

Book X.  
Title XLVIII.

Concerning excuses from municipal burdens (liturgies).  
(De excusationibus munerum.)

Headnote.

This title, the three preceding titles, and a number of titles following this deal with exemption from liturgies. A general summary may here be given.

Exempt from personal liturgies appear to have been: The various guilds of workmen and artisans and others engaged in imperial work, as more fully noted at C. 10.66 and note 2 appended to law 2 thereof; veterans, C. 10.44.1; C. 10.55; C. 10.56; C. 12.46.1; Protectors and attendants on the military standards; C. 10.48.2; certain purveyors of purple and other goods, in the imperial service, C. 10.48.7; men in the imperial service generally, since their work was necessarily inconsistent with performing personal liturgies in cities, as stated more fully in note C. 12.16.3; whether they were exempt after retirement from office depended, probably, on whether or not they were among the favored few mentioned in C. 10.32.67; students under 25, provided, there were others to perform the liturgies, C. 10.52.2; persons over 55 years of age, C. 10.53.3; the blind, C. 10.51.1; persons with certain kinds of gout, C. 10.51.2 and 3; persons with three or more children, those with three children being exempt from being employed in embassies, those with five children being exempt from other liturgies, and those with thirteen children being exempt from all personal liturgies, note C. 10.52.1; persons absent on embassies across the seas, C. 10.65.3; certain physicians granted exemption by cities and all physicians employed by the imperial government either to attend the emperor or the poor in the cities of Rome and Constantinople, C. 10.53.6 and note; certain athletes, C. 10.54.1. So, too, persons with no property seem to have been exempt (note C. 10.41.1) -a principle carried farther in connection with poor people in the country, for the law seem to have been that they should not be subject to any liturgies whatever. C. 10.48.1; C. 10.55.1; C. Th. 11.16.3 and 4.

Exempt from patrimonial liturgies appear to have been: Shipmasters and others engaged in shipping public grain, D. 50.6.6.3; D. 50.5.3; C. Th. 13.5.5 and 7; persons of illustrious rank, C. 10.48.16; senators, C. 12.1.4; chief physicians and others exempted by cities, C. 10.53.6 and note; churches, Novel 131, c. 5; lifeguards at the imperial court, C. 12.16.3 and note; masters, assistant masters and employees in the four imperial bureaus of memorials, etc., C. 12.9, C. 12.19.4 and notes; officials in office of Count of the Imperial Exchequer and the Count of the Crown Domain, C. 12.23.1; officials in the office of the Masters of the Soldiers, C. 12.54.4, and, according to Kuhn 82, all artisans. There was, however, no exemption from certain patrimonial liturgies, as the construction and repair of highways, hauling public provisions and construction or repair of walls, as shown in headnote C. 10.42. Palace officials immediately attending the emperor and chamberlains had a limited exemption, C. 12.5.2, C. 12.28.1. See also C. 10.48.12 as to imperial officials generally being exempt from "sordid" liturgies.

10.48.1. Emperors Carus, Carinus and Numerian to Demetrius.

Even persons who are shown to have managed our property, must perform municipal liturgies consistent with their dignity.

Note.

Imperial procurators actually officiating were exempt. The instant law imposed liturgies only on those who had acted as such procurators in the past. Cujacius on this law.

10.48.2. Part of the transactions of the Emperors Diocletian and Maximian.

February 13. Firminus and Apollinarius having been brought in and the chief decurions of Antioch standing by, Sabinus said \*\*\* Diocletian (then said): To certain persons of rank exemption from personal municipal liturgies<sup>1</sup> has been granted, that is to say, to those who belong to the protectors and provosts (praepositi). These therefore shall not be called on for corporeal or municipal duties.

10.48.3. The same Emperors to Marinus.

A guardianship furnishes no ground for exemption from municipal burdens, inasmuch as not even the management of three different imperial estates<sup>2</sup> furnishes ground for such exemption.

10.48.4. The same Emperors to Attilus.

Water-organ players (hydraulae) can in no manner prove that immunity from municipal services has been granted them.

10.48.5. The same Emperors and the Caesars to Marcellinus.

Procurators of those who are absent on account of business of the state have no exemption from municipal burdens.

10.48.6. The same Emperors and the Caesars to Gaius.

It cannot be shown that exemption has by any law been granted to hunters on account of this profession alone.

Note.

Some hunters, probably those for the army, were exempt. D. 50.6.6. See C. 10.66.2 note.

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<sup>1</sup> [Blume] Civilius et personalium. The exemption here granted was from personal liturgies only. Cujacius on this law. Protectors were imperial household troops. C. 12.17. Provosts or superintendents (praepositi) was a general term, but at this place probably denoted the immediate attendants on and bearers of the imperial military standards (Cujacius on this law), although Gothofredus, commenting on C. Th. 6.25.1, (see C. 12.18.1), thinks that they were superintendents of municipal liturgies; but this is altogether unlikely.

