

Novel 7.

That the property of the church shall not be alienated or exchanged or specially hypothecated to a creditor, but that he shall be content with a general hypothecation.

(Ne res ecclesiasticae alienentur aut permutentur, aut in specialem hypothecam dentur creditori, sed ut hypothecis generalibus contentus sit)

Headnote.

C. 1, 214 forbade any alienation of immovable church property in Constantinople. C. 1, 2, 17, permitted institutions devoted to religious or pious purposes to sell its property, exchange, mortgage, lease or give in perpetual emphyteusis, in case of necessity. C. 1, 2, 21, forbade alienation of sacred vessels except for the redemption of captives. C. 12, 2, 24, forbade perpetual emphyteusis.

A number of Novels, which follow, related to alienation of such property. Novel 7 related to alienation of church property, and professed to amend and consolidate the then existing laws on the subject. No such property could be alienated, or exchanged, except with the emperor; emphyteusis was limited to three lives; a usufruct could be acquired only under strict limitation; a special pledge of lands was forbidden; sacred vessels could not be sold except for the redemption of captives; stewards might, if they wished, manage the church property themselves; monasteries were forbidden to be sold and sterile lands acquired.

Novel 40, promulgated the following year gave to the church of the Holy Resurrection of Jerusalem the right of alienating buildings belonging to it, notwithstanding the general prohi-

Headnote to Novel 7 cont'd.

bition contained in Novel 7. Novel 46 gave churches, except the Great Church at Constantinople (St. Sophia) the right to alienate immovable property, in case of necessity, to pay public or private debts, giving it in payment in case of private debts. Novel 54 c. 2 permitted exchanges between ecclesiastical and eleemosynary institutions, excepting the Great Church. Novel 55 forbade alienation made ostensibly in favor of the emperor, but really for the benefit of private individuals. It also gave the right to church and pious institutions, excepting St. Sophia, to lease lands in perpetual emphyteusis. The provision declaring exchanges made with the emperor as a sham to be void, was repealed by Novel 119 c. 10 appended immediately following Novel 55. By Novel 65 non-producing land and old houses in Mysia were permitted to be sold, for the redemption of captives. By Novel 67 (which also contains provisions on other subjects) two bishops were directed to be summoned to a council, in case the metropolitan bishop sold immovable property.

Novel 120 again undertook to consolidate all the laws on this subject. The first four chapters related to the church of Constantinople, and forbade alienation except to the emperor. The other chapters related to other religious and pious institutions. Perpetual emphyteusis was permitted, as were special pledges of property and exchanges. Other minor changes in the previous laws were made.

Novel 7. cont'd.

Emperor Caesar, Flavius, Augustus to
Epiphanius, holy and blessed archbishop
of this fortunate city and universal
patriarch.

Preface.

It has always been our aim to correct whatever was previously imperfect and perplexing, and to render the imperfect perfect. Since we have done that in all our legislation, we think we should also in connection with alienation of sacred property embrace all prior laws in one, which renews and corrects the former, adds what is lacking and leaves out what is superfluous. Leo of blessed ⁽¹⁾ memory, who, after Constantine of blessed memory -- the chief among the emperors of the Christian faith -- increased the honor and established the status of the holy churches, enacted a law ⁽²⁾ concerning the alienation of church property, which law, however, is confined to the holy Great Church of this fortunate city. Many things in that law, containing severe and pious provisions, we approve, but we are dissatisfied with it because it was not enacted concerning all the churches, aside from the fact that we are persuaded that it is in need of some correction. Anastasius of blessed memory, enacted a law ⁽³⁾ in regard to these matters, but it is not to be compared with the former and is altogether imperfect, and which, though it touches places outside (of Constantinople), it nevertheless remains imperfect, since it deals only with the highest position in the priesthood and with the diocese under the blessed patriarch of this imperial and fortunate city, but does not deal with other positions,. However, since he thought this matter worthy of correction, for what reason did he

