

Book I.
Title IV.

Concerning the bishop's court and various matters relating to the right of the bishop and his care and the reverence due him.

(De episcopali audientia et de diversis capitulis, quae ad ius curamque et reverentiam pontificalem pertinent.)

Headnote.

The present title primarily deals with the powers of the bishop and was intended to show his sphere of influence in various affairs of life; and it is shown herein how extensive and powerful that influence was. Other matters, however, too, are found in the title, and also founding other portions of the Code. Thus the manner of living of clergymen is considered, and other matters which were intended to uplift society. The title also deals to some extent with heresy, and that no heretics should hold office. That subject, too, is considered in other titles.

1.4.1. Emperors Valentinian and Valens to Julianus, Count of the Orient.

The Christian bishops (Christiani sc. episcopo) whose true duty it is to aid the poor and those placed in necessitous circumstances, must see to it that the traders, if any, connected with the imperial house, do not make any excess profit.

Given at Constantinople April 17 (364).

Note.

This law was apparently taken by the compilers of the Justinian Code from C. Th. 13.1.5, giving it, however, an entirely different meaning. Gothofredus, Comm. On C. Th. 13.1.5 says that the law has given rise to much dispute. He reads the law as here translated. The same meaning is given to it in the German translation hereof. The term 'Christianos' is read as 'Christiani,' namely, Christian bishops. The literal translation of the text in the Justinian Code would seem to be as follows: "Traders, if any, connected with the imperial house, must, lest they seem to make too much profit, aid the Christian poor, who belong to the true faith, and are in necessitous circumstances." This, of course, gives the law an entirely different meaning, and is probably not intended by the compilers.

1.4.2. The same Emperors to Claudius, City Prefect.

If a clergyman resorts to an appeal before final decision for the purpose of delay, he will be compelled to pay a fine of fifty pounds of silver which a general statute imposes on an appellant of that kind. This shall not be paid to the fisc, but shall be faithfully expended on the poor.

Given July 8 (369).

Note.

This law is a duplicate of C. 7.65.4a.

1.4.3. Emperors Gratian, Valentinian, Theodosius and Arcadius to Nestorius, Praetorian Prefect.

No one must wait for orders of Our Serenity which, perchance, may be late, but the judges must carry into effect the indulgences which we have been accustomed to grant. As soon as the first day of paschal arrives, no jail shall hold anyone confined; the chains of all must be loosened.

1. But we except herefrom those by whom, as we have noticed, the happiness and common joys are contaminated, if released.

2. For who would grant a favor to a despoiler of tombs on holy days? Who would pardon an adulterer or one guilty of debauchery or incest at a time consecrated to chastity? Who would not more insistently, amid the greatest quiet and common joy, pursue a ravisher of virgins?

3. One who does not permit the dead to remain undisturbed by his crime shall not receive any alleviation from his chains. Let the poisoner, the enchanter, the counterfeiter suffer torments. Let the homicide and parricide be in constant fear of requital. One guilty of treason should not hope for pardon from the emperor against whom he plotted.

4. We, therefore, restrict the indulgence of our Serenity to those condemned persons, and subject, also, to such absolution (as above mentioned) by this limitation of our law, that only those crimes shall receive pardon which have been committed only once, in order that the kindness of our generosity may not be extended again to those who have used their exemption from punishment for an old crime, not so that they may mend their ways, but for the purpose of habitual criminality.

Given at Milan February 25 (385).

Note.

See note on this law, and on pardons and general dismissals of prosecutions in headnote to C. 9.43.

1.4.4. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect.

Mimes and persons who make their living by the play of their bodies, shall not publicly use the dress of virgins consecrated to God.¹

Given at Heraclea June 29 (349).

1.4.5. Emperors Arcadius and Honorius to Gennadius, Augustral Prefect (of Alexandria).

Only Christians shall be appointed as chiefs of the city and as superintendents of food supply, to the observance of which you must give careful attention.

Given at Constantinople February 5 (396).

1.4.6. The Same Emperors to Rufinus, Praetorian Prefect.

No clergymen, monks, or monks called synoditae (companions) shall by force or unlawful seizure claim or detain men who are sentenced to punishment and condemned for the enormity of their crime, and no one shall hold or protect accused persons going to the place of punishment under attendance.

1. The judge (cognitor) will be fined thirty pounds of gold, and the chiefs of the official staff will be visited with capital punishment, unless such unlawful assumption of authority is immediately vindicated; or, if the audacity of the clergy and monks is such that it is thought that war rather than a judicial proceeding is likely to result, the acts done

¹ See also Novel 123, c. 44 and C. Th. 15.7.2.

shall be reported to our Clemency to that, in our discretion, a still severer punishment may follow.

2. And, furthermore, it² will be considered as the fault of the bishops if they, knowing that anything of the kind forbidden by this law, perchance is done by monks in the district in which they personally govern the people by preaching the Christian doctrine, and they do not punish it.

3. We do not, out of humanitarian considerations, deny them the right, if time permits, to interpose an appeal.

Given at Mnizum July 27 (398).

Note.

Part of this law is duplicated in C. 7.62 29, to which a note is appended explaining this law. See also C. Th. 9.40.16.

1.4.7. The same Emperors to Eutichianus, Praetorian Prefect.

If any persons want to litigate before a bishop of the sacred law by consent, they are not forbidden to do so, and they may voluntarily try his court, (he) sitting in the name of an arbitrator, but only in civil cases. This provision (quod) cannot and should not prejudice those who, when summoned before the aforesaid examiner, appear to have preferred to remain away rather than come.³

Given at Milan July 27 (398).

1.4.8. Emperors Arcadius, Honorius and Theodosius to Theodorus, Praetorian Prefect.

The episcopal court shall be a competent court for those who shall voluntarily subject themselves thereto, and its adjudications shall be entitled to the same reverence

² Blume penciled in two illegible words here, along with a question mark in the margin. Scott's translation of this passage (which in his edition is 1.4.7) has in parenthesis after the bishop's fault is stipulated "as in other cases." 6 [12] Scott 57.

