

Novel 123.

Concerning various ecclesiastical topics.

(De diversis capitibus ecclesiasticis.)

The same Augustus (Justinian) to Peter,
glorious master of offices.

Preface.

We have heretofore made some provisions about the administration and privileges and other subjects relating to the holy churches and other venerable houses. In the present law we have decided to embrace, with proper correction, those provisions which were previously enacted in various constitutions about the reverend bishops and clergymen and monks.

c. 1. We therefore ordain, that whenever it is necessary to elect a bishop, the clergymen and primates of the city in which a bishop is to be elected shall make nominating statement as to three persons, in the presence of the holy testament and at the peril of their souls, and each of them shall swear by the holy testament, and shall write stating that they have made the selection through no bribe, promise, friendship or other reason, but because they know the nominees to be of the true catholic faith, of an honorable life more than 30 years old and men of learning, having to their knowledge neither a wife nor children, nor having or having had a concubine, or natural children; and if either of them formerly had a wife that she was the only one, the first one, not a widow nor separated from her husband, nor one with whom marriage was prohibited by the laws or the sacred canons; that they know him not to be a curial or provincial, apparitor, or if he has been subject to the condition of either, that they know him to have lived a monastic life in a monastery

Novel 123 c. 1 cont'd.

not less than 15 years. 1. This, too, must be inserted in the nominating statement, that the person named is no less than 35 years of age. The best one of the three persons, as to whom such orders have been made, shall be chosen by the selection and at the risk of the person appointing a curial or official who, as stated, passed 15 years in a monastery and was promoted to the episcopate, shall be freed from his condition, but the person liberated from his curia may retain the fourth part of his property, but the rest of his property must, according to our law, be claimed for the curia and the fisc. 2. We give power to those making the nominating statements, if they deem one of the laity, outside of a curial or provincial apparitor worthy of the aforesaid election, to nominate such man along with two clergymen or monks; but a layman who has in this manner been elevated to the bishop's office shall not be appointed as such immediately, but shall first be made a clergyman for not less than three months, and being thus taught the sacred canons and the holy service of the church, may then be chosen as bishop; for he who should teach others, ought not himself be taught after his election. But if, perchance, three suitable persons for such election are not found in the place, they who made the nomination statement may make it as to two or even one, who, however, must have all the testimonials stated by us. If they who must choose the bishop fail to make the nomination statement within six months, then he who is the competent person to do so, may appoint the bishop at the peril of his soul, all other provisions made by us, being, however, observed. If anyone is chosen bishop contrary to the rules just stated, we order that he shall be expelled from the bishop's office; and he who dared to appoint him contrary to

Novel 123 c. 1 cont'd.

these provisions, shall be expelled from his sacred office for a year, and all of his property which came under his control at any time or in any manner, shall, on account of the crime committed by him, be claimed for the church of which he is bishop.

Note

See also c. 2 Novel 137 and c. 1, 3, 31.

c. 2. If anyone accuses a person nominated for bishop, for any cause, which might, according to the laws or canons, prevent his appointment, such appointment shall be deferred, and he who is to appoint the bishop must carefully investigate the accusation whether the accuser is present and presses his accusation, or whether he omits to press his accusation for three months. And if he finds him guilty of the accusation, the appointment is forbidden; if the accused does not appear to be guilty, the appointment shall not be impeded, but the accuser, whether he fails to prove the accusation or desists therefrom, shall be expelled from the province in which he lives. If anyone ordains the accused before investigation, the person appointed shall be expelled from the episcopate, and the person who dares to appoint him, shall be subjected to the punishment above mentioned, namely, that he shall be forbidden his ministry for a year and all his property shall be confiscated for the church. 1. Above everything, we want it to be observed, that no one shall be appointed bishop for a gift of gold or of other property. But if anything of the kind is done, the givers, receivers and mediators shall, according to divine law and the sacred canons, be subjected to condemnation, and the giver, receiver and mediator shall be re-

Novel 123 c. 2. cont'd.

moved from the priesthood and the clerical order, and the property given on that account shall be confiscated for the church, the bishop's office of which was sought to be bought. If a layman received anything on this account, or was a mediator, we order that twofold thereof be demanded from him and given to the church. We direct that not only the property given in this manner shall be confiscated, but every due bill, given therefor in any manner, every obligation of pledge or surety and every other cause of action shall be void, and besides, he who receives the promise shall not alone deliver it up, but a like amount as mentioned in the due bill, shall be demanded from him and given to the church.

c. 3. If any bishop, before or after his appointment, want to give all or part of his property to the church of which he becomes bishop, we do not only forbid that, and order him to be exempt from the condemnation and punishment of the present law, but we adjudge him to be worthy of every praise, because that is not a purchase but an offering. But we allow only those things to be given as customary presents by those who are appointed bishops which are hereafter enumerated in the present law. We order, therefore, that blessed archbishops and patriarchs of ancient Rome, Constantinople, Alexandria, Theopolis (Antioch) and Jerusalem, if it is the custom that upon their appointment less than 20 pounds of gold (\$4320) be given to bishops or clergy, only that be given which is customary; but if before this law more has been given, no greater amount than 20 pounds of gold be given. Metropolitan bishops, moreover, who are appointed in their synod or by the blessed patriarchs, and all other bishops who are appointed by

