

Book I.
Title II.

Concerning holy churches, their property and privileges.
(De sacrosanctis ecclesiis et de rebus et privilegiis earum).

1.2.1. Emperor Constantine to the People.

Let everyone have permission to leave when he dies, to the Holy Catholic and venerable Church, any property that he chooses. Such testaments shall not be void. There is nothing that is due to men more than to have a free pen for their last will—after which they can wish nothing more—and to exercise an untrammelled judgment, the opportunity for which returns no more.

Given at Rome July 3 (321).

C. Th. 16.2.4.

1.2.2. Emperors Gratian, Valentinian and Theodosius to Pancratius, City Prefect.

Let no one think that the seats of the apostles or martyrs may be used as burial places for bodies.

Given at Heraclia July 30 (381).

C. Th. 9.17.6.

1.2.3. The same to Cynegius, Praetorian Prefect.

No one shall sell, or barter in, the relics of martyrs.

Given at Constantinople February 26 (386).

C. Th. 9.17.7.

1. 2.4. Emperors Honorius and Theodosius to Aetius, City Prefect.¹

No more than 950 burial men (decani) shall be assigned to the holy church of this magnificent city; no one shall have power to add to or change this number or to substitute others for those who have died.² No other guild members over and above the prescribed number shall, through intercession, by giving them immunity (from other duties) and with all power of innovation abolished, claim rights similar to those which are permitted to the holy church in its honor or for its necessary service.³

¹ Marginal note in Blume's handwriting says: "Pharr (changes not made in copy of Pharr)." Pharr is Clyde Pharr, organizer of the Corpus Juris Romani project, who asked Blume to join that project. Blume sent Pharr Book II of this manuscript for Pharr's appraisal in September of 1933, and Pharr offered some criticisms of the text in December. Ten years later, Pharr withdrew many of his criticisms and asked Blume's permission to use Blume's translation of the entire Code as the basis for the "Corpus Juris Romani's" projected translation. The margins next to several laws in this title bear penciled notations such as: "Pharr"; "changes not in Pharr"; "Pharr—no changes." See "Introduction" and "History of the Annotated Justinian Code" at the "Annotated Justinian Code" web site (<http://uwacadweb.uwyo.edu/blume&justinian/default.asp>) for additional details of the Blume-Pharr collaboration.

² [Blume] Evidently refers to those above the number 950.

³ Blume's original typed version of this sentence reads: "No others over and above the prescribed number, shall, through intercession, have the privileges of that guild, and all power of innovation in claiming rights similar to those which are permitted to the holy church in its honor or for its necessary service, shall be

Given at Eudaxiopolis August 21 (409 or 419).
See C. 4. 63. 5.

Note

The decani were burial men in the city of Constantinople. The subject relating to these men is fully considered in notes to C. 11.18.1 and Novels 43 and 59. See also law 9 of this title and 1 Greek and Roman Antiquities. Anastasius assigned 70 pounds of gold for the burying of poor people in the above mentioned city (law 18 of this title), but this proved insufficient, and 1100 shops, accordingly, were assigned to this purpose, 800 of which were required to furnish bodily labor (apparently one man each) and 300 money. The number of burial men is here stated at 950. Constantine had fixed the number at 1100, and according to the novels above mentioned, Anastasius again fixed the number at 1100. The church probably furnished the remaining men (above 800), arbitrary substitution for person[s] who died being forbidden. See provision for substitution as to the others, C. 1.2.9. The instant law is part of the same law of which C. 4.65.5 was a part. That law relates to firemen, and the same provision as to substitution contained in the instant law is contained in that law, with the addition that the substitution for deceased fireman was made by the city prefect.

1.2.5. The same Emperors to Melitius, Praetorian Prefect.⁴

The course of a reasonable plan having been carefully considered, we deem it proper to strictly prescribe from what special civic burdens the churches of the various cities shall be exempt. In the first place, the affronting (insulting) practice should be repelled that estates dedicated to heavenly secrets should be vexed by low grade (sordid) burdens.⁵ No extraordinary burden or superindiction shall be demanded from them;⁶ no duty of transportation shall be brought forth; lastly, nothing, aside from the regular contribution shall be asked of them which a suddenly appearing necessity may require; if any one should be guilty of violation hereof, he—after suffering the proper punishment rightly inflicted on the sacrilegious—shall be sent into perpetual exile.

Given at Ravenna May 25 (412).
C.Th.16.2.40.

Note.

In addition to regular taxes, the government was sustained by special help extended by its citizens. This special help was called a “liturgy.” Liturgies, of course, were burdens, consisting of personal work or attention, or requirements from land

denied.” He edited it as above, but left the final phrase “shall be denied,” which I have omitted because it does fit with the rest of the sentence as he edited it. Scott’s translation reads “..and let none of those of this body who exceed the above-mentioned number and have been appointed through patronage, and have been denied the right of innovation, claim those things which have been bestowed upon the Holy Church by way of honor, or as necessary privileges.” 6 [12] Scott 16.

