduct causes before Your Magnificence, by any judge, not even by the eminent prefecture. Nor shall anyone think of enjoining any duty on the provincial advocates or on those of the courts of magistrates of worshipful rank. Therefore no duty of inspection (of property for taxation), or of equalization of taxes, shall be imposed on them, no erection of any public work, no auditing<sup>2</sup> (discussio), no accountancy (ratiocinium) shall be required of them; nothing, in a word, shall they be ordered to do except only to act as referee<sup>3</sup> and that only in the place where they exercise their office as advocates; the officials rashly attempting to violate the regulations of this law shall be punished by a fine of fifty pounds of gold.<sup>4</sup>

Given at Constantinople April 19 (439).

2.7.7. The same emperors to Thalassius, Praetorian Prefect.

We decree that the advocates of the illustrious prefecture of Illyria shall have the same privileges and the same immunities as are enjoyed by the advocates at the high seat of the praetorian prefecture of the Orient.

Given at Constantinople August 26 (439).

2.7.8. The same emperors to Cyrus, Praetorian Prefect, COUNSUL Designate.

Since the body of advocates of the praetorian prefecture is limited to 150 in number, and is not at all to be increased or diminished, we order that those of them who become advocates of the imperial exchequer shall, together with their children, whenever born, be exempt from serving as provincial apparitors or in any other public position of low grade, and after they have completed a year and have relinquished such office they shall leave the guild of advocates with the title of Count of the Consistory. We decree

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<sup>2</sup> [Blume] See C. 10.30.3.

<sup>3</sup> [Blume] i.e., try cases as referee or petty judge. C. 3.3.

<sup>4</sup> [Blume] The law was first enacted (Nov. Theod. 10.1) for the specific purpose of holding lawyers in the local courts. On account of various burdens imposed on them, and because they all longed to practice in the highest courts of the land, too many flocked to Constantinople. Nov. Val. 32 of 451 A.D. shows that in various provinces, cities were left destitute of those who could perform local functions by those who “eagerly seek the privileges granted to the lawyers” of the praetorian prefect and the city prefect. Hence they were required, if they wanted to leave, to have their local functions performed by substitutes, provided, further, that there were sufficient lawyers in the province; not less than four.

that all property which is in any manner from any source acquired by the advocates of the court of Your Highness, shall be held by them as their own special property, and shall not, pursuant to the authority of this law,<sup>5</sup> accrue to the advantage of their fathers, or paternal grandfathers. The provisions shall also apply to the advocates of the city prefecture.

Given December 30 (444).

Note.

The consistorian counts were members of the imperial council. C. 12.10 and note the instant law enlarges the rights of advocates as to their earnings and made the right mentioned in C. 4 headnote applicable to them also during the life of the father and grandfather. See 6 Z.S.S 35 ff. As to provincial apparitors, see C. 17 headnote and note.

2.7.9. The same emperors to Appollonius, Praetorian Prefect.

If any advocate of the court of Your Highness or of the Illyrian or of the city prefecture, or of those who extend their assistance in cases in the provincial courts, has, by your selection, taken upon himself the duty and power of governor of a province, he shall, after finishing his administration honestly and without any spot upon his reputation, have the right to return to the position from which he was taken and in which he made his living, and shall not, through envy, be prevented from again pleading causes.

Given at Constantinople August 21 (442).

Note.

High administrative positions, like that of governor of a province or diocese, were, of course, coveted, and probably generally bestowed on lawyers. These positions were not like those mentioned in laws 3 and 6 h.t.

2.7.10. Emperors Valentinian and Marcian to Polladius, Praetorian Prefect.

We direct that each year the two advocates found to be first in rank in your court shall become advocates of the imperial exchequer, each to be invested with the same insignia and rank and privileges previously enjoyed by the advocate who formerly alone was selected for that office.

Given at Constantinople June 18 (452).

Note.