³ This reflects several penciled changes to the typewritten original which read: "If any persons want to litigate before this bishop-upholder of the sacred law by consent, they are not forbidden to do so, provided that they may make trial of this court (only) when he voluntarily sits as arbitrator, and then only in civil cases. This provision (quod) cannot and should not prejudice those who, when summoned before the court of the aforesaid examiner, prefer to remain away rather than appear." Blume has also penciled in a reference to "Fleury 1, 338" which appears to refer to volume 1 of The Ecclesiastical History of M. L'Abbe Fleury (London, 1843) wherein the same law is translated as: "They who agree to have their cause tried before the Bishop, shall not be hindered; but they shall receive his judgment as that of an arbitrator chosen by consent, and only in civil matters; this shall not be to the prejudice of those, who prefer not to appear upon such a citation."

Scott's version of this provision (cited as 1.4.8) is: "If, by common consent, any persons should desire to institute proceedings before the bishop of the Sacred Law, they shall not be forbidden to do so; but such proceedings shall only be instituted in civil matters before an arbiter who voluntarily presides, and a decision of the bishop cannot and should not prejudice those who have been summoned to the trial, instead of having voluntarily appeared." 6 [12] Scott 57-58.

which must be paid to (the decisions of) your high office from which it is not permitted to appeal. And, lest the decision of the bishop be ineffective, it must be carried into effect by the official staff of the (provincial) judges.

Given December 13 (408).

Note.

Episcopal Courts

These courts, already several times referred to in previous laws, were unique institutions in Roman jurisprudence. As the Roman empire decayed, the church came to be more and more relied on to support the falling structure. It was the custom of Christian communities to bring their disputes before their Christian superiors instead of before the secular judges, in accordance with the words of St. Paul [in] Cor. 1:6. And it seems that Constantine the Great ordained that either party in a dispute of a civil nature might select the bishop as his judge, even against the will of the other party, and that the episcopal decision should be conclusive, and should be executed by the secular authorities. Const. Sirm. 1 and 7; Sozomen 1.9. Eusebius, Vit. Const. 4.27. These laws, however, evidently led to abuses, so that subsequent emperors were compelled to introduce the modification that civil suits might be tried before the bishop, provided that both parties agreed. If they did, the decision was final and not subject to appeal, and was executed by the secular authorities. Criminal cases could not be tried by that court. Justinian made the authority of bishops exclusive in all civil disputes between members of the clergy. Nov. 79 and 83. According to Novel 123, c. 21, a civil suit against clergymen or inmates of holy houses was first to be brought before the bishop, whose judgment in such case was not, however, binding. See also C. 1.3.25 and 28.

In many other matters, the bishop became a quasi-imperial officer, as may be noticed from the laws in this title. In each city he inspected, with three of the chief citizens, the public accounts and all possessions or bequests made for public works, markets, aqueducts, baths and other public works. C. 1.4.26. It was made his special duty to look after prisoners, minors, insane persons, foundlings and women. He was charged with upholding the good morals of a community and the administration of justice, and was invested with numerous powers which were intended to aid the state in the enforcement of the laws. See on the subject generally, Boyd, The Ecc. Edicts of the Th. Code c.5; Smith & Cheetham, Dict. of Christian Ant. Under the title "audientia episcopalism;" Gieseler, Ecc. Hist. § 115; Kurtz, Church History § 48; Novels 79 and 83 as to jurisdiction over monks and clergymen.

1.4.9. Emperors Honorius and Theodius to Caecilianus, Praetorian Prefect.

Judges shall see accused persons brought forth from the custody of the prison and shall interrogate them, lest humane treatment may be denied to persons imprisoned by corrupted guards.⁴ They shall supply victuals to those who have none, ordering two or three farthings daily for the jailor, or as many as they deem proper, so that the support of

⁴ This has been penciled in, accompanied by a question mark. The typewritten original reads: "Judges shall cause the prisoners to be brought before them on Sundays and they shall interrogate them so that [sic] persons imprisoned may be treated inhumanely by corrupted guards."

the poor may be procured by this outlay.⁵ And the prisoners must be conducted to the baths under faithful guard. 1. Judges shall be fined 20 pounds of gold, their staff the same amount, and the underlings (ordinibus) three pounds of gold, if they neglect these salutary provisions. Nor shall praiseworthy care of Christian bishops be lacking to admonish the officiating judge of the observance hereof.

Given at Ravenna, January 25 (409).

C. Th. 9.3.7.

Note.

The incarceration of persons accused is considered at C. 9.4 and see also law 22 of this title, which enjoins on bishops the duty to visit prisons.

1.4.10. The same Emperors to Caecilianus, Praetorian Prefect.

We order that astrologers shall be expelled not only from the city of Rome, but from all the cities, unless they are ready to have the books of their error burned under the eyes of the bishops and join the catholic religion, never to return to the error of the past. If they fail to do this, and, contrary to the salutary decree of Our Clemency, are found in the cities, or if they spread the secrets of their error or profession, they shall be punished by deportation.

Given at Ravenna January 25 (409).

C. Th. 9.16.12.

1.4.11. The same Emperors to Theordous, Praetorian Prefect.

We want Christians living in close-by places (to the boundaries of the empire) [to] see to it that no one will detain returned Roman captives or inflict outrages or damage upon them.

Given at Ravenna December (409).

1.4.12. Emperors Theodosius and Valentinian to Floretius, Praetorian Prefect.

If fathers who are procurers impose upon the daughters, or if masters impose upon their female slaves, the necessity of sinning, these daughters and slaves may implore the help of the bishops and be freed from their miseries.

Given April 21 (428).

C. Th. 15.8.2.

Note.

Part of the original of this law is found at C. 11.41.6. See note to that law, and see also C. 11.41.7 and Novel 14, dealing with panderers.

⁵ This too is a penciled correction. The original translation was: "If they have no means to live on, the judges shall order the jailor (commentariensis) to supply them with two or three farthings daily, or as many as they deem proper, so that the poor may be supported by this outlay."

1.4.13. Emperor Marcian to Constantinus, Praetorian Prefect.

We decree that everyone who desires to sue the reverend overseer of Catholic churches under the jurisdiction of the pious archbishop of this fostering⁶ city either concerning ecclesiastical matters or matters pertaining to himself, or (whoever wishes to sue) any other clergyman of the same churches, may⁷ plead his cause before the blessed archbishop, who, in hearing the matter will exhibit double fidelity and trustworthiness—that of a priest and that of a judge. 1. It is to willing plaintiffs only that the episcopal court is open. And no one who brings such action against the holy churches or the aforesaid clergymen, may be dragged before the pious archbishop (*antistitem*) as a judge against his will.

