

Book X.  
Title XXXII.

Concerning decurions and their sons, who will be considered decurions, and in what manner they may be freed by curial obligations.  
(De decurionibus et filiis eorum et qui decuriones habentur quibus modis a fortuna curiae liberentur.)

D. 50.2.

Headnote.

1. To write a complete history of the decurions, would be to write a complete history of Roman municipalities. Only the barest outline will be given in this and other notes on that subject. A number of works, some very recent, have gone fully into the subject, or some phases of it. Among these are Abbott & Johnson, Municipal Administration in the Roman Empire (1926); Liebenam, Stadteverwaltung in R.K. (1900); J. S. Reid, The Municipalities of the Roman Empire (1913); Dill, Roman Society in Last Century of Western Empire (1906) 227-281; Rostovetzeff, Social and Econ. Hist. of Roman Empire (1926), especially cc. 8 and 12; Arnold, Roman Provincial Adm. 244, et seq; Kuhn, Verfassung d. R.R., Marquardt, 1 R. Staatsverwaltung 1-215; 1 Karlowa, R.R. 576-616; 894-903; article "decuriones" in Smith's Dict. of Greek and Roman Antiq.

The development of the municipal system under the Romans is an interesting study in itself. In the West, few municipalities were found by the conquering Romans except those of Greek origin, as, for instance, Marseilles on the southern coast of France and some cities in southern Italy and Sicily. Roman and Latin colonies and municipalities were gradually established with more or less local and independent control of their own affairs. A number of municipal "charters" have been preserved for us, some of which are found in Bruns, Fontes Juris Romani Antiqui 120-160, and some of which, like the lex Julia Municipalis and the so-called lex rubrica, a fragment, have been translated by Hardy in his "Six Roman Laws." The chief magistrates in western municipalities, were usually, but not always, styled duoviri, that is to say, the two chief men, the plural indicating their creation on the model of the two consuls in Rome. Usually there were also two aediles, and they, together with the duoviri, were frequently called the quatuorviri (four men). These officials "combined the judicial functions of a Roman praetor with the administrative duties of aediles." Hardy, supra, 147. The duoviri had limited judicial functions. The aediles, among other things, looked after the public buildings and the markets, and saw that liturgies were performed. The treasury was frequently managed by quaestors, two in number. Abbott & Johnson, supra, 59. These officials were for some time freely elected by the citizens in popular assemblies.

In Greece, the Romans found the country already organized in civic communities, with their popular assemblies and magistrates of various names. That was not ordinarily true in the other portions of the East. But the Romans devoted their attention to the spread of municipal organization in every province, including the founding of new cities. Abbott & Johnson, supra, 73. Whatever differences in municipal organization originally existed, the tendency from the time of Septimius Severus and of Caracalla, who made Roman citizenship universal, was to make it uniform, particularly as to the decurionate,

so that from that time on we may speak of a general "municipal law," although local customs and laws were frequently left more or less undisturbed. Karlowa, supra, 581, 592.

2. The decurions, otherwise known as curials, were the members of the municipal curia, or senate. They constituted, as we would say, the members of the various municipal councils, organized in pattern of the senate of Rome. The position, accordingly, was originally one of honor, and was eagerly sought. The number usually was 100, although that was not true in all cases. We find that Antioch, for instance, had 1200 decurions at one time, and the number evidently varied according to the size and the custom of the communities. Karlowa, supra, 586; Leibnam, supra, 490, note 3. According to the "charters" of some cities left us, a revision of the list was made every five years by the duoviri, who acted as censors during that year. Past magistrates were entitled to entrance. Infamous persons and freedmen - unless under exceptional circumstances - were excluded, and a property qualification was at all times a prerequisite, which at first was high, but was continually lowered as time went on. The senate, or council, in order to act as such, acted in an assembled meeting. The rule seems to have become uniform that two-thirds of the members were required to be present to constitute a quorum and a majority was necessary to act affirmatively on any matter. C. 10.32.45. Various laws were passed to insure the ready presence of the requisite number. See C. 10.38.1.

The decurions constituted a middle class of the population of the Roman Empire - the bourgeoisie, as they have been called, and were, as a whole, separated from the nobility on the one hand and from the plebeians on the other. Various privileges were granted them from time to time. But the main privilege left them in later times was exemption from torture. Even that was doubtful, and from time to time only the chief men among them seem to have been secure in this privilege. See C. 10.32.4; C. 10.32.33 and 57. Instead of the position being one of honor, it became one of extreme burden, from which men sought to escape. What were the causes thereof? To discover and understand them it will be necessary to examine municipal affairs and the duties of decurions with some detail.

### 3. Municipal budget and liturgies.

The expenses of cities varied, of course, with their size and needs. It is not the intention to go into any details here, except to indicate what bearing the finances of the city had in connection with the fall and decline of Roman municipalities and the decurionate. The management of most cities in the Roman Empire required considerable care and attention, and the expenses were heavy, since they were built along similar lines as the cities of modern times in the Occident. They contained a good scientific system of drainage, an abundant water supply provided by aqueducts, paved streets, covered porticoes that lined the streets, public baths in various portions of the city in which the citizens could take their daily baths at little expense; large public buildings for the senate, officials and guilds; theatres, circuses, stadia, amphitheaters, lecture halls; picture galleries and other public buildings. Rostovtzeff, Social and Economic Hist. of the Roman Empire 135. The time came - though that seems not to have been necessary in the early times - when emperors found it necessary to make many regulations not alone as to public, but also as to private buildings in cities. C. 8.10 and 11. Thus in 377 A. D.,

decurions were directed to repair or reconstruct their houses that had been neglected. C. 8.10.8. By a law of 384 A. D., no one could claim to be exempt from contributing his just share toward the construction of ports, aqueducts and walls. C. 8.11.7. By a law of 396 A.D., the expenses of new city walls or repair of the old was to be equitably apportioned among the land holders. Other regulations will be found in title 11, already mentioned. The collection of corn, oil and other supplies for the needs of the community and to help the poor was one of the necessary duties of every Roman city, especially those of any size. Teachers and physicians were employed, to some extent at least, at public expense. Police protection had to be provided, though that was generally poor throughout the empire, as was true also with the system of lighting. In addition to this, every city attempted to imitate the capitals of the nation in providing the people with amusements, and while a large portion of the cost thereof was defrayed by the city officials, through custom or law, a part of this expense came frequently out of the municipal treasury. The responsibility to carry out these various functions and meet the necessary expenses in connection therewith rested upon the decurions. Every municipality had public slaves, though the number thereof probably diminished toward the latter part of the empire. They cleaned the streets, took care of the public buildings and performed other menial duties. Abbott & Johnson, supra, 143. Cities paid their minor officials and employees whether these were freemen or slaves, and they had to be provided with quarters, clothing and food, or salaries, and the total of these payments were large. Rostovtzeff, Soc. & Econ. Hist. 137. The number of minor officials must, of course, have varied with the cities. Scribes, lictors, keepers of archives, clerks (tabularii), were probably found in all of them. See Liebenam 275, who mentions a number of others found in the larger cities. See also C. 10.71.

In the early part of the empire, when the needs of the imperial government were not so great, the income of many municipalities was comparatively large from the rentals of municipal lands from import or transit dues, and from mines and salt works. But the tendency had been to deprive cities of these sources of income in whole or in part. See Liebenam 16, 17, 20; Reid, supra, 454. By a law of 395 A.D., a third of the income of municipal farms was set aside for repairing city walls and heating the public baths. C. 8.11.11. This indicates that previously, perhaps, not so large a portion had been left cities from this source. See also C. 11.70. Some revenue was derived from water rent, fees for baths and rent for shops in public places, and fines. Liebenam 17-20. But none of these sources would have met these burdens, had it not been for the system of compulsory liturgies which, found in existence by the Romans in the East, was fully adopted throughout the empire. The Romans generally used the term "munus," plural munera, sometimes "onus," plural onera, sometimes "superindictio," as shown in note C. 10.17.1, sometimes "functio" or "munia," "indictio" or "superindictum." All these terms are here translated as "liturgy" or the plural thereof, although the original Greek thereof was, perhaps, not so broad. Kuhn, supra, 62. The word "burden," or the plural thereof, or other equivalent terms, have often been used in this translation to express the same thing. None of the officials already mentioned drew any salaries. Their work was performed without compensation. That was true also in the case of those who, outside of the magistrates, had charge of any of the municipal functions and they ultimately became so burdensome that even a magistracy came ultimately to be considered a liturgy instead of an honor. Most of these liturgies were "personal," that is to say, required time, labor

and attention without expenditure of personal funds; the necessary funds being furnished by the municipality. But some of them were liturgies resting upon property; in other words, they constituted a form of taxation. See C. 10.41.1 and note, and headnote to C. 10.42. There were a few exemptions from liturgies resting upon property. But it came to be otherwise with personal liturgies. Everybody was bound to help bear the burden which he owed to the city of his birth or adoption. C. 10.39.

