

Novel 120.¹

Concerning the alienation and emphyteusis of church property.
(De alienation et emphyteusis rerum ecclesiasticarum.)

The same Augustus (Justinian) to Peter, Praetorian Prefect.

Preface. Since many and diverse laws have been promulgated concerning alienation, emphyteusis, leases and other administrative matters of church property, it has seemed best to us to embrace everything in the present law.

c. 1. We therefore ordain that those who manage the holy Great Church in this imperial city or an orphanage, hospital, poor house, infirmary or other venerable house in the imperial city or within its territory—excepting only the venerable monasteries—shall have no permission to sell, give away, exchange, give as remuneration or in any manner whatever to alienate immovable property as civic bread rations or rural slaves, unless an exchange is made with the imperial house, and we do not even permit anything to be given under colonistic right. An emphyteusis, moreover, by the aforesaid holy Great Church of this imperial city or by the mentioned venerable houses, shall only be made to the person receiving it, and (after him, successively) to two heirs, and no greater amount shall be remitted to two heirs, and no greater amount shall be remitted to the person receiving it than the sixth part of the fixed rental. As to the suburban estates belonging to the same holy Great Church and the aforesaid venerable houses in the imperial city or its territory, we direct, that if an income is derived therefrom, an emphyteusis thereof, with full rental, may be made thereof by the managers of the same venerable places, in the manner aforesaid, to the emphyteuticary and two successors, and no diminution (of the rental), but rather an increase shall be made. If these suburban estates have no income, we give the managers of the venerable places the right to let them out, for same amount, under emphyteusis, as stated above. **1.** If the property, let out under emphyteusis by one of the foregoing venerable houses, happens to

¹ Blume wrote at the top of this manuscript page: “C. 21.44 Nov. 123 absent.”

come into the possession of the imperial house or the imperial fisc or some city or municipal senate or some other venerable house, we give the managers of the venerable house which made the emphyteusis in the first place, the right, within two years, to declare their intention to leave the property in possession of the party which has received it and receive the income contained in the agreement of emphyteusis, or to receive the property back, with the emphyteusis dissolved, as they think best for their interests. **2.** If there are places belonging to the same holy Great Church or one of the aforesaid venerable houses, on which the buildings have fallen down, furnishing no income, but the aforesaid venerable houses, on which the buildings have fallen down, furnishing no income, but the aforesaid venerable houses to which these places belong, are unable to restore the buildings, we give permission to their managers to let them out under perpetual emphyteusis, provided that this be done subject to the payment of the third of the income collected from the buildings while still standing, or, if the emphyteuticary prefers he may first put up the buildings, and out of the income therefrom, fixed according to value, pay half thereof to the venerable house from which he received the places, with the right also to use the building material from the fallen houses found on the place.

c. **2.** If any one wants to receive some immovable property from the holy Great Church of the imperial city or from one of the aforesaid venerable houses as a usufruct, he shall not receive it, unless he immediately turns over to the venerable house from which he receives the usufruct, another property, in right of ownership, which brings in as much income as the usufruct given him, and not burdened with a greater amount of taxes, and after his death, or after the time for which the usufruct was given according to agreement—not exceeding the life of the receiver—both properties, the ownership and usufruct thereof, shall completely belong to the same venerable house.

3. We permit leases to be made by the same venerable houses for as many years as may please the contracting parties, not exceeding, however, the period of thirty years.

c. 4. If it happens that one of the aforesaid venerable houses is in want of money, on account of taxes, or some other burden weighing upon the venerable house, its manager may hypothecate its immovable property, and give it in special pledge, so that the creditor may have possession of the property and receive the income therefrom, crediting part of it on the principal and part of it on the interest at the rate of not greater than three per cent per annum. If those at the head of the venerable house pay the debt, or the creditor is paid off by means of the income (from the property), the property shall be returned to the venerable house which pledged it.

