

Novel 40.

That the church of the holy Resurrection
should be permitted to alienate buildings
situated in the same city.

(Ut ecclesiae sanctae Resurrectionis
alienare liceat aedificia in eade
civitate sita).

The same Augustus (Justinian) to Peter, holy
and blessed archbishop of Jerusalem.

Preface.

We have already made provisions prohibiting alienation of church property, which provisions we want to be valid and which we ratify in every respect. In as much, however, as the advantages of all the churches should be looked to, particularly those of the holy Resurrection (at Jerusalem) and of the place where the creator of the world deigned to become flesh, we thought it proper, therefore, to enact the present law, not to overturn what has already been enacted, but to confer a proper and necessary benefit. Every one knows that the holy church of the Resurrection, takes in and nourishes those who flock there from every part of the earth, the number of whom may be said to be infinite, and makes immense outlays, sufficing, beyond all hope, for those who congregate there, as though daily experiencing the very miracle of the Great God and of our Saviour Jesus Christ, who fed an unnumerable multitude on a few loaves. Thus the church is in need of greater income and pious bequests, so that it may be possible for it to help such a multitude. 1. We have learned at present that Eusebius, God-beloved presbyter and keeper of valuables of the holy church in this imperial city, when he had gone to the stated city of Jerusalem, and also then exhibited his honorable manner, pleasing to God, through which the income of the holy church has many times been greatly increased, bought (for the church of the holy

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Resurrection) a (yearly) income of about 30 pounds of gold for \$80 pounds, piously collecting a part, getting the stewards, dear to God, of the aforesaid church of the holy Resurrection to procure a loan for the other part.

He has informed us that the creditors are asking to get their money back, and that he has unexpectedly fallen on another source of income; that many flocking and going to the aforesaid city of Jerusalem, through love of the places dedicated to God, are wishing to buy, at great cost habitations, in church buildings, in order to enjoy living in the place mentioned; that the heads of the holy Resurrection are unable to do this, in fear of the laws enacted by us in regard to alienation of church-property, although the thing is very beneficial, in that, some want to buy these habitations for a sum based on the computation of rental for fifty years, ^(a) and that this would make a great and unheard-of difference in the future, in as much as such possession of the holy church would bring the unheard of return of about thirty pounds of gold in hardly thirteen years, when it was sold on the basis of (the same return in) fifty years, especially since the property consists of buildings which, being subject to all fortuitous circumstances, might perish, leaving not even a vestige, if, by some accident -- which we hope may not happen -- they should be overturned or destroyed in some way.

(a) According to this, the buildings were to be sold upon the basis, so as to bring thirty pounds of gold in thirteen years, when ordinarily they would have received this amount in fifty years.

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c. 1. These things have moved us to enact the present law, which we dedicate to God and the holy Resurrection, by which we ordain that all other matters contained in the law concerning the alienation of church-property shall also be valid as to the lands of the church of the holy Resurrection -- for we do not permit it to make a sale of lands -- but we somewhat relax the law as to buildings. For as we have made that law for the benefit of the holy churches, but we see that there is such a benefit in the matter above mentioned, why should we not concede them that in the present law, giving leave to those that sell and protection to the buyers, especially since we are satisfied that the properties will quickly return to the church, in as much as the purchasers of such property, having bought them on account of their love for God, will return them when they die. The holy church (of Jerusalem) therefore may make a sale of buildings, without fear of the general law relating to them, since an exception is made thereto by the (present) more recent law; and no penalty shall be visited upon any person by reason thereof. This may likewise be done in the future, whenever an advantage may come therefrom, so that manifold good may, through alienation, accrue to the holy Resurrection, from little property. We extend every protection to the purchasers thereof, now and in the future, and they and their heirs and successors need have no fear that they will be taken from them now or in the future, since those who make such purchase pursuant to the present law, should not be disturbed in connection therewith or be apprehensive, or suffer any damage or fear that it will be taken away. Your Beatitude must enter a decree (when a sale is made), in the

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presence of the venerable clergymen, and cause must be shown, why the alienation should be made, which must be made in order to secure a greater benefit, and that while few buildings are sold, a large and fine amounts will be obtained, provided, however, that for the present, the price received from sales made (upon the basis of rental) for fifty years, must be paid to pay the loan, which the creditors made for the acquisition of the (yearly) income above mentioned. If the Lord of all and creator of the world, deigned to bestow such privilege upon this church, above all other cities, that he should there become flesh, it is clear, that we, too, following the Lord God and his great miracles, as far as man can do so, have given her something, in preference of all other churches, so that she may enjoy this law, which we bring to her in the way, as it were, of first fruits, choosing and honoring its benefit in all things.

Epilogue.

Your Beatitude, therefore, learning of these provisions, embodied in this special law, and which must be inscribed in the books of laws, must make it known to all who are there, showing them our love which we have toward the holy, and justly by all men adored, church of the Resurrection, and which we offer to God, who has bestowed and bestows so many and such great benefit upon us, over all others who reigned before us.

The special law has been written to Peter, holy and blessed archbishop and patriarch of Jerusalem.

Given May 18, 538 A.D.