

Book I.
Title XII.

Concerning those who flee to the churches or raise a disturbance there.
(De his qui ad ecclesias configiunt vel ibi exclamant.)

Headnote.

Sanctuaries.

Entrance into a sanctuary, some holy or sacred place, to escape from the worldly authorities was a common practice in ancient times and is in use in some countries even in our own day. This practice is attested for Japan as late as the year 1924. Woess in 46 Z.S.S. 32 (1926). Temples, churches, statues of the emperor and other places of sacred character served as such sanctuaries or asylums. Title 25 of this book deals, for instance, with statues of the emperor as sanctuaries. The privilege of affording refuge was conceded to the Christian church soon after Christianity was recognized by the Roman emperors as the state religion. The church was the seat of the bishop, and Christians early felt that the bishop was the natural refuge of those that were in trouble. It was his duty to intercede for persons in misfortune, and those who had occasion to fear the law, under which a man might be arrested even for a debt, took refuge in the church. Such refuge was not intended to obstruct justice, though it came to that; it was intended for the innocent, the weak, and the misunderstood, and not for the systematic and determined criminal. It was used in 1924 by Japanese strikers. Under the Roman law, no right of sanctuary or asylum existed in favor of public debtors. We find quite a little legislation on the subject, as shown by the instant title and the references given below.

The right of asylum might also be personal—that is to say, not connected with a place, but with a person. In this connection we find the so-called “logos” which was a letter or statement in writing granting the bearer exemption from molestation by public authorities. At first such letter or statement was probably granted to a person who had taken refuge in a sanctuary, but who wanted to go home or to some other place for the purpose of attending to some necessary matters. Then, later, entrance into a sanctuary or asylum was entirely dispensed with, and the letter or statement was of the same effect as though the bearer were actually within the enclosures of a sanctuary. Novel 17, c. 6, provided that such logos (plural, logoi) should not be granted for more than thirty days; if someone sued the bearer thereof, he had an option to renounce the right granted thereby or go into a sanctuary; but the judgment might be executed in such sanctuary in a becoming manner, as is also provided in the laws of the instant title. Edict 13, cc. 9 and 10 has considerable [sic] to say about these logoi and shows that they were issued by the governors and bishops and other persons, but they were forbidden to be issued as a protection against the collection of public tribute, unless the tax officials authorized them. Under c. 13, Novel 128, no collector of tribute, assessors, clerks, or other public servants could enjoy the benefit of such letters granting the right of asylum. By edict 2, such letters for protection against collection of tribute were declared to be entirely void, and they were limited to private causes. By edict 10, c. 13, Novel 128, above mentioned was somewhat modified. It provided that provincial apparitors who fled to a sanctuary should be expelled therefrom but given a “logos” assuring them safety in a place outside of the province. See 46 Z.S.S. 32 et. seq., and the title “Sanctuary” in Smith and Cheetham, Dictionary of Christian Antiquity.

1.12.1. Emperors Arcadius and Honorius to Archelaus, Augustal Prefect.

The Jews, who pressed by some criminal charge or by debts, pretend that they want to join the Christian religion, so that by fleeing to the churches they may avoid the charges or the burdens of the debts, shall be shut out and shall not be received therein until they have paid all their debts or have been purged of the charge by proof of innocence.

Given at Constantinople June 7 (397).

C. Th. 9.45.2.

1.12.2. Emperors Honorius and Theodosius to Jovius, Praetorian Prefect.

By reason of faith and zeal for God (Deo), we ordain that no one shall abduct those who take refuge in the holy churches,¹ adding that if anyone should violate this law, he is to be prosecuted for treason.

Given at Ravenna April 1 (409).

C. Th. 16.8.19.

1.12.3. Emperors Theodosius and Valentinian to Antiochus, the Magnificent.

Let the temples of the great God be open to those who are in fear. We dedicate for the safety of refugees not only the sacred altars and the oratory of the temple which is enclosed by the barriers of four walls, but whatever space there is beyond that, as far as the outermost entrance of the church, shall be a place of safety for refugees, so that the space between the temples, which we have directed to be bounded as aforesaid, and the first entrances of the church, beyond public grounds, whether consisting of houses, gardens, halls, baths or porches, shall serve the fugitives (as places of safety) the same as the temple, and no one shall lay sacrilegious hands on them; nor may he, who dares to say so, take refuge for help when he sees himself in danger.

