

Book XII.
Title XXXV.

Concerning military matters.
(De re militari.)

Headnote.

This and the succeeding titles to C. 12.47 deal mainly with the armed military service. The masters of the soldiers, in supreme command of the armies, and the counts and the dukes under them are considered in C. 1.29, 46, 47, 48. See also C. 3.13 and headnote, and C. 3.13.6 and note. The Scholarians, domestics and protectors have already been considered at C. 12.11 and C. 12.17.29.

12.35.1. Emperor Antoninus to Annaeus, a Soldier.

You do not rightly ask that the pay and donatives of the period during which you say you were among the enemies should be given you, after, by the grace of the emperor you returned and were reinstated (*postliminio regresso restitutoque*).

Note.

Donatives and salary were not withheld from those who were captured by the enemy, but who subsequently returned. D. 49.16.15. Hence this law must have contemplated a deserter, who was reinstated by the grace of the emperor. The right of a returned captive was known as *postliminium*. See headnote C. 8.50. The term could not, accordingly, have had the ordinary meaning at this place. See Cujacius on this law.

12.35.2. The same Emperor to the Soldiers of the First Cohort.

If you have served for twenty years, no (*sordid*) duties of the service shall be imposed on you.

Note.

Those who had served in the army for twenty years were relieved from services of a low nature in the army. These duties were imposed upon those who had not served that long.

12.35.3. The same Emperor to Julianus.

Soldiers, dismissed in disgrace, shall not, while they are branded by infamy, enjoy any honors which are wont to be paid to men of spotless standing. They shall have liberty, however, of living where they desire, except in those places which are specially forbidden them.

12.25.4. Emperor Alexander to Atticus.

That the goods of deceased persons who were guilty of desertion, should be confiscated, was decided by the divine Marcus, and by Antoninus, my father.¹

¹ [Blume] Caracalla.

12.35.5. Emperor Gordian to Valentinus and other soldiers.

Since you state that the husband of your sister was for seven years a deserter, and was restored by our indulgence, you do not rightly desire that that time should be considered the same as if he had lived in camp. Hence after deducting the time of the desertion, the person restored must perform military service for the remainder of the time. And therefore, he will not be able to demand the pay of that time during which he was a deserter.

12.35.6. The same Emperor to Brutus, a Soldier.

Soldiers once dismissed on account of sickness, are not usually restored to their places on the pretence of recovered health, since they are not dismissed, unless it clearly appears, after a report from physicians, and after careful investigation by a competent administrative officer, that they have contracted a disease.

12.35.7. The same Emperor to Domus, a Veteran.

Your fear is groundless that the disgrace incurred on account of a military offense, will hurt your good name, now that you are a veteran, especially since it is understood that soldiers, disgraced on account of such offense, which may also happen in the case of persons not soldiers, shall not, after dismissal be considered infamous.²

12.35.8. Emperor Philip, and Philip, Caesar, to Maccius.

A dismissal on account of sickness is not an aspersion on the good name of anyone.

12.35.9. Emperor Constantine to Aelius, Praetorian Prefect.

If anyone by any betrayal gives opportunity to the barbarians to plunder Romans, or if anyone divides (with them) the spoils obtained in any other manner, shall be burned alive.

Given April 28 (323).

C. Th. 7.1.1.

12.35.10. Emperor Constans to Titianus, Praetorian Prefect.

Whenever soldiers are permitted by our order to have their family come to them, Your Excellency will arrange³ that only their wives and children, as well as slaves bought by special military-money⁴ but no serfs (adscriptos) go to them.

Given May 30 (349).

C. Th. 7.1.3.

12.35.11. Emperors Gratian, Valentinian and Theodosius to Cynegius, Praetorian Prefect.

The tribunes and the soldiers shall have no right to roam about on farms; they shall remain with their standards in the customary and public camp grounds. And if

² [Blume] See as to infamy C. 2.11.

³ [Blume] The praetorian prefect could send them on the public post. See 12.51.

⁴ [Blume] As to such money see headnote C. 6.60.

anyone shall ignore these necessary orders, notice must be immediately given us concerning him and his tribune by the rectos and defenders, so that heavy punishment may be inflicted on them.⁵

Given at Constantinople April 10 (384).

C. Th. 7.1.12.

12.35.12. Emperors Theodosius, Arcadius and Honorius to Ricomeres, Count and Master of Both Military Forces.

We order by this well-considered decree, that when the whole multitude of the legion stands on the green banks of the rivers, no one shall by his filth, pollute the common cup, and while he washes off the sweat from his horses, he shall not appear naked and shock the public eyes, but must do this in lower parts of the river away from the sight of all.