⁴ “Pharr” written in margin in Blume’s hand. Above the second sentence is another written note stating “Changes not in Pharr’s.” In the margin along side the second and third sentence is the note “2 sentences overlooked.”

⁵ Blume’s typed translation of this sentence was “In the first place, the degrading practice of imposing sordid (degrading) duties on estates dedicated to religious uses should be abolished.”

⁶ Blume penciled in at the bottom of this law: “(hac) is evidently an error probably intended to refer to [ecclesiae --jus] also in the same situation.” The gist of Kruger’s note, upon which Blume’s is based, seems to be that “ab hac” is an error introduced into the text and refers to the same burdens noted in the previous sentence.

owners, called patrimonial liturgies. This subject is fully considered at note C. 10.41.1 and headnote C. 10.42, the latter also mentioning the subject of “extraordinary” liturgies or burdens (munera). The instant law apparently exempted property devoted to religion from all burdens except the regular tax. A few years later, however, it was declared that the building of roads and bridges were worthy undertakings, from which such property should not be exempt. So, also, hauling the products payable as taxes to government warehouses was a duty imposed on all alike. C. 10.42.

Similar exemptions granted to property devoted to religious purposes were granted to religious men. Thus C. 1.3.2 exempts them from sordid and extraordinary liturgies, and even from payment of the tax levied upon traders. It exempts them also from furnishing haulage on by-ways, which would seem to leave them liable to furnish haulage on the main highways. (See C. 12.50.) But the exemption as to by-ways was apparently taken away by C. 1.3.3. See also Nov. 131, c. 5 appended to C. 1.3.

1.2.6. The same to Philippus, Praetorian Prefect of Illyria.

We direct that all innovations shall be annulled and that the ancient customs, and the ecclesiastical canons, which have been in force to this day, shall also be observed throughout all the provinces of Illyria, and if any doubt arises, it should be referred to a church assembly and its holy judgment, with the knowledge of the reverend bishop of the holy faith, situated at Constantinople, which city enjoys the prerogative of Ancient Rome. Given July 14 (421).

C. Th. 16.2.45.

1.2.7. The same to Asclepiodotus, Praetorian Prefect.

We gladly assign holy (imperial) houses (divinas domos) and venerable churches, to such worthy undertakings as the construction of roads and bridges, because such work is not to be numbered among degrading burdens.

Given at Constantinople February 15 (423).

Note.

C. 11.75.4, which is part of this law, states that no one is exempt from the duties here mentioned. It mentions “divinas domos,” but at that place, the term means “imperial houses,” that is to say, the imperial domain. Gothofredus thinks that the term has the same meaning in the instant law. For [a] note on exemptions of burdens of churches, see note to law 5 of this title.

1.2.8. Emperor Theodosius to Isidorius, Praetorian Prefect of Illyria.

The holy church of the city of Thessalonica must clearly understand that the amount of its own land tax is only remitted by kindness of Our Majesty, and the state must not be injured by the burden of (exemption from) other tribute by the abuse of the ecclesiastical name.

Given at Constantinople October 10 (424).

Note.

This law is also found as part of C. 10.16.12, to which a note explaining this law is attached.

1.2.9. Emperors Theodosius and Valentinian to Cyrus, City Prefect.

We believe that the fraud of those who attempt to escape other liturgies under the pretext of being burial-men (decani) or Firemen (collegiate), when in fact they do not perform the duty thereof, should be circumvented, so that no one, under pretense of a liturgy, which he does not perform, may be relieved from the burdens of another liturgy; and so that the duties of bankers or money changers may not be declined by those who merely hasten to bear the mere name of firemen and burial-men. If anyone, therefore, calls himself, under cover of a mere name, a fireman or burial-man, he must know that he must procure a substitute to take his place, who will be approved as suitable for the foregoing liturgy; the substitution for the persons above mentioned, or for those who die, to be approved by the chiefs of the person for whom substitution is made. No one shall be excused from compliance herewith under claim of reverence for the holy churches. Given at Constantinople March 23 (439).

Note.

This law is also found at C. 11.18.1; and see full note to that law. See also C. 1.2.4.

1.2.10. The same to Florentius, Praetorian Prefect.

We order that no ship of a capacity of more than 2000 bushels shall be exempted and reserved from public duties, before the happy embarkment or the shipment of public supplies (felicem embolam), either by reason of any privilege of rank, for religion, or of any prerogative of person; not even an imperial rescript, either by marginal notation, or pragmatic sanction that is brought forward, will annul the rule of this providential law. We desire this to be observed in all matters, so that generally if any such rescript, notation or sanction is produced in any matter, against this law or the public good, it shall not be valid. For whatever is in any manner attempted in fraud of that law, shall be punished by the sale of the ship exempted.