Given—(456).

Note.

This law seems to be connected with C. 1.3.25, which, too, provides that plaintiffs suing persons here mentioned might bring suit before the archbishop; if they did not want to do that, they were required to sue before the praetorian prefect. The instant law gave the option to plaintiffs who wanted to sue such persons to do so before the archbishop but did not compel them to do so, leaving in force the remaining provision in C. 1.3.25. The term *antistites*, which was generally used for the bishop and sometimes also for the presbyters seems here to have been applied to the archbishop.

1.4.14. Emperor Leo to the people.

No one shall attempt to lead into debauchery or prostitution an unfree or free woman, not even if she is a choirist or other actress. If a (female) slave is prostituted, she may be claimed as free by anyone, without any expense, by going before the magistrates of the place or the pious bishops, whose care it is to see that they do not permit any woman, slave or free, to be a mime or dancer against her will, or to be compelled to exhibit any show in theater.

Note.

The profession of an actress was considered as ignoble. See note to law 12 of this title, and C. 11.6.7 and Novel 14, relating to panderers.

1.4.15. Emperors Leo and Anthemius to Nicostratus, Praetorian Prefect.

No one shall belong to the guild of advocates in the court of Your Magnitude, or in any provincial court, or in the court of any other judge, unless he is initiated into the mysteries of the Holy Catholic Church. If anything of the sort, however (contrary hereto), takes place or is attempted in any manner or by any deceit, the official staff of Your Sublimity shall be condemned to a fine of one hundred pounds [of gold]. So, too, whoever dares to secretly obtain the position of advocate contrary to the prudent decree of our Serenity and extends forbidden patronage, shall be removed from his position as advocate, shall be outlawed and sent into perpetual exile. The rector of the provinces,

⁶ The typewritten original has “famous” and Scott has it as “fair” (in 1.4.14). 6 [12] Scott 59. The Latin is *almae*, implying nurturing or nourishing.

⁷ At the end of this law, along side his note, Blume has penciled in “*dicat* sounds imperative, but evidently was not so intended.”

too, must know that he under whose administration anything of the sort is attempted shall have half of his property confiscated and shall be sent into exile for five years.
Given at Constantinople March 31 (468).

Note.

This law is also found at C. 2.6 8.

1.4.16. The same Emperors to Erythrius, Praetorian Prefect.

If a hoped-for marriage is not forbidden by the laws, and the woman refuses to marry the man after the betrothal-money is given, on account of diversity of religion, and it is proven that the woman or her parents knew about this before the betrothal-money was given, they have no one but themselves to blame. But if she received the betrothal money without knowledge of the fact, or such cause for repentance arises thereafter, they need to return only what they received and are released from paying twice the amount. This, in like manner, shall apply to the betrothed man, as to receiving back the betrothal-money furnished.

Given at Constantinople, July 1 (472).

Note.

This law is also found as part of C. 5.1.5. As to betrothal-money, and the penalties for breaking a marriage agreement, see C. 5.1 and notes thereto. The penalty for a woman was greater than for a man.

1.4.17. Emperor Anastasius.

Whenever there is any need in any city for a purveyor, the appointment shall be made by the decision and vote of the bishop of the place and of the chief land owners, not arbitrarily, as it pleases those who make the selection, but only officials of the place who are in service or who have seen service, shall be selected as purveyor by the persons above mentioned, in as much as those who by long service are acquainted with public matters perform the duties of the office more easily. Whoever violates this law, or permits it to be violated, must pay a fine of 30 pounds of gold.
(491 to 505).

Note.

This law is also found at C. 10.27.3.

1.4.18. The same Emperor.

Soldiers furnished and placed (for protection) shall, in their places⁸ receive natural products for their rations from the farmers of the city and its surroundings, according to the direction of the bishop and the president, or of the defender, if there is no president. And the tax payer shall not be compelled to pay in money.
(491-505).

Note.

See C. 12.37.19.

⁸ The typewritten original reads: "Soldiers furnished (for protection) and placed in camp, shall in these places."

1.4.19. The same Emperor to Esutathius, Praetorian Prefect.

We order that only those shall be installed to perform the functions of defender, who, initiated in the mysteries of the holy, orthodox religion, first acknowledge the fact by statement under oath, to be made of record, in the presence of the pious bishop of the orthodox faith.⁹ We direct that they shall be installed only after election by the reverend bishops, clergymen, titled persons (*honorati*), land owners and curials. Given April 19 (505).

Note.

This law is also found at C. 1.55.11, and the subject of defenders of cities is fully considered in that title.

1.4.20. Emperor Justinian.

No one shall be in the imperial service unless he is shown to be an orthodox Christian by the testimony of three witnesses, made of record; the record shall be made before the official under whom the person is to serve; a fee of two gold pieces to be paid therefore.¹⁰ If this shall be violated, the magistrate¹¹ must pay 50 pounds [of gold] and his official staff 20, and the person received into the service 10 pounds, and he shall be removed; the persons who have sworn falsely shall be punished corporally; the fines shall be collected at the peril of the count for the crown domain.

1.4.21. The same emperor to Mena, Praetorian Prefect.

If the person who has a writing showing money delivered or things given if present,¹² but has some administrative post in the provinces, so that it seems to be difficult to send the protest of “money not delivered,” then the person who wants to use the defense mentioned may go before other judges and make it known to the party to whom the defense is opposed that he has made a complaint of money not actually paid (or things not actually given). 1. But if there is no other administrative officer, civil or military, or it is difficult through any cause for the person who makes the said complaint to go before him, to do what has been stated, then he may make the defense known to the creditor through the reverend bishop and thus interrupt the stated time. It is accepted that this applies also to the defense of non-paid dowry. Given at Constantinople July 1 (528).¹³

Note.

This law relates to the somewhat peculiar defense of failure of consideration, or rather the defense that money or property purporting to have been loaned was not actually loaned. This subject is considered in C. 4.30, and the instant law is part of C. 4.30.14.5 and 6 with slight changes.

⁹ Blume has penciled in the margin next to this sentence: “somewhat too succinct.”

¹⁰ There is a question mark penciled in the margin next to this sentence and next to the last clause in the law.

¹¹ “Magistrate” is used here as a translation of *praeses*, even though in the previous line Blume changed his translation of *praesidem* from magistrate to “official.” This probably was an oversight.