C. 5. Emphyteutic leases, hypothecations and leases for over five years shall not be made by the holy Great Church of the imperial city, except by the will and with the consent of the blessed archbishop and patriarch, the God-beloved stewards and the record keepers (chartularii) of the same holy Great Church swearing in his presence that the contract is not being entered into in fraud of its rights. In the remaining venerable houses, the record-keepers, if there are any, shall take the same oath in the presence of the head of the venerable house; if there are no record-keepers, the head of the venerable house shall make the contract with the holy gospels laid before him and he shall, under oath insert in the document (evidencing the contract), that the contract is not being made in fraud or circumvention of the venerable house. **1.** The stewards, moreover, and the heads of orphanages and the managers of other venerable houses, and record-keepers, and their parents, children or others connected with them by relationship of blood or marriage, must not receive emphyteusis, leases, or hypothecations of property belonging to such venerable houses, either personally or through a third person, knowing that if anything of that kind takes place, the contract will be void, and all their property, as well as that of the stewards, record-keepers or managers, with whom they are

connected in the manner aforesaid, will after their death, become that of the venerable house from which they received the emphyteusis, lease or hypothecation.

c. 6. We have made these provisions for the holy Great Church and the aforesaid venerable houses in the imperial city and its territory. It has pleased us to make similar provisions as to the remaining holy churches, monasteries, hospitals, infirmaries and other venerable houses situated in the different provinces of our state, as well as to the monasteries in the imperial city and its territory. **1.** We therefore give power to the aforesaid venerable houses not only to make emphyteutic leases, limited in time, of immovable property belonging to them but also deliver property to those who want it, in perpetuity, under emphyteutic right. If the property is that of a holy church of another venerable house, the management of which is in the hands of the holy bishop of the place, either in person or through his clergy, such contract shall be made by his will and with his consent, the steward, managers and record-keepers of the venerable houses taking an oath in the presence of the bishop, that no damage is inflicted to the venerable house by this emphyteusis. In the case of poor houses, hospitals, infirmaries and other venerable houses having their own management, if they are holy houses of prayer, the contract shall be made by the consent of the greater part of the clergymen ministering therein and of the steward; otherwise, in the case of a hospital, poor house, infirmary or other venerable house, the contract shall be made by the head thereof, the managers of these venerable houses taking an oath in the presence of the God-beloved bishop by whom they are designated or appointed, that no fraud or circumvention is being committed by such contract against such venerable house. **2.** In the case of monasteries, the contracts shall be made by the abbot together with the greater part of the monks who serve therein. And in all these cases, we direct that it shall be written in the document (evidencing the contract), under oath, that the transaction is not entered into in fraud or circumvention of the venerable house (in question). These formalities having been observed, not more than a sixth part of the income from the property under emphyteutic lease shall be remitted. The provisions made above as to fallen houses belonging to venerable houses

situated in the imperial city, shall also apply to such venerable houses (not situated there). And it has seemed good to us to also prescribe in connection with the same venerable houses, that if they are in debt either on account of public taxes or on account of some other unavoidable cause, and they are unable to pay the debt out of movable property, then, in the first place, immovable property may be specially pledged to a creditor, so that he may credit part of the income therefrom on the debt and part of it on the interest, at a rate not greater than three per cent per annum. If they are unable to pay the debt in this manner, then we direct that the persons who are appointed by the holy patriarchs, whether they are metropolitan bishops, other bishops, abbots, or managers of an orphanage, poor house, hospital, infirmary or other venerable house, shall make a record before the holy patriarch by whom they are appointed or designated, and under the oath of the managers and with the consent of the majority of those who minister in the venerable house, making the debt known and stating that it is unable to be liquidated by movable property; person who are appointed by metropolitan bishops, whether they are bishops, abbots or managers of an orphanage, poor house or other venerable house, shall similarly make such record before the metropolitan bishop; in like manner, records shall be made before bishops, whether appointed by patriarchs or metropolitan bishops, who have monasteries, poor houses, hospitals, infirmaries or other venerable houses under them; provided that, whether such records are made before the patriarchs, metropolitan bishops or (other) bishops the venerable house shall not suffer any damage or expense by reason thereof. We do not, hereafter, want such records to be made by the persons and houses mentioned before presidents of provinces or defenders of cities, so that they need incur no expense. After these things have been done before the mentioned holy patriarchs, metropolitan or other bishops, the aforesaid managers of the venerable house in debt shall post up a notice in writing in a public place of the city during a period of twenty days, thereby notifying those who may want to buy the immovable property, that the person offering the most will have preference over the others. When all these things have been done in this manner, the sale may be made and the price shall at all events be paid on the debt, and the purchaser shall not be protected unless he pays the price