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amend some matters, while leaving others in disorder? We therefore ordain that it shall cease to be of validity in the future, being imperfect, circumscribed as to territory, not being a general law and not introducing anything of dignity. Correcting all these things, we have thought it best to enact one law relating to the property of the holy churches, hospitals, infirmaries, poor houses, monasteries, foundling hospitals, old men's homes and every holy institution, and add this law to the constitution of Leo of blessed memory, first briefly giving the contents of that constitution, and then adding the remainder. That constitution provides that neither the God-beloved archbishop and patriarch of this fortunate city or of the holy Great church, nor the steward shall sell or give away or in any manner alienate any immovable property, such as a house or field or serf or rustic slaves or civic bread rations -- for these too are to be considered as immovable property, if they belong to the holy Great church at Constantinople -- and shall not do so, either for the purpose of remuneration, or any other such pretended purpose. It indeed threatens the purchaser with restitution; that is to say, that he must restore the property received, with all its fruits of the intervening time and all other gains, to the person who administers the property of the holy Great church at the time; threatening the person who dares to receive or purchase any such property (also) with the loss of the (purchase) price, since, whatever is done contrary to law, is considered under the law as not done at all. It directs the steward, who transgresses these provisions, to turn over to the holy Great church, from his own property, whatever he gained in the matter or pay for whatever detriment he caused to the holy church; it

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also removes him from his administrative post, and it gives an action to the holy church not only against the God-beloved stewards, but also against their heirs, whether they themselves made the alienation, or whether, seeing the officiating bishop or someone of the other clergy do so, they disgracefully and dishonorably kept silence, and much more so, if, seeing such person consent to such matter, they permitted it and did not forbid it. And the law further delivers the scribe, who writes documents relating thereto, into perpetual exile, without hope of clemency or hope of returning. And it threatens the highest magistrates, who permit, or aid in, these matters, or suffer documents to be made before them in connection with such gifts or other alienation, with expulsion from their magistracy or dignity and with confiscation of their property. The law, sternly forbidding the foregoing, permits the holy churches (however) to give the use of church-property, or, what is called the usufruct, for some certain time, or as long as he, who receives it, lives; under this condition, nevertheless, that he who enjoys this liberality, shall turn over to the holy church, in right of ownership, property of the same quantity, from which the holy church might receive the same income, as he receives out of the usufruct; that, after the death of the person who received it, forsooth, or after the time fixed for the usufruct, he shall turn over to the holy church the usufruct of the church-property given, and the usufruct of the property given (by the former usufructary to the church) as well as the ownership shall be acquired by the holy church. ⁽⁴⁾ The law ordains that such contract may be made without peril. But if that which is given to the church in

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return is less (in value) than that which is given by the church, the ownership of which she indeed receives immediately, but the usufruct of which is deferred to a future time, the contract is void and the law makes it invalid and gives the right to reclaim (the property given by the church), for fraud committed against the right of the holy church. These, then, are the things which the law, under penalty, prescribes, but it confines itself to property of the holy church. It indeed does away with every kind of trickery, but it was not able to meet the evil-mindedness of the future time. For some, the colonistic right ⁽⁵⁾ having been invented-known neither to our laws nor to any one -- to bring about an almost perpetual alienation, committed no small fraud against our law. We forbade that to be done from the time on that we enacted a law concerning this matter. ^(e) Then they took refuge in the emphyteusis [long lease], and those who managed the property of the holy Great church greatly diminished, by favoring the emphyteuticaries (long-term-lessees), the amount of the true income. So we defined in one of our constitutions, ⁽⁶⁾ that an emphyteusis should be made for the lives of three (successive) persons -- during the life of the person who received it and two other successors, and we permitted that in connection with church property, but we ordained ⁽⁶⁾ that no more than a sixth part (of the rent) should be remitted to emphyteuticaries on account of fortuitous circumstances, having learned that such unrestrained and impious contracts have been entered into by some so, that not even the sixth part was left to the holy church, everything else being forgiven the emphyteuticary. Anastasius of ⁽³⁾ blessed memory decided that alienations, whenever the exigencies

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should require such, should be made a matter of public record, and that an emphyteusis not so made a matter of public record would limit it exclusively to the life of the emphyteuticary, thus extending it into perpetuity, if made a matter of public record. But the law is not rounded out, nor useful, clearly imperfect, and, as stated, confined solely to the diocese of the patriarch of this fortunate city.

Note

(1). Pial sovs - really "of a blessed fate." The authenticum has "pial memorial." That expression has been followed throughout.

(2) C. 1, 2, 14.

(3) C. 1, 2, 17.