Novel 123 c. 3 cont'd.

patriarchs or metropolitans, shall, if the church for which he is chosen has an income of not less than 30 pounds of gold (\$6480), shall give 100 solidi (\$300) as entrance (appointment) money, and to the notaries of the person making the appointment and to the others serving under him and who customarily receive it, 300 solidi. If the church has an income of less than 30 pounds of gold per annum, but not less than 10 pounds, they shall give 100 solidi as entrance money, but to all the others, who customarily receive money, 200 solidi (\$600). If, perchance, the income of the church is less than 10 pounds of gold, but not less than five, they shall give 50 solidi as entrance money, and to all the others customarily receiving money, 70 solidi (\$210). If the church has an income of less than 5 pounds but not less than three, he shall give 18 solidi (\$54) as entrance money, to all the others, according to custom, 24 solidi (72). If the income of the church is less than three pounds, but not less than two pounds of gold, he shall give 12 solidi as entrance money, to all others, according to custom, 16 solidi. If the income of the church is less than two pounds of gold, we do not permit the bishop to give any entrance money, or any other customary gift. The gifts which we have decided to be given shall be received by the first presbyter of the person making the appointment, and the archdeacon and by them distributed among those who customarily receive them. We, therefore, order that these provisions be complied with in every respect, so the churches may not be overburdened by debts on such account, and the bishop's office may not become venal. And if anyone dares to receive anything as entrance money or as customary payment any amount above that fixed by us, we order that three times the excess received by him shall be paid to the

Novel 123 c. 3 cont'd.

church out of his own property. And these things have been said about the ordination of bishops.

c. 4. Moreover, after ordination bishops shall be free from the status of slave or serfe, unless a curial or provincial apparitor is ordained contrary to the aforesaid rule; for we order such men to be removed from the bishop's office and restored to the curia or to their office, so that the bishop's office may suffer no injury from such condition. But we order that those who prior to this law were curials and ordained as bishops, shall be free from such condition, but shall give the legal portion (three-fourths) of their property to the curia and the fisc, but the rights of the church shall not be dininished as to that property, which we have determined as belonging to their church, namely, that which he acquired after he took the office as bishop. And if an appointed bishop is, perchance, under paternal power, he shall be sui juris from the time of his appointment.

c. 5. We do not permit God-beloved bishops and monks, to be made guardians or curators pursuant to any law. We allow presbyters and deacons and subdeacons to be called to such duty, solely by right of blood-relationship, provided that within four months after being called, they declare in writing before a competent judge, that they undertake such duty voluntarily. And if anyone of them, perchance, does this, he shall not thereby be prejudiced as to any other guardianship or curatorship.

c. 6. We do not permit a bishop, steward, or clergyman of any rank, or a monk, either on his own account, or on account of the church or monastery, to become a receiver or collector of fiscal tribute or a lessee of taxes or of the possessions of

Novel 123 c. 6. cont'd.

another or a curator of a house or a procurator of a lawsuit or a surety in such cases, lest a loss be thereby inflicted on the holy houses and the divine ministry be impeded. But if any property borders on churches or monasteries and the managers of the holy houses desire to lease or receive an emphyteusis thereof, and all the clergy or monks consent thereto in the instrument (evidencing the contract) or on the public records, and declare that to be to the advantage of the holy places, then such lease and emphyteusis may be made. And we permit these holy churches and venerable houses to make leases and emphyteuses among themselves, and likewise we allow the clergy to lease and manage the property of their churches, with the consent of the bishop and steward, excepting those persons whom we have forbidden to do this by another law. If anyone does anything contrary hereto, then, in case of a bishop, all his property, derived from any source or person, either before his episcopacy or thereafter, shall become confiscated to his church; in case of a steward or other clergymen, they shall pay to the church the pecuniary-fine deemed just by the bishop. And those who entrust to them the farming of revenue or leasing of any property or receiving or collecting of public tribute, or the care of any house or who receive them as sureties in the afore said cases, shall have no right of action against the churches or monastery or its property or managers, or against the persons to whom they entrusted these matters or against their property or sureties. And those who entrust to the aforesaid persons the receipt, leasing or collection of public tribute or accept them as sureties, shall be compelled to make good out of their own property any loss sustained by the public.

Novel 123 c. 7.

c. 7. No magistrate is permitted to compel God-beloved bishops to come into court and give testimony, but the judge shall send some of his officers, so that in the presence of the holy testament, as becomes priests, the bishops may state what they know.

