

Novel 129.

Concerning the Samaritans.

(De Samaritis).

Preface.

No offense of any of our subjects is so great as not to be considered worthy of our clemency. For though we hate what is done by them, and rise up to visit punishment upon them, still, having regard for time, we sooth our just ire by considerations of kindness. The present law is to that effect. For the Samaritans who were inflexible, rose up against the Christians and fell into the extreme of irrational conduct, were previously punished by us by many penalties and especially the one prescribing that they could not make a testament, or if they died without testament, could not transmit their inheritance to those called thereto on intestacy, unless, perchance, those called to the inheritance in either case were of the true christian faith. We forbade them, moreover, to give legacies or make gifts or alienations of any property, if the person who was to receive it was not of the orthodox faith. And we remember that we embodied this in a general law. But we did not actually apply the severity contained in the law, and did not permit our fisc or any department of our empire to receive anything from that source, although the law clearly permitted it.

c. 1. But now when we see them returned to moderation, we do not think it worthy of ourselves to persevere in the same wrath against those who are no longer affected by the same sickness, and we should especially give way to the prayers of Sergius, holy bishop of the metropolis of Caesarea, which he has employed for them testifying

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that they have become better and promising that they will be peaceful in the future, and inducing us to enact the present law, by which we ordain that Samaritans shall be permitted to make testaments and dispose of their property, in the manner in which other laws permit and the present law prescribes; and those who are called as heirs on intestacy may just as heirs of other men, inherit from those who die without testament, except in so far as we shall make a change by the present law. And we permit them to make gifts, give and receive legacies and make contracts of that kind without hindrance. For since we permit them to make testaments and to dispose of all of their property, why should we burden them as to a partial disposition?

c. 2. However, we do not put Christian and Samaritan heirs in the same position, but give a privilege to those who follow the better faith. So if one of them dies without a testament, leaving behind him children who differ in their worship of God, only those shall be called to the inheritance who profess the better faith, excluding those who cling to the same error as the decedent. We say this not only as to children, but also as to other cognate relatives, of whatever lineage, so that those who follow the orthodox faith shall have preference over those who are not, provided that they have the same degree (of relationship) or are called to the inheritance in the same order. For we do not give those who are of remoter degree of relationship and who are excluded by those of nearer degree, a preference or privilege over those who are of nearer degree, although the former follow the better faith.

c. 3. However, the matter is not so firmly fixed, that no room

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is left even for penitence for those who are hereby excluded. For those who subsequently wish to return to the true Christian faith, who for this reason are excluded from the inheritance, they may receive their portion, and shall be called to the inheritance as though of that faith from the beginning, losing only the fruits of the meantime. If one of them makes a testament, we direct it to be valid, so far as religion is concerned. If it is a father, or other ascendant or a descendant who makes the testament, and all those called to the inheritance cling to the same error as the testator, he may dispose of his property as he wishes; but if out of those who, of the same degree of relationship, are called to the inheritance, some cling to the same error as the father (testator), he shall not leave them more than two twelfths of his property, the rest shall go to those who follow the true faith, unless, perchance, he leaves legacies to Christians. And in this case too, the opportunity shall be open to those who wish to repent to enjoy an equality with those who were Christians from the beginning, just as we have determined in connection with those who are called as heirs on intestacy. And according to the same order, and in the same portion, we give ascendants and descendants, who follow the true faith, the right to bring a complaint against an unjust testament, if they are treated wrongfully by the distribution made in the testament.

c. 4. We also permit them to make gifts, leave legacies, manumit slaves and make contracts with each other, and the law previously enacted shall hinder them. For we entirely exclude our fisc and every department of the empire, and they shall have nothing to do

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with the inheritances, property or contracts of the former pursuant of such law. This shall be true not only as to the future, but also as to the past, so that our fisc or anyone else shall not bother their property on account of anything done in the past. For as we act in a spirit of humanity as to future things, why should we be severe as to those of the past? Thus let those deemed worthy of this, our spirit of humanity, give thanks to God and to us to the holy Sergius, who especially aroused us to this spirit of humanity toward them.

Epilogue.

Your Glory, therefore, knowing of our Clemency manifested toward them by the present law, will make these provisions known in the provinces by usual edicts, so that the Samaritans may enjoy this beneficial grant.

Given at Constantinople June 15, 551.