And the principle so often stated as to curials that they were bound, in a measure, to the place of their origin, applied to non-curials as well, in so far as bearing certain burdens was concerned; and if a person became an inhabitant of another city, he was bound to bear his share of the burdens in both places. C. 10.39.1, and C. 10.40. Certain personal functions could be performed only by decurions. That was true not only as to the positions of honor, that is to say, magistracies, but also as to liturgies which were said to adhere to these positions of honor, as for instance the management of food-supplies, of the public funds and of the public buildings - functions originally managed by the chief magistrates, but for which the creation of separate managements had been found to be necessary. Karlowa, supra, 608, 609. But the inhabitants generally could be called on for the performance of other functions. The charters of cities or custom generally regulated the amount of personal burdens, the performance of which could be required. Thus the charter of the colony Julia Genetiva prescribed that no more than five days manual labor (operae) could be required of any man per annum, and not more than three days labor per team. 1 Karlowa 610. That was similar to the amount of labor which at one time might be required of every able-bodied man, between certain ages, in some of the smaller municipalities in the United States. In the latter, ordinarily at least, otherwise in the Roman municipalities. C. 10.48.9; 1 Karlowa 610. Burdens such as these were necessarily distributed and required under the directions of the municipal magistrates. 1 Karlowa 610. Certain burdens, as the making of flour, baking of bread, burning of chalk, which were called "sordid" burdens, could not be required of decurions. 1 Karlowa 609; see also C. 10.72.14. But it is not easy to determine exactly just what burdens could be imposed on the citizenship as a whole, rather than on decurions, though it may be safe in saying that, in general, the superintendency of the various functions rested upon the curials; that included the care of the aqueducts, temples, archives, public buildings and baths; the purchase of public grain and other supplies and the distribution thereof and the management of public armies. However that may be, the tendency in the later part of the empire was to bind each man to his station, and as a partial result, most all the municipal burdens come to rest upon the shoulders of the decurion, though, as indicated by C. 10.39 and C. 10.40, that was not entirely true. Workmen, that is to say, artisans were generally exempt from liturgies, and were, it seems, ordinarily grouped into guilds. That was true also with a number of what we might call professions. C. 10.66, and note to law 2. Some duties, as already indicated, were performed by municipal slaves. Then, too, the city officials had apparitors, such as clerks, keepers of archives and scribes, who were bound to their position the same as the apparitors of a provincial governor were bound to theirs. Those positions had at first been filled by municipal slaves, but finally passed into the hands of freemen. Again, certain guilds took over certain burdens. Work of a low character, which could not be imposed on curials, was done - doubtless where slaves did not do the work - by collegiati, guilds, under the direction of curials. Nov. Marj. 7.3; Kuhn 80; Duruy, 8 Hist. of Rome 36; 1 Karlowa 902. But in the main, the

personal municipal liturgies, which, as stated, came to include magistracies, as well, came to rest exclusively upon the curials. 1 Karlowa 898-901; Kuhn, supra, 243-256. And it may be mentioned here that the duties of a guardianship and curatorship of minors and other persons, and to act as legate, were among those which a curial might be compelled to perform, as already indicated. Burdens which rested upon property alone were required to be borne by all land owners, whether curials or not, except when exemptions were specially granted. See C. 10.42, headnote. Special rules as to liturgies existed in Egypt.

#### 4. Imperial interference and imperial liturgies.

Municipalities in the Roman Empire and the decurionate might have become and remained the vital forces of keeping the empire flourishing, if they had been permitted to work out their own salvation under the principles of local self-government, without too much interference on the part of the imperial government and without the imposition of imperial burdens that finally became crushing. The election of magistrates by the people soon passed out of use, and passed into the hands of the local councils, because there was no competition for the offices. From the time of Trajan, curators of the cities sometimes known as the fathers of the city or logistes, came to be appointed, who took charge of the financial affairs. They were imperial agents, first appointed by the emperors, but later locally. C. 10.32.30 and note. They were found in all parts of the empire and came to overshadow the other municipal magistrates in importance. Later still, about 364 A.D., the emperors created the defender of the people, or of the city, who really became the chief magistrate thereof, and at times, but it seems not generally, supplanted the other magistrates. Abbott & Johnson, supra, 201; Liebenam, supra, 499, note 1. This official acquired jurisdiction to hear certain civil and criminal cases, and, as thought by Abbott & Johnson, supra, 205, together with the Christian bishops, "probably absorbed whatever judicial power still remained in the hands of the local magistrates." A special title in the Code (C. 1.55), deals specially with the office of defender of cities. The appointment of these officers in itself shows the decline of municipalities. The governors had general supervision of the affairs thereof and their interference in purely local affairs became so burdensome that legislation was finally enacted prohibiting the auditing of local accounts by their agents and putting in the hands of local boards consisting of the bishop and some of the leading men in the community. C. 10.30.4, and note; C. 1.4.26, and C. 8.12.1. After the establishment of the Christian religion, as the religion of the state, some of the lands belonging to cities were given to the churches. Karlowa, supra, 898. And most of the income of the lands that were left them was, as already indicated, devoted to the uses of the imperial government. The cities ordinarily were city-states; that is to say, their territory embraced lands outside of the limits of the city-proper. Sometimes this territory was extensive, embracing villages or other subdivisions, so that the empire was at one time composed entirely of these city-states as units. But that was not entirely true. Large fiscal estates were ordinarily no part of cities. And by confiscations or otherwise, these estates were enlarged from time to time at the expense of the cities. Imperial tenants were ordinarily exempted from municipal charges. See C. 11.68.1. And gradually there came into existence in the empire large landed estates belonging to private individuals, who, frequently, had received them from the emperors, and who in time, despite the resistance of the imperial government, came to constitute a class similar to the feudal

barons of the middle ages. Many individuals, and sometimes whole villages, placed themselves under their protection. Thus large areas of lands were withdrawn from time to time as sources of municipal revenue. Abbott & Johnson, supra, 215. In this and other ways, the vitality of cities was sapped and their financial strength undermined. See Gelzer, Studien 74, 79, 89; de Zulueta, De Patrociniis Vicorum 13; Rostovzeff, Studien 375-377; headnote C. 11.54.

The emperors took no effective steps to offset these weakening forces. On the contrary, as the needs of the imperial government became greater, still greater burdens were imposed upon the curials. They were compelled to billet, or quarter, troops and officials, and this liability became greater in the latter part of the empire as the number of officials increased immensely under a bureaucratic government. Then, too, the curials were required to look after the needs of the imperial post and provide transportation in connection therewith, as well as convoys for recruits, homes, money and provision for the central government. Besides, the local councils were generally made the administrative units for the imposition and collection of taxes. The full extent of their liability for the collection thereof is not definitely known. Anastasius placed this burden for a time on officials called vindices, and in some cases depending on the custom, the governor and his staff collected the taxes. C. 10.19.9 and note. Generally speaking, however, the taxes were collected by local collectors or receivers, nominated by the local council and confirmed by the governor. C. 10.72.8. Those who nominated these collectors were responsible for them. C. 10.72.2. And authors are generally agreed that the whole curia was collectively responsible for any delinquencies in the payment of the total sum of taxes imposed upon the municipality as a whole, even for the taxes of abandoned lands after a certain time. Liebenam, supra, 490; Abbott & Johnson, supra, 222; Rostovzeff, supra, 467; Dill, supra, 259; 1 Karlowa 900; C. 11.59.1; C. 10.23.4. In some portions of the empire, the primary liability for the collection of taxes appears to have rested on the so-called ten men (decaproti, decemprimi), or twenty men. Liebenam, supra, 490, note 1. Abbott & Johnson, supra, 222, state that this does not appear to have been true after Diocletian, but C. 10.42.8, embodied in the Justinian Code, appears to have recognized that system as existing. This responsibility, in either of the forms here mentioned, insured, to a more or less extent, the collection of the money as needed, but it would have been much better to have lost a small amount from time to time rather than to involve the curials in connection with such payment, for every time that others, or the whole curia, became involved, the government drew upon the existing or accumulated capital and ultimately brought ruin upon nearly the whole body of men thus held responsible, and thus unwittingly, but surely, "killed the goose that laid the golden egg."

