

Book XII.
Title XXXIII.

Concerning those who can serve in imperial positions (militare), and also concerning slaves aspiring to such service or to any position of rank, and that no one may enjoy at the same time two positions of such service, or a position of rank and a position in such service.

(Qui militare possunt vel non et de servis ad militiam vel dignitatem adspirantibus et ut nemo duplici militia vel dignitate et militia simul utatur.)

Headnote.

This title draws a clear distinction between the ordinary position in the imperial service, which was called a militia (whether in the armed or in the civil service) and a dignity, i.e. a position of rank. A dignity, generally speaking, was one of the higher positions in the imperial service, and which carried a title, such as count, tribune etc. See headnote C. 12.1. The term "militia" is sometimes translated simply as "position," as distinguished from "dignity." C. 12.57.12 indicates that "militia" did not include the service of provincial apparitors. C. 12.57.13, however, indicates the contrary.

12.33.1. Emperors Severus and Antoninus to his Antonius, Greeting:

If you want a post in the imperial service, offer yourself to those who have the right of approval. Do not forget, however, that those who have sought a post in the imperial service on account of a lawsuit, are, upon demand of the adversaries, customarily absolved from their oath (dismissed from the service).

Note.

The reason that one who had a lawsuit could not, because of that fact, enter the imperial service, was evidently, in order that he might not be able to make extra trouble for the adversary. So that was forbidden. When the lawsuit was finished, however, he could reenter the service. D. 49.16.4.8.

12.33.2. Emperors Diocletian and Maximianus to Valeius, a Soldier.

Fraud in enlistment in military service to escape civil liturgies will avail neither sons of decurions nor anyone else.¹

12.33.3. Emperors Honorius and Arcadius to Pulchrus, Master of the Forces.

Your Sublimity must take great care, lest free serfs (coloni), or tenants on the plantations (saltuensis) are enlisted in the armed military service, either voluntarily or by compulsion.²

12.33.4. Emperor Leo to Dioscurus, Praetorian Prefect.

No curial or provincial apparitor can hereafter belong to the armed military service.³

¹ [Blume] C. 10.32.17.

² [Blume] Serfs free or unfree were bound to the soil. C. 11.48.

³ [Blume] C. 10.32.17.

About 472.

12.33.5. Emperor Justinus to Licinius, Master of Offices.

To those who are shown to have heretofore been granted the right to serve in two, three or more positions (cingulis), which are not combined according to ancient custom, but separated and different (in nature), are given an election, which position they prefer to retain, and which they want to leave, and they must steadfastly remain in that which they shall have chosen, and be expelled from that which they have rejected. 1. No one shall hereafter have the right to serve in more than one position at the same time, and all alike, as has been said, are forbidden service in two or more positions, nor shall anyone be permitted to join a position of rank to an ordinary position in the imperial service, so that even those who supplicate us on matters herein prohibited, shall be punished by a fine of ten pounds of gold for their temerity, though fruitless, and those who shall have received an imperial rescript elicited by them by stealth, as sometimes happens, shall be punished by a fine of ten pounds of gold. Bureaus, also, and members of official staffs, concerned with this law, shall, if they fail to resist violations of this pragmatic sanction, be punished by a fine of ten pounds of gold. 1a. If any act is done contrary to these provisions, let all take notice, that what shall be permitted or done or inscribed in public records, contrary to what is legal, shall be considered as though not permitted, said or inscribed at all in any register. 2. Likewise those who are in the military or a civil service, and who have heretofore been, or shall hereafter be selected to administer provinces or to command soldiers, and who at the same time have received the imperial sanction to retain their grade, shall also have the choice after quitting their post of administration, either to remain in service in which they enlisted without claiming the rank which the intermediate administration post conferred, or to retain the splendor which they acquired by reason of their administration, but retire from the service (in which they enlisted). 3. Admonished, however, by our inborn clemency, we have deemed it best to give permission, that if the office from which retirement must take place, is one of those which may be sold, it may be transferred to another and the price therefor received, just as has been the custom heretofore in those positions.⁴ 4. Excepted herefrom, however, and not to be subjected to this ever-enduring pragmatic sanction, are those who hold offices which are naturally related and joined by a common bond, as is customary among the devoted scholars and candidati,⁵ as well as the devoted registrars (laterculensibus), and the clerks who write the pragmatic sanctions (pragmaticarrii), or secretaries for confidential communications (secretis), who are also members of the bureau of memorials or imperial messengers, and with others whose services are closely related.

Given at Constantinople December 25 (524).

Note.

The law forbade two positions to be occupied, with few exceptions, or to occupy an ordinary position in the service and at the same time enjoy a dignity. Bas. 57.1.42

⁴ [Blume] The position of aid to the quaestor, and that of the silentarii (life guards). 2 Cujacius 823 on this law; C. 12.16.5 and note; C. 8.13.27 and note.