¹² [Blume] Has his domicile there.

¹³ Blume penciled in at the bottom of this page “Just. 9.4.6.”

It may here be noted that protests, recognized by law, might be made before the bishops in order to preserve a record thereof; [this] indicates the wide extent of the bishop's functions.

1.4.22. The same Emperor to Mena, Praetorian Prefect.

We want no one to be thrown into prison without the order of the illustrios or worshipful or honorable magistrates or defenders of this fair city or of the provincial magistrates or defenders of the cities.

1. Moreover, the reverend bishops of each place shall visit the prisoners one day of each week, on the fourth or the sixth day thereof, and diligently find out the causes of their detention, whether they are slaves or free, whether they are detained on account of debt or some other accusation, or on account of homicide.

2. The illustrious, worshipful and honorable magistrates of this fair city or of the provinces shall do in connection with them what the constitution sent in regard thereto to the illustrious praetorian prefects has ordered. Permission is given to the pious officiating bishops to report to us if anything is neglected by the officiating bishops to report to us if anything is neglected by the officiating illustrious, worshipful or honorable magistrates, so that suitable action may be taken against transgressors.

Given at Constantinople January 19 (529).

Note.

This is part of the law found at 9.4.6, which should be consulted for greater details. The instant law is found in this title because it deals with the duty of bishops.

That judges should examine prisoners on Sunday is mentioned in law 9 of this title.

1.4.23. Emperor Justinian to Mena, Praetorian Prefect.

We entirely prohibit private jails to be established in cities or villages, and whoever is detained therein shall be liberated by the help of the devout bishop of the place.

Given at Constantinople January 21 (529).

Note.

This is part of the law found at C. 9.5.2.

1.4.24. The same Emperor to Demothenus, Praetorian Prefect.

We permit no one to claim either as slave, unfree serf or free serf, any small boy who has been exposed, whether he is the child of free-born parents, freedman or slaves; nor do we give anyone who ha[s] taken him up to raise permission to bring him up with any mark of difference.¹⁴ But, children reared, nourished and brought up by such people shall, without any distinction, be considered free and free born with power to acquire property and to transmit it to their posterity or to outside heirs at pleasure. Not only the presidents of the provinces but also the pious bishops shall observe these provisions.

Given at Chalcedon September 17 (529).

¹⁴ [Blume] Blume penciled into the margin here: "Perhaps something left out. See C. 8.51.3."

Note.

This law is part of the law found at C. 8.51.3, which deals with this subject more fully.

1.4.25. The same Emperor to Demosthenes, Praetorian Prefect.

We also give pious bishops permission to inquire into the provisions enacted in regard to the game called dice and concerning the prohibition thereof, and if the game is played to reprimand the players, and to compel offenders to return to sanity through the action of the presidents of the provinces and the fathers and defenders of cities.

Given at Constantinople September 22 (529).

Note.

For more complete provisions as to gambling see C. 3.43.

1.4.26. The same emperor to Julian, Praetorian Prefect.

Concerning the income which comes each year to the several cities either from public or from private sources which is left, donated, or given them by anyone, or is in any manner acquired by them, to be expended on public wards, grain supply, public aqueducts, heating of baths, ports, building of walls or towers, repairing of bridges or pavements, or for any (other) public use, we ordain as follows, whether, as stated, (such income is) derived from public or private sources: The reverend bishop and three men of good repute from among the chiefs of the city shall assemble together and annually inspect the works and take care that they are appraised, and that those who superintend, or shall superintend, them render a true account of them and cause it to be known and have a record made of the fact that the works have been completed, and that the money destined for food supplies, baths, pavements, aqueducts, or other purposes has been expended.

1. All this shall remain unchanged through the ages, and it shall appear, by the making of a public record, whether the superintendent is free from liability, or whether he is in debt, and whether he has paid what he owed; in this manner the man who superintended it will be protected. But whenever we deem it best, we shall send some one at our pleasure to examine their accounts, and if found correct, he will, upon such decision, give a full release to them and their heirs and successors, so that no occasion will be left for another accounting or inquiry. All this shall be carefully done, with the holy gospels before them, since we ourselves shall institute an examination at our pleasure.

2. The holy bishop and those who make the examination with him must, if any works require continuous outlay, see to it that they are carefully kept up each year by means of the public income and revenue.

3. If the superintendent refuses to render an account, and declines the summons of the holy bishop of the place and of the landowners chosen for that purpose, then he shall be compelled to do so by the president of the province and his official staff, and he shall be forced, without penalty, to submit to an accounting of the reverend bishop and the chief citizens of the city, and to pay to the city whatever shall appear to be due from him.

4. We deprive our presidents of power to send auditors (discussores), accountants (logothetal) or revisers into cities for the purpose of examining into public accounts; if they do anything of the sort contrary to our wish, and it appears that they have

surreptitiously secured an imperial rescript, the reverend bishop of the city may receive it, but he shall notify us, so that we may inquire whether it was given the president by our order or whether it was obtained surreptitiously, and if any deception appears to have been practiced, then whatever has been done thereunder shall be void, and whoever obtained it will be in danger.

5. If a decree, letter of instruction or order of any of our ruling officials is sent and an examination of accounts in (any of) the above mentioned matters is directed, we altogether forbid the reverend bishop of the city and its principal men to allow it, but the provincial president and the land owners themselves may reject such orders and refuse to pay a penny on that account. If the reverend bishop neglects this, he will incur the anger of the Lord God, and he must further expect our imperial indignation, that in a servile manner, unworthy of a free tongue such as becomes a bishop, he kept silent.

6. And if a messenger^{14 a} shall announce in a province promotions of any magistrates or consuls, or any general order of our glorious prefects or of another of our magistrates, or gives notice of (new) constitutions, imperial instructions, general letter or of the erection of statues of the emperor, he shall not be permitted to demand more than six solidi for each announcement, or for each order, constitution, imperial instruction, general letter or notice of erection of statues in any one province to which he carries the notice; and no matter how many cities there may be in the province, he shall demand only six solidi.