In each bar, or guild of advocates, the oldest in service was chief, or primate, whom we might call dean of the bar. The person who reached this position became, in the later empire, advocate of the imperial exchequer (fisc), or, as generally called herein, fiscal advocate, representing the government in fiscal cases and in those involving the emperor's property. (C. 2.8.4). It was, of course, necessary to have one in at least each governmental unit. Thus, as appears from this title, the governor of a province, the Augustal Prefect, the Count of the Orient, the city prefect, and the Praetorian Prefect, each had one or more. The office was first created by Hadrian. 20 Hist. Aug. Hadr. 6. They held office, ordinarily, for two years. See C. 12.13.22.24 and 26. An exception was made, it seems, in the case of the office of Praetorian Prefect of the Orient to whom the instant law was addressed. He had two fiscal advocates, and the period of office, given here as one year, does not appear to have been changed. At first all seem to have served two years. See law 12 h.t.

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<sup>5</sup> [Blume] istius (?)

2.7.11. Emperor Leo to Vivianus, Praetorian Prefect.

We decree that no one shall be permitted to add anyone, under the pretext of making him assessor, to the fixed number of 150 advocates which Your Eminent Prefecture has chosen as counselors.

1. And no one shall be admitted to the guild of advocates of your high office, unless in connection with (his) examination, in the presence of the apparitors, by the rector of the province in which he was born, a record is made by which it clearly appears that he is not subject to the status and condition of provincial apparitor. This applies if the rector of the province is present at his examination; if he is absent, such record shall be made before the defender of his city.

2. His teachers, too learned in the law, shall certify in writing under oath that the person who thereafter wants to be chosen as an advocate is learned in the law. Furthermore the sons of the advocates of the court of Your Excellence, who now or shall hereafter plead causes therein, shall have preference over other supernumeraries.

3. (2) We further direct that also the advocates of the court of our eminent seat, above the number of 150, shall be permitted to plead causes before the worshipful proconsul, the Augustal Prefect, the Count of the Orient the worshipful vicars and the rectors of the provinces.<sup>6</sup>

Given at Constantinople February 1 (460).

2.7.12. The same emperor to Eusebius, Prefect of Illyria.

We ordain that the advocates of the imperial exchequer in the court of Your Highness, shall no longer go out of office at the end of a year, but at the end of two years, according to ancient custom, reserving to them all the privileges, which were granted them by former employees.

Given at Constantinople February 20 (463).

Note.

The extension of time of service from one to two years mentioned in this law seems not to have been applicable to the advocates of the Praetorian Prefect of the Orient.

2.7.13. Emperors Leo and Anthemius to Alexander, Duke of the Boundary of Egypt and Augustal Prefect.

Deservedly granting to the learned advocates of the splendid city of Alexandria the petition which they have presented concerning the register of their court and the advocate of the imperial exchequer, we decree by this ordinance, that said court shall have fifty regular advocate; their names shall be inscribed in the register to be kept from time to time, and they may engage as advocates on behalf of those seeking their aid in the court of the worshipful Augustal Prefect and of the worshipful duke of the Egypt border. The others, beyond this number, may practice law before the other judges of the aforesaid city of Alexandria, the sons of the regulars to have preference over supernumeraries in replacing those that have died. The fiscal advocate, in retiring from office after two years, shall, in consideration of his services, be rewarded with the rank of an exconsular moderator of a province, and permission shall not be denied him, when occasion demands, to act at advocate for himself, his children, parents, wives and collateral relatives to the fourth degree. 1. When, moreover, it happens that a fiscal advocate dies, the next in rank shall without delay be chosen in his place, without hope for the heirs of

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<sup>6</sup> [Blume] See law 17 h.t.

the deceased to derive any benefit (emoluments) therefrom. All the privileges which they (the fiscal advocates) are known to have heretofore had, as well as those mentioned in the report of Your Magnitude, shall be preserved for them hereafter, intact and inviolable, so that after such an honor has been conferred upon them by the liberality of Our Serenity, they may pass the rest of their days in leisure and peace, without any public duty being imposed upon them against their wish.