for the debt itself and that fact, together with the fact that nothing is being done in fraud or circumvention of the venerable house, is stated in writing, under oath, in the instrument of purchase. If no purchaser of the property in that manner is found, we direct that the creditor of one of the aforesaid venerable houses may lawfully receive the property in payment, a just and careful appraisal being made, and a tenth being added to the whole valuation, and the creditor receiving (a proportionate) quantity in payment and with full right of ownership; provided that the managers of the venerable house in debt and the majority of those ministering therein consent to such sales. The immovable property given the creditor shall not be selected by the creditor, but property shall be given that holds a middle ground so far as fertility and sterility, income, public tribute and other matters concerned.

3. If any bishop, steward or manager of any venerable house in the imperial city or in the provinces has received or shall hereafter receive any loan, we direct that they shall not charge it to the account of the venerable house, unless they first show that it went to the use of the aforesaid venerable house; and the creditor himself or his heirs shall have no right of action on that account against the venerable house, unless they show that the money was used for matters pertaining to the venerable house, but they must (if not so used) bring an action against the person or his heirs who received the loan.

c. 7. We also direct that—excepting the holy Great Church of the imperial city and the venerable orphanage and the hospitals and poor houses in the imperial city and in its territory—that all holy churches and venerable houses and monasteries in the imperial city and in the provinces may make exchanges among each other, preserving each from damage, with the consent, in writing, or by declaration on the public records not only of the managers of both venerable houses, but also of the majority of those ministering therein. Property obtained by any venerable house from the imperial houses, or which shall hereafter be so obtained, shall not in any manner be sold, exchanged or alienated, not even when that is undertaken by venerable houses among themselves. **1.** Since, moreover, we have learned that alienations of monasteries are made by some persons, so that they are transferred

from a holy to a private status, we also entirely forbid this. If anything of [this] kind is found to have been done, we give permission to the holy bishop of the place to reclaim such monastery and retransfer it to its former status. If any of the aforesaid venerable houses in this imperial city or in the provinces—excepting the holy Great Church of the imperial city—have possessions burdened by public taxes, from which no income to the venerable house is derived, we give permission to the managers of the venerable house to alienate such possession in any manner they wish for the benefit of the venerable house, records being made in connection with such alienation before the person by whom the managers of the places are designated or appointed, the managers and the majority of those ministering therein swearing on the holy scriptures, that the alienation is not being made through betrayal or out of favor or in fraud, but in order that the venerable hose may be kept free from damage. We, moreover, forbid the stewards, managers and record-keepers of any venerable house, anywhere, and their parents, children and persons united to them by blood-relationship or marriage, to either personally or through a third person, be the beneficiaries of any lease, emphyteusis, purchase or hypothecation of any immovable property belonging to the venerable houses, just as we forbid those in the imperial city.

c. 8. If any chief lessor (conductor) moreover, or any emphyteuticary of any property belonging to the holy Great Church or any venerable house situated anywhere in our empire, deteriorates the property which he has received or shall hereafter receive, or shall fail to pay the rental for a period of two years which he promised, we give permission to the venerable house by which the lease or emphyteusis was made, to demand the arrears from him and the restoration of the former status of the property leased or let out by emphyteusis, and to expel him from the property, and he cannot bring any action against the venerable house for betterments. If the managers of these houses do not want to expel him, we direct that the amount due on the lease or emphyteusis be demanded from him, and he may retain the property until after the time fixed (for payment) has elapsed, but must pay the amount agreed on. If he flees, we give the heads of the venerable

places the power to indemnify the venerable houses out of his property, and he cannot even in such case claim anything for betterments.