Given at Constantinople April 6 (439).

Note.

This law is also found at C. 11.4.2. See note made at that place.

1.2.11. The same Emperors to Taurus, Praetorian Prefect.

Since, for the purpose of making the expedition of our majesty easy, assistance must be rendered to us at all the places in the provinces which we touch, we direct that no one shall be excused from furnishing haulage on highways or by-ways or furnishing wagons or from any other liturgy, although the lands may belong to the holy churches. Given at Constantinople February 17 (445).

Note.

This law is part of the law found at C. 11.49.2.

1.2.12. Emperors Valentinian and Marcian to Palladius, Praetorian Prefect.

We decree that the privileges, which former emperors by general constitutions granted to all holy churches of the orthodox religion, shall be maintained in perpetuity. Indeed, we direct that all pragmatic sanctions, which were obtained through favor and unlawful solicitation against the ecclesiastical canons, shall be shorn of their force and strength. And since it is a part of our duty to provide for the needy, and take care that nourishment is not wanting to the poor, we order that the pensions (in produce) also

which have heretofore been given to the holy churches from the public treasury, shall remain as heretofore and shall be furnished, undiminished by any one, and we assign to this most ready bounty perpetual endurance.⁸

Given at Constantinople November 12 (451).

1.2.13. The same Emperors to Palladius, Praetorian Prefect.

We ordain by a general law, that a widow or a deaconess, or a virgin dedicated to God, or a nun, or a woman that bears any other religious honor or dignity, who by testament or codicil, which, however, is fortified by every other rule of law,¹⁰ has deemed or shall deem best to leave to the church, or a martyr, or cleric or a monk, or to the poor, her property in whole or in part, of whatever it may consist, such testament or codicil shall in every respect be valid and effectual, whether the property is left by institution (as heir), or substitution (as heir), legacy or trust, general or special, and whether the will is written or unwritten; and all doubt in regard to these matters is hereby for the future removed.

Given at Constantinople April 22 (455).

1.2.14. Emperors Leo and Anthemius to Armasius, Praetorian Prefect.

We order that hereafter no archbishop presiding over a church in this imperial city, and no steward to whose government church property has been entrusted, shall have power to transfer to any person whatever, by whatever form of alienation, any farms or lands, urban or rural, or in a word, immovable property, or serfs (coloni), or slaves upon these lands, or any civic bread rations, left to the holy church by the last will and testament of any person, or by the will of any living person; but he may divide, cultivate, increase and extend such estates, but he shall not dare to part with them (entirely) in favor of any one.

1. And if any one by testament, by whatever right it is made, or by codicil or verbally, or by legacy or trust, or in anticipation of death, or by any other last wish, or as a gift during life, either by sale, donation, or in any other manner, has wished his property or a definite portion thereof consisting of farms, urban or rural estates, houses, civic bread rations (annonis), slaves and serfs and their peculium,¹¹ to belong to the aforesaid venerable church, they (the archbishop and steward) shall preserve and keep such gift intact, without diminution, knowing that they shall on no pretext and at no time, have power, in return for a pretended benefit or favor, give it or alienate it even, to parties wanting to buy it, not even if all the clergy, together with the pious bishop and the overseer, agree to the alienation of these properties.

2. For it is proper that the property that belongs to the blessed church, or which is given to it hereafter, should, just as the holy and sacred church itself, be reverently kept

⁸ The last clause in this sentence reflects penciled changes made by Blume, accompanied by a question mark in the margin. The typewritten clause, which he did not line out, reads: "and we establish this ready bounty to last forever."

¹⁰ The last clause in this sentence reflects penciled changes made by Blume, accompanied by a question mark in the margin. The typewritten clause, which he placed in parenthesis did not line out, reads, after "who by testament or codicil": "executed in other respects according to law...." Scott's rendering of the same passage is: "...if a widow...believes that she has left either by her will or codicil (which, however, should be executed with all legal formalities)..." See 6 [12] Scott 18.

¹¹ [Blume] Special property that normally was used by them, but legally belonging to the master.

intact, so that as she is the external mother of religion and faith, so her property should perpetually remain unimpaired.

3. Certainly if any steward or other person undertakes, audaciously and sacrilegiously, to violate these our orders, the person who boldly attempts to acquire or hold any church property, by gift, purchase, exchange, or by any other contract, except in the manner now decided by us, shall lose the fruits of his own temerity, and the price and gifts,¹² which have been given, on account thereof, to the steward or any other person, shall accrue to the gain and benefit of the church.