7. If he demands more, he must pay it back fourfold, giving power to the bishop of the city to forbid the taking of more, and the same punishment in this case, that is to say, a fine of 10 pounds of gold hangs over the provincial president and the staff under him, as well as the reverend bishop, if the connive with the demandant and do not hinder him in every way possible.¹⁵

8. None of our magistrates (in this city), moreover, shall send out such orders into the provinces concerning the cleansing of streams or sewers, tearing down buildings near the (city) walls, destruction of structures built on porches, or concerning structures called “produliae,” or tearing down ruins or inter-columniar structures, or concerning statues, or other things of that nature, or, finally, concerning public affairs, but the reverend bishop of the city, and its first citizens, and the rectors of the provinces, landowners, and citizens are permitted when such order is shown, to reject it and forbid and resist the execution

^{14a} [Blume] The subject of auditing the accounts of a city is dealt with at this place and at C. 8.12.1 and C. 10.30.4. and several Novels. The subject will be more fully considered at note 10.30.4. It is apparent from these laws that a greater control of local affairs was sought to be left to municipalities, and to relieve them from the burden of paying for accountants sent by the central bureaus. And it may be noted that the chief responsibility as to municipal affairs was fastened on the bishop.

¹⁵ [Blume] Sections 6 and 7 of this law are also found at C. 12.63.2. Messengers were sent into the provinces for the purpose of communicating to the provincials any new law, or any order, and it seems promotions of high officers and the occurrence of any special events. These were paid for by the provincials. See also C. 3.2.2, by which it was provided that messengers of edicts of magistrates should not receive more than 15 gold pieces.

thereof and of every exaction imposed on that account. The same punishment (above mentioned) hangs over the reverend bishops if they do not prevent it.

9. The reverend bishop, moreover, the father (of the city), and landowners of good repute must take care that no public or municipal place near the (city) walls, or on public porches, or in streets, or in any other locality is occupied without cause, and that no public place be let to any one without our rescript.

10. So, too, they should inquire into what is called the distribution of the water,¹⁶ which belongs to anyone according to an imperial order, lest some will have more and others less than they ought to have.

11. Nor shall our subjects be burdened by the practice of giving surety (in a suit) or appointing a procurator therein; and if those cited to appear have sufficient property, they shall only be required to give a guaranty under oath; if not, they must furnish a surety in the amount long ago fixed by law, without any expense, however.

12. If the process-servers raise a doubt¹⁷ as to the sureties or the guaranty under oath, the reverend bishop, father and defender of the city shall meet and adjudicate as to whether the surety is suitable as to the amount in controversy; this done, it will be necessary for the process-server to accept him without asking any fee for the bond with surety or an oath.

13. If he is ordered, however, by our special command, or by the command of the highest magistrates, to bring the person along, if he has no faith in the surety, then he may refuse to accept him, but this, too, without expense.¹⁸

14. In connection with these matters, the same mentioned penalty shall be visited upon the reverend bishop and the provincial rector if they permit any violations thereof or do not immediately denounce the violator.

15. They shall not permit any fees to be demanded above the amount defined in our constitution, nor any exactions to be made in the cities in any necessary cases, except only in the foregoing cases, as in giving notice of promotions, constitutions, imperial or general instruction, order or letter, or in other like cases previously sanctioned, and excepting (such amounts) which the citizens want to make, in a spirit of liberality, on account of their own benefit and safety, for, perchance, public works, food supply or other reason approved by all and looking to the common benefit of the city. Those who attempt to violate these provisions, and the reverend bishops who do not report it to us, will be visited with the punishment already threatened.

16. Finally, the reverend bishop of each city, after learning everything ordered by us, must cause to be properly carried out our order as to commutation-money for the duty of quartering, and as to the prohibition (of taking money) in connection with [the] taking

¹⁶ [Blume] Considerable irrigation of land was done in the Roman Empire, and water was distributed according to certain definite rules and orders. See C. 3.34 and C. 11.42.

¹⁷ Blume crossed out bailiffs here and inserted "process-servers" but added a question mark next to it.

¹⁸ [Blume] Part of the provisions relating to bonds given by defendants in a suit are found duplicated at C. 3.2.4. The subject is also fully considered at C. 2.2.4.

away of arms, and all orders contained in our imperial constitution published concerning these matters.¹⁹

Given at Chalcedon June 24 (530).

1.4.27. The same emperor to Julianus, Praetorian Prefect.

It has seemed necessary to us to define in what manner the appointments of curators of insane persons of either sex are to be made.

1. If a father appoints a curator for a mad person in his last testament, whether the latter is instituted as heir or is disinherited, the person so appointed shall be called to the curatorship, and a bond shall be unnecessary, since the father's testimonial (as to his fitness, etc.) is sufficient, provided that he shall appear before the president in the province, and shall in the presence also of the reverend bishop of the place and three of the chief men, declare in open court, while touching the holy scriptures, that he will manage everything properly and to the advantage of the mad person, and that he will neglect nothing that he may deem advantageous to the mad person, and will do nothing disadvantageous to such person, and after an inventory has been made publicly and in detail, he shall receive the property and manage it according to his judgment, a lien existing on his own property (for security for proper management), as in the case of guardians and curators.

2. But if the father did not make a testament, and an agnate relative is, according to law, called as curator, or if there is no such agnate relative or there is none with sufficient property, so that it becomes necessary to appoint a curator by judicial selection, then the appointment shall be made in the provinces before the president of the province and the reverend bishop of the city and three of its chief men, and if the curator has sufficient property (as guaranty) for managing the property faithfully, the appointment may be made without requiring security; but if no such person is found, then as much security should be asked from his as is possible to be obtained.

3. The appointment should in every case be solemnized in the presence of the holy scriptures, the curator himself, whatever property he may have or of whatever rank he may be, taking the aforesaid oath as to managing the property advantageously (for the ward) and publicly making an inventory in writing, and taking a mortgage in any event on the property of the curator, so that, as far as possible, the property of the mad person may be managed advantageously.

Given at Constantinople, September 1 (530).

Note.

This law is part of the law appearing in C. 5.70.7.

¹⁹ [Blume] Romans were subject to quartering, or billeting soldiers and officials. Relief from this duty was sometimes bought with money. So, too, Romans were forbidden to carry arms. See Novel 85. C. 12.40.12 provided that no president in going about in the province should ask for any money either for releasing people from the duty of quartering or from delivering up arms. The instant law evidently referred to that provision and made the bishops responsible for enforcing it. It will be noted throughout this law that many duties were imposed upon the bishops—an innovation made, of course, by the Christian emperors and particular by Justinian.