5. These, then, were among the main causes of the "decline and fall" of Roman municipalities and the decurions. Thousands of curials were impoverished and ruined. No wonder that the remainder sought to evade the yoke. Laws became necessary to hold curials within the curia and to draft others into it, as long as available men could be found. In the latter part of the empire, the order apparently included all citizens who owned twenty-five acres of land (jugera) (C. Th. 12.1.33), or 300 solidi, according to Novel of Valentinian 3.3. See Kuhn, supra 250, 282; Abbott & Johnson, supra 113, 206; 1 Karlowa, supra 900. It became hereditary and escape therefrom became more and more difficult. Abundant evidence of these facts will be found in the within and subsequent

titles and the Novels attached thereto. We shall not anticipate the details of this legislation, but shall let it speak for itself.

In the latter part, after cities had ceased to flourish, we find provisions that persons other than curials should participate in some of the affairs of the municipalities. Thus we found at C. 10.30.4, that a special board was created for auditing the accounts, the board including the bishop - the bishops playing a leading part in the affairs of the empire at that time. Again, we find that "possessors" should also act in conjunction with curials, as, for instance, in the sale of certain property of the municipality. C. 11.32.3. These possessors seem to have been the small landed-proprietors in the city who were plebeians, and who did not have sufficient land so as to become curials. 1 Karlowa 902-903. A number of provisions as to the government of cities are found in C. 11.30 to C. 11.42. As to buildings in cities, see C. 8.10 to C. 8.12.

10.32.1. Emperors Valerian and Gallienus and Caesar Valerian to Caesones.

If, since your father wanted you to be a decurion, that honor was conferred on you during his lifetime, his heirs are indeed liable to the city - since in this respect your father occupies the position of a surety - but not until your property has been found inadequate. Promulgated November 27 (259).

Note.

A man who nominated another to a municipal office was responsible for the acts of the person nominated. See C. 11.34-36. That principle was applied when a father wanted a son to be a decurion, and who, thereafter occupied an office of responsibility in connection with which he became liable to the city. His father stood in the position of a surety and his heirs after his death. The son was not necessarily an heir, as fully shown in book 6 of the Code. The surety, however, was not responsible, until the property of the principal was exhausted. If the father did not consent to the son becoming decurion, he was not responsible. Law 5 of this title. Nor was he responsible for an emancipated son, simply because he consented that such son might become a decurion. C. 10.62.1.

10.32.2. Copy of the Imperial Letter of the Emperors Diocletian and Maximian.

The magistrates must take care that the decurions, called together in the usual manner, make definite nominations for official positions, and that notice thereof be immediately given to the nominees by a public official. A nominee shall have the right of appeal, if he desires it, and plead his cause before the president in the usual manner. If it shall be found that he should not have been nominated, the expense of the litigation must be repaid to him by the person nominating him.

Note.

Any office in a city had become a burden, instead of an honor. The officers, as here shown, were duly nominated and elected in an assembly of the local senate, duly convened. Inasmuch as during the period with which we are here dealing, the number of senators was not ordinarily great, and as no one wanted the office, the nomination was equivalent to an election. Hence, throughout the Code, the word "nomination" is frequently used as synonymous with election. Inasmuch as the office was a burden, redress could be had, if at all, only on appeal to the governor of the province. Such appeal was required to be taken in two months. C. 7.63.1; see also C. 7.62.4 and note and

C. 7.62.27 and C. 10.43.1. Appellant recovered his expenses if he won an appeal.  
C. 10.69.1.

10.32.3. The same Emperors to Julius.

Since you voluntarily accepted the honor of the decurionate, you cannot have your name stricken from the register, although you state that you are aged.  
Promulgated November 13 (285).

10.32.4. The same Emperors to Cassianus.

Since an adopted son (of a decurion) will, through the dignity of the adopting father, be considered a son of a decurion, there is no doubt that the latter, whom you write you have adopted in the place of a natural child, must not, on account of sever intentional wrong, be subjected to unlawful corporal punishments by the president of the province, and this will be restrained by proper penalty.  
Promulgated November 20 (285).

Note.

Decurions were ordinarily exempt from torture to which plebeians were freely subjected. That was about the only sign of honor left them. Headnote C. 9.41 and laws 33 and 57 of this title.

10.32.5. The same Emperors to Alexandrus.

You were wrongly induced to think that sons still in the power of their father cannot be called to positions of service (munera) or honor (honores). Of course, if you have not given your consent to the nomination, of your son, you cannot be held responsible for his administration.  
Promulgated (286).

Note.

Most magistracies were considered as positions of honor; other positions, as positions of service, commonly called liturgies. During the latter part of the empire, however, the distinction between these positions became more and more obliterated, and all positions were positions of burden or liturgies.

10.32.6. The same Emperors and the Caesars to Leontius.

The laws do not prohibit unlettered men from performing the duties of a decurion.  
Given April 24 (293).

10.32.7. The same Emperors and Caesars to Diogenianus.

Though brothers hold property undivided, nevertheless each of them individually are bound to perform municipal liturgies.  
Promulgated May 12 (293).

10.32.8. The same Emperors and Caesars to Platonianus.

Infamy (infamia) which you should abhor, but not the misfortune of the loss of your eyes, will deprive you of your acquired honor.  
Given January 17 (294).



Note.

For the subject of infamy, see C. 2.11 and headnote thereto. It did not exempt anyone from liturgies. Law 12 of this title.

10.32.9. The same Emperors and Caesars to Aurelius.

In the register of the decurions, a father will have preference over those who are childless.

(294).

10.32.10. The same Emperors and Caesars to Aurelius.

If the president of the province shall find that your father is over the age of seventy years, he will take care that your father will be exempt from personal liturgies.

(294).

Note.

The age of seventy exempted a person from personal liturgies, not from performing the duties of a position of honor. See note to law 5 of this title.

10.32.11. The same Emperors and Caesars to Maximius.

That a wife cannot be sued for debts of her husband, who is a decurion, is unquestioned.<sup>1</sup>

(294).

10.32.12. The same Emperors and Caesars to Zoticus.

It is proper that the infamous should have no immunity (from liturgies), since immunity is a privilege and not the reward of disgrace.<sup>2</sup>

Given November 27 (293).

10.32.13. The same Emperors and Caesars to Pratus.

Neither the decision of the president, granting perpetual exemption, nor the age of fifty, nor gout in the feet, will furnish an excuse from performing the duties of the decurionate.

10.32.14. Emperor Constantine to Evagrius.

No judge shall, arbitrarily, exempt anyone from curial obligations. If anyone, through misfortune, has become so poor, that he should be relieved, a report concerning him should be made to us, so that an exemption from municipal liturgies may be granted him for a limited time.

Promulgated March 15 (313).

C. Th. 12.1.1.

Note.

Whatever exemption was granted could be granted only by the emperor. C. 10.45.1. See also C. 10.47.1, by which curials were forbidden to grant exemptions.

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<sup>1</sup> [Blume] C. 4.12.2 and references.

<sup>2</sup> [Blume] See law 8 of this title and note.

10.32.15. The same Emperor to Hilarianus, Corrector of Lucania and Britain.

We want all decurions to refrain from the duties of notaries.<sup>3</sup>

Given January 27 (316).

C. Th. 12.1.3.

10.32.16. The same Emperor to Hilarianus, Proconsul of Africa.

If any decurion should be compelled, either on his own or on public account, to come to our court, he shall not depart until, having communicated his desire to the judge, he receives permission to depart. But if anyone contemptuously ignores this order, he will be made to feel our displeasure.

Promulgated at Carthage June 25 (324).

C. Th. 12.1.9.

Note.

A decurion could not leave his city to go to the imperial court without the permission of the governor. The reason lay in the fact that the government needed them for the performance of duties in the municipality. The law was passed in 324 A.D., and shows that even at that time the burden resting upon decurions was heavy. And while the emperors professed from time to time that they wanted complaints against officials to be laid before them, the prohibition contained in the foregoing law, naturally operated so that governors could frequently prevent such complaints. See Liebenam, Stadteverwaltung 509.

10.32.17. The same Emperor to Evagrius, Praetorian Prefect.

Whoever has left the curia and has served as a soldier (*militaverit*) shall be recalled to the curia.

Given May 17 (326).

C. Th. 12.1.13.

Note.

This law shows that even as early as 326 A.D., decurions sought to escape their duties as decurions by enlisting in the army. This was forbidden. C. 12.33.2 and 4. Frequent reference to attempted escape from duty will be found herein; for instance laws 18, 26 and 31 of this title. See Liebenam, Stadteverwaltung 495.