(4) This law purports to give the provisions of C. 1, 2, 14, as to the terms on which a usufruct belonging to the church, might be transferred to another for a limited time. But it does not give it accurately, as that law has come down to us. That law provided in substance, that the contract should be in writing and should define the terms, and though stating that the contract should state what each party was to receive, seems to limit the compensation to be paid for such usufruct to twice the amount of the income (reditus) which the usufructuary received, payable, it seems, when the usufruct ended. The amount so to be paid is striking enough. But the provisions made by Justinian in the instant law, also stated in c. 4 of this Novel, appear to be still more remarkable, and seem to provide that when the usufruct was turned over to the usufructuary, the latter should instantly turn over to the church, in full ownership, together with its usufruct, another property which would yield the

Note to Nov. 7 cont'd.

same return as that turned over by the church, thus apparently, giving the usufructuary no advantage whatever; that further at the end of the term agreed on for the usufruct, it, together with the ownership thereof, as well as the property turned over to the church by the usufructuary, together with its usufruct, should become the absolute property of the church. It is hard to see of what possible benefit such transaction could have been to the usufructuary. Was it, that the use of the church property had some peculiar value, or was it that the property was waste land at the time of the contract, bringing little income, which, by cultivation, might be largely increased?

(5) colonarius jus -- see note C. 1, 2, 24.

(6) C. 1, 2, 24.

The holy Great Church was St. Sophia, built by Justinian. Civic bread rations were rights to bread, such rations being attached and appurtenant to houses. They were distributed mainly in the capitals and in Alexandria, and, as appears from c. 8, also in a few other places. See c. 11, 25.

C. 1. We therefore ordain -- for we must now proceed with this law -- that neither the holy Great Church of this fortunate city, nor the churches under it and which it supports, as interpreted by Anastasius, nor the remaining churches in this fortunate city or its vicinity, nor those subject to the patriarchal seat of this fortunate city, the metropolitan bishops of which the patriarch ordains, nor any other patriarch or bishop anywhere -- we mean those who are in the Orient and Italy, and besides those in Egypt, and Libya, adjoining it and united with it, and those

Novel 7. c. 1. cont'd.

in Africa, and to embrace them all, those in our realm -- nor the God-beloved bishops in the Occident, extending from ancient Rome as far as the orthodox churches situated on the ocean, nor the superintendents of any hospital, poor house, infirmary, orphanage, old men's home or foundling inn, nor the abbot of any monastery, nor abbess of any nunnery, nor superintendent of any eleemosynary institution, shall have any right to alienate any immovable property, consisting of houses, fields, gardens or anything of the kind, or rustic slaves or civic bread rations, or deliver it by special hypothecation to any creditor. We use the general word 'alienation' in order to forbid sale, gift and exchange, and emphyteusis in perpetuity, which is not far removed from alienation. We prohibit all priests from making any such alienation, under the penalty provided in the constitution of Leo, of blessed memory. We ordain that that constitution shall be valid and in force in every respect. And we have set that law forth (herein) and have not written this law in our native tongue, but in the common, Greek tongue, so that it might become known to, and easily understood by, all. But whatever has gone by, we leave alone; for to disturb so many contracts made long ago, would give infinite trouble. Hence what has been heretofore done, shall be left as it is, but we forbid all alienation in the future, under the foregoing penalties.

c. 2. In order, however, to accommodate this law to the variety of human nature and the usual appearance in human life, and have it perpetually remain -- for what is so stable among men and so constant as not to suffer any change, when our status is

Novel 7. c. 2. cont'd.

in perpetual motion -- we have thought it necessary to add some exceptions to the law, found out by much care and the use of midnight oil, so that, by their aid, the law may remain entirely unshaken. 1. We therefore permit the emperor, whenever a necessity arises for the common benefit and the advantage of the state which requires the possession of immovable property, such as we have mentioned, he may receive it from the holy churches and the other holy houses and institutions, provided that indemnity in every respect shall be given such establishments, and they shall be given by the receiver an equal or better property than that which was taken. For what excuse can the emperor give for not giving a better property, when God has so enriched him as to have much, be the master of many things, and able to give with ease, and particularly to the holy churches, the giving to which without measure is the best measure? Thus, if anything of the kind is done and a pragmatic sanction is issued directing anything from such property to be given, and giving a better, more valuable and more useful property in return, such exchange shall be valid, and the superintendents of the establishments which own the property exchanged, and persons taking part in the execution of documents (relating thereto) shall not be guilty of any offense, and need not fear the penalty threatened by the constitution of Leo, of blessedmemory, and confirmed by us. For there is not much difference between priesthood and sovereignty, or between holy and public things, in as much as the holy churches always receive their abundance and their status through the munificence of the emperor. Hence, if they render to each other what is proper, they cannot justly be blamed by any one. Every other