4. Such landed estates, moreover, and all things connected therewith, together with its fruits or rents and accretions of the meantime, shall be reclaimed by the clergy and the acting stewards, as though they had never been sold and bought; since acts done contrary to law are to be treated as null.

5. The steward, moreover, who has done this, nay, who has permitted it, or who has at all consented to a sale of this kind, or gift or exchange, or, in a word, any kind of alienation except as this law permits to¹³ be done, shall be deprived of the administration of the stewardship entrusted to him, and all loss thereby caused to the church shall be repaid out of his property, and his heirs, successors and descendants may be sued by the church authorities for his act or consent, in the proper action.

7. The judges or persons having the right to keep records who make records of gifts or contracts of this kind shall be deprived of their rank and all of their property.

8. But, lest every avenue for care and every opportunity to act for the best interests of the venerable church may seem barred to the pious stewards, we necessarily grant them the right to do what is generally considered beneficial, by observing the necessary caution.

9. If a reverend steward of a church of this imperial city, therefore, shall deem it advantageous that temporary possession of the usufruct of certain possessions or landed-estates, urban or rural, pertaining to the church, should be granted to a petitioner therefore in accordance with his position, then such steward may enter into a contract in writing with the petitioner for a time that may be agreed on between them, or for the life of the petitioner, if the latter should demand that, stating therein both the time during which the property is agreed to be left, and making it plain what each,¹⁴ in turn, has received on account of a benefit of that kind. The temporary usufruct, indeed, of the church property is, (thereby) granted, but after the time fixed and agreed, the temporary ownership of the income reverts absolutely to the control and dominion of the church; and so, forsooth, that when the period agreed on between them has expired, or on the death of the lessee, if that was the time agreed on, the person who, by contract, received ecclesiastical property for the purpose of having the usufruct of certain income, shall leave to the church no less than twice the amount of income therefrom which he received, together with the absolute ownership of the landed-estate itself, and the immovable property, serfs and slaves thereon. Unless agreements were entered into under this condition, they shall be invalid,

¹² "Price and gifts" in the ms. are underlined in pencil and a question mark has been placed in the margin next to this line.

¹³ There is a penciled question mark in the margin next to this line.

¹⁴ Here Blume has penciled, within parentheses, above "each" "quacumque—i.e. pars?" This reflects a note in Krueger questioning what form of "quacumque" is accurate.

and the ownership of and right in the property shall remain in the church and shall be reclaimed by the clergy or stewards, as though transferred unlawfully.
Given at Constantinople (470).

Note.

The substance of this law is that the archbishop and steward of the church at Constantinople could not transfer any church property, except by temporary lease, not exceeding the life of the lessee, with a reserved rental of twice the amount of the income received by the lessee, all payable at the end of the lease. See C. 1.2.24. This seems ridiculous from the standpoint of the lessee. As to the terms upon which a usufruct might be let, see Novel 7 pr. Laws 17 and 21 of this title also relate to the disposal of property devoted to religious purposes, and various novels were enacted in connection therewith, Novels 57 and 67.

1.2.15. Emperor Zeno.

If any one makes a gift of property movable, immovable, or self moving, or of any right, in order to build a chapel in memory of any martyr, apostle, prophet or holy angel, in whose name he inscribes the gift, and such gift has been made a matter of public record according to the imperial constitutions—which is made necessary in such case—than this gift shall be valid and may be collected, whether the sacred building has been commenced or not, but the donor has only manifested his intention by the promise of a gift. And he and his heirs are bound by the pious promise, and shall, as stated, not only build the sacred chapel, promised by the gift, but shall also when that has been or is being built, turn over to it without delay the fruits of this gift.

1. These provisions shall also fully apply to what are called hospitals, infirmaries and poor house, which any one has, in the manner aforesaid, promised to build as a gift.

2. The pious bishops of the places or the devoted stewards shall have the right to bring, pursuant to this imperial constitution, an action against them for what has been piously promised, if indeed—which it is a shame to mention—an action in court should be necessary.

3. But when this law has been complied with, and the promise of a gift has been carried into effect, the management of the property given shall be carried on pursuant to the direction of the giver and the conditions attached thereto.

Note.

The ground upon which a church, monastery or chapel was to be built was required to be first consecrated, and could not be built without the consent of the bishop, and without making provisions for its support (Novel 67 cc. 1 and 2) and he could not appoint clergymen at will. Nov. 57, c. 2. See also Nov. 131, cc. 7 & 10, and Nov. 5, c. 1.

