

Novel 134.

Concerning vicars, women who commit adultery and other subjects.

(De vicariis et mulieribus adulteris aliisque capitibus.)

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In the name of our Lord Jesus Christ, the Emperor Caesar Flavius Justinian Alamanicus Gothicus Franciscus Anticus Alanicus Vandalicus Africus, pious, fortunate, renowned victor and triumphator and ever Augustus to Mazonius, city prefect.

Preface.

Always giving our attention to matters that may be of benefit to our subjects, we find that our subjects are damaged in various ways by the vicars appointed in the provinces by the civil and military magistrates. We have already promulgated a law on that subject, <sup>(a)</sup> undertaking to better the situation somewhat.

(a) Nov. 8, c. 4; Nov. 17, c. 10; Nov. 128, c. 19.

c. 1. But desirous to relieve our subjects more completely, we ordain that the officiating praetorian prefects of the Orient and of Illyria and the counts of the State Finance and of the Crown Domain shall have no power to send any vicars into the provinces, or appoint the presidents of the provinces as such. <sup>(a)</sup> Nor shall the provincial magistrates even appoint any vicars in any city in the provinces committed to their charge. <sup>(b)</sup> There shall only be a prefectorial vicar in Osroena and Mesopotamia, and if necessity requires, a vicar shall be appointed in other places at a time of a military expedition for the purpose of providing supplies, and such appointment shall only be made at our command. We further order that neither the masters of the soldiers nor the dukes in the provinces in which they have been appointed to command, shall have vicars or agents to repress violence (biocolytae) or to pursue robbers. <sup>(c)</sup> If it happens that by reason of necessity that masters of the soldiers or dukes are sent into other places, pursuant to

our order, then a vicar may be appointed in place of the absent person, and that too, only pursuant to our order. No magistrates, civil or military, shall travel about in a province without cause. If any necessity of that sort arises, the magistrates, and the men about them, and the official staff under them, shall do so at their own expense, and they shall not burden our subjects with any burden of haulage on the main highways (angeriae), or any fees for exemption from quartering (epidemetica), or any other burden,<sup>(d)</sup> and shall not ask or seek any customary gifts, which their predecessors may have devised for their own gain; for things wrongly devised should not be confirmed by long custom. And all the aforesaid magistrates, civil and military, should know that if they violate these prohibitions, the man who appoints a vicar shall pay a fine of twenty pounds of gold (\$4320), and shall be deprived of his office, and the man who accepts such position shall be deprived of his property and sent into exile.

(a) See also Novel 128, c. 19 and note.

(b) For similar provisions, see Novel 128, c. 20 and note.

(c) For similar provisions, see Novel 128, c. 21 and note.

(d) " " " " Novel 128, c. 22 " "

e. 2. For the better enforcement of our constitution, we direct that the bishops of the places and the presidents of the provinces and the citizens themselves, shall not, contrary to this constitution, receive either a man appointed to suppress violence (biocolyta) or one to pursue robbers; for we do not permit any magistrate, civil or military, who is in the province, to have a representative. And we especially order the provincial presidents to conduct themselves so uprightly and manage matters so well, that it will be unnecessary to send anyone into the province to investigate or manage anything. But if it does become necessary that representatives be sent into the province for the purpose of collecting taxes or for some other

matter that needs investigation, such person shall neither have a mandate as, or the name of, vicar. The person sent shall, while in the province, inflict no damage and he shall finish his business by the help of the provincial president and his staff. If, perchance, he was sent in connection with an accusation against the president, the latter's official staff shall obey his orders. As we forbid the appointment of vicars, so we direct that everything must be done at the risk of the presidents and their official staffs; they must attend to the collection of the taxes, see that there is peace and quiet in the places and that no wrong or damage is inflicted. If there are collectors (vindices) or receivers of taxes in the provinces, and they need assistance, the presidents and their official staffs shall furnish that zealously, so that the collection of taxes may proceed without hindrance. And we direct the presidents of the provinces to investigate all cases, civil and criminal, within their jurisdiction, and examine them at their peril and put an end to them in a lawful manner. They shall further, when they are about to assume their office, whether present in this city or absent, furnish a guaranty to the praetorian prefect, Count of the State Finance and Count of the Crown Domain for the payment of the money (taxes etc.) to be paid to these parties respectively, and though they do not furnish such guaranty, they and their official staffs shall nevertheless be liable to the officials above mentioned in the same manner as though they had furnished it. In provinces and cities, moreover, in which there are no men from the bureau of taxes (scriniarii) or collectors called vindices or other collectors who do not make the collection of tribute at their own peril, the collection must be made at the risk of the presidents.