(a) See C. 1, 3, 7 and note.

c. 8. We do not permit that a bishop be ordered against his will, and without imperial order, to appear and be present in any civil or criminal case before any civil or military magistrate, and a magistrate who dares to do so with or without writing, shall be deprived of his girdle and shall pay a fine of 20 pounds of gold (\$4320), to be paid to the church whose bishop he ordered to appear and be present; and the bailiff attending at the suit shall likewise be deprived of his girdle, shall be subjected to torture and be sent into exile.^(a)

(a) See C. 1, 3, 7, and note

c. 9. We forbid God-beloved bishops to leave their own churches and go into other provinces. Whenever any necessity therefor arises, they shall do so only pursuant to a letter of their blessed patriarch or metropolitan bishop, or an imperial order, and not even the bishops who are under the blessed archbishop and patriarch of Constantinople shall enter the imperial city without the latter's permission or our order. And if a bishop of any place departs in the manner aforesaid, he shall not leave his church for a longer time than a year. Moreover, bishops who, as stated, come to the imperial city from whatever diocese they are, shall, before doing everything else, go to the blessed archbishop and patriarch of Constantinople and through him have access to Our Serenity. These

Novel 123 c. 9 cont'd.

who, contrary to our constitution either depart or live away from their church beyond the time fixed, shall in the first place not be paid their expenses by the stewards of the church; next, shall be admonished by a letter of the bishop under whose jurisdiction they are, to return to their church; and if they defer to return, shall be summoned according to the sacred canons. And unless they return to their church within the time fixed by the bishops, they shall be expelled from the office of bishop, and a better person shall be chosen in their place, pursuant to the present law. These provisions shall also apply to the clergymen of whatever rank or service.

Note.

See on this same subject Novel 6 cc. 2 and 3 and Novels thereto appended.

c.10. In order that every ecclesiastical status and all sacred canons be carefully maintained, we order that every blessed archbishop, patriarch and metropolitan call all the holy bishops under their jurisdiction, in the same province, before them once or twice every year, and carefully examine all disputes which the bishops, clergymen or monks have among themselves and settle them according to the ecclesiastical canons; and, besides, if anything has been done by any person contrary to the canons, to correct it. 1. We forbid, moreover, all holy bishops, presbyters, deacons, subdeacons, readers and all others, in whatever religious guild or position he may be, to gamble or be participants in, or spectators of gambling, or to go to any spectacle for the purpose of looking on. If any of them does so, we order him to be forbidden every religious service for the period of three years, and to be sent to a monastery.

Novel 123 c. 10 cont'd.

If in the meantime he shows repentance commensurate with his offense, the bishops under whose jurisdiction he is may lessen the time and reinstate him in his ministry. All holy bishops who should avenge such offenses, if they know thereof but fail to avenge them, must know that they must give an account thereof to God. 2. But no bishop shall be compelled, against his will, to dismiss any of the clergy under him from his clerical order.

c. 11. We forbid all bishops and presbyters to exclude anyone from the holy communion, until proof of a cause on account of which the ecclesiastical canons order that to be done. And if anyone excludes another from the holy communion contrary thereto, the person so unjustly excluded from the communion shall be admitted thereto by the superior bishop, lifting the ban, and he who unjustly dared to exclude anyone therefrom, shall himself be excluded therefrom by the bishop who has jurisdiction over him, for such length of time as the former may order, so that the latter may justly suffer what he did unjustly. It is not permitted ~~to~~ a bishop to beat any one with his hands, for that is not becoming to priests. 2. If, moreover, a bishop who is expelled from his office according to ecclesiastical canons, dares to enter the city from which he was expelled, or to leave the place where he was ordered to live, we direct that he shall be delivered to a monastery situated in another province, so that, living in a monastery, he may expiate his offenses as a bishop. (a)

(a) see c. 1, 3, 14.

c. 12. Moreover, we permit no clergymen to be ordained unless they are educated, have lived an upright and honorable life and have had no concubine or natural children, but live chastily or

Novel 123 c. 12 cont'd.

have a legal wife, and she the first and only one who is neither a widow, or separated from her husband, or otherwise disapproved of by the laws or the sacred canons.

c. 13. Moreover, we permit no one to be made a presbyter who is less than 30 years old, nor a deacon or subdeacon who is less than 25 years old, nor a reader who is less than 18 years old; nor shall anyone be ordained a deaconess in the holy church who is less than 40 years old, or who has married a second time. ^(a)

(a). See C. 1, 3, 9.

c. 14. If at the time of the appointment of a clergymen of any association or rank, there is an accuser who states him to be unworthy, the ordination shall be deferred, and all things shall be done, both as to examination as well as to punishments which we have above ordered as to the ordination of bishops. 1. If, moreover, he who is to be ordained as deacon has no wife according to what we have said above, he shall not be ordained unless he is first interrogated by him who is about to ordain him, and he promises that he can live chastely after the ordination without a legal wife, and he who is about to ordain him may not give him permission at the time of the ordination that thereafter, as deacon, he may marry. If anyone does so, the bishop giving such permission shall be expelled from his office. And if after ordination, a presbyter, deacon or subdeacon marries, he shall be expelled from the clerical order and together with his property, shall be delivered over to the curia in which he was a clergyman. 2. If a reader marries a second wife, or his first wife is a widow or is separated from her husband or is disapproved of by the laws or sacred canons, he shall not be advanced to any