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alienation, whether by sale, gift, exchange or perpetual emphyteusis, whether to the emperor or any other person, we entirely cut off. Nor do we permit any pledge of immovable property on account of a loan. And this shall apply to every church, monastery, infirmary, hospital, foundling-inn, hermitage, old men's home and every institution founded through charitable action, so that no one shall receive any such property from them. Thus there is no further need of the constitution of Anastasius, of blessed memory, nor the decrees (public records) to be made under it, nor the aforesaid observance (thereunder). For as we destroy its very foundation, and forbid what was done (under it), we need not concern ourselves with it any further.

c. 3. We permit an emphyteusis, either as to (property of) the holy church or all other venerable houses, to be given to the person receiving it and (succeeding him) to two successive heirs, children, namely, male and female, or grandchildren of either sex, or to the wife or husband (of the emphyteuticary), if mention is made of such wife or husband; it shall not pass to any other heirs, but shall be limited solely to the life of the person who receives it, if he has no children or grandchildren. We permit no emphyteusis to be made in any other manner, either as to immovable property of a church or other charitable institution, or as to rustic slaves or civic bread-rations, and if made, shall have no force or effect. 1. But since Leo, of blessed memory, enacted a constitution, that property of (rent due) a church should be delivered without any diminution whatever, but we enacted a constitution, providing that a sixth part only of (the rent) under an emphyteutic lease might be excepted, we so regulate the matter

Novel 7. c. 3. cont'd.

of the diminution (of the rent), that the true amount of the rent for the property under the lease must be carefully investigated, namely, that which existed originally and was payable to the holy church, and the emphyteusis must be given only to such persons as we previously stated. In such event only do we remit the sixth part of the rent, to be computed accurately. If the rent was diminished on account of some unfortunate circumstances, still the person who wants the emphyteusis must take it with the full amount of the rent then fixed, or he must not take it at all, since it is better to lease it (otherwise) than to permit such diminution to be made in the emphyteusis. If some valuable suburban estate of the church is given in emphyteusis -- and we know that there are many such in this fortunate city, which, indeed, are of great value, but bring little or no return -- then the measure of the rent under it shall not be such return, but the suburban estate shall be carefully valued, and the rent shall be computed on the basis of what would be received if the price were collected in 20 years. ^(a) And with the rent thus computed, the emphyteusis shall not be given in perpetuity, but to him who receives it and to two of his heirs (in succession) and to husband and wife, ad before stated. 2. Emphyteuticaries should take notice that if they fail to pay the rent for a period of two continuous years --- for that time, instead of the three years given to other persons, shall suffice to destroy the emphyteusis of property of the church and of other charitable institutions, on account of negligence -- he will be deprived of his emphyteusis, and the managers of the holy houses, may, if they wish, reclaim the land and houses, without

needing to be in fear of having to pay for betterments. If the person who receives the emphyteusis lets the land (in the country) or the suburban estate or house deteriorate, he will be compelled to restore it to its former condition at his own expense, and not only is he himself obligated to do so, but also his heirs and successors and property, aside from the fact that any rent that may be due shall be collected without delay. As to what we said about no immovable property of the church or other charitable institution being permitted to be alienated to any of our subjects, that shall be in force not only as to standing buildings, suburban estates, fields and gardens, but also as to ruins, whether the ruin has arisen from a fire, earthquake or any other cause; it shall even be true as to those which have been totally destroyed and lie on the ground as mere rubbish, leaving no building and no building material on the ground. No alienation shall be made even as to them, except only an emphyteusis for a limited time, according to what we stated above, and to three (successive) persons as stated before. And in order that no fraud may be committed even in that matter, two of the foremost mechanics or builders of their time in this imperial and great city shall, together with the God-beloved stewards and five reverend presbyters and two deacons go to the places (to be given in emphyteusis), the God-beloved archbishop also being present. In the provinces two eminent mechanics or builders shall do so, or one, if the city has only one. And with the holy gospels before him, the builder (or mechanic) shall determine what is proper to be paid to the holy church under the emphyteusis, and a document, granting the emphyteusis as to such place shall be executed according to the rule above stated. The emphyteuticary may then build, and may