Note.

See note to Novel 128, c. 19, dealing with the subjects mentioned in this chapter. It appears herefrom that at times vindices (special collectors of taxes) or scriniarii (bureau clerks) were permanently stationed in the provinces to look after the collection

c. 3. It has also come to us that some of the magistrates in the provinces have acted so impiously in their desire for corrupt gain as to prevent testaments from being executed or opened, marriages from being solemnized, marriage contracts from being made, bodies of deceased persons from being buried, inventories from being made, or anything else of that kind from being properly executed either on the public records or by attestation of witnesses. We forbid all magistrates, civil and military, and their official staffs and every body else to do anything of the kind. If anyone undertakes to do anything of the sort in any place in our republic, or aids anyone else who dares to do so, he shall be deprived of the girdle of his office and shall be sent into exile, and shall restore the damage inflicted by them upon anyone twofold, without depriving the parties so damaged of any other legal remedy. We give the holy bishops of the places and the primates of the city, authority to restrain any such attempts, and to see that everything is done according to the tenor of law without let or hindrance, and to report to us. 1. All our magistrates and other persons who try cases pursuant to our order, whether of high or low degree, must accept appeals that are taken and give a copy of the record to the litigants without delay, so that appeals may be legally heard. And besides, when an appeal is taken legally, the decision shall not be carried into effect and possession of property shall not be transferred, until a final decision (on appeal) has been rendered. (a)

(a) As to matters on appeal, see C. 7,63.

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c. 4. Since it happens that adultery, abduction of women, murder and other crimes are committed in the provinces, we order the presidents of the provinces to punish them according to law, and seize the violators; but they must not punish anyone for the crime of others,<sup>a</sup> or seize some other man in the place where the criminal came from instead of the latter, nor shall they inflict any damage on such place where the criminal came from, nor seize pledges on account of the delinquent, nor omit to punish for gain, nor appropriate the property of the offenders as their own. We want the guilty persons to be subjected to punishment, but we do not permit any damage to be inflicted on our subjects, and magistrates or their assistants or official staff shall make no gain by reason thereof, so they may not, through their cupidity, inflict unjust punishment or sell the delinquents. If these provisions are violated, the president himself must make the damage good to all those that are wronged, and he will be punished and sent into exile; his counselor (assessor) will be subject to a like punishment, if he consents in writing to the acts done contrary to law by the president, and the latter's official staff and others who lend him any assistance therein, for the purpose of gain, will not only be compelled to make good the damage to those who are wronged, but the guilty ones will be subjected to the legal punishment and sent into exile.

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<sup>a</sup> For similar provisions, see C. 11.57.1, and Nov. 52, appended thereto.

c. 5. If a person guilty of a crime hides or leaves the province in which he committed the crime, he shall be cited to appear by lawful edicts. If he does not obey, proceedings according to law shall be taken against him. If he is found to reside in another province, the president of the province in which the crime was committed shall send a public letter to the president where the offender resides, and the latter, and his official staff, shall, at their peril, seize the offender and cause him to be transmitted to the province where the crime was committed, in order that he may be subjected to punishment. If the president receiving the public letter neglects to do this, or the members of his official staff act traiterously or neglect to obey the orders, the president himself shall pay a fine of three pounds of gold (\$648) and his official staff shall pay a like fine. If the president or a member of his official staff shall omit to arrest such person or transmit him when arrested, for money, he shall, upon conviction, be deprived of the girdle of his office and sent into exile.

c. 5. Note - Appended to C. 9.40. after b

c. 6. We also want this to be observed by all our magistrates; If we have, perchance, sent a written order to one of our magistrates, and he retires from office in the meantime, his successor shall accept the order and make it of record; if the letter relates to a private, he shall carry out the order as though addressed to himself; if it relates to a fiscal matter, he shall look into it; if the fisc would not be injured by carrying out the order, he shall carry it out; if he would thereby injure the fisc, he shall do nothing but first report to us, so that a second order in reference thereto may be issued by us. So in case mandates are issued by any magistrate, and before it is made of record, the person giving the mandate or the person receiving it, retires from office, the successor shall receive and carry out the mandate lawfully issued; but if issued contrary to law, or against the interests of the fisc, they shall be treated as though not issued.

Note.

