

Book III.
Title XXIV.

Where senators or those holding the title of clarissimi (honorable) may be sued civilly or criminally.

(Ubi senators vel clarissimi civiliter vel criminaliter conveniatur.)

3.24.1. Emperor Constantine to Octavianus, Count of Spain.

If a person is not of illustrious, but only of honorable rank and rapes a virgin or invades the property of another, or is apprehended in any misconduct or transgression, he shall be immediately subjected to the public laws in the province wherein he perpetrated the crime, nor shall he have the right to object to the venue. For the charge excludes consideration of such position of honor.

Given at Serdica December 4 (317).

C. Th. 9.1.1.

Note.

Senators of the empire, while having their official residence in the capital (C. 10.40.8), were actually living in various parts of the country. The term “senator,” generally speaking, was applicable to men of all the three ranks, honorable, worshipful and illustrious. 10 Cujacius 883. The foregoing law deals only with persons whose title was that of honorable—clarissimus—and provides that they should be subject to the jurisdiction of the ordinary judges in all criminal matters, and should not be able to claim that they should be tried somewhere else. This law, passed by Constantine, became applicable all over the empire. No sentence could be pronounced, however, till a report was made to the praetorian prefect. C. 12.1.16, which modified C. Th. 9.1.1. By C. Th. 9.1.13, the rules seems to have been changed in the Occident, where the provincial governor had only the power of investigation, but not of trial or passing sentence. Cass. Var. 6.21.3; Mommson, Strafrecht at 287. In civil cases, senators, if in the provinces, could be sued before the ordinary judge—the governor of the province; in the capital, they were subject to the city prefect, praetorian prefect, or the master of offices, if the latter was specially authorized for such purpose. Law 3 of this title makes special provision for men of illustrious and patrician rank.

3.24.2. Emperors Valens, Gratian and Valentinian to the Senate.

In civil cases senators who live in this city or its suburbs shall answer suits against them in the court of the praetorian and city prefectures, as well as in that of the master of offices—provided that we have given the latter an order to that effect; in the provinces they shall answer where they have their hearth or possess the greater part of their property and where they usually live.

Given March 1 (376).

3.24.3. Emperor Zeno to Arcadius, Praetorian Prefect.

Whenever an accusation for public or private crime, which cannot be answered through a procurator, is brought against a person living in this fair city or in the provinces, who is a patrician or ex patrician, or who is made illustrious through the administration of the powerful praetorian or city prefecture, or who is a consular made illustrious through the customary (consular) procession and by the imperial order of our Piety, or who is made famous by the hardship of the office of master of forces, or who

officiated as master of offices or as questor, or who has been at the head of our sacred bedchamber (Grand Chamberlain), and, after relinquishing the office, has been made a member of the senatorial order, or to whom Our Serenity has entrusted the management of the department of the imperial body-guard (domestics), or who had in charge the treasure of Our Majesty, or of our crown estate or that of our consort, the Serene Augusta—the trial shall be had only before Our Piety or an imperial commissioner to whom Our Serenity had delegated the hearing of the cases by imperial letters in his stead; provided, that such cases shall be heard before such judge without the help of members of any official staff or of any department (schola), in the manner customary in connection with hearings on reports for imperial consultations, without observing the trial days usual in a cause before taking up the case, and with the devoted secretaries of the bureau of petitions (libellensibus) performing the customary services (in connection therewith). And, lest the accused might be wronged, before proof is furnished, he shall have the right to sit in a place in the court room which is below that of the judges, but above that of the disputants.

1. We believe it proper, moreover, to so increase the honor of such positions of rank that we do not concede the right to the imperial inquisitor, even after proof of the crime, to make any order against such men or against their property, but the inquisitor who hears the cause in place of the emperor can only report his findings as to the accusation laid before him, if it is proven, to the emperor.

1.a. The measure of punishment to be meted out to persons of such positions of dignity rests solely in the discretion of the emperor. But if the prosecution was malicious, the accused forsooth being immediately absolved, the accuser must be punished as the law provides even without consulting Our Serenity, unless, perchance, the latter also is not of a rank inferior to that of the defendant; for it is proper that in such case the emperor should be consulted concerning the punishment for malicious prosecution of such an accuser.

2. Men of illustrious rank, however, who reside in this city, and who, without actual administration of the office, have been awarded the honorary title only, shall—although they, by our order, occupy a privileged position, seeming to have done what in fact they have not done—in criminal cases, obey the orders of Your Magnificent prefecture and of the city prefecture and of the magnificent master of offices—in the latter case only when special imperial authority has been sent to his court—and the accused in such cases cannot during the examination claim the right to be seated (as above mentioned).

2.a. But they, too, may know that those who try them cannot make a definite order against them or their property, even when the crime is proven, until they have first reported to Our Piety.

3. But if men of illustrious rank living in the provinces—other than those who can be tried only before Our majesty or before a judge appointed in our place—are called into court on a criminal accusation, they shall have the right to be seated during the trial in the chambers of the judge (secretaries) and the judges, whenever the crimes are proven, must refrain from making any definite order against them or their property till they receive an answer from Our Piety pursuant to their reports. But the punishment to be meted out to accusers for malicious prosecution—when that appears—must not be deferred by the provincial judges, if, as has been said above, they are not of the same rank as the defendants.

Given at Constantinople (485-486).

Note.

The officers of the highest, illustrious rank, whose position was called a dignity, were, as here stated, the praetorian prefect, city prefect, master of the forces—cavalry or infantry, count of the imperial body-guard domestics, master of offices, quaestor (attorney-general), count of the Imperial Exchequer, count of the Crown Domain, and Grand Chamberlain. To these must be added the consul for the year—called consular after the end of the year—after whom the year was reckoned, and whose position did not require any active work, but gave consular processions. The rank of patrician was a special honor conferred upon certain men of illustrious rank by the emperor.

The men who had actually occupied the positions above mentioned, or had received the honor of patrician, could be tried, in criminal cases in which they were required to appear personally, only before the emperor, or a special judge delegated by him, who, however, had no right to decide the case definitely or pass sentence in case of guilt. Men who had merely received the honorary title of illustrious, without actually filling one of the offices above mentioned, or who had not received the honor of patrician, could, in a criminal case, be tried only by the praetorian prefect, city prefect or master of offices, and the emperor was required to be consulted before sentence was passed upon them, if found guilty. If the latter class of men lived in the provinces, they could be tried before the governor of the province, who, too, could not impose punishment in case of guilt, until after consultation of the emperor. It will be noted that the manner of being seated was considered of importance. Hearings according to the method of report and consultation—substantially a method of appeal on the record made below—are fully mentioned in headnote to C. 7.62 (4). In such cases there was no time to set in which the parties might appear, which was not true in other cases of appeal.

In some criminal cases of minor importance, men of illustrious rank could, and were required, to appear only by an agent. C. 9.35.11, and Novel 71. Concerning malicious accusers, see C. 9.46. For the various imperial bureaus, including that of petitions, see C. 12.19. Where the trial was had before the emperor or his special delegate, the clerks assisting therein were taken from the imperial bureaus; in other cases, they were taken from among the members of the official staff of the magistrate who heard the case.