1.2.16. The same Emperor to Sebastianus.

We order that everything that has been done in any manner against the God of the orthodox religion shall be entirely null and void, and all things as to the faith of the orthodox religion and the status of the holy churches and chapels (martyriorum) shall be fully restored and recalled to the condition which existed before the departure¹⁵ of our

¹⁵ [Blume] Zeno married Areadne, daughter of the emperor Leo and became emperor in 474 A.D. But he was driven from the throne by Basiliscus, brother of Verina, the widow of Leo in 476 A.D., and fled into the Isaurian Mountains. It is this flight which is referred to as the “departure.” During the reign of

Clemency. The innovations made by the tyrants, contrary thereto, against the venerable churches of which the blessed and reverend Acacius, sustainer of our piety, is bishop and patriarch, and against the other churches situated in the different provinces, and against their reverend bishops, either as to the right of ordaining priests or as to the expulsion of any bishops undertaken by any one during those times, or as to any prerogative in connection with precedence in rank in or outside of, the council of bishops, or as to any privilege of a metropolitan bishop or patriarch in those impious times,¹⁶ shall be entirely annulled, so that, with the things which issued¹⁷ pursuant to that kind of wicked orders, pragmatic sanctions, impious constitutions or rescripts being abolished and rescinded, whatever was conceded or directed by the past emperors of blessed memory, prior to our reign, and thereafter by our clemency, in regard to the holy churches and chapels and the pious bishops, clergymen or monks, shall be preserved inviolate. 1.¹⁸ And we order and ordain that the holy church of this religious city, mother of our piety and the holy seat¹⁹ of all Christians of the orthodox faith, and the holy (ecclesiastical) see of the same city shall, in deference to the imperial city, in perpetuity firmly possess all privileges and honors in regard to the ordination of bishops, precedence of place and all others which they are known to have had before or during our reign.
Given December 17 (477).

1.2.17. Emperor Anastasius.

We ordain that the provisions made and in force concerning the great and holy church of this imperial city—under which the holy houses also are properly comprehended, the property and so-called daily allowance (diariorum) and the payment of other expenses of which the church itself manages—shall remain altogether undisturbed and unimpaired. Confirmed, too shall be²⁰ the privileges which at any time, or in any manner belonged to or are owing to the same great church and see of this imperial city.²¹

1. We ordain that the alienation of all immovable property or civic bread rations²² which belong or will belong to the religious houses, shall be void, in whatever manner made or attempted or could be devised, unless, perchance a sale, hypothecation or

Basiliscus, the Entychian bishops seized upon the sees, expelling rightful prelates. Acacius, bishop of Constantinople, a man of great ability, struggled against Basiliscus, who had sent out an encyclic letter condemning the proceedings of the council of Chalcedon, and largely through his influence Basiliscus was overthrown in 477 and Zeno recalled, at which time the above constitution was issued. Gibbon c. 39, Milman, 3 History of Latin Christianity, ch. 1. The chapels here mentioned were those erected in honor of martyrs.

¹⁶ Blume has written in the margin next to this sentence “No—Pharr.”

¹⁷ The phrase “with the things which issued” is written in pencil above the typewritten phrase “what was done,” around which Blume also penciled in parentheses. In addition, a question mark has been penciled into the margin following this sentence. In Scott, this is C. 1.2.15, and the relevant phrase is given as “. . . such as were granted or established. . .” 6 [12] Scott 25.

¹⁸ Blume follows Krueger in using a number 1 without additional numbers following.

¹⁹ “The holy seat” has been added in pencil and a question mark placed in the margin following this line.

²⁰ “Confirmed” and “shall be” are added in pencil and a question mark penciled in the margin. The lined out original reads: “Undisturbed” and “shall remain.”

²¹ The phrase “belonged to or are owing to,” originally read: “belonged or were owing to.” Blume has penciled in the changes but there also is a question mark in the adjacent margin. In addition, the words “Pharr—no” have been written above the line.

²² [Blume] The capitals and Alexandria had bread rations, allowed to houses. See headnote C. 11.25.

exchange of such property should be of advantage on account of some necessity or utility to these which may arise; that is, if the price of the property sold is used to pay debts, not those that naturally and ordinarily exist, but those that arise out of (acceptance of) successions or inheritances, or necessary or advantageous causes of the aforesaid venerable houses, or to acquire or purchase other property which is more useful and rather necessary to them, or to remove or keep up a religious, which is urgent and does not permit of great delay. The same reasons for exception exist in connection with the prohibition of contracting debts and giving hypothecations therefor. So an exchange may be made if likewise it concerns property more useful and rather necessary and from which a proper income may be procured for any of the venerable houses not less than from the alienated property. So, property may be let by emphyteusis (long lease), if the amount of the income is not in any manner diminished, or, also, if the property given is altogether sterile. For we do not forbid these houses to part with their property by gift or alienation if, on account of sterility it brings in no income but is a detriment.