Given August 20 (468).

Note.

It is apparent from this that the membership of the guild of advocates ordinarily advanced from the lowest to the highest rank therein in regular order, doubtless according to the time of entrance in the guild. See also 11.26.27 h.t. It would seem from this and other laws in this title, that when an advocate had filled the position of advocate of the imperial exchequer, he ceased to have the right to practice law, except for certain relatives and close connections. By Nov. Valent. II. 2. 2 the practice of a lawyer was limited to 20 years. This was in 442 A.D. and seems to have been an innovation. The law was apparently disregarded, for in 454 A.D. another was enacted, upon the petition of young students of the law. Nov. Valent. II. 4. The terms of that law have been lost, but the petition was evidently granted to some extent. In 451, three years previously, a law was enacted, which recites the barbarian invasions and that there were many regions having no lawyers. Unlimited service was, accordingly, permitted to provincial lawyers. These laws, limiting the time of practice, were left out of the Justinian compilation, except as above mentioned. It should be added, however, that fiscal advocates were, generally, doubtless, put in some other governmental positions after their term of office.

2.7.14. The same emperors to Callicrates, Praetorian Prefect of Illyria.

The advocates who untangle the doubtful fate of lawsuits and by the strength of their defense in public and in private matters raise up the fallen and repair the weakened, serve humanity no less that if they saved their country and their kin by battles and by wounds. We do not consider that those only battle for our empire who rely upon their swords, their shields and their cuirass, but lawyers also; for advocates of causes battle by their eloquence, and relying upon the strength of their glory-giving eloquence, defend the hope, the life, the offspring, of those in distress.<sup>7</sup>

Given at Constantinople March 28 (469).

2.7.15. Emperor Leo to Diocorus, Praetorian Prefect.

We decree that the sixty-four lawyers at present next in rank<sup>8</sup> to the two advocates of the imperial exchequer—who enjoy equal benefits according to former constitutions<sup>9</sup> shall, from the first to the sixty-fourth, enjoy the (same) imperial favors by which the fiscal advocates and their children were honored. 1. We have decided that this also should be added, namely, that one who has reached the rank of fiscal advocate and dies, shall have the unrestrained right to transmit to his heirs or successors, whether children or outside heirs, both by testament as well as upon intestacy, the salary of the whole year in which he commenced to fill the office.

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<sup>7</sup> Blume made changes to the typed original in both pencil and pen. These changes do not entirely coincide, and the above is a combination of both.

<sup>8</sup> [Blume] Post.

<sup>9</sup> [Blume] 11.10.12 h.t.

Given at Constantinople May 16 (472).

Note.

The right to transmit to heirs a whole year's salary, as here mentioned, was not a general one. Similar rights were granted, in addition to the men mentioned in the instant law, to the fiscal advocates of the court of the Orient (law 22 h.t.), the fiscal advocates at the court of the President of the Second Syria (law 24 headnote), to imperial messengers or secret service men (C. 12.20.2), to the primipilus, who supplied the troops with provisions (C. 12.62.1). It was denied, among others, to the fiscal advocates at the court of the Augustal Prefect. L. 13 headnote. See Gothofredus to C. Th. 6.24.11.

The privileges of the sixty-four above mentioned did not relate to salary, but to other matters.

2.7.16. Emperors Leo, Jr., and Zeno to Justinianus, City Prefect.

As in the case of the sixty-four advocates of the court of the powerful praetorian prefecture, fifteen advocates only, in the court of Your Magnitude, who at present are first in rank next to the fiscal advocate, shall enjoy the same privileges through the favor of Our Clemency, by which the fiscal advocates and their children are protected.

Given at Constantinople March 1 (474).