c. 9. We permit the holy churches of Odessus and Tomis (on the Black Sea) to alienate immovable property for the redemption of captives, unless, perchance, some possessions have been given upon condition that they should not be alienated. We also permit, that the holy church of Jerusalem shall have power to sell houses belonging to it in the same holy city, but for a price not less than what is collected as rentals therefrom for fifty years, so as to purchase another and better income with the price thereof. If persons, moreover, have given, sold, turned over to or left sterile possessions to a venerable place in the imperial city or in the provinces, we direct that the venerable house to which such possession has come shall not suffer any damages on account thereof, either on account of public tribute or on account of anything else, but the burden shall be returned to the persons who gave such property or their heirs, who will be compelled to receive such possessions back and to indemnify the venerable house out of their own property for any damage arising out of any such matter. If any fraud was committed in such matter, so that money was given to the venerable house for (receiving) such property, we direct that the venerable house shall have that as a gain, but the sterile property shall be restored to the person who gave it and to his heirs. **1.** We further direct that no necessity shall be imposed upon the holy churches and other venerable places situated in the imperial city or in any province of our empire, to buy sterile or fertile possessions anywhere, lest it come about on that account that they might lose what they have or become liable for debts. If any person, moreover, wants to have the usufruct of any immovable property of any of the foregoing venerable houses—as we also above prescribed for the venerable houses in the imperial city—he shall not receive it, unless he immediately turns over to the venerable houses from which he receives the usufruct, another property, by right of ownership, which brings in as much income as the usufruct given him, and is not burdened with a greater amount of taxes, and after his death, or after the time for which the usufruct was given according to agreement—not exceeding the life of the receiver—both properties,

the ownership and usufruct thereof, shall completely belong to the same venerable house, and we have prescribed these matters as to immovable property.

c. 10. Concerning the holy vessels belonging to the holy Great Church of the imperial city or to some other house of prayer situated anywhere in our empire, we decide generally, that they shall not be sold or pledged except for the redemption of captives. But if there are many vessels in any one of the mentioned venerable houses which are not applied to any necessary use, and such venerable place happens to be burdened by debts, and no other movable property with which the debt may be paid is at hand, we give permission, records being made as stated above, to either sell the superfluous vessels to other venerable places which need them, or to melt them and sell them, and apply the price on the debt, so that immovable property may not be sold.

c. 11. If any contract is made in violation of the provisions of the instant law concerning movable or immovable property of one of the aforesaid venerable houses, it shall be returned to the holy church or the venerable house, in connection with which anything of the kind happens, together with the fruits thereof of the intervening time, and it shall, moreover, retain the price of remuneration or whatever was given in exchange or for any other reason. If an emphyteusis is made contrary to what we have prescribed, we direct that the property shall be returned to the holy church or venerable place, and the emphyteuticary shall pay (nevertheless) according to the tenor of the emphyteutic instrument. If any church property or property of another venerable house was presented as a gift, it shall be returned to the holy church or other venerable place, together with the fruits thereof of the intervening time, and an amount equal to its value shall be paid. If a hypothecation is made contrary hereto, the creditor shall lose the debt and shall return the property to the venerable place. Notaries, moreover, who dare to give assistance in connection with instruments in violation of this law, shall be condemned to perpetual exile. If anything was done in accordance with the former constitutions previous to the enactment of this law, it shall in every respect remain

in force. But everything done contrary to the former constitutions shall be invalid, and the property given in violation thereof shall be returned to the venerable houses. In the future, everything shall be done in accordance with the instant law, and all other constitutions promulgated concerning such matters shall hereafter cease to have validity.

Epilogue. Your Sublimity, therefore, must zealously maintain the provisions made by Our Serenity by the instant law which shall be in force forever, posting [the] edict only in the customary places for ten days, without sending anyone into the provinces in connection therewith. For we have in mind, how our present, general constitution may become known to all without damage to the tax-payers.

Given at Constantinople May 9, 544.