1.4.28. The same emperor to Julianus, Praetorian Prefect.

The children of both sexes of a demented person, as well as those of a mad person, shall be able to contract marriage, and the dowry as well as the prenuptial gift shall be supplied by their curator. But the standing of the person (who is to marry) and the amount of the dowry and prenuptial gift is to be determined by the excellent city prefect in this city, and by the honorable president or the bishop of the place in the provinces in the presence of the curator of the person demented or mad, and of those of the family who are noble. Provided that in this imperial city or in the provinces, the property of the person mad or demented shall suffer no loss, but all things shall be done gratuitously so that such property of such unfortunate persons may not be burdened by expenses.

Given at Constantinople October 1 (530).

Note.

This is part of the law found at C. 5.25.

1.4.29. The same Emperor to Julianus, Praetorian Prefect.

We ordain that no devoted clergyman shall in the first instance be accused, either by a clergyman or a so-called layman before the blessed patriarch of the diocese, but before the bishop of the city in which the clergyman (accused) resides, as provided by the sacred canons. If the accuser mistrusts such bishop, he shall make the accusation before the metropolitan bishop. If he is not satisfied even with him, as may happen, he may summon the accused to be judged before the sacred council of the province, so that three reverend bishops who precede others as to the time or ordination shall meet with the metropolitan bishop and settle the suit in full session of the synod.

1. If the decision is agreeable, let the matter be ended.

2. If the complainant deems himself aggrieved, he may appeal to the blessed patriarch of the diocese, whose decision shall be final, as if he had tried the matter in the first place.

3. For it was decreed by our predecessors that there is no appeal from such Episcopal decisions.

4. The above procedure shall also be followed if a bishop is accused either by a so-called layman or a pious clergyman or a reverend bishop.

5. For we completely forbid accusations to be instituted directly before the blessed patriarch and to have the accused dragged into another province, unless, perchance, the accusation is brought, so as to have the cause transferred to the local bishop; for in such case the accusation may be laid before the reverend patriarch, but a letter shall be sent to a local bishop for him to hear the cause in the manner above mentioned.

6. He, however, shall not be permitted to go to the devoted clergy and impose immoderate fees upon those cited before him, as we have learned to have been heretofore done.²⁰

7. No more than a sixth of a solidus, for each person cited, shall be given to the persons sent by the patriarchs or metropolitans, unless a bishop is accused, in which case

²⁰ Blume has penciled into the margin here: "What meaning? German diff[erent]."

six solidi shall be paid, but no more, no matter what the case or what the amount involved may be.

8. The same rule must be observed by the metropolitans, if any accusation is laid before them against any bishop under them or against any clergyman in their province. For if we took pains to reduce fees and the amount of expense in civil causes, and provided therefor in the laws, so much more should we fix a limit in ecclesiastical accusations.

9. But if a decision has been referred by the reverend patriarch to some reverend metropolitan or some reverend bishop, but one of the parties does not acquiesce therein, and he appeals, the appeal shall be directed to the archbishop's court, to be there determined according to the rules heretofore in force.²¹

10. If anyone ventures to do anything contrary to these provisions, he must return to the person who paid, double the amount received and shall be subject to ecclesiastical punishment and shall be removed from the clerical order by the holy officiating patriarch or reverend metropolitan.

11. Complaints, moreover, pertaining to ecclesiastical matters, shall be made only before the reverend bishops, metropolitan bishops, the holy synods, or reverend bishops, but we do not compel them to do so against their will, and they may, if they prefer, resort to civil tribunals, which are also permitted to adjudicate criminal matters.

12. Since some of the reverend patriarchs also occupy the place of metropolitan bishop in the province in which they live, and others again ordain the reverend bishops under them throughout the province, or the metropolitan bishops, or other clergymen, we therefore ordain that the rules made by us for the reverend metropolitan bishops shall also govern them. For he deservedly is called a metropolitan to whose jurisdiction the bishops, according to the sacred canons, are subject.
Given at Constantinople October 18 (530).

1.4.30. The same Emperor to Johannes, Praetorian Prefect.

In regard to curatorships of minors, whether of the first or second age,²² or of others for whom curators are appointed under the law, we ordain that if the property of the minors amounts to only up to 500 solidi, the appointment shall not await the action of the rector of the province, nor shall it be involved in much expense, the rector's per chance, not (even) living in the cities in which the curatorship happens to arise, but the appointment of guardians and curators shall in such case be made before the defender or (other) chief officer (stratigos) of the city—in Alexandria before its juridicus (judge)—together with the reverend bishop and other public officials, if the city has any. Surety shall be required according to the amount of property involved, by the decision of the aforesaid persons, and all other things shall be done which are customarily done in connection with guardians, curators and sureties, since only the appointing power is, for the benefit of the minors, changed by the present law.

1. All these things shall be done upon payment of two solidi, for it is because of that that the present constitution is enacted. If anyone ventures to accept more, or delays

²¹ The same marginal comment as in the note above was added here. Blume also penciled in above “referred by the reverend patriarch” “delata sententia.”

²² Blume has penciled inserted within parentheses above this “up to or over 14.”

the appointment of a guardian or curator in hope of greater gain, he will be punished not only by compelling him to return threefold the sum received, but he shall also be removed from his position.

2. We ordain that if the appointment of guardians and curators is made before the defender, in the presence of the bishop of the city, the record thereof shall be deposited among the archives of the holy church, so that the knowledge thereof may be perpetually preserved, and the protection therefrom of those placed under a guardian or curator may not perish. In this great city, however, guardians and curators shall be appointed by the honorable praetor, according to provisions heretofore made.

Given at Constantinople July 29 (531).

Note.

For appointment for minors, see C. 5.28 et. seq. and especially note to C. 5.33.1. As to city officers generally, see headnote C. 10.32. As to the *juridicus*, an officer in Alexandria, see C. 1.57.

1.4.31. The same Emperor to Johannes, Praetorian Prefect.

We ordain that if a man who detains property owned by or pledged to another, happens to be absent, and the owner of pledgee of the property wants to claim it, but is unable to do so because the person who detains it is absent or labors under infancy or insanity without having a guardian or curator, or is very influential, such owner or pledgee may go before the president, or lay a petition before him, and make this a matter of complaint within the prescriptive period and thus interrupt it. 1. But if he cannot in any manner go before the president, he shall at least go before the bishop of the place or the defender of the city, and make his desire known in writing.

Given at Constantinople October 18 (531).