10.32.18. The same Emperor.

If any persons nominated to a municipal office, shall flee, they shall be sought for, but if, in their stubbornness, they are able to continue in hiding, their property shall be at the disposal of those who at that time are called on to perform the duties of the duumvirate in their stead, so that if they (persons fleeing) shall thereafter be found, they shall be compelled to fulfill the duties as duumvir for a full period of two years. 1. All persons who attempt to escape from public liturgies shall be treated likewise.

Given at Serdica September 27 (329).

C. Th. 12.1.16.

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<sup>3</sup> [Blume] See note to C. 4.21.17 as to notaries. A notary could be made decurion. C. 9.22.21.

Note.

There were ordinarily two duumviri, who originally were the highest magistrates in a municipality. See headnote to this title. Yet this law shows that persons attempted to escape from filling that office as early as the time of Constantine. In the earlier times, there were ordinarily also aediles and quaestors, who, however, largely disappeared from the third century onward, leaving the duumviri, ordinarily, as the only magistrates (Abbott & Johnson, Municipal Administration 89), who functioned as such, aside from the curators and defenders, though, of course, the duties formerly performed by the aediles and quaestors were performed by others. Giving games and shows and paying therefor was included among the duties of the duumviri. Gothofredus on this law; Liebenam, Stadteverwaltung 371. The instant law assigned the property of a person nominated as duumvir to the person who was nominated or chose in his place - not, it would seem in perpetuity, but to defray therefrom the expenses inherent in the office, the remainder doubtless still belonging to the person who fled. See laws 20, 26 and 51 of this title. The office was annual, but if the person who fled returned, he, as a penalty, was compelled to fill the office for two years. Gothofredus on this law. By the beginning of the fifth century, the defender was the sole magistrate in many towns. Abbott & Johnson, supra 201. That was probably true, however, only, or mainly, in the smaller towns, and the larger cities probably had their full quota of officials.

10.32.19. The same Emperor to Lucretius Paternus.

Vacating all rescripts by which an exemption from municipal liturgies has been granted to some persons, everyone shall be subject thereto. Not even an exemption granted anyone by the consent of the citizens or the curia shall be valid, but all shall be called on to perform liturgies.

Given at Heraclea October 25 (329).

C. Th. 12.1.17.

10.32.20. Emperors Constantius and Constans to the Curia of Constantina of Cirtensis.

Your Gravity will take care to compel those who desert their magistracy (as duumvir) to bear the burden of their condition so that they will be forced to forthwith refund and repay the expenses which the city advanced on their account.

Given at Naissus January 19 (340).

C. Th. 12.1.29.

10.32.21. The same Emperors to Nemisianus, Count.

The curials of the cities must not be troubled on account of the Crown Domain or compelled to perform, as extra burdens, work in connection therewith, since it is enough that they properly fill the offices in the cities.

Given at Bessa August 14 (340).

C. Th. 12.1.30.

Note.

The Crown Domain was under the control of the Count of the Crown Domain, his comptrollers (rationales) and procurators and other officers. The governors of the provinces were responsible for the collection of rents etc. His, Domanen 56, 57.

10.32.22. Emperor Julian to Julianus, Count of the Orient.

Former emperors permitted persons to be enrolled as curials of Antioch, who were such on the mother's side, and whom the condition of the father did not rightly claim as curials of any other city.

Given at Antioch August 28 (362).

C. Th. 12.1.51.

Note.

Ordinarily, the children of a decurion followed the status of their father, not that of the mother. See law 44 of this title. If the father was not a decurion, his children, ordinarily, were not compelled to become such, unless he possessed a certain amount of property. See headnote to this title and note to law 37 of this title. But an exception was made in Antioch, and if the mother was born of a decurion, her children could be enrolled in the municipal senate, provided that the father was not a decurion of some other city, for in the latter event, the sons would have succeeded him as decurions in that city. This exception is mentioned in laws 61 and 62 of this title.

10.32.23. The same Emperor to Julian, Count of the Orient.

The interests of those who have recently been added to the register of decurions, must be looked after, so that they are not burdened by the debts of past receivers of taxes (susceptorum), but having sued those on account of such debts who contracted them under previous tax warrants (praecedentibus delegationibus), you will not permit them (the new decurions) to suffer any trouble on account of the burden of a nomination with which they had nothing to do.

Promulgated at Berytus November 1 (362).

C. Th. 12.1.54.

Note.

Receivers of taxes (susceptores) were nominated and elected by the municipal senate, confirmed by the governor. C. 10.72.8. Those who nominated them were responsible for their acts and their delinquencies. C. 10.72.2. The question in the instant law, therefore, was as to whether or not new members of the senate who had nothing to do with the nomination or election should be held responsible along with the members who aided in the nomination and election, and the answer was that they were not. Gothofredus interprets "delegatio" as being equivalent to "nominatio" - nomination, and that meaning may well be given it here. Cujacius interprets it as here translated, which would seem to be the more plausible. "Delegatio" was often used as the equivalent of a tax-levy or tax warrant, and the receivers of taxes acted pursuant thereto.

10.32.24. The same Emperor to Leontius, Consular of Palestine.

If any decurion is father of thirteen children, he shall be granted honorable exemption from liturgies.

Given at Antioch March 1 (363).

C. Th. 12.1.55.

Note.

Holmes, 1 Age of Justinian and Theodora 198, note, says: "Fathers of a dozen children were released (from municipal liturgies) or not called on \*\*\*. Otherwise disease or decrepit old age seem to have been the only effective claims for relief, apart from

interest, bribery etc. The general result of this political economy was that the empire resembled a great factory, in which each one had a special place, and was excluded from everywhere else."

10.32.25. Emperors Valentinian and Valens to the citizens of Byzacenus.

The curials shall not be ordered by the moderators of provinces to be present to perform liturgies beyond the boundaries of their city, unless public necessity demands it. Given at Aquileia September 12 (364).

C. Th. 12.1.60.

10.32.26. The same Emperors to Modestus, Praetorian Prefect.

Some slothful sectarians, having deserted their duties in the cities, seek solitude and hiding places, and have joined the assemblies of hermits, under the pretence of religion. 1. We order, therefore, after careful deliberation, that these persons and those like them, shall be seized and dragged from their hiding places, and be called back to perform the duties in their native city, or they shall be deprived, in accordance with the tenor of our constitution, of the pleasure of possessing property, which we have ordered to be claimed by those who are to bear the burdens of public liturgies.

Promulgated at Berytus January 1 (373).

C. Th. 12.1.63.

Note.

That decurions tried to escape from their duty by joining a religious organization is attested by various laws in the Theodosian, as well as the Justinian, Code. See, e.g. C. 1.3.12 and 52. If they refused to return, their property was turned over to those who bore the municipal burdens. And it seems that in such case, all the property was required to be turned over, since the law states that they should no longer enjoy the pleasure of possessing property. This is borne out also by C. Th. 12.1.104. The property was probably appropriated by the senate as a body. But even this limited right of remaining as a member of a religious body was taken away by C. 1.3.12, and the fugitives were to be returned at all events. See also C. 1.3.52, and Nov. 123, c. 15.

10.32.27. The same Emperors to the Moors at Sitifens.

No one can claim exemption from curial duty, by reason of his father's military service, if the grandfather who was a soldier, and a father who was a decurion, will succeed to the duties of his father.

Given at Treveris May 1(368-370).

C. Th. 12.1.64.

Note.

It was stated in note to law 22 of this title that ordinarily sons followed the status of their father. But so depleted had become the municipal senates and so strong was the call thereto, that the duty to become a decurion was placed above that of a soldier - soldiers coming largely from among the barbarians; that if the grandfather was a decurion, his grandsons became such, though the father was a soldier; and on the contrary, though the grandfather was a soldier and the son a decurion, the grandsons became decurions. See also law 29 of this title and note.

10.32.28. The same Emperors to Volusianus, City Prefect.

No (decurion) shall be considered exempt from his municipal liturgies by reason of any prerogative whatever.<sup>4</sup>

Given at Milan June 28 (365).

C. Th. 12.1.67.

10.32.29. The same Emperors to Germanianus, Praetorian Prefect of Gaul.

Sons, the offsprings of a marriage between a woman who belonged to the tenants of our estate and a man who was a decurion, shall follow, not the condition of the father, but that of the mother.

Given October 13 (365).

Note.

This law was apparently repealed by Novel 38, c. 6.

10.32.30. The same Emperors to Modestus, Praetorian Prefect.

That procurators of a city should resort to actions for the public (in case of need) is not in doubt.

(370-371).

Note.