Novel 123 c. 14 cont'd.

other ecclesiastical rank; and if he is promoted to a higher rank, he shall be expelled therefrom and restored to the former one.

c. 15. Curials and provincial apparitors shall not be made clergymen, lest injury arise therefrom to the venerable order. And if persons of that kind have been taken into the clerical order, the ordination shall be considered as not having been made and they shall be restored to their former station, unless any of them perchance, have lived not less than 15 years in a monastery, and such men must be ordained on condition that the legal portion (three-fourths of their property) must by a curial be turned over to the curia and the fisc. The clergymen must lead a life worthy of a monk. And if one of them, after obtaining the honor of the clerical order, marries or has a concubine, he shall be returned to the curia, or post of service or fortune to which he was subject, although he has such ecclesiastical rank in which the occupant is not by the sacred canons or laws forbidden to take a wife. These provisions shall also apply to all monks who, from a monastery, have been transferred to any ecclesiastical rank, although they were not subject to any condition of servitude. 1. And we ordain generally, that no one occupying any ecclesiastical rank shall abandon it, and become layman, and those who do so, shall be deprived of the girdle of their office, if they perchance have one, and of their rank or public service, and shall be delivered over to the curial condition of their city. Those who before this law were, when ~~curials~~ curials made clergymen, may fulfill their pecuniary duties by substitutes, and shall be immune from corporeal work. (a)

(a) See c. 1, 3, 112.

Novel 123 c. 16.

c. 16. We do not permit any clergyman of any grade to give anything to him who appoints him or to any other person, but he shall only pay the amounts to the officials of the person who appointed him which they receive according to custom, but which shall not exceed the emoluments of one year. He shall perform his service in the holy church in which he is appointed, but shall pay nothing to his co-clergymen for his entrance in the order, nor shall he on that account be deprived of any of his salary or other allotments. Nor shall a superintendent of a hospital, poor house, infirmary or of any other religious institution or manager of any ecclesiastical property, give anything for his appointment to the management to the person appointing him or to any other person. Whoever, contrary hereto, gives or receives anything, or becomes a mediator, shall be deprived of the bishopric, clerical office or any management committed to him, and whatever has been given shall be confiscated to the religious institution in which such person was ordained or of which he received the care of management. And if a layman received anything, or was a mediator double the amount given shall be demanded from him and paid to the religious institution in which such person was ordained or of which he received the management or care. 2. But if any clergyman of any rank or a manager of a religious house, want to give anything, either before his ordination or appointment as manager or superintendent, or thereafter, to the church in which he is ordained or of which he receives the management or care, we do not alone forbid that, but rather encourage them to do so for the safety of their soul. For we forbid gifts to be made only where they go to private individuals, not gifts which are made to holy churches or other religious houses.

Novel 123 c. 17.

c. 17. If any slave with the knowledge and without objection of his master is taken into the clerical order, he shall by virtue thereof become free, as a person free-born, by virtue thereof. But if that was done without the knowledge of the master, the latter shall have a year in which to prove the status of such person, and have his slave returned to him. But if a slave is taken into the clerical order with or without his master's knowledge, and he thus, as taken, becomes free, but he thereafter abandons his ecclesiastical service, and becomes a layman, he shall be redelivered to slavery to his master. 1. But serfs, bound only to the soil on which they are serfs, are permitted to become clergymen against the master's wishes, but though clergymen, they must fulfill the agricultural duty to which they are subject. ^(a)

(a). See c. 1, 3, 16.

c. 18. If anyone shall have erected a house of prayer, and he and his heirs shall want to have clergymen appointed for it, then, if they defray the expense of the clergymen and name worthy ones, those so named shall be appointed. But if those so named are forbidden by the sacred canons to be appointed, because unworthy, then the holy bishop of the place shall take care that others who are better are appointed. 1. We ordain moreover, that the reverend clergymen shall remain in their churches and perform every ecclesiastical service pertaining to their office. Inquiry into this shall be made by the holy bishop of each city and those who are primates in each ecclesiastical rank, and persons who fail to carry out these provisions shall be subjected to canonical punishment.

Novel 123 c. 19.

c. 19. Presbyters, moreover, and deacons and subdeacons and readers and singers all of whom we call "clergymen" shall have all property which they in any manner acquire, within their own power, just as a special military property and may give it away according to law and dispose of it by testament, although they may be under paternal power; provided, however, that their children, or in the absence of such, the parents, shall be entitled to the legal portion.

Note.

See c. 8, 46, 2 note.

c. 20. If, moreover, presbyters and deacons are found to have given any false testimony in any civil cause, it will suffice that in place of torture they be separated from their ministry for three years and put into monasteries. If they shall give false testimony in criminal causes, we order that they shall be expelled from their clerical rank and be subjected to the lawful punishment. All others, moreover, in the other ecclesiastical orders, if they are convicted of having given false testimony in any cause, civil or criminal, they shall be not only expelled from the clerical and ecclesiastical order, but shall also be subjected to torture.

Note.

See c. 1, 3, 3.

