

Book XI.
Title XXXXIII. (XXXXII)

Concerning Aqueducts.
(De aqueductu.)

11.43.1. Emperor Constantine to Maximilianus, Consular of the Waters.

We want the land owners and over whose lands aqueducts pass, to be exempt from extraordinary burdens, so that in place thereof they may keep the aqueducts free from filth, nor are other requirements to be made of such owners, lest occupied in other things, they fail to clean the aqueducts. 1. If they neglect this, they shall be punished by the loss of their possessions; for the fisc will take possession of the land of a man by whose negligence aqueducts are damaged. 2. Furthermore, the men, through whose lands aqueducts run must take notice to plant their trees 15 feet away on either side of the aqueduct. The staff of the governor must take care that if these trees send up sprouts at any time, they be cut down, lest their roots injure the conduit.

Given May 18 (330).

C. Th. 15.2.1.

11.43.2. Emperors Valentinian, Theodosius and Arcadius to Pancratius, City Prefect.

If anyone in the future has the audacity to injure the advantages of this flourishing city by diverting water from a public aqueduct to his own farm, he may know that such land will be confiscated to be added to the crown domain.

Given at Constantinople (389).

C. Th. 15.2.4.

11.43.3. The same Emperors to Albinus, City Prefect of Rome.

We order that those who have heretofore, or may now become entitled to a water supply, through our favor, shall take it from the reservoirs or from service-conduits, and shall not disturb the course or the solidity of what are called the water-mains (matrices) or draw water from the aqueduct itself. If anyone does otherwise, he shall not only lose what he heretofore received through our benefaction, but he shall also be severely punished according to his station in life.

Given at Rome August 28 (389).

C. Th. 15.2.5.6.

Note.

While the term 'forma' was used as the equivalent of aqueduct in law 1 of this title, it is here clearly used for a service pipe or conduit. Gothofredus on C. 15.2.5.

In the construction of the ancient aqueducts, the water, when it reached the walls of the city, was received in a vast reservoir, which formed the head of the water. From this principal reservoir, the water flowed into other reservoirs whence it was distributed for public and private use, main conduits, as indicated by the instant law, leading some of the water to certain portions of the city. See Smith's Dict. G. & R. Antiq. Under 'aqueductus.'

11.43.4. Emperors Arcadius and Honorius to Asterius, Count of the Orient.

We direct that ancient water rights, established by long ownership, shall remain the property of the several citizens without innovation, and, each shall receive the amount which he has received by ancient right and by custom lasting to the present day. The punishment provided for persons who use secret channels for irrigating their fields or beautification of gardens shall remain.

Given November 1 (397).

C. Th. 15.2.7.

11.43.5. Emperors Theodosius and Valentinian to Cyrus, Praetorian Prefect.

If anyone has received a water right through imperial favor, he must not present the rescript to the rectors of the provinces, but to the office of Your Excellency. A fine of 50 pounds will be imposed on the person who attempts to present his petition (for a water-right) to the moderators, and on all administrative officers who accept a rescript surreptitiously obtained, and the apparitors of the moderators (governors) shall be subjected to such punishment as you may determine. Your office must direct what amount of water shall be assigned to the public baths and to the houses for public nuptials, taking into consideration the number of people, and what amount from the water that remains shall be given to the people who have received grants from Our Serenity. (440-441).

Note.

According to this law, water rights could only be granted by the emperor. That is also attested by D. 43.20.1.42; Frontinus 103; Gothofredus, paratitlon C. Th. 15.2, and note to C. Th. 15.2.2; Liebenam, Staateverw. 413. The right was granted either to lands or a landed-estate or to persons; the latter right was personal to the grantee, the former was appurtenant to the land. D. 43.20.1.43.

While the plan to have water rights granted by the emperors was, perhaps, feasible in the capital in which they lived, it seems somewhat remarkable that it should have existed in other cities.

11.43.6. The same Emperors to Cyrus, Praetorian Prefect.

Every servitude of the waters of the Hadrian aqueduct attached to houses, possessions, suburban residences or baths, pursuant to imperial rescript filed in court or pursuant to usurpation is declared entirely void. For we prefer that the aforesaid aqueduct shall be used for accommodations of our palace, the public-baths and houses for public nuptials (nymphaea). And we direct that this order shall in every respect be observed in the future, and no one shall have permission to present a petition and ask the use of water from this aqueduct or to tap it. If anyone dares to do anything of that kind in any manner, or if an official helps in procuring such petition or complies with a petition not (yet) procured, he must pay into the fisc a fine of 100 pounds of gold. 1. We further ordain that a public conduit for water shall not be interfered with by any trees within ten feet of it, but a clear space of ten feet shall be left on both sides thereof. 2. We further order that the same rule shall be observed as to leaden pipes leading to the so-called Achillean baths which we know to have been constructed through the foresight of Your Magnificence. 3. For we want the above mentioned pipes to serve only those baths and houses for public nuptials to which Your Eminence assigned them. The apparitors of

Your Sublimity shall have the right to inspect houses, suburban residences and baths without fear, so that no deception, fraud or invasion of the public interest may take place. (440).