2. Whatever is done shall not be valid unless one of the aforesaid reasons is stated on the public records, at Byzantium before the master of the census, in the provinces before the defenders, in the presence of the holy testament, the churches being represented by the stewards and clergymen who live there, the monasteries by the superintendent and other monks, the poor houses by the manager and all those who participate in the administration thereof; the same rule shall apply to orphanages, so that whatever is agreed to be done by the majority may be done, with the consent, however, of the bishop of the place in which these transactions customarily take place.²³

2a.²⁴ Nor may the master of the census or the defender refuse to go to the venerable house in which such transaction takes place, and they must protest it free of charge, and if they fail to do so, they will be subjected to a punishment of 20 pounds of gold.

2b. Thereafter, a document shall be executed which shall recite the reasons, and the fact of the execution of the document and the names of the parties present as well as of the party before whom the transactions were carried on.²⁵

3. If any of the things mentioned are omitted, the creditor and purchaser shall lose the property, the debt and the price paid; and he who made an exchange shall lose both what he gave and what he received; whoever received any property by emphyteusis (long lease) for his life or by gift or alienation, shall return what he received and an additional amount equal to what was given.

4. What has been said shall apply also to property of churches and venerable houses acquired in the future.

5. If these houses have movable property, aside from sacred vessels, sufficient to meet the expenses necessary for the reasons aforesaid, no alienation or pledge of necessary immovable property and civic bread rations shall be made.

²³ [Blume] The manner of making a record may here be noted. The officer was there; the transaction before him was oral, the reasons were stated to him, and he took down these oral proceedings and thereupon made a written record, which was probably transcribed into a permanent record and kept in the archives. See note C. 1.56.2 where a full account of making records is given.

²⁴ This numbering follows Krueger.

²⁵ [Blume] The instant law was repealed by Novel 7. That and various other novels were enacted concerning the disposal of property devoted to religious uses.

1.2.18. The same Emperor (synopsis)

The constitution assigns to the Great Constantinopolitan Church 70 pounds of gold, so that funerals in Constantinople as far as the new walls and the Blachernan district²⁶ may be free, and Sycae is part of the city. It fixes a penalty of 50 pounds of gold for violators.

1.2.19. Emperor Justinian to Mena, Praetorian Prefect.

What some persons, under some ancient though obscure law have attempted to maintain, namely that gifts made for pious purposes should nevertheless be valid though not enrolled on the public records, we (now) define (taxamus) by a definite and lucid law, so that in other cases the ancient laws concerning registration of gifts shall remain in force; but if any one makes a gift in any matter up to the amount of 500 solidi to the holy church, to a hospital, infirmary, orphanage or poor house, or to the poor themselves or to a city, such gift shall be valid even without making a record thereof. But if the gift is for a greater amount, unless made by the emperor, it shall not be valid, unless enrolled upon the public records. No one has permission to change the laws of the ancients to be applied (introducenda)²⁷ concerning enrollment of gifts on the records for any cause, though pious, except as specially permitted herein.

Given 528.

Note.

For the requirements as to registration of gifts, see C. 8.53. As to “uncertain gifts” see C. 1.3.24.

1.2.20. The same Emperor.

Military food supply (annona)²⁸ shall not be transferred pursuant to an imperial rescript or by order of a prefect or of any judge, to venerable houses, to the clergy or to monasteries, since these corporations already are deficient in number.²⁹

Note.

The first part of the law appears clear, forbidding the transfer of food supply, or perhaps food supply converted into money, destined for the army to the parties here mentioned. The last clause is obscure, and it is hard to say what could have been intended. The law has come down to us in a mutilated state, some of the editions leaving out the last clause commencing with “since.”

1.2.21. The same Emperor to Demosthenes, Praetorian Prefect.

We order that no one shall be permitted to sell, hypothecate or pledge the sacred and holy vessels or vestments or other paraphernalia which are necessary for divine worship, since even ancient laws ordained that the property devoted to God should be

²⁶ [Blume] Northwest of the city the extramural district abutting on the Golden Horn was called Blachernae. Sycae was another district outside of the walls of the city, situated north of the Golden Horn. Holmes, *The Age of Justinian and Theodosius* 26, 80, 81. See map opposite p. 80. Special members of the clergy in Constantinople attended to burying the dead. See note to C.11.18.1 under “decani;” also Novels 43 and 59; also C.1.2.4.

²⁷ The words “to be applied (introducenda)” have been added in the margin, followed by a question mark.

²⁸ Above this phrase, which was typewritten, Blume has penciled in “natural means of subsistence,” without lining out the typewritten phrase.

²⁹ Blume has placed a question mark in the margin beside this last clause.

withdrawn from human bonds; but these things shall be reclaimed from those who dare to take them, by the pious bishops as well as by the stewards and guardians of the sacred vessels, leaving to the taker no right of action either for the recovery of the price or for interest on the money for which the property was pledged, but having all such actions, they shall be compelled by every means to make restitution of the property.