Novel 213

c. 21. If anyone has a right of action against a clergyman, monk, deaconess, nun or hermit, he shall first inform the holy bishop who has jurisdiction over such person, who shall decide the case existing between them. If both parties acquiesce in the judgment, it shall be carried into effect by the president of the province. If one of the litigants objects to the judgment within ten days, the president of the province shall try the case, and if he finds the bishop's decision to be correct, he shall confirm it by his own and carry the judgment into effect, and the person defeated in such cause a second time shall have no right of appeal. If the decision of the president is contrary to that of the God-beloved bishop, an appeal may be taken from the decision of the president, and it shall be sent and heard according to the rules of law. But if the bishop adjudicates a case between any person pursuant to an imperial order or the order of a judge, the appeal shall be referred to the emperor or to the judge who assigned it. 1. If one of the aforesaid religious persons is accused of a crime, and the accusation is made before the bishop, and he is able to find out the truth, he shall expel the guilty person from his position of honor and rank, and thereupon the civil judge shall seize such person, examine the case according to law and put an end to it. If the accuser goes first before the president, and is able to prove the crime upon legal trial, the record of the proceedings shall be made known to the bishop of the place, and if it is clear therefrom that the accused has committed the crimes charged, then the bishop shall deprive the accused of his honor and his rank according to the canons, and the judge shall visit the penalty upon him prescribed by law.

If the bishop does not think the records of the proceedings to be justly made, he may delay in depriving the accused person of his honor and rank, but such person shall be put under legal bond, and the case shall be referred to us by the bishop and the judge, so that we, after examining the matter, may make such order as seems good to us. 2. If any person, moreover, has an action against one of the aforesaid persons in a civil matter, and the bishop delays in adjudicating it between them, the plaintiff may go before the president, provided that the accused person shall not be compelled to give a surety, but only his promise, without oath, and together with a hypothecation of all his property. But if an accusation is laid against one of the aforesaid persons in a criminal cause, the accused person shall give a legal bond. If it is an ecclesiastical matter, the civil magistrates shall have nothing to do with the investigation, but the holy bishops shall put an end to the matter according to the sacred canons. ^(a)

(a) See note C. 1, 4, 8, and novels appended.

c. 22. If any of the holy bishops of the same synod have a controversy with each other either over an ecclesiastical right or over anything else, their metropolitan bishop, together with two other bishops of his synod, shall decide the cause; and unless both parties acquiesce in the decision, the blessed patriarch of that diocese shall decide between them and determine that which is in consonance with ecclesiastical canons and the laws, and neither party shall be able to object to his decision. If a complaint is made on account of any matter against a bishop by a clergyman or any other person, their holy metropolitan bishop shall first adjudicate the matter according to the sacred canons

Novel 21 c. 22. cont'd.

and our laws, and if anyone objects to the decision, the matter shall be referred to the blessed patriarch of that diocese, and he shall put an end to it according to the canons and the laws. If any complaint is made against a metropolitan bishop either by a bishop, clergyman or any other person, the blessed patriarch of that diocese shall, in like manner, adjudicate the cause. In no cases, moreover, shall any surety or promise on account of the litigation be demanded from bishops, whether they are summoned before the metropolitan bishop, the patriarch or before any other judges, but they themselves shall strive to extricate themselves from the cases brought against them (as soon as possible).

c. 23. We order, moreover, that stewards and managers of poor-houses, hospitals, infirmaries and other venerable houses and clergyman shall answer for their administration to the bishop over him, and render an account of this administration, and if anything is shown to be owing by them by reason thereof, it shall be demanded from them, and shall be turned over to the venerable house to which the debt appears to be owing on account of such administration. If they believe themselves aggrieved, the metropolitan bishop shall examine the matter, after payment has been made. If it is a metropolitan bishop, who examines into such matter against one of the aforesaid persons and demands the debt, and the person from whom it is demanded thinks himself aggrieved, the blessed patriarch of that diocese shall adjudicate the matter. And we do not permit the aforesaid persons in such cases to evade the bishop before such examination and demand is made and go into another court. If one of the churchmen, to whom such administration is entrusted, dies before rendering an account and before paying

128
Novel 21 c. 23 cont'd.

the debt (owing by him), we direct that his heirs shall, in like manner, be subject to the rendition of an account and to demand.

c. 24. If any bishop or clergyman from any province is found in Constantinople, and any one wants to bring an action against him, but issues have already been joined in the same matter in the province, the case shall be finished there; if the action has not yet been commenced, he shall answer the plaintiff only before the glorious praetorian prefect of the Orient or before the judges designated by us.

c. 25. The religious deputies (apocrisarii) of any church, moreover, who live in the imperial city, or who are sent by their bishops to the blessed patriarchs or metropolitan bishops shall not answer in any action for their bishops or for any transaction of the church or for a public or private debt, or be subject to any exaction, unless they have a mandate from their bishop or steward to see some persons; in such event, we give permission to those who are sued, if they have any right of action against the church or the bishop, to bring it against the deputy. If the deputies, however, obligate themselves in any matters or in any action during the time that they attend to their affairs, they shall also answer in actions, relating thereto. (a)

