

Novel 46.

Concerning alienation of immovable church property and payment thereby, excepting that of the church of Constantinople.

(De ecclesiasticarum rerum immobilium alienatione et solutione, exceptis is quae Constantinopoli sunt).

The same Augustus (Justinian) to John, praetorian prefect the second time, exconsul and patrician.

Preface.

We bestow daily care upon the law and other matters so as to find protection for our subjects, curbing what is without restraint and without limit, and substituting for it what is definite and reduced to a certain norm. And we have sometimes on purpose inserted unnecessarily harsh limitations in the law, because no limitations existed previously, so that by restraining what was previously without restraint, we might thereafter equalize matters. We recently enacted a law for all holy churches and monasteries and other holy houses, taking away from them all right to alienate immovable property. For we saw the matter to be without restraint, and that lands of the church were gradually passing into other hands, without a just price having been paid therefor, and without an inevitable necessity compelling such alienation, and that the laws already enacted were being defrauded a thousand times. Thus, abolishing the former course, we thought it above that the opportunity to defraud the churches and other holy houses was taken away from all alike. And although their possessions were thereby generally benefitted, still a difficulty arose, because debts previously or thereafter contracted by reason of some urgency and especially fiscal matters, led the holy houses

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to the necessity of alienation. For when no sufficient movable property was at hand, the danger arose that their managers would be reduced to extreme necessities, not being able to sell and having nothing with which to pay debts. However, we have often granted the right that they might give lands of the church to creditors in payment -- provided the payment were made by the exercise of due care and formality -- nor have we expressly taken that right away in our law. But if it is not a private creditor, but the public treasury which presses and demands its debt, and there is no money and the fisc (public treasury) cannot receive immovable property (in payment), we have thought the law ought to be somewhat relaxed in such case and that if a necessity of that kind exists, an alienation should be permitted.

c. 1. We therefore ordain, that if a holy church or other holy house owes the fisc and has no money with which to make payment, all shall meet, the clergymen, the God-beloved bishop of that city and, further, the metropolitan bishop, and the matter shall be investigated in the presence of the holy scriptures. And if shall appear that no way exists by which the fiscal debt can be paid except by alienation, then they shall have permission to touch the immovable property and make an alienation for the purpose of paying the debt, a decision to that effect being made and a decree of the president of the province being entered. The purchasers shall pay the debt to the fisc, receive a receipt, assume the fiscal debt, be protected on that account, nor be in fear in any manner of the law previously enacted by us. Those who make the sale, moreover, shall be without blame, so far as that law is concerned. The public receipt shall be enrolled on

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the records, and those who give it shall deposit it (in the church), so that clear proof may also be in possession of the church that the taxes have been paid and that everything was done according to our law, and that no one may pretend the existence of a public debt so as to proceed to an alienation of immovable property on that account. For we want a decree also to be made (by the governor), so that the existence of the public debt may be shown by testimony, and out of what years it arises, and that there is no money with which to pay it, but that the sale has been made out of necessity. The truth of this shall be attested in every respect, and everything shall be done in the presence of the holy gospels. The bishops, the clergymen and all others must take notice, that God will see everything that is done by them, and that if they do anything through fraud or cupidity or by trickery, they will have that on their conscience, both living and dying.

c. 2. If it therefore is a private person to whom a debt is due, he can receive immovable possessions by way of payment. But a decree shall also be made in such case, and possessions shall be given him according to the debt in fact owing. If the debt is a public one, (the church authorities) may proceed to alienation of immovable property, according to what has been provided before, so that there is nothing that is not carefully done or lacks anything so as to be for the common benefit.

c. 3. Entirely excepted from all these provisions is the holy Great Church of this fortunate city and the land surrounding it and the chapels of which it takes care, so that the provisions already made by us on this subject shall remain in force. And

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if there are any monasteries under the control of the holy Great church, they too, shall not be subjected to the present law, for it shall have application only in the provinces, which are in great want of money, on which account the holy churches are unable to pay their debts in money.

Epilogue.

Your Sublimity therefore learning of these provisions must see to it that alienations of property of the churches are made in accordance therewith.

Given at Constantinople August 18, 536 A.D.