Remainder of Novel appears in other places.

c.7 We also learn of the following impious conduct in various provinces, namely that creditors dare to detain children of debtors as pledges, or use them for servile labor or lease them out. We entirely forbid this and direct that if a man does anything of that kind, his debts shall not only become void, but he shall pay an equal amount to the person whom he detains or to his parents, and he shall further be subjected to corporal punishment by the magistrates of the places, for so daring to detain a free person for a debt, or to lease him out or hold him as a pledge.

c.8. We think that we should also make the following correction for the benefit of our subjects, namely, that if a woman consents to an instrument evidencing a debt, signed by her husband, or subscribes it, and makes her own property or herself personally liable, such act shall be void, whether she does so once or often in connection with the same matter, and whether the debt is private or public, but a writing to that effect shall be as void as though not executed, unless it is clearly shown that the money was used for her own benefit.



c.9 We have also deemed it necessary to amend this by our aid, namely that no woman shall be incarcerated or put in custody by any magistrate for a pecuniary cause. But if a woman is summoned according to law, for a public or private debt, she may legally answer and finish the cause through her husband or personally, or through any other person. If she is a widow, or was never married, she may similarly set forth her rights, according to law, either personally or through whomever she wishes. If anyone does anything contrary hereto, we order that he, if he is one of the higher magistrates, shall be punished by 20 pounds of gold; if one of the lower magistrates, by 10 pounds of gold. Whoever gives aid in these matters, shall be subjected to torture and sent into exile. If the woman does not, after legal citation, wish to appoint anyone for her to answer, or she is, when sued, condemned, not even then shall she be incarcerated or put into custody, but legal steps may be taken against the property belonging to her. 1. If the woman is accused of a crime, on account of which it is necessary that she be put into custody, if she can give a surety for her person, that shall be accepted, if she swears that she cannot give a surety, she shall give her own recognizance to appear in court. If she is accused of a very grave crime, she shall be thrown into a monastery or hermitage, or delivered to women by whom she may be guarded chastely and becomingly, until the case against her is proven; for then proceedings shall be taken which the law has fixed. For we do not permit any woman, on account of any pecuniary cause, public or private, or on account of any crime, to be put into the custody of men, lest, by such occasion, insult will be found to have been case upon her chastity. We do not permit a nun or holy woman, to be taken out of monasteries or hermitages by any action.

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Note: The following provisions in Novel 134 of Justinian (556) relate to adultery:

c. 10. If the crime of adultery has in any case been clearly proven, the punishment fixed by Constantine, of blessed memory, shall be inflicted, and the assistants and ministrants of this impious crime shall suffer the same penalty. If the adulterer has a wife, she shall have the dowry and prenuptial gift, or the legal portion fixed by us, if no dowry-documents were executed; his descendants and ascendants to the third degree, if he has any, shall receive the remaining property, according to their order and degree of relationship; if he has no such relatives, the property shall belong to the fisc. 1. The adulteress shall suffer the proper penalty<sup>(a)</sup> and be confined in a monastery. If her husband wants to take her back within two years, he has the right to do so and to live with her, and he need be in no fear<sup>(b)</sup>, and the marriage shall not be affected by what has taken place in the meantime. When that time has passed (and she has not been taken back), or if the husband dies before taking her back, her locks shall be shorn, she shall assume the monasterial garb and she shall live in the monastery during the remainder of her life. If she has descendants, they shall receive two-thirds of her property, to be divided in the manner provided by law, and the remaining third shall belong to the monastery in which she is confined. If she has no descendants, but has ascendants who did not aid her in her crime, they shall have one third, to be divided among them in the manner provided by law; two thirds shall be given to the monastery in which she is confined. If she has no descendant or ascendants, or only ascendants who aided her in her impiety, all of the property shall

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go to the monastery. Provided, however, that in all cases her husband shall have the property contracted for in the dowry-documents.

- a. Probably refers to the pecuniary penalty mentioned in Nov. 117 c.8.1.
- b. I.e., will not be held guilty of pandering.

c. 11. In as much as some persons seek to violate our law in which we specially enumerated the causes for which a bill of divorce could be sent either by the husband or the wife, we direct that no bill of divorce shall be sent or if sent, shall be valid, for any cause other than those specified, nor shall the marriage be dissolved by consent, but faults shall be reciprocally forgiven. 1. If they dare to dissolve the marriage for any cause other than those specified by us, their property shall be given to their descendants, if any, either of that or a prior marriage, in the manner provided by law, and the man and the woman shall be thrown into a monastery for the rest of their life, the monasteries into which they are thrown to receive a third of the property of the respective parties, and the husband shall not even have the usufruct of the property given to the children. If they have no descendants, but there are ascendants, these ascendants shall receive a third of the property, unless they consented to the impious act of dissolving the marriage, and the monastery into which the respective parties are thrown shall have two thirds of his or her property. If there are no descendants or ascendants, or only ascendants who consented to the act, all of the property of the respective parties shall go to the monastery into which they are thrown, so that God's judgment and our law may not be violated by any such cunning. 2. And we direct that persons who extend any aid in connection with the dissolution of such marriages, or who draw up any unlawful agreements of that kind, shall be punished corporally and sent into exile. 3. If the parties, however, who dare to dissolve a marriage, want to live together again before they are thrown into a monastery, they shall have the permission to do so, the aforesaid punishment shall be remitted and they shall have their property and may live together again as though no such offense had been committed. If one of them

