

Novel 59.

Concerning expenses permitted to be incurred in burying deceased persons.  
(De impensis in exequias defunctorum faciendis.)

---

The same Augustus (Justinian) to Johannes, Praetorian Prefect of the Orient the second time, ex-consul and patrician.

Preface. Every regulation that is good should, God willing, either find its beginning with us, or, if it already was made by others, but has been spoiled, should be corrected by us and restored to its former condition, so that we may be always intent upon something good either by our own original creation or by correcting. And we have determined to correct abuses in regard to burials of deceased persons, and have granted to our subjects the benefit of not needing to undergo the double trouble of losing dear ones and suffer damage on account of them. What Constantine, therefore, of sacred memory, contemplated and established, and what Anastasius, of blessed memory afterwards confirmed, creating also a fund in connection therewith, that --- since it is in danger of coming to an end, --- we endeavor to reestablish with proper protection and bounds, so that it will last forever, Constantine, of blessed memory, gave 950 shops, from among the different guilds of this fortunate city, to the holy Great Church, exempt (from all other burdens). Anastasius, moreover, of blessed memory, not only added 150 to these shops, but also by two pragmatic sanctions established a definite income, so that the money from that source should be devoted (to the burial of the dead), to be paid to those engaged therein by the God-beloved stewards of the church. Now many, from various places, have come before us, complaining that no equality is being observed in this matter; that the burial of deceased persons is not being made free of charge, but that the expenses (thereof) are being harshly collected, and that there are many other persons and guilds, collecting (the expenses) from the persons whom the deceased left behind, and compelling payment by those who have nothing. We have deemed all these things worthy of the proper correction.

c. 1. And in the first place we restore to the holy Great Church those things in which, in connection with the shops, it has been prejudiced and suffered a loss, and have sent a written order to the city prefect, directing him and the official staff under him to deliver 1100 shops to the God-beloved defenders and stewards of the holy church above mentioned, out of which 800 shall be furnished to the God-beloved defenders, for the purpose of personal labor, and 300 shall be delivered to the pious stewards, in order that they may have these, and the income fixed by Anastasius of blessed memory, without being able to complain that it (such income) is deficient, but making it (a deficiency) up out of the gift of the 300 shops, paying such income out to the decani and the other orders as monthly expense. The God-beloved defenders shall have the 800 shops to furnish the so-called lecticarii (decani) and the other help required in the burial of the dead, so that in that manner the persons whom the decedent left behind may be relieved from burdens.

c. 2. The 1100 shops mentioned must, accordingly, be preserved intact and immune (from other burdens) for the God-beloved stewards and defenders, and if any of them fail or change occurs in their situation or business, the deficiency must be made up by the city prefect, so that the God-beloved stewards who have the management of the estate assigned for the burial of the dead may also have 300 shops exempt (from other burdens), and that the defenders may, having 800 shops, manage the matters pertaining to the burial of the dead. The income, therefore, from the estates shall therefore be expended by the God-beloved stewards for the burial of the dead, as we have said, the income from the 300 shops, which they have asked to be assigned for that purpose, being added. Since, moreover, many of the 1100 shops in this fortunate city (assigned for the aforesaid purposes) have failed, we direct that the deficiency therein be now made up, and the number of these 1100 shops, shall, according to the measure stated by us, be preserved intact for the God-beloved stewards and pious defenders, provided, however, that the decani or copiatæ (one from each shop) shall not be less than eight hundred; the God-beloved stewards, however, to whom 300 shops have been assigned, may, as they wish, either demand personal labor from all or a part of them or they may demand money

from all or part of the so-called exempted shops (from other burdens), and expend this money --- which, as they have shown us, they have heretofore lacked --- for the burial of the dead. This money and the income from the estates (assigned for the purpose aforesaid) shall be distributed among the decani and the female hermits and nuns (ascetriae et canonicae) and acolytes, as we shall hereafter point out. For as the God-beloved stewards have shown us that the income from the estate will not be large hereafter as it has been, we justly assigned the 300 shops to them for this purpose, so that the amount heretofore paid to those who render services in the burial of the dead, may be paid hereafter, namely, the amount of 400 solidi per month, to be distributed among the decani, the acolytes, female-hermits and nuns, according to the custom heretofore prevailing; that is to say, 182 solidi for each month to the decani, 91 solidi to the female-hermits, 91 solidi to the acolytes and 36 solidi to the nuns. This money shall be collected by the God-beloved stewards and paid every six months to those to whom it has customarily been paid.

Note.