1. We grant this extent of space, however, so that no refugee may be permitted to remain in the temple of God or at the sacred altars, or eat, sleep or pass the night there, which the clergy, in honor of religion, should forbid, and the refugees, for the sake of piety, should avoid. The refugees shall not have in, or bring to, the churches, any arms, whether swords or other weapons, which, as other things, we forbid not only in the sacred temples and at the altars, but also in the houses, rooms, gardens, baths, halls, and porches.

2. Hence, those who, without arms, flee to the sacred house of God and the sacred altar, anywhere else or in this city, should, without insult to them, be prevented from sleeping or taking food in the temple or at the altar by the clergy who should show them the spaces which are provided for their safety and protection, and who should inform them that capital punishment will be visited on those who approach those places rashly (to seize the refugees). If the refugee is not obedient thereto, religion must be given the preference over compassion, and the rash fugitive must be removed from the sacred places to those above mentioned.

3. And we give warning beforehand to everyone not to occupy the sacred churches with arms. If there are any armed men in any place of the church, whether within the temple, or about it, or outside of it (within its precinct), they shall be sternly

¹ [Blume] See note to C. 9.3.2.

summoned by the clergy, under the authority of the bishop, to lay down their arms, giving them assurance and oath that they are better fortified by religion than by arms.

4. And if, admonished by the voice of the church, and after so many and such warnings, they do not lay down their arms, then with religion satisfied, and Our Serenity and the bishops being justified before God, they shall be dragged from the churches by armed men admitted (for that purpose) and shall be delivered to the favors of fate.

5. But no armed fugitive shall be removed from the church without the decision or order of the bishop and ourselves, and of the judge here or elsewhere, lest if that power against unfortunate persons be given to many, confusion and disorder might arise therefrom.

Given at Constantinople March 23 (431).

Note.

Previous to the enactment of the law, only the altar and the oratory; i.e. the nave, the place reserved for the people, could serve as a sanctuary or asylum for fugitives. By the terms of the law, such asylum was extended not only within the edifice of the church itself, but also within the whole precinct occupied by the church, the edifice being frequently surrounded by porches, halls, baths, gardens, etc., and all of it evidently surrounded by an enclosure in which there was an entrance. The refugee could not, however, eat, sleep, or permanently remain within the church itself, though he had the right to do so in the space surrounding the church, and if he violated this rule, he could be driven from the church. No arms were permitted within the area occupied by the church and its surroundings, and the fugitive who violated this rule was to be driven from the place, by armed force if need be, after being summoned to surrender his arms. See comment on this law in Smith and Cheetham, Dictionary of Christian Antiquity under the article "Sanctuary," and by Gothofredus to C. Th. 9.45.4, which is a Latin version of the law.

1.12.4. The same emperors to Hierius, Praetorian Prefect.

If anyone's slave should unexpectedly, while armed, without anyone suspecting that, rush into a church or to altars, he shall be instantly driven away, or notice at least shall be immediately given to his master, or to the person from whom the slave fled through such insane fear, and opportunity to take him immediately shall not be denied.

1. But if, through trust in his arms, and impelled by an insane impulse, he is led to resistance, the master may drag him away with such force as is necessary for that purpose. And if it should happen that he is killed in conflict and fight, the master shall incur no quilt, and it shall be no cause for a criminal accusation if the slave who assumes a hostile or homicidal attitude is killed.

Given at Constantinople March 28 (432).

C. Th. 9.45.4.

1.12.5. Emperor Marcian to the people.

We announce to all of you to abstain from all sedition in the holy churches and in other venerable places where it is proper to offer vows in peace and quiet. No one shall make outcries, create a tumult, make an attack or attempt to collect or hold meetings of an assembled multitude in any part of the city, village or any other place. For if anyone believes that any wrong contrary to law is committed against him by any persons, he may call upon the judge and demand proper protection. Let all, indeed, take notice that if

anyone should, contrary to this edict, do anything or attempt to create any sedition, he will be subject to the punishment of death.²

Given at Constantinople, July 13 (451).

1. 12. 6. Emperor Leo to Erythrius, Praetorian Prefect.

By the present law which shall be valid in all places—except in this imperial city where we, living under the protection of a propitious Divinity, furnish, upon call, an immediate remedy, as occasion requires, in individual cases and to specific persons—we direct that no fugitives of whatever condition shall be expelled, delivered or dragged from any holy church of the orthodox faith, nor shall the debt owing by them be demanded in his stead from the venerable bishops, or pious stewards. Those who plot, or do so, or dare to attempt it by mere thought and action³ (tractatu) shall be punished by capital and by the severest punishment. We therefore permit no one to be expelled or ejected at any time from those places and their boundaries which were fixed by former laws, nor shall anyone be so detained or restrained in these venerable churches as to be denied food, raiment or rest.