wants to renew the marriage and the other not, the foregoing punishment shall be inflicted on the party who refuses. 4. We direct that these matters shall be watched - in this imperial city by the count of the crown domain and the palatine school (schola), and in the provinces by the presidents and their official staffs, and they must know that if they overlook such offenses and do not watch them, they will have their property confiscated and will be sent into exile. And we also direct that the holy bishops of the places shall watch these matters, and they must see that the (guilty) persons delivered to them are thrown into a monastery, and that their property as herein specified is given to the monasteries.

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c. 12. If any man accused of adultery escapes the legal punishment through corruption of the judge or in any other manner, and he is thereafter found to live with the woman on account of whom he was accused or to have married her, whether in the lifetime of the latter's husband or after his death, such marriage shall not be valid, and though the man who dares to do this escaped previously, every judge shall have permission to arrest him, put him to torture, and punish him by death, without further accusation or proof; and the woman (in such case) shall be chastised, her locks shall be shorn and she shall be thrown into a monastery, there to remain the rest of her life; the property of either of them shall be divided in the manner hereinbefore specified—all to be attended to at the peril, as we heretofore said, of the count of the crown domain and the presidents.

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c. 13. Inasmuch as we should have consideration for the weakness of humanity, corporal punishment shall to some extent be made lighter, and we forbid the cutting off of both hand and foot, or to inflict the punishment by which the joints (of the body) are torn loose, since such punishment is severer than the cutting off of both of the hands. We therefore direct that if any crime is committed which the laws punish with death, that punishment shall be inflicted as directed by law; if the crime is such as not to deserve punishment by death, the guilty person shall be chastised in some other manner or shall be sent into exile; if the crime deserves the punishment of having a limb cut off, only one hand shall be cut off. 1. We want no limb to be cut off for the crime of theft; nor shall the thief be punished by death, but he shall be chastised in some other manner. By the term thief we mean a man who steals secretly and without the use of arms; for parties who commit the crime with violence, with or without the use of arms, and either in a house or on the highway or on the sea, shall suffer the punishment fixed by law.

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Note: Appended is Nov. 134, c. 13,2, granting the right to part or all of the property of those condemned to death or deportation to certain persons. Sentence to the mine, or to public work perpetually, was also a capital crime, and is not mentioned here. But inasmuch as men of station, who in most cases would be the only persons with property, could not be visited with such punishment, the result of the following legislation was that probably in substantially all cases of condemnation to capital punishment, the property went to the persons herein mentioned, except in case of treason. Nov. 142, enacted subsequently on the subject of castration (see headnote C. 9,16) provided for confiscation of the property of guilty persons to the fisc and evidently modified the present constitution in that respect. Both novels are included in the Basilica. As to property right in case of conviction for adultery, see Nov. 134, c. 10, appended to title 9 of this book.

c. 13, 2. And in order that not only corporal, but also pecuniary penalties shall be more moderate, we direct that in case of accusations for crime for which the law provides for confiscation or death, the property of persons convicted thereof or condemned shall not accrue as a gain to the magistrates or their official staffs, and shall not even go to the fisc according to former laws; but if such convicted persons have descendants, these descendants shall have the property except such as the former obtained by such crime; if there are no descendants, but there are ascendants to the third degree, they shall have the property. 3. If the convicted persons have a wife, the latter shall have the dowry as well as the pre-nuptial gift. If the marriage was performed without a dowry, the wives shall have such portion of the property of the convicted per-



son as has been fixed by our laws, whether there are children or not. If there are no such persons as stated, the property of the convicted person shall go to the fisc. Provided, however, that the former laws shall remain in force in connection with the crime of treason.

Epilogue. Your Glory will publish the present imperial law in this fortunate city, send it to the provinces and have it published by the presidents thereof, so that all our subjects may know with what care we look after them.

Given May 1, (556).