Note.

A nymphaeum was a sort of public building with fountains, flowers, plants, etc. See Smith Dict. of G. & R. Antiq., under the head of 'domus.' This law has reference to Constantinople.

11.43.7. The same Emperors to Eutichianus, Praetorian Prefect.

All the imposts collected from all the ladders¹ of this fair city, and from the workmen called Cyziceni, shall be used for the repair of the aqueduct of this city. Furthermore, no one who has a water right shall pay any assessment made against it, for it would be execrable that the houses of this fair city should be provided with purchased water.

11.43.8. Emperor Zeno to Adamantius, City Prefect.

We ordain by this was that, if anyone administering the powerful prefecture thinks of diverting the gold appropriated for the aqueduct to the construction or care of some other work not pertaining to the aqueducts or public water, he shall repay the amount diverted to the aqueduct-fund out of his own property. A separate treasurer shall handle the gold now or hereafter received for the benefit of the public waters through the liberality of the glorious consuls, or from any other source.

11.43.9. The same Emperors to Sparacius.

We want a careful investigation made as to what springs, either originally public, or which, if originally private, subsequently became public have been diverted to private use; whether this was done pursuant to an imperial rescript obtained surreptitiously or, so much more, whether anything of this kind is known to have been attempted by unlawful authority, without even the color of imperial sanction, so that its rights may be restored to the imperial city; and what once was public, shall not be private, but shall be returned for public use. Rescripts or pragmatic sanctions against the benefit of the public, granted to individuals, are rightly nullified, and no prescription of time shall avail to defeat the rights of the city.

11.43.10. The same Emperors to Sparacius.

We decree that nothing shall be attempted by any person of any rank whatever, against the service-pipes or the public springs which flow into the aqueduct. 1. And if anyone secretly, or, relying upon his own authority, openly, draw water from the service-

¹ [Blume] These were ladders used to go on board ships which could not land. A fee was charge for the use of them. 2 Cujacius 718 on this law. Nothing is known of the workmen called Cyziceni. Cujacius on this law, and Otto, Schilling and Sentennis. Compartments (oeci) by that name are mentioned by Vitruvius 6.6. It may be that the law had reference to the money paid by the workmen on such compartments; that they constituted a separate guild, and were made to contribute these fees for the benefit of the state. This law had reference to Constantinople.

pipes or springs, or pilfers it by clandestine wiles², he shall be compelled to restore it to the public aqueducts. 2. We also direct, that no trees of any kind shall hereafter be planted beside these aqueducts, lest the foundations of the walls of the aqueduct be injured by the roots, which prohibition is also found, as is known, in the ancient constitutions. 3. Let all take notice, that for such offenses, a suburban villa, or estate or both, or water mill or garden, for the use of which public water is diverted, or any of these which are adjacent to the aqueduct, and which is the property of the party who plants trees hurtful to the aqueduct, no matter to what place, person or house it may belong, shall be confiscated for the benefit of the fisc, and no release from such penalty shall be granted to anyone even by an imperial rescript. 4. (1.) All water inspectors, or water custodians, called hydrophylacai who have the management of all the aqueducts of this imperial city, shall be branded on each hand with the emblem of the happy name of Our Piety, so that by this mark they may be recognized by all, and not be dragged off by the procurators of the (imperial) houses or by anyone else, to other employments or detained under pretext of haulage on post-roads (angariarum) or other services. 5. If one of these watermen happens to die, the person substituted for the deceased shall be branded the same, so that like military sentinels they may keep incessant watch over the water without being occupied with other duties.

Note.

It required a great many men to look after the water in the large cities. In the time of Nerva and Trajan, a body of 460 slaves were constantly employed under the orders of the curators of the aqueducts to attend to the latter. Smith's Dict. G. & Rom. Antiq., under 'aqueductus.'

11.43.11. Emperor Anastasius to Sergius, Praetorian Prefect.

We ordain by this law that the imperial order promulgated by the Emperor Theodosius, of famous memory, concerning those who desire to be furnished with water from public aqueducts or springs, shall remain in full force, so that no one, in this holy city, or in the provinces, shall be permitted to draw any water from any public aqueduct or spring without an imperial rescript issued in the customary manner by the bureau of correspondence (epistulorum), filed or to be filed in the tribunal of Your Highness or other proper tribunal. Those who violate our commands or permit them to be violated shall be visited by condemnation of ten pounds and by other severe displeasure.

² [Blume] The two methods here stated of taking water are not clear.