The procurator of the city was the same as the curator of the city. 2 Cujacius 615 on this law. He represented the public interests and brought actions in its behalf. A curator for a city was first appointed as imperial agent, whose chief duty was the supervision of the financial administration of the municipality to which he was attached. He was at a later period chose by the local senate, and his appointment ratified by the emperor. In the Greek cities, he was known as logistes, or father of the city, chosen by the bishop, primates and land-owners. He also looked after leasing the lands of the city and the administration of the public works. The origin of this official dates back to the latter part of the first or the beginning of the second century A.D. He was finally, however, overshadowed in importance by the so-called defender of the city, concerning whom there is a special title in the Code. (C. 1.51); Abbott & Johnson, Municipal Administration in the Roman Empire 90-91; Liebenam, Stadteverwaltung 318; 481-2. He could impose no fines. C. 1.54.3.

10.32.31. The same Emperors and Gratian to Modestus, Praetorian Prefect.

Those who are curials by origin must, out of every house, all be dragged forth to perform public liturgies, and those who hide such persons, will lose, not only their good name, but are in danger of losing their property, if they, proceeding further, put their own wishes and patronage above the public good.

Given at Ancyra July 13 (371).

C. Th. 12.1.76.

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<sup>4</sup> [Blume] For exceptions to this rule, see law 66 of this title.

10.32.32. Emperors Gratian, Valentinian and Theodosius to Neoterius, City Prefect.

The imperial armorers<sup>5</sup> (fabricenses) who decline (the burden connected with) their curial origin, and their duties toward their home-city, shall be returned to their curia. The others shall not be disturbed in the least.

Given at Thessalonica March 17 (380).

C. Th. 12.1.81.

Note.

It is apparent that men even became forgers of arms in order to escape the duties of a curial. This they could not do, as shown by this law and by C. 11.10.4. The latter law provides special precautions against letting decurions become armorers.

10.32.33. The same Emperor to Eutropius, Praetorian Prefect.

All judges and rectors of the provinces must abstain from their accustomed unlawful usurpations, and they must know that none of the chief men (principales) or decurions, must, for any fault or offense whatever, be subjected to torture. 1. But if any judge, shall, in his obstinacy, commit such unlawful act and subject to torture any such chief man and decurions, who, as it were may be called, a senator of his curia, he shall be punished by a fine of twenty pounds of gold, shall be marked by perpetual infamy and shall not be able even by a special rescript to wipe out such mark. And the members of his staff shall pay a fine of fifty pounds of gold in to the treasury, since, in order to resist the obstinacy of the judge, we give them free permission to oppose him.

Given at Heraclea July 21 (381).

C. Th. 12.1.85.

Note.

The principales (also called primarii, primates, summates) were the leading men of the local curia, generally ten men (decemprimi), though sometimes less (five are mentioned in C. 10.32.57) and sometimes more, and commencing with the fourth century the Codes give them a position which seems to have been regarded as a virtual honor, and they acquired some administrative powers. The title, in some cases, at least, was conferred by vote of the local senate. Abbott & Johnson, Municipal Admin. in Roman Empire 94. They and the other decurions, as already stated in note to law 4 of this title (and see headnote C. 9.41) were exempt from torture. C. 9.41.17 and C. 10. 32. 57 indicate that this exemption was confined to the principales, but that seems hardly possible in view of the other laws to the contrary. Exceptions to the rule are found in C. 9.22.21, and C. 10.32.40.

10.32.34. The same Emperors to Florus, Praetorian Prefect.

If anyone dares to appoint a curial to manage his property, he shall be severely punished, without deference to his rank. And the person who, unmindful of his freedom and his kind, undertakes such infamous service, tarnishing his good repute by servile obsequiousness, shall be delivered into exile.

Given at Constantinople October 23 (382).

C. Th. 12.1.92.

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<sup>5</sup> Blume penciled in "armores" above Blume's original "forgers of weapons," which was placed in parentheses but not lined out.

Note.

Law 15 of this title forbade a decurion to be a notary; the instant law forbade him to be a procurator, or agent in managing an estate. This was said to be beneath the dignity of the decurion. The truth is that the government wanted decurions to devote their time and attention to the service of the state.

10.32.35. The same emperors to Postumianus, Praetorian Prefect.

Your Sublimity will enforce the provisions of the foregoing order in regard to keeping the sons of decurions (within the curia). You will also compel those who decline curial burdens, under the pretense of being an advocate, to the performance of their duties, which, though necessity (perhaps) may not demand it, his city does not (wholly) release him therefrom. You will compel the performance of these duties even by the sons of teachers, who come from curial rank.

Given at Constantinople April 6 (383).

C. Th. 12.1.98.

Note.

While sons of decurions could act as advocate in their native city, they were, nevertheless, compelled to perform their municipal functions. C. 2.7.2. Teachers themselves were exempt. C. 10.53.

10.32.36. The same Emperors to Basilius, Count of the Sacred Largess.

According to the rule governing the senatorial order, each person shall follow the condition of his father; nor shall any special rescript be valid, if anyone, relying on the origin of his mother, has obtained permission to transfer from a greater to a similar curia. Nor shall any exception be made because of a custom of the province.

Given at Rome June 16 (383).

C. Th. 12.1.101.

Note.

The sons ordinarily followed the status of their father, and became decurions in the city in which their father had been such. See law 22 of this title. In a large city, the burdens were greater than those in a small city, and hence transfers to such smaller cities had evidently been attempted, in accordance with a custom in the province. These transfers were forbidden, and the custom set aside.

10.32.37. The same Emperors to Postumianus, Praetorian Prefect.

Whenever those whom their origin makes subject to a curia, or who have been designated as decurions by vote of the senate (*judicium inter patres*) contend that they have been granted some privilege by our rescripts, they can receive no hope, of avoiding the curia, by reason of any imperial order.<sup>6</sup>

Given at Constantinople July 19 (383).

C. Th. 12.1.102.

Note.

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<sup>6</sup> Blume placed this in his list of “difficult points” at the end of Book X and wrote: “*judicium inter partes*—I construed with Gothefredus, *patres*—correct?”



The local senates were filled from time to time by plebeians possessing a certain amount of property. 1 Karlowa 900; also headnote to this title. They were the so-called land-owners (possessores) who at times acted with the senate or a part thereof in electing certain officials, as the curator, mentioned in note to law 30 of this title. 1 Karlowa 902. According to Gothofredus, these were the parties mentioned in the law who were chosen for the senate by "the vote of the senate."

10.32.38. The same Emperors to Cynegius, Praetorian Prefect.

No member of an official staff shall, as punishment and in place thereof, be made a curial, unless he, perchance, has fled from the curia and entered the service (of the Governor) in order to escape the duties to which he was born. 1. Hence, you will admonish all the judges under your jurisdiction, not to assign anyone to the curia, instead of punishing him, since, in any event, punishment, not dignity, should follow an offender. Given at Constantinople November 6 (384).

C. Th. 12.1.108.

Note.

It will be noted that the municipal senates had fallen so low in the estimation of the general public that an assignment to one of them was considered a punishment. In order, however, to uphold the dignity of such senates, the emperor was required to prohibit such practice.

10.32.39. The same Emperors and Arcadius to Eusignium, Praetorian Prefect.

The curials, who think that they can defend themselves by reason of the privilege (of being in the service) of our House, shall be dragged back to the curia, shall be subjected to their property duties and made amends to the city for the loss. Given December 25 (386).

C. Th. 12.1.114.

Note.

Those who became imperial procurators or other agents of the imperial government, could not by reason of that fact escape their curial duty.

10.32.40. The same three Emperors to Cynegius, Praetorian Prefect.

Whoever of the chief men (principales) or decurions shall be found to be a thief of public money, fraudulent in unlawful assessments, or immoderate in collection, shall, according to former custom, be subjected to blows from leaden balls, not only by you to whom, an account of the dignity of your position, is committed the supervision of all things, but also by the ordinary judges.<sup>7</sup>

Given at Constantinople April 1 (387).

C. Th. 12.1.117.

10.32.41. The same Emperors to Cynegius, Praetorian Prefect.

A decurion cannot, through patronage and by corrupt solicitation, change the lot to which he was born, and even though he may be exempt (from liturgies) because of old age, still he shall not leave the curia, on account of the resolutions and orders (of the

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<sup>7</sup> [Blume] See note to law 33 of this title.

curia) which are passed by a majority of the members (and in connection with which he may easily assist).

Given at Constantinople July 7 (387).