Novel 7. c. 3. cont'd.

use the building material (thereon), if it has any, and may transmit the emphyteusis to two (successive) successors, as stated; but after the death of three persons, subsequent to the time of making the emphyteusis, it shall revert to the holy church or venerable house. Such contract, as not repugnant to the present law, shall be valid. 3. We do not even permit -- as has been heretofore done against (the law relating to) such contracts -- the addition to be made that after two (successive) heirs the property might be given as an emphyteusis to their successors, and that the latter should have preference over others. For that would be nothing else than a perpetual emphyteusis, made in a round-about and circuitous manner, and a complete alienation of the church property. Though something of that kind is done, it shall not be incumbent on the reverend stewards, when to (successive) heirs have died, to deliver the emphyteusis to their successors.

(a) The annual rent apparently was to be five per cent of the value of the property.

c. 4. If any one wants the use, or what is properly called the usufruct, of any property of a church or of the holy Great Church or of any charitable institution situated anywhere under our sway, he shall not receive it except under observance of what has been stated above and according to the rule of the constitution of Leo of blessed memory, namely, that only a well-to-do person and owner of immovable property, shall immediately, in return, give another property from which he receives the usufruct, to the holy church or holy house, in right of ownership, which will

Novel 7 c. 4 cont'd.

bring the quantity and quality of income as the property given (as a usufruct); and after his death the property of the church or charitable institution shall, together with the usufruct given, which shall not exceed in time the life of the receiver, revert to the holy house, which, too, shall receive the usufruct of the property given in return, and after the death of the receiver (of the usufruct) or after the time for which, according to contract, the usufruct was given -- which forsooth, shall not exceed in time the life of the receiver -- both properties shall completely -- namely, the ownership and the usufruct thereof -- belong to the holy church (or other institution).

Note.

See note 4 to the preface of this law.

c. 5. In as much as the constitution of Leo, of blessed memory almost confined his penalties to sales, but we not only forbid sales, but also gifts, exchanges and perpetual emphyteusis and pledges of immovable property, and in as much as some persons take such delight in risks, that they make efforts against what is forbidden and presumptuously and audaciously dare to circumvent the laws, and do the things which are altogether prohibited, and which brings men even to death, we have therefore deemed it necessary to fix a definite penalty in connection with the same contract, namely, that the penalty threatened by the aforesaid constitution of Leo, of blessed memory against stewards, shall not, likewise, be visited upon, the steward, the manager of a hospital, infirmary, foundling-inn, abbot and abbess of a monastery or hermitage, as determined above. If any one, therefore, ventures to buy property of a church

Novel 7. c. 5. cont'd.

or charitable institution, he shall immediately lose the price thereof, and the property itself which he received together with its accessions in the meantime, shall be demanded from him. And he shall have no action whatever against the holy church or venerable house, but he shall have an action, on a contract, against the reverend stewards or other persons who made the sale to him, which shall affect (only) their property. The latter may be induced to be slower in selling, at least by the fear of the loss of their property, if not by the fear of God. 1. If anyone dares to accept property of a church or charitable institution as a gift, he shall be deprived of what was given him, and he shall, in addition, give to the holy church or charitable institution from which he received it, a like amount from his own property, so that, experiencing the same detriment in connection with his own property, which he sought to inflict, he may be made conscious of his own evil-mindedness. 2. If an exchange was made with some person, the emperor alone, as stated above, excepted, the person who received property in exchange shall incur this penalty; that what was given him, he shall lose, and it shall be returned to the holy house whence it came, and what he gave in return shall (also) remain the property of the venerable house; a person engaging in a matter contrary to law, justly loses both properties, so that he will be penalized in that he loses his own property, and will not acquire that which he had hoped to possess. He too, shall have an action against the property belonging to those who made the contract with him.

c. 6. If a creditor receives a pledge into his possession of any immovable property of a church or charitable institution, such

Novel 7, c. 6. cont'd.