1. If, moreover, the vessels or paraphernalia have been or shall be melted down or changed in any manner or broken, still the right to recovery shall lie either for the property itself or its value either in an action in rem, or in personal action (*condictio*) or in an action on the facts (*in factum*), which course (*tenor*) is often permitted in many and various branches of the law, excepting causes of captivity in which this happens—which may God avert.

2. For if the cause of the redemption of captives requires it, then we permit both sale of such property devoted to God as well as hypothecation and pledge thereof, since it is not improper to prefer human souls to vessels (*vasis*) and vestments of every kind.

These provisions shall apply not only in future but also in pending causes.

529 A.D.

Note.

For the various kinds of actions including “*condictio*” and actions “*in factum*,” see note to C.2.57.2. For a modification of this law, see Novel 120, c. 10.

1.2.22. The same Emperor to Demosthenes, Praetorian Prefect.

We ordain that things coming through any liberality of a curial to venerable churches or hospitals, monasteries, poor houses, foundling-inns, orphanages, old men’s homes or similar establishments, whether in contemplation of death or by a last will and testament, shall be exempt and immune from the tax on gifts; the law made concerning such tax shall retain its force in the case of other persons, but shall in deference to piety, be relaxed as to churches and other houses assigned to pious assemblages. For why should we not make a discrimination between things divine and human, and why should not a proper privilege be upheld in favor of the celestial love?

1.³⁰ These provisions shall apply not only to cases arising in the future, but also to cases pending which have not yet been ended by judicial decree or amicable agreement.

Recited in the new consistory of the Justinian palace, at the seventh milestone of this famous city.

(529 A.D.)

Note.

The municipalities of the later empire deteriorated, and the burdens resting upon the chief men thereof were so great that many attempted to escape. Headnote C.10.32.

The emperors sought to retain as much property within the possession of curials—members of the municipal councils—as possible, so that they might defray the burdens resting upon them. Accordingly, a tax was imposed upon gifts made by these men.

C.10.36.1 and note. Gifts to churches and charitable organizations were excepted from this tax by the instant law. See also Novel 131, c. 5.

1.2.23. The same Emperor to Julianus, Praetorian Prefect.

³⁰ Blume follows Kruger in adding a number 1, without additional number to follow.

In order that a proper difference may exist between divine and public and private rights, we ordain that if any one leaves an inheritance or legacy or trust or gift, or sells anything, to holy churches, or to venerable hospitals, poor houses, monasteries, nunneries, orphanages, foundling-inns, old men's homes or cities, there shall be a very long time for the recovery of the property left, given or sold, not to be confined to the customary prescriptive period.

1. And if any money or property is left or given, in lawful manner, for the release of captives, we order that the right of recovery thereof shall continue for the longest time.

2. We have wished, indeed, not to circumscribe such action by any limit of time. Lest, however, we might seem to extend it infinity, we choose the longest period of the life of man, and do not permit such action to be barred unless the period of more than 100 years has elapsed; only then do we permit such exaction to be barred.

3. If, accordingly, an inheritance, legacy or trust has been left, or a gift or sale has been made to such religious houses or to cities, whether consisting of movable, immovable or self-moving property, or if any property has been left or given for the release of captives, the right of recovery thereof shall be almost perpetual, and shall last for 100 years, and no other defense of limitation shall be set up, whether the action is against the original persons or against their heirs or successors.

4. We give in all these cases not only the right to bring personal actions, but also real actions and on hypothecation, according to the tenor of our constitution,³¹ which gives to legatees and cestuis que trust the right of hypothecary actions, and we impose only one limit of time, namely, that of 100 years.

5. We ordain that these provisions must be observed in cases arising in the future and those already pending in court.³²

Given at Constantinople, March 28 (530).

1.2.24. The same emperor.

Looking after all things ecclesiastical and particularly those pertaining to the holy and great church³³ of this felicitous city, mother of all, head of all others, we forbid in the future the grant of any church property by perpetual lease (*colonario jure*)³⁴ the name of which shall be abolished and (henceforth) unknown to the laws.

1. Other contracts, which the reverend bishops of the same holy and Great Church are permitted to make, they may make with whomever they please except the noble and

³¹ [Blume] C. 6.43.1

³² [Blume] This law was modified by Novel 9 and Novel 131, c. 6. See C. 8.53.29 note as to transfer of ownership without delivery.

³³ [Blume] St. Sophia.

