

Novel 80.

Concerning the inquisitor.

(De quaesitore.)

Emperor Augustus to John, Praetorian Prefect the second time, exconsul and patrician.

Preface.

We are always, with the aid of God, anxious to protect our subjects, delivered to our care by His grace from harm. Thus we also enact laws to insure justice in every way possible, take pains to diligently repair what is in a state of delapidation, and, further, devise new magistrates who may diminish crime by punishing wrongdoers. Such is the position of the praetor of the people, (a) whom we have created in this great city, an act which, through experience, has been proved of great advantage to all who live here. As a result of this experience, we have determined to devise another remedy, worthy of the law and of the magistracy, in a situation which needs it. For we have discovered that our provinces are deserted by men, and this great city is put into difficulties by being filled with various people, especially serfs who have left their own cities and have abandoned the cultivation of land.

(a) Novel 13.

c. 1. This has actuated us to consider the present law and a magistracy, now almost to be created anew. We have not hesitated to provide for the latter an ample salary (annona) and an official staff and make it responsible for negligence. We give the name of inquisitor (quaesitor) to this magistracy and to the occupant thereof. For those who in the beginning - we mean in ancient times - devised this position called the occupant thereof by this name. This magistrate, mindful of God, of fear of us, and of the law, must keep himself informed about the people who live in this city, from what

province they came, whether they are men or women, whether clergymen, monks or nuns, whether advocates from other cities or men of some other calling or men of (positions of) dignity, and careful inquiry must be made who they are, where they came from and for what reason they came. If these people are serfs, he must find out before what judges their litigation is pending, must hurry up the latter, quickly release the former from their difficulties on account of which they came here, and when they have obtained whatever they are justly entitled to, send them back from whence they came as soon as possible.

c. 2. If serfs who are subject to a master come to this imperial city in order to lay before the latter some petition, he (the inquisitor) shall take care that the masters rapidly finish the business on account of which the serfs came here, and send the latter back as soon as they have obtained their rights. If they have, perchance, come to engage in some litigation with their masters, and bring an action against them, then, if there are many of the serfs (having their interests in common), he shall immediately send most of them back into the province, leaving two or three to carry on the litigation as agents. He shall also urge the magistrate who tries the cause, to decide it as soon as possible, so that the litigants may not be detained for long, especially in the case of serfs whose presence in the city is superfluous and whose absence from the tillage of the soil brings damage to themselves as well as to the masters.

c. 3. If not rustics, but others, perchance, come here to engage in litigation with someone, he shall not permit them to tarry here, but shall strenuously urge the judges to end the litigation quickly and release the litigants, so that they may return to their own provinces and cities. If he, the inquisitor appointed by us, has

urged the judge trying the case or the masters of the serfs, to release the litigants or those waiting here, but they delay, and do not quickly release them from the litigation or from waiting, then he, the inquisitor, who occupies this magistracy through us, shall cause the litigants or the parties asking something from their masters without avail to be brought before them, examine them, quickly decide the matters on account of which those from out of the city tarry here, and send them back to their native cities or places from whence they came, and no one shall have the right to raise any objection to his jurisdiction or plead any privilege.

c. 4. If there are those who come here, not for the purpose of lightening their burden of life or to engage in litigation, but to engage in begging, or, not being satisfied with that, to commit crimes, he, the inquisitor, shall examine into their physical condition and if they are robust and able to work, he shall, in case they are slaves, learn who their master is and send them, though unwilling, back to him; if they are free and have come from some province or city, he must send them back from whence they came.

Note.

As to beggars, see further next paragraph and C. 11, 26.

c. 5. If they are born here and robust in body but have no honest way to make a livelihood, he shall not permit them to idle away their time and be a burden on the community, but he shall send them to the tradesmen of public work, and to the overseers of bakeries, and to those who cultivate gardens, and to those who engage in any other trade or work, where the former may toil, be supported and change an idle course of life for the better. If they refuse to remain at work, to which they have been sent, he shall expell them from this imperial city. We make these provisions for their benefit, so that idleness may not lead them to unlawful actions and that the laws may

not deliver them over to our magistrates for punishment. But men and women in this city who are unable to work and who are weak with old age, shall be let alone, to be supported by those who wish to act charitably. But the inquisitor shall ask of all other persons the purpose for which they came, and having found out, do whatever is proper to be done, so that they may not idly tarry here, but may, after completion of their business, be returned to their province.

Note.