It will be noted that the stewards who paid out the money here mentioned had lands assigned to them by Anastasius from which these payments might be defrayed. The income from these lands decreased, and so the stewards asked that 300 shops be assigned to them from which they might receive stated payments, so as to add to the money received from the lands.

The asceteriae and canonicariae were much alike; neither the ones nor the others were in Justinian's time, strictly nuns, but led a secluded life similar to that of the nuns. See Smith and Cheetham, Dictionary of Christian Antiquities under 'asceticism' and 'canonici.' The 'acolytes' were candle-lighters. See the same authority under 'acolytes.' All these persons were hired mourners --- a custom usual in the Orient. They accompanied the funeral procession, the women singing.

c. 3. The portion which belongs to the pious female-hermits shall be paid by the God-beloved stewards, within the time mentioned, to Eugenius, God-beloved deacon and superintendent of the hospital Samson --- of sacred memory --- and of the hospital founded by us, and to those who, after him, will be superintendents of the

aforesaid hospitals, because the female-hermits serving in connection with burials are under the supervision of the officiating superintendents of these holy hospitals. The amount owing the acolytes and the nuns shall in like manner be paid by the God-beloved stewards to those who now or hereafter are at the head of the former, in order that distribution may be made by them (the superintendent mentioned and those at the head of the nuns) to the persons mentioned, namely, the female-hermits and nuns under them, and besides, to the acolytes. If the God-beloved stewards delay in making payment, and that becomes clear by the non-payment during the second six months (after it is due), it shall be collected from the God-beloved officiating stewards with four percent interest from the expiration of the current semester (for which it was due), through the holy officiating archbishop and the patriarch of the holy Great Church of this fortunate city.

c. 4. If another year passes by, and the God-beloved stewards do not even then pay anything to the pious women and decani whom we have mentioned, the holy officiating patriarch may not only collect the debt with the stated interest from the God-beloved stewards, but he may also compel them to pay everything that has been stated, and, if the holy patriarch wishes, expel them from the management of the estate and restore the condition thereof as it now is. Care of this shall be taken by the blessed officiating archbishop and universal patriarch, who has the God-beloved stewards and the whole clergy and all the affairs of the holy church under his jurisdiction. **1.** These things having been thus provided, one shall take anything from anyone against his will for the burial of the dead. And in order to make detailed provisions, we ordain that with each funeral procession, given free, there shall be an asceterium<sup>a</sup> of female-hermits or nuns, so that no less than eight women march before the funeral procession, singing, and three acolytes, who shall receive nothing (other than already mentioned). But if anyone of the relatives of the decedent who arranges for the funeral, voluntarily and without compulsion, wants to have asceterium company (of women), or two or more additional, that may be done at his expense. But in order not to leave even that matter indefinite, we want the same measure above defined to be observed as to the female-hermits or nuns

and acolytes who are summoned at the expense (of such relative), so that no less than eight female-hermits or nuns shall be in each asceterium, and three acolytes for each asceterium.

<sup>a</sup> An asceterium would, properly, be an abode for ascetics; a hermitage. See Cujacius 2. 26. But here it evidently means a company of hired mourners who accompanied a funeral procession, each company consisting of eight women and three acolytes. If only one such company accompanied a funeral procession, nothing was to be paid by any relative or friend of the decedent, and the pay provided in another part of this Novel was to suffice; but if the relative or relatives desired more than one company, the extra companies, each consisting of the same number as above mentioned, could be called for and paid by him or them, the amount of which is mentioned in the next chapter.

The pay mentioned in this and the following chapters meant the money paid by the survivors of the deceased, and not the regular pay which the decani and hired mourners received from the stewards of the church as mentioned in c. 2.

c. 5. The female-hermits or nuns, who are called on outside of the company which acts gratis, may be paid as much as a third of a solidus, if the burials takes place within the new walls of this fortunate city, but the acolytes shall receive no part thereof or share it with the pious female-hermits or nuns; but the acolytes, who are called --- outside of the three who act gratis --- shall, if there are three, be content with three siliquae (45 cents), if there are six, with six siliquae (90 cents), and additional ones according to the same measure. It is proper moreover that if the distance is greater and the number of decani who manage the bier are several, and the number of companies (accompanying the bier) are several, that a small amount be given to the former on account of the burden of the bier, in pattern of those who accompany the funeral procession, so that they, too, may receive some solace on account of the difference in their labor. But the passage of Justinianae or Syci<sup>a</sup> shall be considered as within the new walls, since the distance is not far, and no greater time or labor is necessary to go there. But if the funeral takes place outside of the new walls, or in transmarine places outside of that mentioned, then the female-

hermits or nuns shall receive the half of a solidus, the acolytes in no manner participating therein, and the acolytes themselves shall, for each company (asceterium) receive four siliquae (60 cents), and nothing further, according to the division above mentioned. The "asceterium" furnished free shall follow the bier with three acolytes, as stated. They shall take no compensation or ask anything for the candles furnished or in any other manner set up a pretext therefor.