⁵ [Blume] The candidati were a select group of imperial guards (Bury, 1 Hist. L. Roman Empire 37), perhaps the same as the excubitores mentioned in headnote to C. 12.17. They were so named on account of the white robes which they wore.

says of this law: "This constitution deals with the subject that no one shall at the same time have two positions in the imperial service or two dignities; nor shall it be permitted to enter upon two positions in the service, nor mix up a dignity with a position in the service. Whoever ventures to do so, shall pay ten pounds of gold as a fine, nor reap any benefit therefrom."

This law is explained more or less by law 8 of this title, which has been preserved only in Greek, and of which portions are lacking. It may be noted in this law, as well as law 8, how clear a distinction is drawn between a dignity and an ordinary position in the imperial service (militia). As to purchasable offices, see C. 8.13.27 note.

12.33.6. Emperor Justinian to Mena, Praetorian Prefect.

As to slaves who shall hereafter attempt to aspire to any position in the imperial service, either with or without the knowledge of their masters, we order that if the former have received the position without the knowledge of the masters, the latter may go before a competent judge, and prove their lack of knowledge, and if the contrary is not shown, the slaves shall be despoiled of their position and returned to the control of their masters. If the slaves, however, occupy the position with the knowledge of their masters, the latter shall not alone lose control over the slaves, but also the right of a patron. The slaves, thus rendered free, shall, if they shall appear to be useful in the service, remain therein, if not suitable, they shall be deprived thereof. 1. As to slaves who have heretofore occupied and who still occupy positions in the imperial service, we grant permission to the masters within the space of thirty days - reckoned from the time that the present sanction is published - either to come before Our Clemency or go before competent judges to prove their lack of knowledge, and thus recover control over their slaves. 2. After that time has passed, they will be deprived both of control, as well as the rights of a patron. Given at Constantinople April 6 (529).

12.33.7. The same Emperor to Johannes, Praetorian Prefect.

If anyone permits his slave to acquire a position of rank in the same manner as an ordinary position in the imperial service, he shall lose both ownership of the slave, as well as all right, which belongs to patrons. For how can anyone bear that men, who receive gifts at our hands, should still be slaves and perchance jointly with their masters adore our purple? 2. In case, therefore, slaves have acquired, not an ordinary position in the imperial service, but a position of rank, the same laws are applicable, which have heretofore been enacted, so that our ordinance may not appear to contain anything that is imperfect. 3. Let masters, therefore, take notice, that if in pattern of our past constitution, which we enacted concerning slaves of this kind, they do not, within thirty days after they have received knowledge thereof, go before a competent judge and cause the slaves to be despoiled of their rank, they shall lose ownership of them and the right pertaining to patrons, reserving to us the right to consider, whether, after the slaves shall have been liberated and are counted among the freeborn, they shall retain the rank or be deprived thereof as unworthy. Given September 1 (531).

12.33.8. (Synopsis in Greek) The same Emperor to Florus, Count of the Crown Domain.

We ordain that declaration must be made on the records, which position they prefer, and if they prefer to enjoy the title of an honorable count or the insignia of the worshipful tribune, they must relinquish another position or positions which they occupy, so that they may enjoy only one and no more; if he prefers to retain an ordinary position in the service, he must renounce the title acquired, including the insignia that may have been granted as an honorable praetorian tribune of the notaries. 1. We ordain therefore, that within three months after they have been informed of this pragmatic sanction, each shall express his preference in this imperial city before Your Excellency, in the provinces before the presidents of these provinces, and if he chooses one of the positions, he shall drop the others, or if he retains the title as honorable count or the insignia of the honorable praetorian tribune of notaries, ***.⁶ 2. When this time expires, then (the constitution) directs, that, if they have several positions in the imperial service, they shall retain only one; if they have a position in the imperial service and letters-patent as a tribune of notaries, they shall remain only tribunes; if they have a position and the title of a count, they shall lose the position and retain only the title of a count of the first class. No pragmatic rescript shall prevail against these provisions. 3. If anyone occupying a position becomes president of a province, and has obtained an imperial rescript reserving to him his proper grade (in the service), this rescript, according to the constitution, shall remain in force, so that the grade of service being preserved for him, but he cannot also enjoy the title received, perhaps, as governor of a province. 4. If anyone attempts to hold both, or presume to hold two positions, he shall lose both. 5. It fixed, moreover, a fine of twenty pounds against the violators of this law; although any of them may have an imperial rescript contravening it. A similar fine is imposed on presidents who accept such rescript.

Note.

This law, of which only a Greek synopsis has come down to us, lacks some portions. The law is also preserved in Bas. 57.1.45. It confirms the provisions of law 5 of this title, with more details.

⁶ [Blume] Unintelligible and disjointed words, no doubt giving the right of election to persons having a dignity to retain that or a position in the service, as is provided in what follows.