2.7.17. The same emperors to Paulus, Praetorian Prefect in Illyria.

We order that the guild of advocates of the court of Your Highness shall, as had been settled previously, be limited to 150 men. Whenever this number is reduced by reason of termination of the professional career, by death, or by any other cause, the vacancies shall be filled by selection by your high office. At present and for two years hence, successors shall be appointed for the purpose of keeping this number filled, without inquiring as to whether they are subject to the duties of provincial apparitors or of persons of lower condition, the right being reserved to the apparitors (of their native city) to bring any action against them, if any exists; which (right against them, however), it is certain, is extinguished after they have filled and retired from the post of advocate of the imperial exchequer. After a lapse of two years, however, persons requesting to be enrolled in the forum of Your Magnificence, shall not be otherwise admitted unless it is made to appear from (public) records caused to be made that they are not subject to any duty as provincial apparitors. 1. We ordain, however, that all privileges granted to the advocates of the magnificent prefecture of the Orient by the imperial ordinances of former emperors or especially of Leo of renowned memory, or by our ordinances, shall, pursuant to this perpetually-enduring law, apply, without distinction, to the lawyers of your glorious court.

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Note.

The members of the official staff of the provincial governor, that is to say, his apparitors, were called cohortales, or cohortalini, a name derived from the military term "cohort." These men were in later law bound to their station and could be dragged back to it, if they fled it. C. 3.23.1; C. 12.57.12-13. So, too, many other men were bound to their station. C. 10.32 headnote. Such men could not, ordinarily, become advocates. An exception was made in the case of decurions, who could become advocates in their own city, without, however, being relieved from their duties toward their city. Law 2 h.t.

2.7.18. (Greek text).

No one except the praetorian prefect shall impose a fine upon the advocates belonging to the regular.

Note.

The law referred to the advocates of the court of the praetorian prefect, and did not prevent judges of other courts in penalizing advocates of their own court. See C. 2.6.1; Bas. 8.1.29.

2.7.19. (Greek text).

Neither before the presidents, nor before the referees shall two advocates employed in a case delay the decision of a case under the pretext of the absence of a third, but the two who are present shall present the case without delay.

Given at Constantinople December 27 (486).

Note.

It is not clear whether this law refers to two lawyers on one side only, but that is probably the meaning. Cujacius Obs. 13. c. 2. That several lawyers might be employed on a side in a suit appears also from C. 3.1.14.5.

2.7.20 (8.1)<sup>10</sup> Emperor Anastasius to Eusebius, Master of Offices.

We think that we should comply with the report of the illustrious count of the Crown Domain and proconsul of Asia, through which he has communicated to the ears of Our Serenity, that the advocates of his court have earnestly requested by unanimous petition that they should, through our liberality, enjoy some title (dignity) after retiring from the position of advocate. 1. We therefore order that after they retire, as has been said, from their position above mentioned, each of those, who at present are or in the future shall from time to time be enrolled in the register of their number, shall have the title of honorable count of the first order,<sup>11</sup> so that they may both reap the fruits of their past labors in their retirement, and, on account of the approved fidelity and industry toward their clients, may be segregated from the multitude of men of private station, and justly numbered among the honorable (clarissimi).

Given at Constantinople December 31 (497).

2.7.21 (8.2) The same emperor to Thomas, Praetorian Prefect of Illyria.

We direct that the advocates of your high office who from time to time are promoted to the rank and office of advocate of the imperial exchequer, together with their children already or hereafter born, shall, together with their property, be kept immune and free from the bonds (binding them to the status) of apparitor or of any low condition,<sup>12</sup> since it is clear that this privilege has long since been granted to the advocates both of the powerful prefecture of the Orient, as well as of the magnificent city prefecture by imperial constitutions, and there is no doubt that not only their powers but also those of your high seat are derived from the same source.<sup>13</sup>

Given November 20 (500).

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<sup>10</sup> Numbering as in Krueger.

<sup>11</sup> [Blume] See C. 12.10 note, as to these.