<sup>a</sup> Leading to the modern Pera and Galata.

c. 6. We have defined these matters for those who do not, for display, ask for the two large biers, placed in the sacred treasure-chamber as a church ornament, namely, those of Studius and of Stephanus. If any one want them then what has been said does not apply, since many men are necessary in that case, and greater care and solicitude, and when a man exhibits a desire of display, he shall pay the decani or pious female-hermits or nuns the amount promised by him, provided that this cannot exceed the amount of 12 solidi (\$36) when the two biers of Studius and Stephanus are used, and (an additional) four solidi, when the gilded bier located in the holy Great Church --- or the one made to take its place --- is also used;<sup>a</sup> and the female-hermits and acolytes shall receive double the amount previously mentioned, and the member of the company of hired mourners, female-hermits or nuns, who march in front of other biers without pay, shall receive the same pay as the members of the other companies. The same shall apply to the acolytes as stated, so that they, too, shall receive double to the amount already fixed by us. If (only) one of these three biers is used for a funeral, and the person arranging it wishes it so, it will be necessary for the God-beloved defenders to furnish the decani out of the 800 shops assigned to them, and the bier without charge, since the God-beloved stewards are compelled to pay the persons mentioned, according to the division defined for all, out of the income left by Anastasius of sacred memory and out of the 300 shops. In this manner nothing will be left indefinite; and the persons wishing a moderate funeral may enjoy the benefit of this constitution, and those who want to indulge in display, will not incur large expenses, but may make such display with moderation.

<sup>a</sup> The text is difficult, not clear and probably somewhat corrupted, making the translation also somewhat conjectural. It would seem that if one only of the three biers was used, payment might be made but was not compulsory, but if two or more biers were used, payment was compulsory.

c. 7. We have, then, defined these matters as to shops, income and funerals --- those that are free and those made with display. We have further provided as care-takers, by whom the number of shops may be preserved, not only the glorious (city) prefect of this fortunate city and the official staff under him, but also, especially, Your Sublimity and the persons who will hereafter be at the head of the office over which you now preside. And we further fix a penalty for your official staff, if it neglects the matter, of fifty pounds of gold, and for those who occupy your office for the time being a penalty of double that amount if they ever permit a deficiency, according to the diversion made by us, in the number of the 1100 shops mentioned. When you are informed to this, and your successors, you must give attention to this matter and see to it that everything will remain throughout as it should be and will not be burdened or disturbed upon any pretense by Your Sublimity or by any other person, so that no occasion for the payment of any money will arise for the funeral of any person except as we have provided. No difference shall be made among deceased persons, whether they are rich or poor, unless, as stated before, they select one (or more) of the three biers, for which case we have made proper provision. And we want these provisions, in the manner mentioned, to be perpetual and ever-enduring; this pragmatic sanction shall last forever, as long as there are men, as long as the great and praised name of Christians lives among mankind and is daily extended through the clemency of the Lord God. The holy patriarch of this fortunate city shall look after this matter, forsooth, along with all the others, exerting his sacerdotal power therein, and not permitting any person, or priest or magistrate or any other person of power to violate the provisions made by us. We bind even the emperor, whoever he, the holder of the scepter may be, in having the Great God in mind, to carefully look after this matter. For it is not only for the benefit of the dead, but also for the welfare of the living and especially of those who reign, that pious

provisions should be carried into effect, and should not perish through the negligence of the successors of those who first labored in making them. And as, moreover, we have ordered 1100 shops to be preserved intact and exempt (from other burdens), so we direct that all the remaining shops shall be subject to tribute. No one shall have permission to exempt them from tribute --- venerable houses, hospitals, hermitages, monasteries or any other place; not even (shops of) the imperial house, or shops that belong to any magistrate or power. All shops alike shall acknowledge tribute, lest, while some of them seek to escape and lighten their burden, all of it be placed on the remaining few, letting those that cannot bear it, suffer great damage.

Epilogue. Your Sublimity, therefore, and those who occupy your office after you, and the official staff under you, now and for all time must uphold the provisions which we deemed best to make by the present imperial pragmatic sanction.

Given November 3, 537.