C. Th. 12.1.118.

10.32.42. Emperors Theodosius, Arcadius and Honorius to Abundantius, Count and Master of both Forces.

Military men shall have nothing in common with curias. They must know that they have no power in matters not within their jurisdiction. No tribune, duke or count shall subject any decurion of chief thereof (principalis) to any indignity, lashes or beating. 1. If anyone hereafter rashly and heedlessly subjects any of the chief men (principales) to any unlawful indignity, he must know that he will be punished by a fine of ten pounds of gold.

Given at Constantinople July 31 (392).

C. Th. 12.1.128.

10.32.43. The same Emperors to Rufinus, Praetorian Prefect.

You must not hesitate to return to their duties persons subject to the curia by ties of blood, but who have taken up various (imperial) official positions and posts. Neither rescripts nor imperial notations shall be of any avail in permitting them to flee therefrom.

Given at Constantinople April 12 (393).

C. Th. 12.1.134.

10.32.44. The same Emperors to Rufinus, Praetorian Prefect.

No one shall be bound (to curial duties) by the ties of a mother's blood alone, because the infirmity of women never renders anyone subject to functions of this kind from which she herself is [??] considered exempt.<sup>8</sup>

Given at Constantinople August 9 (393).

C. Th. 12.1.137.

10.32.45. Emperors Arcadius and Honorius to Ennoius, Proconsul of Africa.

The rule as to nominations should not vary. If all who are on the register of the curia are not able to be present, the absence of a few, either because of misfortune or accident, should not invalidate acts which have been decided for the common benefit by the greater part of the order, since two-thirds of the order present in the city, represents, as it were, the whole curia.

Given at Milan May 16 (395).

C. Th. 12.1.142.

Note.

While this law is not plain, it would seem therefrom and from D. 50.9.3 that two-thirds of the members of the local senate were required for a quorum, and a majority thereof decided questions of nominations and appointments. See a discussion of the subject in 1 [Karlowa](#) 587-588; [Abbott & Johnson](#) 67.

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<sup>8</sup> [Blume] For exception, see law 22 of this title.

10.32.46. The same Emperors to Theodorus, Praetorian Prefect.

To fill the offices in a city, the curials most worthy, by merit and possession of property, should be chosen, so that no persons should be named, perchance, who are unable to properly perform municipal functions.<sup>9</sup>

Given at Milan September 28 (395).

10.32.47. The same Emperors to Caesarius, Praetorian Prefect.

The curials, who have received the title of honorary countship,<sup>10</sup> must respect those who have been entrusted with the government over them (i.e. governors of provinces), and must not think that they have received the rank, so as to be able to ignore the orders of the judges. 1. But if they persevere in this offense, the guilty person will be subject to a fine of five pounds of gold and will be deprived of the honor which he has betrayed.

Given at Constantinople December 29 (395).

C. Th. 12.1.150.

10.32.48. The same Emperors to Florentinus, City Prefect.

As to succession as curials, we order that, although the fathers have fled (decesserint), the sons shall be bound.

Given at Milan December 21 (397).

C. Th. 8.7.19.

Note.

Cujacius understands this law to mean that even posthumous children, that is to say, children who were born after their father's decease, were subject to become decurions. "Decesserint," however, probably should not be understood here as "have died," but as "have gone away," that is to say "have fled." See C. 12.28.3. The Theodosian Code has "etiamsi patres haec fugerint," "although the fathers shall have fled therefrom," which makes the meaning plain. C. Th. 8.7.19. See Gothofredus on that law.

10.32.49. The same Emperors to Theodorus, Praetorian Prefect.

All who are bound by law to any curia, are, or whatever religious faith they may be, subject to perform municipal liturgies.<sup>11</sup>

Given at Milan February 13 (389).

C. Th. 12.1.157.

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<sup>9</sup> [Blume] See C. 10.52.4 note; C. 10.41.1.

<sup>10</sup> [Blume] As to the countship, see C. 12.10, et seq. Curials were frequently honored by the honorary countship for special reasons. Gothofredus on this law. The chief of the senate was frequently so honored. Abbott & Johnson, Municipal Adm. In the Roman Empire 94;

<sup>11</sup> [Blume] See C. 1.5.7. Blume listed this as one of the "difficult points" of this Book, adding "quo libet curiae—'by any law' or 'by any tie.'"

10.32.50. The same Emperors to Eutyhianus, Praetorian Prefect.

Absolutely all curials shall remain in the curia to which they belong by birth or otherwise, and those who, through fraud and corrupt solicitation, have come to the post of government and administration of a province must know that they not only must go back to their curia, but must again perform all municipal liturgies from the beginning.<sup>12</sup>  
Given at Constantinople October 25 (398).

C. Th. 12.1.159.

Note.

Various offices or positions were required to be filled, the order of which was definitely fixed. 1 Karlowa 899, citing D. 50.4.18; see note to C. 10.41.1; Kuhn, Verfassung d. R. R. 246. If a man escaped curial duties, and became governor of a province, he was required to go back and perform each of these duties over again, though he had already filled some of these positions.

10.32.51. The same Emperors to Messala, Praetorian Prefect.

Although care had been taken, by (the obstacle of providing) proper punishment, how curials should be returned, to their duties depriving them of their position of imperial service and honor, yet because they have, dishonestly, devised a plan to escape by avoiding the boundaries of their province - as if approach thereto only were prohibited to them - and seeking foreign lands, therefore, in order that their hope of keeping in hiding and the solace of impunity may not spur them on, to the damage of the curia, we meet their cupidity by providing that those who have attempted to withdraw from attendance at and from their duties toward the city by unlawful solicitation of forbidden imperial service or by any fraud, shall indemnify the curia which they deserted out of their property. 1. Thus, if they - persons, of course, who are bound to the curia by undoubted ties - are called by edicts, and prefer, nevertheless, to hide for a year thereafter rather than return, they must know that at the expiration of such year, the moderators of the provinces will, when called on to do so, consult the interests of the curia which they deserted, (by reimbursing the curia) out of their property. Nor can they plead that the shortness of time has inflicted swift damage on them.<sup>13</sup>

Given August 16 (399).

C. Th. 12.1.161.

10.32.52. The same Emperors to Probinus, Proconsul of Africa.

Where can be found a judge so wicked, who in cities, in splendid condition and rich in a desirable number of curials, would compel anyone to perform a burdensome duty a second time, so that while some have scarcely been initiated in the sacred functions of the curia, repeated performance thereof should be required of others?

Given at Milan March 17 (397).

C. Th. 12.5.3.

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<sup>12</sup> Blume included this as a “difficult point.” He wrote: “1<sup>st</sup> sentence not quite right—‘debitis’ incorrectly translated by ‘otherwise’—should be ‘and owing by them.’”

<sup>13</sup> [Blume] See law 18 of this title and note and C. 4.44.17 and note. All the property of the fugitives was apparently assigned to the curia.

10.32.53. Emperors Honorius and Theodosius to Eucharius, Proconsul of Africa.

A duumvir<sup>14</sup> cannot, with impunity, extend the power of his fasces<sup>15</sup> outside of the boundary of his own city.

Given at Ravenna March 10 (412).

C. Th. 12.1.174.

10.32.54. The same Emperors to Polladius, Praetorian Prefect.

We ordain by a general law, that if any curia<sup>16</sup> wants to reclaim its decurion for the curia, and the president cannot be reached, it may lay hands on him, and take the recalcitrant before the judge for examination, and unless the (latter), the moderator of the province, in case a question arises by reason of setting up a defense, settles the origin by proper decision, within three months, restoring the person, if convicted, in addition to assessing a penalty against him, to the duties owing by him, or pronouncing him free, he shall be compelled to pay a fine of ten pounds of gold, and his staff will be liable to pay a like amount.

Given at Ravenna May 3 (416).

C. Th. 12.1.181.

10.32.55. Emperors Theodosius and Valentinian to Isidorus, Praetorian Prefect.

If any decurion or person subject to a curia<sup>17</sup> dares to aspire to any imperial service, no lapse of time shall protect him, but he shall be dragged back to his own status, and neither he nor his children, procreated after the beginning of such status, shall be able to decline the duties which they owe to the city.

Given at Constantinople April 3 (436).

C. Th. 12.1.188.

10.32.56. The same Emperors to Isidorus, Praetorian Prefect.

Although the chief senators (principales) of Alexandria perform the functions of an advocate, they shall not in any manner be liable<sup>18</sup> to undertake embassies to the emperor, and the curatorship of the city shall not be imposed on them in any other than their own city. And after the chief (primus) of the curia has filled all the offices and has reached the highest rank, he shall, after two years, receive the title of count of the first order, but he shall, nevertheless, remain a curial.

Given at Constantinople June 4 (436).

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<sup>14</sup> [Blume] The chief magistrate. See headnote and note to law 18 of this title.