Given at Vincentia May 27 (391).

C. Th. 7.1.13.

12.35.13. Emperors Arcadius and Honorius to Romulianus, Prefect of the City.

No one of the soldiers in the immediate service of Our Clemency, and those who have been permitted to be present in this city, when our court, is here, and those who belong to other troops and legions, shall engage in any business, or perform services for others without imperial consent. Those who are convicted of such offense, shall be deprived of their position and be visited with suitable punishment; and whoever is found to have employed soldiers in his private business, shall be punished by a fine of five pounds of gold. 1. If a soldier is sent by his troop or by a tribune, to the court of Our Serenity -- for we forbid him to come otherwise -- he shall present himself to the illustrious counts to whose commands he is subject, tell the reasons for his coming, await our imperial answer, and receive permission to return. 2. If the presidents learn that soldiers have left their troops and roam about in the provinces, they shall cause them to be arrested and guarded, till a report thereof can be made to us to enable us to make an order directing what should be done.

Given at Constantinople February 1 (398).

C. Th. 17.1.7.

Note.

Soldiers and other men engaged in public business were forbidden to engage in service for others. C. 4.65.31 and 35; C. 10.32.34, laws 15 and 16 of this title; Novel 116; appendix IV to Novels.

Deserters were directed to be seized and punished by the governors of the provinces. C. 12.45.3; C. 3.27.1 and note. But it may be noted that the governors were not authorized to mete out punishment to soldiers who were not deserters; but they were required to report to the emperor, so that the proper instructions might be issued. See also C. 3.13.6 and note.

⁵ [Blume] As to leave of absence, see C. 12.37.16; C. 12.42.1.

12.35.14. The same Emperors to Stilicho, Master of the Forces.

We do not want our soldiers to be transferred from one troop to another contrary to the public advantage. Let the counts and dukes, therefore, to whom the command of the soldiery is entrusted, take notice that it is not only unlawful to transfer soldiers from the field and palatine troops (comitatensibus ac palatinis numeris—see (a) in following note) to other troops, but they shall not transfer any from the field legions, the riparian, the camp or other legions (see (b) in following note) unless our august majesty has, for the public good, ordered that to be done; because an increase in honor should be acquired not by corrupt solicitation, but by work. Those who violate these provisions, may know that a pound of gold will be demanded of them for every soldier (so illegally transferred). Given at Milan March 20 (400).

Note.

The soldiers consisted, roughly, of three large divisions:

(a) The palace troops of the emperor, consisting of the scholarians, protectors and domestics and off-shoots therefrom, as mentioned more fully in headnote to C. 12.17.

(b) The field army, stationed at various places in the interior, and established partially for the security of the interior and partially in order to be able to be moved to some definite place where necessity existed. According to the register of Dignities, they consisted of the so-called comitatenses (lit. those that accompanied, namely, the emperor), and the so-called palatines (palatini), not to be confused with the Scholarians. These palatini were, as held by Bury, "a privileged section of the comitatenses and retained the special character of imperial guards, in so far as most of them were stationed in the neighborhood of Constantinople or in Italy." Seek, in 4 Pauly-Wissowa 619, 620, says that the name "palatini" was simply one of honor, not particularly changing the situation of these men from that of the remaining comitatenses. These troops consisted of infantry and cavalry, the term legion, or numerus, being applied to the former and the term vexillatio, squadron to the latter. These terms were applied mainly, if not exclusively, to the field army.

In connection with the field army should be mentioned the so-called pseudocomitatenses, which are mentioned at times in connection with the field army, and at times with the border troops. They were in fact troops taken from the army on the border, and temporarily used as part of the field army, the time of such service extending at times over a considerable period. See 4 Pauly-Wissowa 619-622.

(c) The border troops, ordinarily called limitanei. A special name was applied to those stationed along the rivers -- the ripenses. Those stationed in camp went under the name of castriciani.

The strength of the old Roman legion had been 6000 or more. The later legion, frequently called numerus, was composed of about 1000 men. A squadron of cavalry consisted of 500 men. The old legion, seems, however, to have been retained in the case of the border troops, being broken up in detachments of about 1000 men each. In the beginning of the third century, the army seemed to have comprised about 300,000 men. It was greatly increased by Diocletian, and in the beginning of the fifth century, comprised, perhaps, about 600,000 men. See Bury, 1 Hist. of Later Roman Empire 34-38; and 2 Bury 358-359; Holmes, 1 Age of Justinian and Theodora 166-172; 1 Karlowa 861; Guldenpennig, Gesch. d. Ostrom. R. 13-16; Pauly-Wissowa, under the title of exercitus; see also C. 1. 29.

