

Book X.
Title XXXIV.

Curial estates are not to be sold without a decree.
(De praediis curialium sine decreto non alienandis.)

10.34.1. Emperors Valentinian, Theodosius and Arcadius to Cynegius, Praetorian Prefect.

If any decurion, impelled by necessity, sells (offers) any rural or urban lands (for sale), he shall appeal to the proper judge, set forth each of the matters by which he is pressed, and he shall receive approval for selling his land only if he proves the necessity of alienation. Every sale, in connection with which this rule is neglected, shall be void.

1. By taking this course, no vendor will act immoderately, and no purchaser, of whatever condition, will be found to be unjust. Thus no occasion will hereafter exist for a vendor to complain that he was circumvented by fraud, or oppressed by the power of the purchaser, since the public records will disclose both the necessity of the seller and the willingness of the purchaser. 2. But if any person, by secret machinations, becomes, contrary hereto, a purchaser from a decurion by fraudulently making the purchase through a third person, he may know that he will be deprived of the price which he paid and must restore the place which he bought, together with its fruits.

Given at Constantinople November 24 (386).

C. Th. 12.3.1.

Note.

It was shown in C. 4.44.17 that curials could not secretly dispose of their property. The burdens to be met by them were so great, and the incentive of secret disposition of the property so strong, that laws were enacted preventing any sale of immovable property without an investigation and without an order from the governor of the province. According to law 3 of this title, it would seem that the report of the municipal senate was a prerequisite to an order permitting a sale. That every effort was made to keep the property of curials within the curia, appears even more clearly from title 35 of this book, dealing mainly with the devolution of property upon the death of a curial.

10.34.2. Emperors Theodosius and Valentinian to Florentius, Praetorian Prefect.

Neither the sale of property of an inheritance, which has fallen to the curia, nor the release of a debtor thereof, who has paid, shall be valid, unless a decree of the whole or the majority of the senate is made or record showing the contract (of sale) to be entered into, or the reason for the release of the obligation. 1. For we order the sums received from these sources to be expended in the purchase of lands, the income of which, as has been said,¹ shall be honestly preserved for the public burdens of the same curia, which has shown itself to be in need of relief. Lessees shall be selected by consent of all, especially the rich, or after giving proper guaranty.

Given at Constantinople June 9 (428).

¹ [Blume] This statement shows this law to be a part only of an enactment. It was evidently preceded by C. 10.35.1, which see.

Note.

The instant law deals with movable property left as an inheritance to a curia. Upon request of the municipal senate, the sale could be authorized, but the proceeds were required to be invested in immovable property, so that the income might be used to bear the burdens of the curia.

10.34.3. Emperor Zeno to Sebastianus, Praetorian Prefect.

We indeed forbid curials to sell immovable property and rural slaves without the interposition of a decree. Gifts, however, and exchanges, or any other contracts may be made by them without a decree, since the imperial constitutions, which were made on this subject by former princes, have in many parts spoken about not having to pay the price, from which it appears clearly that it must be understood that contract of sale only was forbidden to the decurions. 1. But when a sale is made and a decree is entered, as stated, we direct that those who buy from them, shall not be compelled to incur any expense on account of any person, or for any cause or on account of a theater-gift, as is said often to occur, nor shall the decree be recited out of the formal document thereof² (ex tabella recitari), but the orders of the proper judge, confirming the sale, shall be rendered upon the viva voce (relatione currente) report of the curials or the majority of the curia, made by them without malice, and without damage to the contracting parties.

Note.

According to the instant law, a sale of immovable property was forbidden without decree of court; gifts or exchanges, however, might be made without such decree. That was changed by subsequent laws, as appears from Novel 38, and no disposition of such property was permitted without decree. The law making the change is lacking, but the purport of it clearly appears from Novel 38.

10.34.4. Emperor Justinian.

10.34.5. The same Emperor.

² [Blume] So that no fee was necessary to be paid to the record-keepers. 2 Cujas 630.