<sup>15</sup> [Blume] Fasces - a bundle of rods, having among them an ax with a blade projecting, borne before Roman magistrates as a badge of authority.

<sup>16</sup> [Blume] Si quis, sc. ordo.

<sup>17</sup> [Blume] i.e. son of a decurion. Gothofredus.

<sup>18</sup> Blume underlined "they shall not in any manner be," and placed a question mark in the margin; he also added this to his list of Book X's "difficult points," writing "Is not the contrary true of the first sentence? No—all right." Scott rendered this as: "The Chief decurians of Alexandria...are, nevertheless, not charged with any duties outside the city, nor are they compelled to perform any public duty except in their own municipality." 7 [15] Scott 123 (where this law is C. 10.31.56).

C. Th. 12. 1. 189.

Note.

Alexandria.

Augustus was afraid of the seditious spirit of the Egyptians, and deprived Alexandria of its local senate, if it had one, or refused to give it one, if it had none. Dio, 51.17. Hadrian, however, followed by Septimius Severus, commenced the municipal system in Egypt in pattern of that in the remainder of the empire. Spartianus on Severus, chapter 16, says: "He gave the Alexandrians the privilege of a local senate, for they were still without any public council, just as they had been under their native kings, and were obliged to be content with the single governor appointed by Caesar. Besides this, he changed many of their laws." Most of Egypt was divided into administrative districts called nomes, the units of which were village communities. Hadrian was the first emperor to found a city in Egypt outside of Alexandria, Naucratis and Ptolemais, the only Greek cities then existing. And the evidence discovered indicates that in time, not only was a local senate given to Alexandria, but to the capital of each nome as well. Abbott & Johnson, Municipal Administration in the Roman Empire 83; Reid, The Municipalities in the Roman Empire 333; Milne, 5 A History of Egypt 11; Radin, The Jews Among the Romans 107.

The senate in Alexandria came in time to be considered of almost an equal dignity with that in the two capitals of the empire. Gothofredus on this law. Hence, certain privileges were given the senators of that body, as indicated in the instant and the three succeeding laws. They were not required to go on embassies, to which, ordinarily, every curial was subject. That privilege was granted even to those members who were advocates, though such men were ordinarily best fitted for such duty. Nor were these members required to perform any curial function outside of the city.

The city had chiefs of the senate, just as other cities. One of these was first in rank (primus), who presided in the meetings. When he had performed all of his duties, and the period of two years had expired, the title of count of the first order (see C. 12.10, et seq), was conferred upon him, although he remained a member of the curia. That title meant that he became a senator of the empire.

10.32.57. The same Emperors to Isidorus, Praetorian Prefect.

We order that the five chief men of the senate (ordinis) of Alexandria shall be exempt from all corporal punishment, so that they may, when they can, defend the interests of their city with freedom. If they do anything criminal, they shall be punished by a fine, assessed by the worshipful Augustal Prefect in the presence of the curia. Given at Constantinople June 4 (436).

C. Th. 12.1.190.

Note.

The fact that the five chief men of the senate are here mentioned does not indicate that the senate may not have had more chief men (principales); but in any event a distinction was conferred on the first five of these, who were exempt from torture, indicating that the other members of the senate were subject thereto. This point is mentioned in law 33 of this title. The probabilities are that such other members were subject to such torture at the time of the enactment of this law, but that, judging from other laws, all curials were exempt from such torture in Justinian's time.

10.32.58. The same Emperors to Isidorus, Praetorian Prefect.

It is proper that a person who has for thirty years performed public services in the city of Alexandria, should be free from corporal (personal) though not from pecuniary liturgies. Merit, however, shall be considered, so that the deserving only shall enjoy this privilege, and not all, including the unworthy, indiscriminately.

Given at Constantinople June 4 (436).

C. Th. 12.1.191.

Note.

Corporal duties required personal service, personal attendance to duties, though not, ordinarily, manual labor; for a duty that required manual labor was called "sordid." A pecuniary duty required payment of money toward the performance of certain duties resting upon the municipality as a whole.

10.32.59. The same Emperors to Isidorus, Praetorian Prefect.

If the registrars (hypomnemato-graphi) have nominated persons to municipal functions, who voluntarily undertake the duties thereof, through the exhortation of the former, we order that the confirmation thereof by the then Augustal Prefect, which is generally obtained for money, need not be awaited, but the consent of both parties shall suffice, so that performance of duty may be commenced at once when no one objects. Thereafter, the (names of the appointees) and (of) those who nominated them shall be sent to the aforesaid judge by a concurring report (of all). If he delays to receive or confirm the report, he must know that he will be punished by a fine of twenty-five pounds of gold.

Given at Constantinople August 4 (436).

C. Th. 12.1.192.

Note.

The "hypomnemato-graphi" were important officers in Egypt, their duties to some extent being indicated in the instant law. It is said by Abbott & Johnson, Munic. Adm. in the Roman Empire 28, that they seldom appear in the records and that their official rank is a matter in dispute. 5 Milne 11, says they were the counterpart of the royal scribes and acted as city clerks. Gothofredus says that this is the officer referred to by Lucian in his "Apology for the Dependent Scholar," 12, where he speaks of himself thus: "My private relations are as they were before, though in a public capacity I am now an active part of the great imperial machine. If you care to inquire, you will find that my charge is not the least important in the government of Egypt. I control the cause-list, see that trials are properly conducted, keep a record of all proceedings and pleas, exercise censorship over forensic oratory, and edit the emperor's rescripts with a view to their official and permanent preservation in the most lucid, accurate and genuine form. My salary comes from no private person, but from the emperor; and it is considerable, amounting to many hundreds. In the future, too, there is before me the brilliant prospect of attaining in due course to a governorship or other distinguished employment."

10.32.60. The same Emperors to Thoma, Praetorian Prefect.

No person who is subject to a curia by the ties of birth, shall perform his curial duties by any substitute, but he shall personally perform the service owing his city, though he may have attained the rank of "worshipful" (specatibiles), unless the right of substitution has been granted him by a special rescript. 1. But persons who have been awarded the honorary title of "illustrious," are not forbidden to satisfy their curial duties by substitutes, at their own risk.

Given at Constantinople February 25 (442).

C. Th. 12.1.187.

Note.

The titles, or ranks, known in Justinian's time were "honorable," the lowest possessed, for instance, by the ordinary governors of provinces, and "worshipful" (specatibilis), the next highest, possess for instance by vicars and proconsuls, and "illustrious" possessed by the highest imperial officials. The title "patrician" was an added honor to the "illustrious" honor. According to some authorities, the rank of "glorious" was an additional rank above that of the illustrious. Boak, Master of Offices, 20.

10.32.61. Emperor Leo to Vivianus, Praetorian Prefect.

We decree that neither Dorotheus, a man of illustrious rank nor his property, nor Irenaeus, worshipful tribune and notary, though born before his father attained the illustrious dignity, need be uneasy on account of their curial birth and condition; their children also, already born, or born in the future, and their posterity in continued perpetuity of time and succession, shall be free from curial status and duty. The law of Julian, of blessed memory, which he promulgated concerning curials of the city of Antioch on their mother's side, shall not apply to the illustrious Dorotheus or the worshipful Irenaeus or to their property, or to their children who are already born or will hereafter be born, or to the property of the latter. 1. We direct that the law mentioned shall have full validity as to all other persons who are subject to the curia of Antioch only by reason of their mother's status.

About (457-465) A.D.

Note.

It was stated in law 22 of this title and note that a person in the city of Antioch, tracing his descent through a mother who was the daughter of a decurion, could be required to become a decurion of Antioch. The instant law was a special law exempting certain individuals named, and their descendants, from the rule of that law. See also the next law.

10.32.62. The same Emperor to Constantinus, Praetorian Prefect.

If any person who is born of the daughter of a decurion of the splendid city of Antioch, and of a father who owed no duty to any other city, and the former has voluntarily confessed or it has been proven, upon examination before the provincial judge, that he was born of the daughter of a curial and that he has been inscribed in the roll of decurions, he has no longer the power to deny or avoid such status; it will be useless for him to attempt to evade the lot of his maternal grandfather, and he need not doubt that he must undergo his curial burdens. 1. But if the curia, concerning which the



present ordinance deals, fails to enroll, according to the foregoing direction, anyone born of the daughter of a curial, it may not compel his offspring to be so enrolled; nor do we permit, where the son to whom the daughter of a curial gave birth has escaped, that the relation ship mentioned shall commence with grandson, great-grandson or subsequent offspring.

About (457-465) A.D.