The army was mainly recruited (outside of what the barbarians furnished), (a) by sons of soldiers, service in the army being compulsory; if not fit, they were compelled to serve as decurions; (b) by voluntary enlistments; (c) by recruits being furnished by land-owners -- they being compelled to furnish soldiers or pay commutation money therefor. See 5 Pauly-Wissowa 629-638. The furnishing of the recruits (of the commutation money therefor) was one of the most important liturgies (burden) resting upon property. See headnote C. 10.42.

12.35.15. Emperor Leo to Aspar, Master of the Forces.

Soldiers who are armed and sustained by the state, should be occupied only for the public good, should not be employed in cultivating fields, guarding animals, making gains in trades, but only in the performance of the duties of their position. 1. Your Magnitude will not hereafter permit any of the soldiers to engage in the forbidden employments, but must order them to be present with their troops, so that by daily exercise in arms, they may prepare themselves for war. 2. But if any military governor assigns any of the soldiers to duties in imperial, kingly⁶ or private houses or to other duties, he, thus violating this law, and the person who dares to receive the soldiers, will be immediately compelled to pay a pound of gold for each soldier. Given July 6 (458).

12.35.16. The same Emperor to Dioscorus, Praetorian Prefect.

We forbid soldiers to take up any civil employment; and if they, perchance, have taken any charge of that kind upon themselves, they shall be immediately dismissed from service and deprived of all their privileges. Whoever ventures to violate these salutary regulations, has the displeasure of Our Serenity to fear.

12.35.17. Emperor Zeno to Marcianus, Master of the Forces.

We permit no one hereafter to be enrolled in any troop of infantry, cavalry or in any border troops without an imperial certificate of employment. The custom heretofore in force, which gave the master of the soldiers and the dukes the right to issue certificates of appointment or enlist anyone in the army, is abolished, and only persons who have an imperial certificate of appointment shall serve among the field-troops (numeris) or on the borders. If the eminent officiating masters of the soldiers and the worshipful dukes shall think it necessary that others should be put in place of those who have did, they must, after investigating the facts, report to Our Serenity, stating who and how many and in what troop (numero) or on what border they ought to be enlisted, so that the selection may be made according to our pleasure and by our order. The staff, subject to Your Sublimity, will be punished by a fine of 100 pounds of gold if any part of these provisions, made by Our Serenity, is violated. About 472 A.D.

Note.

⁶ [Blume] Perhaps referring to the Gothic king or the kings of Armenia. 2 Cujacius 829 on this law; See C. 12.35.13 and note.

The field troops mentioned in note to law 14 of this title seem to have been known as 'numeri,' that is to say, serving in a 'numerus' troop, the later legion, and seem to be opposed in this law to the troops on the borders. See Kuhn, 1Verfass. d. R.R. 135, 136.

12.35.18. Emperor Anastasius to Johannes, Master of the Forces at the Imperial Court.

In order that tax payers, provincials, as well as the brave soldiers are properly governed, and without suffering any injury or damage, we have deemed it necessary to hasten to provide that the devoted soldiers, who belong to the various troops under your control (presentales), and are stationed in the Orient, should obey the orders of the worshipful dukes, so that if anything happens of which care needs to be taken for the common safety, it may be immediately remedied by the garrison in the neighboring places. The aforesaid soldiers need not, however, any longer answer criminal or civil cases brought against them in the court of the magnificent Master of the Soldiers of the Orient, or obey his decisions or directions, but shall answer, only the directions and orders of Your Highness, under whose jurisdiction they are, and those of the dukes under you. 1. But it is to be observed, that an adjutant (Ad Responsum) heretofore customarily sent from the office of Your Sublimity to the aforesaid master of the Orient, shall be sent to the worshipful dukes to attend and aid them, personally as well as through his assistants, and see to it that orders are carried out. We do not, however, deny permission to an Ad Responsum, who is sent, pursuant to this order, from the office of another Master of Forces in the Presence, to do the duties of such office, in causes that may arise, in those places, in which there is no Ad Responsum from your office. 1a. We give the same right also to an officer (adjutant) sent from any other staff, so that an ad responsum may be present at all public and private causes and executions, either through assistants or by one of them acting as substitute for the other. 1b. For we have not deemed it best to send an Ad Responsum from your office to every duke, lest by reason of their multitude the injuries to the soldiers might, by some trickery, be increased. 2. To provide, moreover, for the common good and that of the brave soldiers we have deemed it best to also limit the exaction of fees. And we order that neither the Ad Responsum nor his assistants shall in any criminal or civil case, although it arises out of or is connection with a public matter, be permitted to receive more than one solidus from each soldier, whether unwillingly or willingly offered, and if the whole of a troop or all of the staff officers (primates) are to be summoned, the fees shall only be double that amount; for in such cases no more than two of the staff officers (primates) shall be summoned, whose names shall, acting for all, be made known by entry through the public records (gestis intervenientibus), an agent (syndicus) being appointed according to custom and the laws (to represent them in the suit). 2a. This, too, is to be added, that the litigating soldiers or their agents shall be compelled to pay only one solidus and no more for all expenses for going into the ducal court and this fee shall inure to the benefit of the Ad Responsum and his aids and shorthand writers (exceptores); and neither the chiefs (principes) who serve in the ducal court, nor the other members of the ducal staff (apparitio) shall be permitted to receive or demand anything by reason of such litigation. The same rules as to expenses of litigation shall govern where other persons want to sue the soldiers. 3. It is left to the discretion and judgment of the worshipful dukes, upon considering the character of cases brought against the devoted soldiers by their adversaries, and the amount involved, whether to hear these cases personally or to refer them to the devoted