(a) See Novel 6, c. 2.

c. 26. If bishops, moreover, or clergymen come to the imperial city or go to any other place on behalf of the city or the church in connection with an embassy or on account of the appointment of a bishop, we direct that they shall not be burdened or molested by any one, since a person who thinks that they owe him, may sue

them after they return to the province, but he shall not be prejudiced by the period of prescription on account of the time which they spend in such a journey.

c. 27. If a case arises at some time so that a summons or execution in any civil case, whether public or private, should be served on a clergyman, monk, nun or female ascetic of any monastery, particularly one for women, we direct that the summons and execution shall be served without inflicting any wrong and in a becoming manner; and no monk or female ascetic shall be dragged out of the monastery, but a procurator shall be appointed by them who will answer in the matter. Monks, moreover, may carry on the litigation through a procurator of their own or of the monastery. A judge or enforcement officer who transgresses these provisions must take notice that he will be deprived of the girdle of his office, and a fine of five pounds of gold (\$1080) shall be collected from him by the magnificent count of the crown domain, and an enforcement officer will, in addition, be submitted to torture and sent into exile. The holy bishops of the respective places shall see to it, that nothing contrary hereto is done, or if done that the aforesaid punishment is inflicted. If the presidents delay in inflicting the punishment, the bishop shall refer the matter to us.

c. 28. In connection with fees, we do not permit any person of any ecclesiastical rank, or a deaconess, monk, female ascetic, or nun to give more than four siliquae (50 cents) in any criminal or civil case, whatever the amount involved may be, whether sought by the summons served by a clergyman or a person in the civil service, and whether they live in the imperial city or in the

123
Novel 21 c. 28 cont'd.

provinces; provided that if an enforcement officer takes a summons to one of the aforesaid persons in another province pursuant to an order of the emperor, president or blessed patriarch, he shall not receive more than one dolidus (\$3.00). And if, perchance, several of the aforesaid persons are summoned in one and the same case, he shall receive fees only from one person for all. The bishop shall not be subject to any execution or molestation on account of church matters; but fees may be demanded from him if summoned in connection with his personal affairs. Actions brought against a church, shall be answered by the steward or the person appointed for the case. Whoever dares to demand fees contrary hereto, shall be compelled to return double the amount to the person from whom they were demanded, and if he is in the imperial service, he shall lose the girdle of his office; if he is a clergyman, he shall be expelled from his ecclesiastical position.

Note.

As to fees demandable in suits, see C. 3, 2 and notes thereto.

c. 29. Presbyters, moreover, and deacons and subdeacons and others of the clergy, who, in accordance with the sacred canons, have no wife, are forbidden, according to the sacred canons, to bring into and have any woman in their house, with the exception of a mother, daughter, sister and other persons, who will escape all suspicion. If anyone contrary hereto has a woman in his home who can bring suspicion upon him, and if, upon being once and again warned by his bishop or his co-clergyman not to live with such woman, he refuses to expel her from his house, or if, when an accuser appears, he is convicted of having lived with such

woman dishonorably, then the bishop shall expel him from the order of the clergy according to the ecclesiastical canons, to be delivered to the curia (municipal senate) of the city in which he was clergyman. We, moreover, permit no bishop to have a wife or to live with a woman. If it is shown that he has not complied herewith, he shall be expelled from the episcopate; for he shows himself unworthy of the priesthood.

c. 30. A deaconess, moreover, shall not live with any man, in connection with whom a suspicion of a dishonorable life may arise. If she fails to comply herewith, the priest under whom she is shall warn her to expel such man from her habitation. If she fails to do so, she shall be deprived of her ministry and her emoluments and shall be delivered to a monastery in which to spend the rest of her life. Her property, moreover, shall be divided among her and her children, if she has any, according to the number of persons, the portion received by the woman to go to the monastery to support her. If she has no children, her property shall be divided in equal portions between the monastery into which she is sent and the church in which she was previously appointed.

c. 31. If anyone, while the sacred mysteries or other holy services are performed, enters a holy church and inflicts a wrong on the bishop, clergymen or other servants of the church, he shall be subjected to torture and sent into exile; if he disturbs the sacred mysteries themselves and holy services, or prevents them from being celebrated, he shall suffer capital punishment. And this shall apply to sacred processions (litanies) in which bishops and clergymen are engaged; if he merely inflicts a wrong (on a person), he shall be delivered over to torture and exile, but if

129
Novel 21 c. 31 cont'd.

he disperses the sacred processions, he shall suffer capital punishment. And we not only direct the civil magistrates but also the military magistrates to avenge such offenses. (a)

(a) See c. 1, 3, 10.

c. 32. We forbid all laymen, moreover, to hold sacred processions without the holy bishop of the place and the reverend clergymen under him; for what kind of a sacred procession is it in which the priests are not found, offering up the usual prayers? And the venerable crosses, with which they hold sacred processions, shall not be laid down except in religious places. If necessity at some time demands holding sacred processions, only those shall receive the holy crosses who usually carry them, and the processions shall be celebrated along with the bishop and the clergy. These provisions shall be observed by the holy bishops and their clergy and the magistrates of the (respective) places. If anyone violates our present law in this respect or fails to punish transgression, he will be subjected to the aforesaid penalties.