<sup>12</sup> [Blume] By a law of 529 A.D. fiscal advocates and their children were exempt from curial duties. But that privilege did not, thereafter, extend to children born before the men became fiscal advocate. C. 10.32.67.

<sup>13</sup> [Blume] Germanas.

2.7.22 (8.3) The same emperor to Constantinus, Praetorian Prefect.

We order that the officiating chief of the advocates of the court of the illustrious count of the Orient shall fill the office of advocate of the imperial exchequer for a period of two years, and shall, during that time, receive the emolument assigned to that office by common consent, and shall, after the completion of that service, retire from his profession as advocate; the guild of these same advocates shall be reduced to forty men in number; and if there are persons, already belonging to that guild above that number, they shall not be ejected from their office of advocate, but none shall be added to them as long as the guild of advocates exceeds forty in number.

1. Further, each of the men who, as has been mentioned, has retired from the office as fiscal advocate, shall not be forbidden to act thereafter as advocate on behalf of himself, his wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, children or the serfs or slaves belonging to him.

2. Their homes shall not be burdened by quartering, but they may each claim such privilege for only one house, and that his own.<sup>14</sup>

3. In regard to fees, moreover, the amounts mentioned in the register, delivered to us, shall be observed in their case as well as in that of their serfs and slaves, and no one shall be given permission to exceed that measure, in collecting fees from them.<sup>15</sup>

4. Nor shall anyone hereafter be made a member of the above mentioned guild unless he is known to have applied himself to the study of law for the time fixed.

5. The sons of advocates of those who are still in office or of those who have retired as fiscal advocates, whether still alive or dead, shall have preference over outsiders seeking admission to the same function, and shall be admitted free and without payment of any fees, provided that, as has been directed, they have received instruction in law for the legal time.

6. In order, moreover, to make suitable provision for those who have attained or shall hereafter attain the office of fiscal advocate, not only for those still alive but also for those cut off by death, we direct that not only shall the unpaid salary of such person, who has once been called to that position, go to, and be preserved for, his heirs, but such fiscal advocates themselves who retired or shall hereafter retire as such, shall in no manner be compelled, against their will, to take charge of any public duty, nor, without our special order, be annoyed with the burden of appearing in or be conducted (before any other tribunal), but they must be accused (if at all) in (their) province and must be summoned, and litigate, by order of the worshipful Count of the Orient as the only competent authority.

Given at Constantinople July 1 (505).

2.7.23 (8.4). The same emperor to Eustathius, Praetorian Prefect.

The function of advocate, worthy and necessary to the life of men, should be especially remunerated by imperial rewards.

We therefore order that the honorable officiating advocates of the imperial exchequer of the court of Your Highness, shall, on the solemn festal New Year's day of the year only in which they perform the duties of that office, receive, together with the

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<sup>14</sup> [Blume] The homes of Roman citizens were subject to quartering by soldiers and other military men. C. 12.40.

<sup>15</sup> [Blume] See C. 3.2.

worshipful counts of our imperial consistory, a reward<sup>16</sup> from the divine hand of Our Serenity. And after they have laid down their office, their freeborn sons, if they have any, shall be enrolled in the guild of the honorable tribunes of the notaries, and shall receive the customary letters patent without the payment of any recommendation-money.<sup>17</sup>

3. And if anyone cited by order of Your Sublimity concerning an acknowledged debt or suit brought against him, is ready to enter a confession, the matter shall not be referred to a delegated referee, but to the officiating advocates of the imperial exchequer, or to one of them, if the other cannot be present, a record to be made before them of the confession in accordance with the usual custom.<sup>18</sup>

4. If anyone has at any time entered into a marriage without any dowry contract, but by simple mutual consent of contracting the marriage, and he prefers—whether children have or have not already been born of this marriage—to make legal declarations of his marital inclination, he may do so before the officiating fiscal advocates, or one of them, as has been said, by making it a matter of record; but claims recognized by law, if there are any, of absent persons, shall not be affected.