as a house, suburban estate, fields, gardens, civic bread rations or rural slaves, and gives money on that account, he shall be deprived of his credit, and the holy church or holy house which received the loan, will be the gainer of the money lent; but in this case, too, the creditor shall have an action against the person who contracted for the loan, namely, the steward, superintendent of a hospital or poor house or abbot of a monastery or hermitage or head of other holy institutions; and all these provisions shall be in force against the heads of hermitages or monasteries for women. 1. For if a loan is at any time necessary for holy churches or other holy houses -- for a necessary, forsooth, and unavoidable cause, without which things that are urgent cannot be done -- or in a matter which is beneficial to the holy church, then the heads thereof may give a general hypothecation, and they must not give a creditor a special pledge.

Note.

The title of this law mentions general and special hypothecations. It is evident from this chapter and other portions of this law, that the only difference was, that in the case of the latter, the property was delivered into the possession of the creditor, but that this was not true in the case of the former. In other words, a special hypothecation was a pledge. In the case of hypothecations -- not special -- no possession was given, but possession accompanied a pledge.

c. 7. And if any one dares to accept a perpetual emphyteusis, which is not permitted, or one limited in time, but contrary to the provision of this law, he, too, shall be deprived of the

Novel 7. c. 7 cont'd.

emphyteusis, and what he gave shall belong to the venerable house, and he shall, after the loss of the emphyteusis, nevertheless perpetually pay, what he would have paid, if legally bound by the emphyteusis, and none of the property of the charitable institution, given him in vain, shall remain in his possession. 1.. All these provisions must be observed, under the penalty stated. Notaries (tabelliones) shall not dare to assist in instruments relating thereto, and must be in fear of perpetual exile without hope of returning, not even if an imperial rescript permits. Nor shall officials (keeping public records) dare to dictate such instruments, or accept those that have been executed, and validate them by admitting them of record, lest they suffer the loss of their position and dignity and property.

c. 8. And the same penalty shall be inflicted on those who pledge, sell or melt holy vases for the purpose of alienation, contrary to our law. For we deem them to be worthy of equal, nay greater, punishment, when they dare to act impiously in connection with holy things, already consecrated to God -- unless that is done, as we stated, for the purpose of redeeming captives, when souls of men are freed from death and chains for the alienation of inanimate utensils. The same rule shall also be observed, as often stated in connection with the alienation of civic bread rations; and we have learned that such rations exist not only in this imperial city, but also in the great city of Alexandria and Theopolis, and perhaps also in other provinces. If such property-rights exist there, this law shall also be extended to, and observed there.

c. 9. Since, moreover, it is likely that some person will attempt to obtain an imperial pragmatic sanction for the purpose

of undermining this law, which sanction permits them to do the things here forbidden, we also forbid this in connection with all persons, high or low, whether ~~xx~~ a magistrate, or one of those around us, or one of the populace. And we ordain that no one shall be permitted to show such pragmatic sanction or receive any immovable property belonging to the holy churches, monasteries, poor houses or holy institutions, pursuant to it. Even the glorious quaestor will be visited with a fine of 50 pounds of gold (\$10800), if he dictates one, and the glorious magistrates and others will be punished in the same manner if they undertake to make such imperial sanction known; and if notaries write any such documents, they will be subjected to the constitution of Leo of blessed memory, God-beloved bishops and reverend stewards may reject any such pragmatic sanctions without peril; nay, they will rather admit it under peril, and they must take notice that their position will be in danger, if, neglecting this law, they pay heed to the pragmatic sanction thus executed. 1. For matters ordained for the common benefit and the general advantage of all should prevail over orders made pursuant to the wish of some persons for the purpose of destroying general laws. Only such property, forsooth, is to be leased and given in emphyteusis, which are in need thereof.

c. 10. If God-beloved stewards or managers of other institutions, prefer to manage property themselves, no officiating magistrates shall, even pursuant to a pragmatic sanction, compel them to either lease it or give it in emphyteusis. A magistrate who does so will be subject to the penalty for sacrilege and all the penalties provided for in our laws.