c. 33. It remains that we make provisions also as to venerable monasteries and the pious monks.

c. 34. We therefore direct that an appointment of an abbot or archimandrite in the various monasteries shall not be made from among the monks according to rank, but the person to be appointed shall be selected by the monks, or those of good standing, with the holy gospels before them, they stating that they have made the selection not on account of friendship or favor, but because they know that the person selected is of the right faith, of

123
Novel 21 c. 34 cont'd.

chaste life, one worthy of the administration and who will be able to maintain monastic discipline and the status of the monastery. And the holy bishop, who has such monastery under him, shall appoint as abbot the person so selected. All these provisions made by us as to the appointment of abbots, shall also apply to venerable nunneries and hermitages. (a)

(a) See Novel 5 c. 9.

c.35. If any one, moreover wants to take up a monastic life, and he is known not to be subject to any condition (which binds him to his station), the abbot of the monastery, if it seems good to him, shall furnish him with a (monastic) garb. But if it is not known whether he is subject to any condition, he shall not receive a monastic garb for three years, but the abbot of the monastery shall try him out during the aforesaid time. And if any one appears within the three years, who states that he (in the monastery) is a slave, a free or unfree serf, that he has escaped from agriculture, or has committed theft or has entered the monastery because of some (other) offense, and the charges are proved, he shall be restored to his master, together with the property shown to have been brought by him to the monastery, after receiving the promise of the master that he will not wrong him. But if no such person appears within three years, the abbot, after the three years have elapsed, may give him (the would-be monk) a (monastic) garb, if he deems him to be worthy, and no one shall thereafter trouble him on account of his condition (to which he was subject), as long as he lives in the monastery, but (if he was subject to a condition), the property which he brought to the monastery, shall be returned to whoever is proven to be

Novel 21 c. 35 cont'd.

the owner thereof. But if anyone of such persons leaves the monastery and returns to a secular life, or loiters about in cities or country, he shall be redelivered to his (former) condition.
(a)

(a) For similar provision see Novel 5 c. 2.

c. 36. We direct, moreover, that in all monasteries, called community-monasteries, all, according to the monastic-cans, shall live and eat in one house, and similarly all shall, separately, sleep in one house, so that they may bear mutual testimony for each other of a chaste life, excepting herefrom persons who, on account of their long monastic training want to live quietly, and excepting persons who on account of age or infirmity of body live in separate cells in the monastery, but these persons must do so with the knowledge and consent of the abbot. And all these rules shall also apply to monasteries and hermitages of women. We do not permit monks and nuns to live in the same monastery anywhere in our empire and do not permit the so-called double monasteries to exist. If there is such monastery, the men shall be separated from the women; the women shall remain in the monastery in which they are, and the men shall found another monastery for themselves. If there are a number of such monasteries, so that there is no necessity of building a new one, the holy bishop of the place shall take care to congregate monks with monks and women with women, separately, some in one monastery, some in another, and the property which they have in common shall be distributed among them in accordance with the rights which they (respectively) have. If the women

123
Novel 21 c. 36 cont'd.

chose a man, whether a presbyter or deacon, to manage their business or to administer the holy communion, the reverend bishop to whom they are subject, shall designate such person (for such purpose), if he knows him to be of the right faith and of upright life. If the person chosen by them is not a presbyter or deacon, but the bishop deems him to be worthy of such service, he shall, after appointing him to the position of business manager as stated, send him to the monastery, provided that not even he, thus chosen as business manager of the women, shall live in the monastery.

c. 37. If anyone gives or leaves anything to his children or any person, upon condition of marrying or procreating children, or as a dowry or preuptial gift, or if, after leaving an inheritance or legacy unconditionally in the beginning, he subsequently burdens them, under one of the aforesaid conditions, with substitution (of another person if the condition is not complied with), or with restitution, we direct, that if males or females, subjected to such conditions, enter a monastery, or become clergymen, deaconess or female ascetic such conditions shall be void and as though not imposed. This benefit may also be enjoyed by clergymen and deaconesses of churches, if they remain therein during life, and expend or leave the property, given or left under such condition, for pious works. In the case of persons who have entered a monastery or hermitage and who desert their chaste mode of life the property given or left under such condition, together with their remaining property, shall belong to the monastery or hermitage which they entered in the first place. But if the substitution or restitution, under the aforesaid conditions, is

directed to be made for the benefit of the redemption of captives or the support of the poor, we direct that these shall not be excluded by any of the foregoing methods.

c. 38. If a woman or man choose a monastic life and enter a monastery, and they have no children, we direct that their property shall belong to the monastery which they entered. If such persons have children, and did not make a disposition of their property before entering the monastery and without assigning the legal portion to their children, they shall be permitted after entering the monastery to divide their property among their children; provided that the legal portion of any child shall not be diminished; the portion not given to the children shall belong to the monastery. If such person wants to divide all of his or her property among the children, he or she shall be numbered as one, and one portion shall be retained by him or her, which shall belong to the monastery. If he or she dies while living in the monastery, and before dividing the property among the children, the latter shall receive their legal portion, and the remaining property shall belong to the monastery.

c. 39. If betrothals have been entered into between persons according to law, and the man enters the monastery, he shall receive back what he gave as earnest-money for the betrothal; if the woman chooses a monastic life, she shall similarly only pay back what she received as earnest-money, and the penalty shall be remitted to both parties.