5. Furthermore, if any person wants to manumit his slaves before the then glorious consuls, the aforesaid excellent fiscal advocates are to lend the voice of their advocacy to accomplish such purpose.<sup>19</sup> All other privileges which were formerly, in various ways, granted to the fiscal advocates or to lawyers still officiating as advocates, shall also, by virtue of this ordinance, remain in full force.

Given at Constantinople November 20 (506).

2.7.24 (8.5). The same emperor to Sergius, Praetorian Prefect.

We have decided that the petition of the learned advocates of the president's court of the second Syrian province should be granted, with proper limitation, and we order that their officiating chief shall act as fiscal advocate for two years, and shall, during that time, receive the emoluments assigned to that office by common consent, and shall, after the completion of that service, retire from his profession as advocate; the guild of these advocates shall be reduced to thirty men in number; and if there are persons belonging to that guild above that number, they shall not be ejected from the office of advocate but none shall be added to them, as long as the guild of the advocates exceeds thirty in number.

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<sup>16</sup> [Blume] *Puncti solacia*. The meaning of *puncti* is unknown. Much controversy has been waged about it. Cujas, *Obs.* 13.2 thought the word should be *paca*, with the meaning of customary. Gothofredus, at C. Th. 2.10.3, without changing the word, makes it relate to the time of the gift, namely, that it was given only on New Year's day. Heumann-Seckel (*Lexicon*) conjecture that the word means "advancement in rank." See Heimbach in note to Bas. 8.1.33. It probably refers to the duty performed.

<sup>17</sup> [Blume] C. 12.7. Recommendation-money (*sufferagium*) was money paid as a fee for receiving an office. Gothofredus, at C. 2.29.2.

<sup>18</sup> [Blume] The confessions here mentioned were apparently taken to toll the statutes of limitation, and at which, perhaps, new due bills for the debt were executed. See C. 7.39.7. 5a; Cujac *Obs.* 27.32; Bas. 8.1.33 note. Note that the fiscal advocates could make public records.

<sup>19</sup> [Blume] Fees, doubtless, were paid for the assistance of the fiscal advocates in connection with manumissions. Hence the privilege extended to them.

1. Further, each of the men who, as has been mentioned, has retired from the office as fiscal advocate, shall not be forbidden to act thereafter as advocated on behalf of himself, his wife, his father-in-law, mother-in-law, son-in-law, daughter-in-law, children, or the serfs or slaves belonging to him.

2. Their homes shall not be burdened by quartering, but they may claim such privilege for only one house, and that their own.

3. In regard to fees, moreover, the amounts mentioned in the register, delivered to us, shall be observed in their case as well as that of their serfs and slaves, and no one shall be given permission to exceed that measure in collecting fees from them.

4. Nor shall anyone hereafter be made a member of the above mentioned guild unless he is known to have applied himself to the study of law for the time fixed.

5. The sons of men who still practice as advocates or of those who have retired as fiscal advocates, whether still alive or dead, shall have preference over other persons seeking admission to the same function, and shall be admitted free of expense, provided that, as has been stated, they have received instruction in law for the legal time.

6. In order, moreover, to make suitable provision for those who have or shall have attained the office of fiscal advocate, not only while they live but also after death has overtaken them, we direct that not only shall the unpaid salary of such person who has been called to that position to, and be preserved for, his heirs, but such fiscal advocates themselves who have or shall have retired as such, shall in no manner be compelled, against their will, to take charge of any public transaction, nor, without our special order, be troubled with the burden to appear in, or be conducted (before any other tribunal), but they must be accused (if at all) in (their) province and must be summoned, and litigate, by order of the honorable moderator of the province in which they live, as the only competent authority.<sup>20</sup>

#### 2.7.25 (8.6). Emperor Justinian to Marinus, Praetorian Prefect.

To the honorable lights of eloquence are to be restored the sixty pounds of gold, which in the reign of Zeno, of blessed memory, were assigned to petty judges (*pedaneis arboris*), and to the examiners of the qualification or sureties, but of which the parsimony of a subsequent emperor deemed best to deprive them, so that now, through the liberality of Our majesty, the honorable fiscal advocates shall, without any reduction, each year receive the aforesaid sum, to be divided equally between the two by your high office. For whatever is, in accordance with the wished of all, granted to their chiefs, is given to all.