Note.

We saw at law 21 of this title, that if a man wanted to make a complaint that a certain sum represented by a due bill was not actually paid, he might make the complaint before the bishop, if he could not do it any other way. The making of such complaint in this case operated as an interpretation of the statute of limitation. That was true also in this case. The instant law is part of C. 7.40.2, which should be examined in this connection.

1.4.32. The same Emperor.

If during a period of three years an emphyteuticary offers the rent of the emphyteusis²³ to the owner, but the owner, living in this imperial city or in the provinces, fails to accept it, the emphyteuticary may offer him the rent, and unless the owner desires to accept it, may, as the end of the three-years' period is approaching, put it under seal and cause the facts to be attested before the glorious prefect of the city, or the glorious praetorian prefect or other proper magistrate under whose jurisdiction the owner of the land is, or if the owner is in high position, before the patriarch. In the provinces he may do this before the president, or in his absence before the defender of the place, or before

²³ This clause is penciled in. The typewritten original reads: "...until he sends to the emphyteuticary an attested demand asking the rent..."

the bishop of the city in which the owner lives, so that the testimony of one of these persons may be had to the transaction.

1. And if the owner will not even then accept the proffered payment, the emphyteuticary shall keep it as his own, and the owner shall have no cause of action to recover it.

2. The emphyteusis will not (on the one hand) be released (from the payment of rental), or (on the other hand) can the owner collect the customary rent of the subsequent years, until he commences to demand the rent by pressing the emphyteuticary concerning it and by sending him an attested demand,²⁵ and then the owner may not claim the rent of the time elapsed, since it was his own fault that he did not receive it, but only from the time of the attested demand. If during three years after the time of such demand of the owner, the emphyteuticary fails to voluntarily pay the rent, the owner may expel him from the emphyteusis, according to the provisions of another constitution under this title. (C. 4.66.2.)

Note.

The same constitution is found at C. 4.66.4. The present constitution shows, of course, that at the time of its enactment not all leases were in perpetuity, and that owners who had made such leases repented of their acts and wanted to rescind what they had done. The law is found in this place as showing the activities of the bishop.

1.4.33. The same Emperor to the reverend bishops, wherever located.

We have enacted an imperial constitution by which we have forbidden to drag any woman, either slave or free, into the theater or on to a public stage, or to hinder anyone desiring to leave from doing so, or to hail into court any surety who, in connection therewith, has promised to pay any sum of money.

1. If anything of the sort happens, we order it to be forbidden by the honorable rectors of the province and by the reverend bishops of the cities, giving the latter permission to restrain with the aid of the honorable rector of the province those who use force against them, or who prohibit them from abandoning the foregoing calling and to seize them (who violate this law) against their will, confiscate their property and expel them from the city.

2. If the rector of the province himself is the person who uses the force (against the woman), or forbids them to abandon the calling aforesaid, the woman who suffers thereby, or her surety, may go before the reverend bishop alone, who must oppose the magistrate, and must not permit any outrage to be committed. If they are not powerful enough to do so, they must refer the matter to the emperor, so that suitable punishment may be inflicted by us, the sureties released and invalid guaranties be declared void. Such women, moreover, whether freedwomen or free born, may (after leaving their status) enter into a valid marriage, even though the persons who marry them have the highest positions of rank, and no further imperial order shall be necessary; but they may freely enter into such marriage, provided that they enter into a marriage contract (in writing). The same rule shall apply to daughters of actresses.

3. We have, therefore, placed the aforesaid constitution, sent to public magistrates, in the fifth book of the Code of constitutions mad notable by our name. But

²⁵ Blume penciled in this clause and placed a question mark in the margin next to it.

since it was necessary to make the provisions therein known, by the present law, to all the bishops wherever located, we have, therefore, put into smaller compass what is stated at greater length in the book mentioned above, and have, accordingly, directed this constitution to you, so that you may observe these provisions, mindful of priestly dignity, zealous for chastity and having in mind both the fear of God as well as the imperial displeasure should you violate any of them.

Given at Constantinople November 1 (534).

Note.

The law in book 5 of the Code here referred to is C. 5.4.29, which should be examined in this connection.

1.4.34. The same Emperor to Epiphanius, holy bishop of this famous city and steward of the patriarch.

We are strongly convinced that the purity of the members of the priestly order, their good discipline, and their love of our Lord God and of Jesus Christ, and, finally, their prayers, continuously offered up by them, bring about great good will toward, and blessing to, our state. Hence it is permitted us to govern barbarians and become masters of those who were not subject to us before. And as the influence and honor of the clergy increases, we hope to that extent for an increase of our state. For it they live a life that is dignified and free from blame, and cause the people to follow them, so that the latter, observing their good conduct, will abstain from any sins, it is clear that the hearts of all will hereafter be better, and the good will of the great God and of our Saviour will easily incline toward us.

1. Weighing these things in our minds, it was reported to us to our surprise that there are some of the devoted deacons and even presbyters—for we blush to name anyone above that rank, the bishops, forsooth—who are not ashamed to play dice with each other and engage in the game severely forbidden even to laymen; that others, who do not play themselves, mingle with players, or sit as spectators of a foolish act, or take the greatest delight in watching the most foolish thing in the world, listening to blasphemy, which is necessarily present at such plays, and polluting their hands, eyes and ears by such condemned and forbidden plays; that others publicly attend horse races and even challenge others (by a bet) as to the defeat or victory of the horses, indecently making these plays either personally or through others; that others become spectators of actors or music-hall artists, or are present at fights of beasts in theaters, not remembering that they themselves order those recently initiated and worthy of the sacred mysteries to renounce the cult and pomp of the evil demon, of which the spectacles make up no small part.

2. We have often exhorted them to heed this, but as we continuously see messengers come to us concerning this matter, we have been forced to enact the present law, on account of our zeal for piety, and for the benefit for the priestly order itself as well as for the common welfare.

3. We accordingly ordain that no deacon or presbyter, let alone a bishop—for it seems incredible in their case, since while they are ordained, prayers are offered up to our Lord Christ, the holy, adorable spirit is invoked and the (instruments of) the holiest mysteries among us are placed on their heads or delivered into their hands, so that their

senses may be purified and they be consecrated to God²⁴—shall, after the enactment of this law either play dice or be present among dice-players, or be seated at or delight in play or consent to what is done, or be present at vulgar spectacles which we have mentioned, or do any of the things forbidden them, but they shall, in the future, entirely abstain from all of these things.