Note.

See as to earnest-money in connection with betrothals and penalty for violating the betrothal-agreement C. 5, 1.

c. 40. If during marriage, the man alone, or the woman alone, enter a monastery, the marriage will be dissolved without divorce, after such person has entered the monastery and has received the (monastic) garb. If the man chooses a monastic life, he shall restore to the woman her dowry and whatever else he received from her, and in addition thereto, such portion of the prenuptial gift, as belongs to the woman, according to the marriage contract, in case of his death. If it is the woman who enters the monastery, the husband, in like manner, shall retain his prenuptial gift, and such portion of her dowry as was agreed to belong to him in case of her death; he shall return the remaining portion of the dowry to her, and whatever property of the woman he has. But if both choose a monastic life, we direct that the marriage contract shall be void, the man shall retain his prenuptial gift, and the woman shall receive back her dowry and whatever else she is shown to have given to the husband, so that each may enjoy his or her property without detriment, unless, perchance, they, when betrothed or married, wanted to give something to the other (at all events?).

Note.

It was customary for a woman to bring a dowry to the marriage and for the man to give a prenuptial gift. Marriage contracts also were usually entered into which provided for the disposition of the property in the event of the death of either. Either party to a marriage was forbidden to give anything to the other during marriage, Justinian modified the rule, but still limited the right. Hence the last clause of the foregoing law is somewhat doubtful. See also Novel 22 c. 5 appended to c.5,17.

123
Novel 21 c. 41.

c. 41. Parents shall have no right to exclude children deserting a secular life, and children shall have no right to exclude parents deserting a secular life, from an inheritance, as ungrateful on account of any cause existing before entrance into a monastery; We moreover, forbid parents to take their children who chose a monastic life from the monastery.

Note.

As to exclusion from an inheritance on account of ingratitude, see c. 3, 28 and Novel 115 appended thereto.

c. 42. If a monk leaves his monastery and goes to another, and he appears to have had any property at the time that he left the first monastery, it shall belong to such monastery which he entered in the first place. And the holy bishops of the places shall see to it that neither monks or nuns wander about in cities, but if they have any business transactions, they shall attend to it through deputies (apocrisarii) and they themselves shall remain in the monastery. 1. If a monk leaves a monastery and returns to a secular life, he shall first be shorn of every position of service and honor, if he has any, and shall be thrown into a monastery by the bishop of the place and the president of the province, and the property which he is thereafter shown to have, shall belong to the monastery into which he is thrown. If he leaves the monastery the second time, the president of the province in which he is found shall seize him and make him one of his official staff.

c. 43. If any one ravishes, or tempts, or corrupts a female ascetic or deaconess or nun or any other woman who leads a religious life or wears a religious garb, his property and the property of all participants of the crime shall be claimed for the venerable place in which such woman lived by the holy bishop of the place and their stewards and the president of the province and his staff, and the persons committing such offense and the participants of the crime shall be subjected to capital punishment; such woman shall be searched for everywhere, and together with her property shall be thrown into a monastery, in which she may be more safely guarded, lest she may again be found in such crime. If she is a deaconess and she had legitimate children, the legal portion (of the property) shall be given to the latter, if such property is not claimed by the venerable houses within a year after such crime is known, we direct that it shall be adjudged to the fisc by the count of the crown domain, and the president of the province who neglects to cover it, shall be deprived of the girdle of his office, and a fine of five pounds of gold (\$1080) shall be collected from him by the count of the crown domain.

c. 44. We, moreover, forbid all persons who lead a secular life, and especially those who are on the stage, men and women, and prostitutes, to wear the garb of a monk, nun or female ascetic, or to imitate such garb in any way, knowing that if they use or imitate such garb or dare to make sport of any ecclesiastical condition, they will be punished corporally and sent into exile. And not only the holy bishops of the places and the clergymen

under them shall look after this, but also the civil and military magistrates and the officials staffs under them and the defenders (of cities). We direct that the penalties mentioned in the present law, which were also contained in prior laws, shall apply and be meted out not only in future, but also in connection with past cases or offenses; whatever has just been provided for by the present law shall only be applied in the future. (a)

(a) See c. 1, 4, 4.

Epilogue.

Your Glory, therefore, must see to it that the provisions enacted by Our Serenity by the present perpetually-enduring law be observed in every respect and be brought to the notice of all by edicts posted up in this imperial city.

Given at Constantinople May 1, 546 A.D.