10.32.63. The same Emperor to the Senate.

The status of Docticius, Jr., a man of illustrious rank, and his property, shall in no way be disturbed because of his curial status, and whoever makes such attempt shall be punished as for sacrilege. All his children, born after or during his illustrious administration are protected against any claim of curials, (and they) - let no one doubt - together with all their paternal property, are, together with the person of the father, free from any curial bonds.

Note.

It will be noted that only children born during or after the administration of Docticius enjoyed the privileges here mentioned. The children born before that time stood on a different footing. They did not become of illustrious rank through their father. So in law 67 of this title, the children of an advocate of the fisc, born before he became such, were not exempt from curial duties. The children of senators, however, were all of honorable rank, though born before the father became such. C. 12.1.11.

10.32.64. Emperor Zeno to Sebastianus, Praetorian Prefect.

We want no persons who were subject to a curia, and who since the beginning of the felicitous reign of Our Piety, have been promoted or shall hereafter be promoted to carry on the administration as Count of the Crown Domain<sup>19</sup> of ourselves or empress, or as Count of the Imperial Exchequer, or as Count of the Imperial Body Guard, as Quaestor or as Master of Offices, on that account to escape the leashes of curial duties, but they after their term of office, together with their children, whenever born, and together with their property, shall remain obligated thereto, unless, perchance, protected by privileges under other known laws concerning this subject; for we want all privileges granted by law or constitutions, to be respected as in full and unimpaired force and vigor. 1. Lest, however, they might seem to retain a meaningless name of the honor granted them, they shall have the title of their position of honor and fulfill their curial duty by substitutes, at the peril of their property, and have unimpaired and undiminished the privileges of their position of honor. 2. But those who received the aforesaid positions of honor before the beginning of our reign, shall, together with their property and their children born after they acquired such rank, be exempt from curial bonds and burdens. 3. And we, moreover, decree, that persons who have at any time heretofore been made, or who shall hereafter be made, patrician, consul or consular, and the masters of the soldiers, the praetorian prefects of the Orient or Illyria, and persons who actually at any time have

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<sup>19</sup> [Blume] Privatarum nostrae vel Augustae partis. Probably the Count of the Crown Domain was meant. The Count of the Imperial Patrimony had not yet been created. C. 1.34. See also the next law where a similar expression is used and where the same official was meant.

conducted or shall hereafter conduct the administration in the city, shall, with their property and their children born after the acquisition of the rank, be free from curial obligations and burdens.

Note.

It will be noted that exemption from curial duties was curtailed, and left to but few persons. Under law 60 of this title, a person with the honorary title of illustrious could perform these duties by substitute; under the instant law the Count of the Crown Domain and the Imperial Exchequer and the Imperial Body-guard (domestics), and the Quaestor and the Master of Offices, and of whom were of illustrious rank, had the same, and only the same, privilege. Formerly all senators were exempt from municipal duties. D. 50.1.22.5; Kuhn, Verfassung d. R. R. 294; see C. 10.40.8. An official position which conferred one of the titles mentioned in note to law 60 of this title was called a "dignity." Honorary "dignities," however, also were created. As to these various dignities, see C. 12.1, et seq. Prior to the adoption of this constitution, as plainly appears from the succeeding one, the illustrious persons above mentioned, and their children, born after the acquisition of the illustrious dignity, had been exempt from curial duties. The following constitution corrects the instant one, in that the privileges acquired prior to the adoption of the instant constitution were preserved. See also law 67 of this title.

10.32.65. The same Emperor.  
(lacking)

10.32.66 (65). Emperor Anastasius to Polycarpus, Praetorian Prefect.

We have thought best that the imperial constitution of Zeno, of blessed memory, which was adopted concerning the liberation of curials from curial bonds after attainment of certain high administrative posts or dignities, should be corrected in that portion only wherein it is provided that those also who before the adoption of that constitution, but after the beginning of the reign of Zeno, of blessed memory, had been promoted to administer the offices of Count of the Crown Domain (privatarum) of ourselves, of the pious empress, or of Count of the Imperial Exchequer or of Count of the Imperial Body-guard (domestics) or of Quaestor or of Master of Offices, should not, on that account, be permitted to escape from the leashes of curial obligations, but should after their term of office be, with their children, whenever born, and with their property, held obligated thereto, unless, perchance, protected by privileges granted by known laws on the subject. 1. And we order that the benefit which those who administered the foregoing offices or one of them, formerly (previous to Zeno's constitution) acquired by filling an illustrious office, shall be retained by them and their children unimpaired and undiminished, so that they and their children, born after filling such position, and their property, shall enjoy the freedom from curial condition and from curial obligations granted them by the provisions of former emperors, although it may have happened that they have filled the proper offices in a curia, either personally or through substitutes after the promulgation of the constitution of Zeno of blessed memory. The constitution of Zeno, of blessed memory, shall, forsooth, be in full force as from the date of its promulgation; but it is proper that laws should be made as rules for the future and should work no injustice as to the past. About (497-499) A.D.

10.32.67 (66). Emperor Justinian to Demosthenes, Praetorian Prefect.

Looking to the good of the curial orders, we decree that no one needs to flatter himself or think that he is exempt without reference to certain (definitely prescribed) rules, but he must know that he will be able to acquire liberty from the curial status only under our provisions, and all other methods, not embraced within this ordinance, are abrogated from this day on. 1. Whoever, therefore, has obtained the high honor of a patrician, or has been honored, by the ribbon of the honorary, or actual consulate, so as to become consul or consular, or has obtained the office of praetorian prefect, or the office of city prefect actually administered, or who has filled the office of master of the soldiers, shall, with his property and his children born to him after the acquisition of the honor or after filling such office, enjoy exemption and freedom from such status, but the children born to them previously shall remain in the former condition. 2. And the eloquent advocates of the fisc, of the prefectures of the Orient, of Illyria and of the city, are freed from curial bonds, after obtaining the office, together with their property and their children born before or afterwards. 3. The honorable chiefs (principes) also of the imperial messengers (agentes in rebus), and the worshipful chiefs (proximi) of the imperial bureaus of memmorial, of correspondence, of complaints and appeals, and of assignments, together with their property and children which they had after finishing their term of office, become exempt from curial burdens according to ancient constitutions. 4. And in view of the labors which they have performed through a long period of time, we confirm these enactments so that they, together with their property and offspring, shall be free from curial obligation according to what has been said before. 5. We do not hereafter, permit the children of a future advocate of the fisc who are born before he takes his office, to be exempt, so that a privilege which is not even granted to the highest rank, should not be claimed by others; but the sons born before he obtained his office shall remain in the former condition. 6. In no other ways than those which we have each enumerated, whether embraced in former laws - as where a father was permitted to make one of three sons a member of the greater senate<sup>20</sup> - or whether not embraced in former laws, do we permit anyone to acquire freedom from curial duty, but every pragmatic sanction, made concerning this or a decision of the eminent prefecture, or any other provision, shall be null and held for naught, and all curial members shall return to their cities, their property shall be subject to them, and no excuse shall avail them.  
About 529 A.D.

Note.

C. Th. 12.1.132, enacted in 393 A.D., provided that if a man had three sons, one of them might become a member of the imperial senate - that is to say, might become exempt from curial duties. Gothofredus on that law. That law was repealed by the instant law.

As to the advocates of the fisc, see C. 2.7.10 and note. As to the chiefs of the imperial bureaus and the duties performed by the members of these bureaus, see C. 12.19.

The instant law purports to enumerate all the persons who alone were exempt from curial duties. This law did not, however, abrogate laws 64 and 66 of this title, which permitted certain persons to perform their curial duties by substitutes. And there is

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<sup>20</sup> [Blume] The text is corrupt. The words beginning this subdivision, reading: "Tam praefectureae quaestoris quam" are proposed to be stricken out by Cujacius.

no particular reason to think that exemption from liturgies called extraordinary or sordid, which were mainly, if not entirely patrimonial liturgies, did not remain in force and effect. That seems to have been the intent of C. 10.48.14. Other laws are similar in effect. These laws remained in force and effect probably in that respect, although provisions exempting persons from all liturgies - which would include exemption from curial duties - were doubtless modified by the instant law. In other words, imperial officials not falling within the exemptions mentioned in this instant law, would, after their retirement, be subject to curial duties, if they were of curial origin, otherwise not.

The instant law required the master of the soldiers to actually occupy the office, in order to receive exemption from curial duties. An honorary title did not suffice in that case. An honorary title, however, seemed to suffice in the case of praetorian prefects. That situation was changed by Novel 70, confirmed by Novel 81, and by Novel 38 pr, by which the honorary title merely of praetorian prefect did not give such exemption.