As to beggars, see further C. 11,26.

c. 6. If persons who live in this city or those who come here complain that they have been damaged by some persons, for instance by demand of fees, or the wrong in connection therewith, and that the persons accused have violated the laws governing such fees, or have summoned them, the accusers, without judicial action, he, the inquisitor, must carefully examine the persons accused, of whatever rank they may be, to whatever imperial service they may belong, and under whatever magistrate they may be serving, and take them into custody. If the accusation is proven, he must visit the legal punishment upon them, and the magistrate under whom they serve cannot interfere. He must cause those who suffered the damage to be indemnified, in that he must cause the money, exacted contrary to law, to be repaid to them, as well as collect the fines fixed by our constitutions, report them to us, so that they may be spent as may be determined by us.

Note.

The general rule was that subordinates were subject to the exclusive jurisdiction of their superiors in civil and criminal cases. See note C. 3,13,7. This rule had its exceptions, and one of the exceptions is stated here.

c/ 7. Further, if an accusation of forgery or counterfeiting of signature is involved in any matter, he shall inquire into it, arrest the persons accused as guilty thereof and after written accusation (inscriptio) and proof, visit punishment upon them; for we give him power to also try such cases. If anyone wronged in the manner aforesaid reports to the magistrate created by the present law, but receives no attention, so that it is necessary to report the matter to us or the then reigning emperor, said magistrate must take notice that he must certainly indemnify the person whom he neglected out of his own property for the amount which the accuser should have received from the accused, and in addition thereto may justly expect our displeasure, because he has dared to violate our orders.

c. 8. Above all, the person who becomes such magistrate must ever be zealous to keep his hands clean in everything that he does, to have no sordid or covetous officers and to perform his own functions in an upright and open manner. If he discovers his officers in wrongdoing, he must punish them and set for them an example in constancy and moderation. And on that account we have fixed for him a salary of ten pounds (\$2160) to defray his expenses, for his counselor (assessor) a salary of 100 solidi (\$300), and for his officers for their expenses a compensation of 330 solidi (\$990). We have annexed a list of this to this law, so that they may be satisfied with these gifts from the treasury, and abstain from taking other property. In this way they will be careful servants of God and of us, enjoy the celestial good will and ours, and perform their duty in a more fitting manner and more according to law.

c. 9. We give our said magistrate authority to urge our judges on, to make reports to us, and to do upon his own initiative whatever is proper to be done, so that he may not give powerlessness or anything else as an excuse for appearing more incompetent than he should be in our judgment. We likewise, moreover, give him permission

to write public letters to the presidents of the provinces to send those dismissed by him from here, to their provinces, where they may live in peace and to receive any aid which they may need. He must take special care not to be molested by these persons a second time; that is to say, that the people who are here without any reason and are dismissed by him, do not immediately return, giving him trouble anew. If he again finds those who were freed (from their engagements) and sent away by him into a province, hiding in this city without cause, he should chastise them in a proper manner, and again dismiss them, but with greater severity. In this manner our outside cities will be inhabited and this great city will be freed from trouble. If he deems it best to put persons from his official staff in stations across the sea, to examine persons who come from other places, to receive those who are dismissed from here and send them into the provinces, he may do so, and look after the interests of the state in every way.

c. 10/ We ordain all this to take proper care of our subjects, so that they may not leave their native cities, to live here in misery, let alone to die here, deprived of their property and unable to be laid away in their paternal sepulchre. Indeed our predecessors who enacted laws before us and set the state in order, gave careful attention to these matters, provided for proceedings against idleness and carefully looked into all things pertaining to strangers. Nor is this anything new or an unusual zeal for the benefit of matters, but praiseworthy and ancient, but which was, in the meantime, neglected through a sloth which affects everything adversely, gradually came into danger of being weakened and perish, until we, finding it useful and serviceable, introduced it anew in our state. And as we want this officer and his official staff to be uncorrupted by gifts, and not take anything except what has been provided by us, so, too, no

burden shall be imposed upon these officers, and they need not now or hereafter give anything either on account of letters-patent or by reason of salary or for any other purpose; that is to say, they need not give anything now or hereafter to the officials of the imperial palace or those of Your Sublimity for any letters-patent or orders, nor anything to the superintendents (praepositi) of the treasury on account of the payment of salary paid by them to him, his assessor or his official staff, but the allowance made to them through our liberality shall be subject to no burden. For it will be a sufficient relief for all if he carries on his office legally and is useful to all.

Epilogue. Your Sublimity, taking cognizance of this, our will, must take care to put it into effect, and approve our forethought, since we create a new magistrate and look out for the interests of our subjects in all things.

Given March 10, 539.