<sup>2</sup> [Blume] Domuun - patrimoniorum. Cujacius on this law.

10.48.7. Emperor Constantine to the Vicar Catulinus.

It has been thought best, according to ancient custom, to exempt from every municipal burden purveyors of garments, linens (linterarios), purple and Parthian wares<sup>3</sup> who are in our service.

10.48.8. The same Emperor to Taurus, Praetorian Prefect.

We direct that no judge whatever shall in the future levy any burden on the provincials, so that only those payments shall be promptly made by all, which are required to be made by reason of the regular tax (canonis), or which Our Clemency, either pursuant to a regular tax warrant (delegatione), or pursuant to a preceding imperial letter, orders to be made. 1. But if, perchance, any urgent necessity arises, the matter shall be referred to Your Highness, so that the levy may be ordered by your authority, and if that is done, it shall be reported to us, so that it may be confirmed by our order. 2. If, however, anyone unlawfully attempts to demand more, he shall be subject to quadruple repayment. 3. The severity of this order should serve as a terror to the ordinary judges and their staffs, so that if, by their complaisant connivance or dishonorable dissimulation, a curial perpetrated wrongs, they, too, will be visited by a similar (similis) punishment. Given at Milan April (357).

C. Th. 11.6.11.

Note.

The principle stated in the instant law is similar to the principle stated in C. 10.18.1 where it was provided that no extra tax could be imposed without the emperor's consent. The instant law, however, modifies C. 10.18.1 in that it apparently permitted the Praetorian Prefect to impose extra burdens without the previous consent of the Emperor, reporting his action to the latter. The instant law, it is true, related to liturgies, while C. 10.18.1 related to an addition to the regular tax, but both related to burdens imposed upon taxpayers. See note C. 10.41.1, where this law is discussed.

10.48.9. Emperors Valentinian, Valens and Gratian to Claudius, Proconsul of Africa.

It is proper that warning to be given beforehand, no one may think that a personal function is to be appraised in money.<sup>4</sup>

Given at Treves December 1 (370).

C. Th. 14.3.12.

10.48.10. Emperor Gratian, Valentinian and Theodosius to Hypatius, Praetorian Prefect.

Preserving the privileges of our Crown Domain, the estates permanently leased (jure perpetuo consignata) shall not be afflicted with any extraordinary burden by frequently imposing assessments upon them aside from the first (regular) levy of taxes, since the rental (canon) in gold, fixed in view of these privileges, is not remitted by us on account of this difference in (the amount of) payments,<sup>5</sup> and it is not proper that estates which are bound, to perpetually make fixed prerogative payments, besides the payments in kind, should in the same class with others.

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<sup>3</sup> [Blume] The Parthian wares consisted of hides. Cujacius on this law.

<sup>4</sup> [Blume] D. 50.4.16.

<sup>5</sup> [Blume] i.e. on account of any extraordinary burdens.

Promulgated at Carthage April 13 (382).  
C. Th. 11.16.13.

Note.

This law is valuable as showing what payments were required to be made by persons who held imperial land under perpetual lease - which, at the time of Justinian, was the same as the emphyteusis. His, Domanen 91.

Now lands held under such perpetual lease paid an annual rent, called pensio or canon. In the case of privately owned lands and leased to others under such a lease, it is clear that the lessee was required to pay not only the annual rent - canon - but also the annual tax. C. 4.66. And the regular annual tax was also frequently spoken of as "canon." Now was that true with holders of imperial land held under perpetual lease? His, supra 105, says that the laws of the fifth century indicate that the rent paid under the lease, and the land tax, were united, but that the rent was higher than the ordinary tax. The instant law seems to prove this statement, aside from the inference that might be drawn, perhaps, from the use of the word "canon" as above indicated. It provides that in the first place such landholder was required to pay the annona, the tax in kind (annonarias funtiones). In the second place, he was required to pay a "canon" of gold, but which was fixed in view of the exemption from the ordinary extra burdens - that is to say, was fixed higher. In any event, the law specified but two kinds of payments to be made by such landholder - the annona, and an additional, fixed amount, which took precedence over other rights - which was, as stated "praerogativa." No other, additional amount, either by way of rent or by way of tax, is mentioned or indicated. It is apparent, accordingly, that in so far as the payment of the tax was concerned, such land was nearly - i.e. except as to the amount - in the same situation as privately owned lands. In fact it seems that the annual payments to be made - whether we call that rent or tax - might even be reduced, for C. Th. 10.3.7 provided that the reduction granted from the amount of taxes of ordinary taxpayers should also be granted to those holding imperial land under emphyteusis. C. 11.65.2 states that "patrimonial lands" pay a very high measure in gold and grain. 1 Kuhn 275, takes the view that such land did not pay any land-tax outside of the "canon." Clausing, The Roman Colonate 307, takes the same view, except as to certain of the imperial lands granted "injurprivatum salvo canone," which he says paid a small "rent" (canon) in addition to the tax. See also C. 11.59.17 and note C. 11.62.12.