chiefs (principes) or to referees living at the place. 4. The worshipful dukes and the Ad Responsum in attendance on them and the latter's assistants shall take care, that if soldiers are at any time ordered to present themselves before the aforesaid dukes, or are directed to move from the places in which they are stationed, the curials or the tax payers are not afflicted with any loss, and if the worshipful dukes want to inspect the troops and (for that purpose) want to also summon the soldiers under the masters of Soldiers at the imperial court (presentales), they shall take care not to gather together too great a number (at any one time) in time of peace. 5. Whenever necessity requires soldiers to go to another place, they must abstain from inflicting any injuries on the curials and tax payers. 5a. And if it takes them only thirty days to go and return they must pay their own expenses and not burden the curials and tax payers therewith; but if it is necessary for them to stay in other places longer than that time, their expenses of the extra time shall be paid, as has been stated, by the places where they stay. 6. We have discovered that formerly some persons audaciously and with a wicked purpose, sued some of the soldiers in the tribunal of Your Highness and in that of the master of the Orient, and at the same time have dragged them before other tribunals, and hence several judgments were rendered against the same persons in the same case and transaction. In order that no such snares can be set for our soldiers, and no such confusion arise in connection with complaints brought against them, no one is permitted, whenever an accusation has been lodged against a soldier or soldiers under the master of soldiers at the imperial court (Prasentales) before Your Magnitude and a summons has been issued to sue the same soldier or soldiers criminally or civilly before the worshipful dukes, until the transaction involved in the prior action has been properly terminated. 6a. So conversely, if any soldiers or soldiers under the master of soldiers at the imperial court (prasentales), have been accused and summoned by order of the worshipful duke, no one shall lodge a complaint or demand in the tribunal of Your Sublimity against the same soldier or soldiers. 6b. And if the complainant affirms that the same soldier or soldiers are liable criminally as well as civilly, he shall have no right to separate the cause and use the tribunal of Your Highness in the criminal case and that of the worshipful duke for the civil case, or vice versa. 7. And if anyone shall rashly and inequitably attempt anything of the kind, he shall, in a civil case, lose his suit, and suffer the damages caused by his offense, and, in a criminal case, feel the stings of the law and stand convicted as a false accuser. 8. The foregoing arrangements have been made, not to diminish the power of the master of the Orient, but for the protection of places and for the public safety, since it is clear that the dukes, whom the soldiers under the master of the soldiers at the imperial court (prasentales) are directed to obey, are subject to the order of the same high office (of the master of the Orient).

Given at Constantinople January 1 (492).

Note.

It was stated at headnote C. 1.29 that there were two masters of soldiers stationed at the imperial court; there was another master of soldiers of the Orient, another of Thrace, another of Illyria and Justinian created an additional one from Armenia and adjoining country. Some of the soldiers under the masters of the soldiers stationed at the imperial court were stationed, as appears from this law, in the Orient, apparently in the territory under the control of the master of the Orient. The masters kept in touch with the soldiers under them through an adjutant (ad responsum), who seems to have had

assistants, whose duties it evidently was to look after the interests of the soldiers in connection with any litigation which the latter might have, the various adjutants being able to interchange their labors with each other. For fees, mentioned in the instant law, see C. 3.2 and note; C. 12.25.4 and note; C. 3.29.3.