

Novel 81.

A constitution which effects a release of sons from paternal power through positions of dignity and through the bishopric.

(Constitutio quae per dignitates et episcopatum filios a patria potestas liberat.)

Emperor Justinian Augustus to the sacred senate of the imperial city.

Preface. Always considering whatever affects the utility and ornament of the republic, we are zealous to put it into effect. We, accordingly, long ago enacted a law about the glorious patricians, which liberates them from paternal power through the dignity conferred on them.^(a) For we did not think it becoming that those whom we numbered among the fathers^(b) should be in the power of someone else. For if an act of emancipation, which formerly, in the time of the legis actio^(c) took place through insult and blows^(d), liberated them from such bonds, why should they not be liberated therefrom through letters-patent, considered of honor among all, and granted by the emperor? Now, considering something that is gracious and worthy of the State, we make the same provision as to the glorious consuls, who, after the emperor, give their name to the times^(e), and concerning those who are merely granted (honorary) letters-patent as consuls, and concerning the magistrates who are released from the duty to become decurions, namely the prefects and masters of the soldiers - we speak, forsooth of the positions of dignity which are actually filled and managed^(f) - so that every such position of dignity or such magistracy, conferred upon those whom we deem worthy, which releases them from the municipal curia^(g), shall also release them from the power of their father or grandfather. For inasmuch as we have directed that if a slave is, with knowledge of his master, deemed worthy of a position of service, or has received a position of dignity from the emperor, he immediately becomes free and is put into the status of a free-born person,

why is it not proper that a man who is deemed worthy of the letters-patent mentioned, should also be released from paternal power?

(a) C. 12,3,5.

(b) "Patrician" is a word derived from patricus - "pertaining to the father."

(c) The ancient form of action.

(d) See note to C. 8,48,6.

(e) The years were reckoned "in the consulship of" such or such a man, instead of reckoning them by years.

(f) As distinguished from mere honorary positions. See C. 10, 31,66; Nov. 38 pr.

(g) Generally every man was subject to certain duties to his native city.

c. 1. Using, accordingly, this most creditable law, we ordain, that the regular consuls, if under paternal power, shall be made their own masters along with the name itself, which confers such position upon them. The letters-patent of those who are honored by the emperor by the (honorary) letters-patent shall be the cause of their emancipation. Those whom we create glorious praetorian prefects in any of our dioceses, and those who are made prefects of either Rome (Rome and Constantinople), or who are advanced to the position of master of the soldiers, shall immediately become their own masters. For we deem it unworthy of our laws and of our times that those who are put over and govern so many men, should be under paternal power and not be among those who are their own masters. We ordain, moreover, in general, as has been stated, that every position of dignity and every magistracy, which releases from curial duties, shall also, as a reward, bring to those so honored, the right to be their own masters. This will bring greater honors to the fathers, who are the fathers of those so honored by the em-

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peror, and if they were not themselves seeking this, they would not petition the emperor for it. Hence, whether anyone, who enjoys these honors or magistracies which we have enumerated, is now or shall hereafter be in another's power, the right to be their own master follows, whereby they will also be given their own special property (peculium), to use it at discretion, and they may do what is worthy of the honor and of the confidence placed in them by the emperor. This will be a greater honor to parents and will give them the occasion for great joy.

c. 2. We especially provide by this law that such release from paternal power shall not have the same consequences which follow emancipations, but the emperor makes a special gift to such independence. For we do not want a man who becomes his own master in this manner to lose any of his lawful rights, but the legal and natural rights of the family against him, and of him against the family shall be preserved. His children shall pass into his power after the death of the grandfather^(a), just as if the father of such children had become his own master, not by this law, but by the death of his own father, and thus would rightly have the children in his power after the death of his own father, so that nothing of what has been granted him by the emperor will seem to take something away from him, since it is proper that everything that is granted by God, and by the emperor who imitates Him, should be nothing but good, without the admixture of anything bad or injurious.

(a) It may be noted here, that emancipation or release from paternal power in the manner here provided, still left the children, then born, in the grandfather's power.

c. 3. It is, moreover, clear that there is no one who does not know that above all the holy bishops become their own masters along with their ordination. For how can those who are the spiritual fathers of all, be considered in the power of someone else? It is proper that they should enjoy this honor and receive it by our law. (a)

(a) As to other privileges of bishops, see C. 1,3,34; C.10,31,66.

Epilogue. We want this our law, made in your honor and respect, venerable fathers, to make our republic illustrious forever, both in honor of you and as proof of our liberality which we have bestowed upon our patricians, consuls and bishops.

Given March 18 (539).