10.48.11. The same Emperors to Syagrius, Praetorian Prefect.

We order that those who, with the honor of count, and as masters, presided (over the bureaus) of memorials, correspondence or petitions, as well as those who prepared and sealed the responses of Our Clemency, shall be exempt from all municipal liturgies. 1. Those of them who leave the service in our palace with such honor, may glory in the enjoyment of these privileges, and even though they reach a higher rank, they shall continue to enjoy these privileges so granted them.<sup>6</sup>

Read at Capua August 30 (382).

C. Th. 11.16.14.

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<sup>6</sup> [Blume] For the masters of these bureaus, see C. 12.9.1.

10.48.12. The same Emperors to Hypatius, Praetorian Prefect.

The men of the highest dignities, the counts of the Imperial Council, our notaries and chamberlains and ex-chamberlains, shall be exempt from any sordid liturgies. 1. All others, moreover, serving in the palace, who as civilians or soldiers in the palace are privileged, shall enjoy the same exemption, only if they shall show that it was granted them by some previous statutes, not to individual persons, but when such benefits are shown to have been granted to a rank or corporation, (as such). The ancient custom shall remain in force as to rhetoricians and grammarians of the Latin and Greek languages. 2. The exemption from sordid liturgies is as follows: The property of the bearers of the above enumerated dignities shall not be charge with making flour, baking bread or services in a pounding mill, nor shall they be charge with furnishing horses or haulage on the byways, except such as is necessary for the care of<sup>7</sup> the Rhaetian border or by which the Illyrian army is assisted as necessity or time demands. 3. No contribution of services of various artificers, or duty of burning lime shall be demanded from them; the property of the excepted persons shall not be compelled to furnish timber, wood (lignum) and boards; these men need no longer furnish coal, except what the mint or manufacture of arms demands according to ancient custom. No duty devolves upon them in connection with the construction or repair of public or sacred buildings; no commutation for recruits shall be asked of them. Finally, the property which enjoys such privileges shall not be called on to contribute toward the expense of legates or persons called as such by the emperor (adlectis). 4. But this shall apply only to estates personally owned by the holders of the dignity. 5. We also grant to persons, who have functioned in similar positions of honor, exemption from sordid liturgies.

Given December 9 (382).

C. Th. 11.16.15.

10.48.13. The same Emperors and Arcadius to Neoterius, Praetorian Prefect.

Exemption from sordid liturgies given to certain persons can not extend to heirs and successors. For it is clear that a right granted, not to property, but to persons because of their dignity and service, cannot be perpetual.

Given at Milan April 14 (385).

C. Th. 11.16.15.

10.48.14. Emperors Valentinian, Theodosius and Arcadius to Tatianus, Praetorian Prefect.

We direct that the law, which we enacted concerning extraordinary and sordid liturgies (services), and wherein we expressly named the liturgies to which, and the persons to whom, the law applies, shall remain in force as to the persons to whom we extended our generosity, to be enjoyed by them not only while in office, but during life.

Given at Milan March 22 (391).

C. Th. 11.16.19.

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<sup>7</sup> Blume penciled in “as is necessary for the care of” and put a question mark in the adjacent margin. Scott has this as: “...with the exception of those which, in accordance with custom, are performed on the frontier of Rhetia...” 7 [15] Scott 143 (as C. 10.47.12).

Note.

The former law, referred to in the instant law, was C. 11.16.18, enacted in 390 A.D. That law gave exemption to certain persons from "sordid" liturgies, but provided that no person should be exempt from "extraordinary" liturgies. In respect to the latter, however, certain exemptions were granted from time to time as noted in the headnote to this title, and were given to illustrious persons by law 16 of this title, and in that respect the instant law must be deemed to have been modified. The intent of the instant law, as a whole, would seem to be to provide that exemptions granted officials during their term of office should continue in force after retirement from office. See C. 12.28.3.

10.48.15. Emperors Arcadius and Honorius to Messianus, Count of the Crown Domain.

We definitely and absolutely order that the estate belonging to our patrimony, whether held under a short or perpetual lease, shall not be subject, aside from the regular payments (*ordinam*), to any superindiction,<sup>8</sup> commutation money (for horses and recruits), or sordid burdens. This grant was made not only by former emperors, but was also renewed by Our Serenity. 1. Whatever judge, therefore shall violate these provisions, shall pay five pounds of gold out of his own property; his staff shall pay the same amount, and the curials who cause such illegal orders to be carried out must pay an equal penalty.

Given at Milan June 15 (395).

C. Th. 11.16.20.

10. 48. 16. The same Emperors and Theodosius to Melitius, Praetorian Prefect.

We exempt persons of illustrious rank from sordid and extraordinary liturgies.

Given at Ravenna February 15 (412).

C. Th. 11.16.23.

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<sup>8</sup> [Blume] Probably the same as "extraordinary liturgy." See note to C. 10.17.1. See also headnote to C. 10.42.