1. Besides, we deem it best that they shall received imperial letters patent, by which the honorable praetorian tribunes and notaries are honored, which is to be done not only in the name of one, but in that of either of the two,<sup>21</sup> whether they decide to honor their own sons thereby or others.

2. We further grant them, through a still greater favor, the diploma by which the illustrious rank is honored, which we promise to grant to these eloquent men, (but) in the

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<sup>20</sup> [Blume] The law [is] nearly a duplicate of law 23 h.t.

<sup>21</sup> [Blume] *Alterius uoque unius*. Edition, Lyons, 1571, has *alterius quoque utrius*—adopted.

name of only one, to be of advantage to either of them with the other's consent, or to<sup>22</sup> whatever provincials, or friends living in the provinces, as they may wish.<sup>23</sup>

3. We further give them power to present each year two men each, to adore our purple, and to be enrolled in our bodyguard<sup>24</sup> at the court, one in the corps (scola) of cavalry, one in that of the infantry, to take the place of those who have died, provided that the later have not, while living, made an agreement for the sale of their place to those to whom such agreements are<sup>25</sup> of interest, and provided that the foregoing eloquent men may know that, when they shall see fit to present the men, the sum of 2,000 solidi and no more is to be paid for each to the magnificent counts of the devoted domestics (bodyguard), that is to say, to the count of the cavalry for the man who is to serve in the cavalry, and to the count of the infantry for the man who is to serve in the infantry, and the customary stipend and other compensation of these positions are to be immediately assigned to these recruits, without any further expense.

4. (The said eloquent men) shall also enjoy the other privileges which they have obtained at various times, either by imperial rescripts or by orders and directions of Your High Office; for persons who are deemed worthy of new honors, are all the more to be aided also by older ones.

Given at Constantinople December 1 (519).

2.7.26 (8.7). The same emperor to Theodorius, City Prefect.

We order by this law, that until the guild of lawyers of the forum of Your Highness has been reduced to eighty in number, no one shall by any artifice be permitted to, or be able to, aspire to join it, except the sons, learned in the science of the law, of the first thirty ranking men—and that without expense and without paying recommendation-money; or,<sup>26</sup> perhaps, two outsiders, each year, but no more, they, too, being found conspicuous in learning. After the number of men (in the guild) has been reduced to eighty, no one shall thereafter by collusion or by cunning dare to increase it.

1. Permission is taken from all to change the regular order of precedence, from that which time itself fixes, just as in contracts of merchants, to change places,<sup>27</sup> mixing new recruits with the veterans.

2. We also deem it proper to state that none of them shall live in other places, refraining from attendance at your glorious court, for all may know that those who, after they obtain the name of patron of lawsuits, see fit to live away from this imperial city for more than three years, shall no longer be permitted to enjoy either the name of a lawyer or the privileges of these men, so that trips abroad, sallies of peregrinations may not be prolonged or leaves of absence diligently asked of the aforesaid court and renewed. If any of the least of these provisions are violated at any time, the twenty primates of said guild, as well as the officiating keeper of the records<sup>28</sup> in the office of Your Highness as

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<sup>22</sup> [Blume] Cui

<sup>23</sup> [Blume] Persons of illustrious rank had various privileges, as e.g. in law suits. C. 12.1.17 pr. and 2; C. 3.24.1. So in connection with the burden of quatering soldiers. C. 12.40.2. See generally, 9 Pauly-Wissowa 1080 ff.

<sup>24</sup> [Blume] For these see C. 12.17.