Novel 7. c. 11.

c. 11. We have learned that a grave offense is being committed in Alexandria and Egypt, and now, moreover, in other places under sway, namely, that some persons dare to sell, exchange or give away even the holy monasteries themselves -- in which an altar has been dedicated and holy ministry performed such as is customarily performed in holy churches, and the holy scripture is read, and the holy communion is celebrated, and in which the monks live -- so that they, turned away from holy and pious purposes, are transferred to a secular use and condition. We entirely forbid that to be done hereafter, and permit no one to do so, and we declare void what is done, and we penalize the person who receives it with the loss of the price, and the person who sells, with the loss of the property and the price, assigning it to the holy churches and monasteries of the place. Hence let them see to it, that what is evilly alienated, is returned to its monastic status, nor shall a hypothecation of such property be valid; but it shall be void, and the monastery shall again be devoted to the service of God.

c. 12. As, moreover, we forbid all injurious alienations, so, likewise, we forbid injurious acquisitions. For many complaints have come before us, when some persons gave sterile lands to holy churches or venerable houses, or sold them as sterile lands, although they were sterile from the beginning, thereby injuring the holy houses. We therefore forbid the heads of the religious houses to engage in anything of the kind; and unless they make contracts with care, and sterile and damaging property is given to the churches, monasteries, hospitals, infirmaries, or other holy institutions, they must take notice that the contract will

Novel 7. c. 12 cont'd.

be void, and whoever gave it must receive it back, when such property has been given through fraud and trickery. The steward, moreover, or head of the hospital, infirmary, poorhouse, orphanage or old men's home, who does anything of the kind, must indemnify him who gave it, out of their own property. If some money was given in connection therewith (by the donor), this, too, shall accrue to the benefit of the venerable house which received the sterile property; the person who gave the money shall, as above stated, have an action against the person who made the contract.

Note.

In order to understand this law, reference must be made to the situation of sterile lands in the empire, as mentioned in C. 11, 59 and notes thereto. There was a great deal of such lands, and a good deal of legislation was enacted in order to get such lands under cultivation, so that the government might not lose any taxes. The church, or other institution, receiving such sterile lands, was required to pay taxes thereon, and the detriment here contemplated, was, doubtless, the detriment arising by reason of that fact. It may be noted here, that the giver of such lands even at times paid money for the privilege of making such gift. He thereby relieved himself from a certain amount of taxes.

Epilogue.

This, our law, is enacted concerning the alienation of property of churches or charitable institutions, devotedly follows the constitution of Leo of blessed memory, but it does not regulate a part, leaving other parts unregulated. But ~~it~~ it shall be extended to every part of the earth, wherever the Roman

Novel 7. Epilogue cont'd.

law and the rule of the catholic church obtains. It defines the subjects of regulation thereof, and it shall be valid, and shall be forever maintained by the holy patriarch of the various dioceses, and the God-beloved metropolitan bishops and by the remaining bishops and clergymen and stewards and heads of hospitals, infirmaries, orphanages, foundling-inns, old men's homes and by all who are at the head of holy institutions, giving every one the right and power to report offenses (against it). For such person who reports violations of law and piously benefits holy houses, is to be praised and will escape the appellation of calumniator. It shall not any the less be upheld by our magistrates, high or low, civil and military, and especially by the glorious praetorian prefects in all our dioceses, and those who hold the magistracies of median rank, those that are called worshipful, by whom we mean the Augustal prefect, proconsuls and worshipful count of the Orient and other counts; and by those magistrates who are below them in rank, namely, the rectors of the provinces, whether consulars, or presidents, and by the defenders of cities; and finally, every civil, public and military office shall maintain this, our law, as one enacted for the common safety and in accordance with the devotion of the whole earth, and those who violate it will undergo the punishment stated above. But whatever we or our predecessors enacted concerning leasing of church-property or other topics, shall remain in force and not be affected by this our present constitution. We permit all other laws to remain in force within their sphere, unless containing something regulated herein. The instant law, supplanting all others (on the same subject), together with the law enacted by Leo, of blessed memory, suffice for destroying

Novel 7. Epilogue cont'd.

all pretext for alienating property of charitable institutions. Your Beatitude, therefore, and those who, after you, hold the archbishop's seat, must zealously carry our enactment into force and effect. May the Divinity preserve you through many years, holy and pious father.

Copies have been sent to the holy archbishops of Rome, Aelia, Alexandria and Theopolis, and to John, glorious praetorian prefect of the Orient the second time, exconsul and patriarch, and to Dominicus, glorious praetorian prefect of Illyria.

Given at Constantinople April 15, 535 A.D.