4. Although we should investigate the things done in the past, and meet out proper punishment, we are indulgent, imposing however, the duty on all to observe the present law in the future. For it behooves them to spend their time in fasts, vigils, practices in the holy scriptures, prayers poured out for the welfare of all, and they should not abandon these things and participate in profane and forbidden things.

5. We direct the same thing in connection with the remaining clergymen, that is to say, sub-deacons and readers, who themselves are ministers of and workmen at the sacred table and the ornaments in the holy churches, and, touching the divine oracles (scriptures), some of them read the sacred scriptures from our holy books, some of them sing hymns.

6. And if anything of the sort (herein forbidden) is done in the future, and this is reported to Your Holiness in this fortunate city, or to the metropolitan bishop in the provinces under you, or to the other bishops, whom it is the right of Your Blessedness to ordain, and such accusation is directed either against a deacon, presbyter, or even one of the reverend bishops, Your Blessedness in this city, in the provinces the reverend metropolitan bishops under you, and the bishops under them, shall make careful inquiry and investigation according to clerical regulations. Nor shall the inquiry be perfunctory, but they shall hear witnesses worthy of credence, and shall omit nothing to uncover the truth; but as we restrain the clergy to do the things forbidden, so we forbid that they shall be slandered by anyone.

7. And if upon inquiry made on every hand, with the holy scriptures before them, the accusation appears to be true, and a deacon or presbyter shall be proven to be a player of dice, or to have mingled with the players, or to have been present at such foolish things, or to have witnessed the spectacles above mentioned; or if, perchance, which we trust will not happen, one of the reverend bishops shall in the future witness a spectacle, or be seated by and be with those playing dice, such person, if he belongs, to the so-called clergy, shall be immediately removed from his sacred office by Your Blessedness, or by the metropolitan bishop or the reverend bishop, under whom he serves, and canonical punishment shall be imposed on him, and the time shall be fixed during which he shall, by fastings and supplications, placate god on account of such offense.

8. And if the person subjected to such penalty indeed perseveres throughout the appointed time to implore remission of his sins by tears, penitence, fasting and prayers to our Lord God, then the person under whose jurisdiction he is shall, after having carefully verified this, cause common prayers to be offered for him, and thoroughly enjoin upon him to abstain in the future from such outrage upon the priesthood, and if he deems him sufficiently penitent, to restore him to his clerical position.

9. But if, on the other hand, he appears not to be truly penitent, after excommunication, but rather to have considered it lightly, his soul manifestly taken up by

²⁴ As to the method of ordination, see Smith & Cheetham, Dictionary of Christian Antiquity under “ordination.”

Satan, then the bishop under whose jurisdiction he is shall strike his name from the register of clergymen and entirely depose him.

10. He shall thereafter be unable to return to the clerical orders; and if he has some property, the municipal senate of his city in which he previously ministered unto God, or if his city has no municipal senate, then some other city of the province which needs curials the most, shall take him with his property to serve there ever after. If he has no property, he shall for the future become an apparitor of the provincial staff instead of a clergyman, and because he deserted his duty to God, exchange the low status of provincial apparitor for his previous honorable position.

11. We ordain that all these provision must be carried out in this city by Your Holiness, and in all of its consecrated churches by the defenders and stewards thereof, whose duty it is to investigate and denounce violations, and deprive those who are convicted of the sustenance and support assigned them by the holy churches. In the provinces, the reverend metropolitan bishops under Your Blessedness, and , further, the reverend bishops under them, and their defenders and stewards, must carry out the same measures previously mentioned and must keep the sacerdotal dignity unaffected and free from blame in every respect.

12. The duty to carry out these provisions devolves also on the glorious praetorian prefect of the Orient as to the people under his jurisdiction, and on the praetorian prefects of the dioceses of Illyria and Africa, and on the official staffs under them, and on the honorable rectors of provinces and the defenders of cities; and the magistrates with the high administrative posts must fear our displeasure, their official staffs a fine of ten pounds of gold, and the greater and lesser provincial magistrates and their official staffs and the defenders of the cities a fine of five pounds of gold, if they learn of violations hereof and fail to report them to the reverend bishops or holy metropolitan bishops or holy patriarch of the diocese, as to the territory under each respectively; so that they, having learned the facts may, according to the provisions herein, move against the offenders and assign those convicted of such offenses by them, and who have not come to their senses, either (vel) to the municipal senate (curia) or to the (provincial) staff. Those positions were burdensome.

13. The glorious prefect of this famous city, too, and his official staff must observe these provisions, if any violations occur in this imperial city, and he, the prefect, must expect our indignation, and his official staff a fine of ten pounds of gold (if they do not do so).

14. But we have embraced these provisions in a law.²⁵ Aside from that, moreover, it is truly proper that our just dues to Him be paid in full by promoting the dignity of priests in the sight of God.²⁶

15. If they transgress any of the provisions herein and connive at and fail to punish (transgressions), but extend a censurable pardon, they will, aside from the punishment pursuant to our laws, also undergo celestial punishment and the divine

²⁵ The typewritten original reads: "We have made this the subject of (our) legislation." Another variation Blume penciled in above the version noted in the text uses the phrase "finished with legislation" as an alternative to "embraced these provisions in a law."

²⁶ The typewritten original read: "For it is truly proper that while promoting the dignity of priests in the sight of God, our just dues to Him be paid in full."

judgment rendered before the very tribunal of God, accusing and punishing shameful connivance.

16. If anyone of the civil magistrates, greater or minor, or one of their official staffs, or defender learns of such offense and fails to make it known, or, if permitted to punish it, neglects to do so, or makes it known for a compensation, then aside from the punishment provided by us, the vengeance of God will be upon him, and he will be subject to all the execrations of the holy scriptures.

17. In as much, moreover, the foregoing provisions have been enacted in honor of our Lord, we also add this, that investigations shall be made carefully, and no one shall slander, falsely accuse, or bear false testimony against another in such a matter.

18. For as we have provided punishment for priests who violate these enactments, so too, we want punishment by heaven and under our laws visited upon those who undertake to slander anyone by making charge and refusing to pursue the prosecution further, or by being unable to sustain the accusation, since we follow equity and justice in all things and especially in the enactment of laws.

Given at Constantinople October 31 (534).