1. If the fugitive voluntarily appear publicly and show themselves to be summoned in the sacred places to those who seek them, then, with due regard to the reverence due to the place, they may be warned by orders of the judges who have jurisdiction over them, and give answer as to each seems best.

2. But if the fugitives hide within the boundaries of the church, then the pious steward or defender of the church or the person whom the bishop has, by his authority, selected for these matters as the more proper person, shall when called upon courteously, and without detriment (to himself), present the person hidden and concealed, if found within the boundaries of the church.

3. If the refugee is cited in a civil action in connection with a contract, public or private, it shall be in his discretion whether he will answer at the trial before the judge by whose order he is cited, personally or by a procurator straightway appointed in the usual manner.

4. If he declines to do either, or delays, then the customary procedure of judicial tribunals and of the laws shall be followed. Thus if he possesses immovable property, then after observing the solemnities of the edicts, delivery or sale of his property or lands shall be made by the order of the judge, to the extent of the debt.

5. But if he has movable property which he hides beyond the boundaries of the church, it shall be sought out wherever hidden, by the enforcement officer, upon order of the judge, and when found, shall, in accordance with equity, and to the extent of the debt, be appropriated for public or private accounts.

6. If the goods are within the boundaries of the church, or are stated to have been hidden or deposited with anyone of the clergy, they shall be searched for by the zeal and care of the reverend steward or defender of the church, and produced (if found), no matter in what manner they may have come to the holy church, so that the claims of the fisc, of the state, of creditors, and of all just claimants may by an equal justice be satisfied out of these goods.

² [Blume] See law 7, this title, and C. 9.29.1.

³ This is penciled in, accompanied by a question mark in the margin. The typewritten original read “seek to do so even by mere thought and discussion.”

7. Whenever they are declared to be deposited or entrusted, we want such care to be used in the search, that if they are said, upon mere suspicion, to be concealed by someone, such person must be ordered by the authority of the venerable bishop to satisfactorily show his knowledge (on oath).

8. We add that the provisions made as to the principals shall apply also to their sureties, mandators, and their property, and to servants, partners or associates, and, in a word, all persons liable in the same matter, and if the refugees want to have such persons with them within the boundaries of the church, the public and private debts shall also be satisfied out of their property, and search of (their) property, wherever deposited, shall be made through them.⁴ The foregoing provisions apply to persons freeborn and unfree.

9. If a slave, free or unfree serf, servant, freedman, or other person belonging to a household or subject to a condition, have [has]⁵ destroyed or purloined certain things, or have [has] escaped from the power of their master⁶ and have [has] fled to holy places, they [he] shall immediately, after knowledge of the facts,⁷ be returned to their place and status by the pious stewards or defenders, through those to whom they belong, after, in the presence of these ecclesiastics, in accordance with the ecclesiastical discipline and in proportion to the crime committed, proper punishment has been meted out, or humane intercession has taken place, and after the refugees [refugee] have [has] been made safe by a pardon, confirmed by an oath. The property which these refugees have with them shall be restored. It is not proper that they should long remain within the church, lest the just duties which they owe may not, by their absence, be denied to their patrons and masters, and so that they may not be supported at the expense of the church, to the detriment of the poor and the needy.

10. Among the matters, moreover, pertaining to the special care of the pious steward and defender of the church, they must carefully examine the persons taking refuge within the churches and into their affairs, and immediately inform the judges or the persons to whom the matters appertain or the persons belong, so as to carefully carry out what justice requires.

Given at Constantinople February 28 (466).

1.12.7.

Whoever has an action against or controversy with anyone, shall not disturb the church in person or through others, but must go to the rectors. If he has need of the assistance of the emperor on account of crimes committed, he may lay that before him through the archbishop. Whoever violates these provisions will be punished.

1.12.8.

Whenever we enter the holy great-church or any other churches on the great holidays according to custom, we want our glorious quaestor to receive the complaints of supplicants and lay them before us. If any one creates a tumult or makes a clamor on festal days wither in the great church or in any other churches, his cause of action shall immediately perish, tough fortified by right; he shall be ejected by the prefect and be

⁴ These last two words have been penciled in, and a question mark has been penciled into the adjacent margin.

⁵ Blume went back and made the relevant nouns singular but neglected to do the same to the related pronouns.

⁶ Blume has penciled in above this phrase, without striking the phrase, "has hidden himself."

⁷ This phrase has been inserted in pencil and a question mark added in the margin.

subjected to punishment. Whoever fears a powerful personage may come to us through the archbishop or the defenders of the churches.