<sup>25</sup> [Blume] Some of the positions were for sale. C. 3.28.30 note; C. 8.13.27 note.

<sup>26</sup> [Blume] Bas. 8.1.34 has “and,” without “perhaps.”

<sup>27</sup> [Blume] i.e., the position could not be sold.

<sup>28</sup> [Blume] ab actis.

well as their assistants, shall each be smitten by a fine of ten pounds of gold, because they did [not] immediately oppose the prohibition of<sup>29</sup> the instant law against those who act contrary to the imperial decree of Our Serenity, and did not resist and by every effort prevent any attempted violation hereof. And if administrators (officiating City Prefects) of Your Sublime office do not earnestly uphold (these) wholesome provisions and see to it that they are not violated, a fine of ten pounds of gold imposed on them will not be lacking.

4. The six hundred pieces of old, moreover, which the officiating fiscal advocate of the forum of Your Highness receives as salary out of the chest of your tribunal, in pattern of former times—so that he may not, after his quickly completed career as advocate and after his glorious labors, go out penniless—shall not be paid, as often happens, on an indefinite date, but shall be paid each year without delay, when he has finished half of his term as fiscal advocate, that is, on October 1st of each year.

5. Whatever other privileges are shown to have been granted this order (of advocates) by sacred rescripts of former emperors, or by the authority of the tribunal interested<sup>30</sup> shall be preserved inviolate.

6. And when one of them is sued, either because of a civil dispute, or on the pretext of a criminal investigation, either here or in the provinces—when anyone happens to be there during the permitted time—no process servers shall receive any fees, nor shall those who serve in setting the controversy in motion, either as short-hand writers,<sup>31</sup> or in preparing papers for the court, or in any other duty, think of<sup>32</sup> demanding fees on any account.

Given at Constantinople February 13 (524).

2.7.27 (8.8). The same emperor to Archelaus, Praetorian Prefect.

No one, except the fiscal advocate Menander, shall in the future hope, that if he has craftily reached a superior grade by leaps and change of places, he will enjoy the benefits which are accorded to fiscal advocates, either while giving his service to fiscal causes or after he has completed his career.

Given August 21 (524).

Note.

As in L. 13 headnote, advocates advanced from lower to higher positions in regular order according to the time of entrance in the guild of advocates. The instant law affixes a penalty in case a man reached the position of fiscal advocate in any other manner. Menander, who reached that position irregularly, was, however, by special dispensation, excused.

2.7.28. The same emperor (constitution lacking).

2.7.29 (8.9). Emperor Justinian to Johannes, Praetorian Prefect.

The advocates of Illyria have asked us to make it clear to hem whether the constitution of our father Justin, of blessed memory, enacted concerning the advocates of

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<sup>29</sup> It seems likely Blume intended to include the “not.” Blume’s typed original reads: “...did not immediately invoke the instant law against...”

<sup>30</sup> [Blume] i.e., the city prefect. Bas. 8.1.34.

<sup>31</sup> [Blume] Bas. 8.1.34.

<sup>32</sup> [Blume] German tr. takes text as “censemus” and translates accordingly.

your high court, applies to them, if they should be absent from your high court with or without leave. 1. We, accordingly, ordain that such law is of general scope and shall also apply to them, so that if anyone is continuously absent without leave beyond two years, or with leave beyond five years, he shall be stricken from the roll, and no permission shall be given him to reclaim his position, or to be again associated with the learned advocates of that court. The advocates of Your Sublimity shall therefore enjoy the provisions of this general ordinance. (531-534).

Note.

From this it appears that previous to the instant constitution, another had been enacted, which has been lost (marked 28 above), directed to the Praetorian Prefect of the Orient (C. 1.26) providing that advocates should lose their position if they were absent from their post more than two years without leave and more than five years with leave. That law was made applicable by the instant law to the advocates of the court of the Praetorian Prefect of Illyria.