³⁴ [Blume] It is suggested in a note to the German translation that under the *jus colonarium* is to be understood a right of property under which the purchaser or lessee paid a small purchase price, the payment being repeated at small intervals, and also paid a yearly rental. The authors seem to mean the "*jus perpetuum*," a species of perpetual lease, somewhat different from the *emphyteusis*. (See C.4.66.) During the later empire, the *emphyteusis*, a species of perpetual lease, took the place of nearly all other leases, and was applied at first to sterile land, and its object was that the lessee should reclaim the land. See full discussion on these various leases His, *Domanen*. Justinian limited the *emphyteusis* to three lives, but later, by Novels 55 and 120, perpetual *emphyteusis* was permitted except in the case of the church of Constantinople. See further as to *emphyteusis* C.4.66. A "lessee" or "lease" herein mentioned referred to "conductors" and "conductio," which meant lessees and a lease for a whole tract in bulk; the "conductor" was a chief-tenant, who sublet the property to various small farmers.

magnificent prefects of this imperial city in office, to whom we do not allow them to alienate any property, (either directly) or through a third person interposed in fraud of this our imperial law, whether such) third person is related to the prefect in office, or not related to him, but is chosen by the latter to take his place for that purpose.

2. The reverend stewards, therefore, must take notice that if they do anything contrary hereto, they must pay to the holy church out of their own means, the value of such property to be recovered. If the noble and magnificent prefects in office are party to any such letting, although they try to cover the transaction up by every artifice using such third persons, and thinking that the fact that such person is acting for them will remain undiscovered, the contract shall, upon discovery of the truth, be annulled, and the prefect shall, as punishment, pay to the holy Great Church, the value of the property.

3. If he acquires the ecclesiastical property in any other manner, by persuasion or force, the transaction shall be invalid and whatever has on that account been given to any churchman, shall be turned over to the church, and the receiver as well as the giver shall each pay a fine of 20 pounds of gold,³⁵ and the receiver shall, for having such contract made, pay double the amount of what is given, all to be turned over to the church.

4. No land shall be leased by the church for over 20 years.

5. Ecclesiastical property shall be given in emphyteusis (long lease) only to rich persons, because of the necessity of restoring it to its former condition;³⁶ nor shall it be given beyond (the lifetime of) the person to whom it is given and two successive heirs after him, nor shall more than a sixth of the rental (of what it formerly brought) be remitted which was reserved at the time of the (old) lease.

6. But if the lessee deteriorates the property, he shall be expelled during the period of the lease and shall make good all damage.

7. If the steward is negligent or leases the property to poor people, he shall make all damage good.

8. The keepers of the archives (chartularii) of the Great Church cannot receive its immovable property, by hire or emphyteusis, or in any other manner, even through an intermediary.

9. Keepers of archives become such by a previously executed document, subscribed by the patriarch and the steward.

10. And if any one of them becomes a thief or a betrayer of this trust or shall for any cause appear to be unfit, the patriarch and steward may strike his name from the list.

11. There shall be appointed in the bureau of the Orient 15 keepers of archives; in the Asiatic 6; in that of Pontus 15; in the domestic bureau 15; in that of Thrace 8; in that of Antioch 6; in that of Calopodium 6; in that for expenditures 10; in that for legacies 8.³⁷

12. They receive, according to custom, for drafting an emphyteusis (perpetual lease) two per cent, for (other) leases and other contracts one per cent.

³⁵ In parentheses here, Blume has “\$4,320,” presumably his attempt to indicate the value of 20 pounds of gold in dollars at the time he was translating. However, he lined through all such previous equivalencies, so I have omitted them wherever they occur in the manuscript.

³⁶ [Blume] The restoration of the land was one of the objects of the form of lease called emphyteusis, as already noted above; hence these church lands were to be let only to rich persons, who were able to restore the sterile land. See also note to C.11.59.1.

³⁷[Blume] It would seem from this that the bureaus in the Orient, Asia, Pontus, etc., were under the jurisdiction of the patriarch of Constantinople. See Kurtz, Church History, § 46A,

13. If any one is made keeper of archives above the foregoing number, he will be ejected and must pay 15 pounds to the church and he who appoints him 20.

14. The steward, by order of the patriarch shall by careful inquiry check the expenditures³⁸ reported by emphyteuticaries (perpetual lessees), or (other) lessees and managers, each of the stewards inquiring into the matters pertaining to the diocese committed to his charge; the others (chartularii?) shall upon written order of the patriarch, subscribe the accounts with “I have examined” (recognovi),³⁹ and the stewards and their property are responsible for whatever amount is found to be due (computatum erit), when this rule is not followed.

15. The keepers of archives⁴⁰ receive one per cent of all money paid out and received, of which they keep account. Whoever receives more will be immediately removed from his office as chartularies as well as from his rank in the church.

16. We also ordain that the present or future reverend stewards shall render their account to the treasurers of the holy, Great Church every month or at least every two months, and they run a risk if they neglect to do so.

(530 A.D.)

1.2.25. The same Emperor to Julianus, Praetorian Prefect.

Since we find in many testaments a provision by which the testator appoints our Lord Jesus Christ as sole heir, without designating any sacred building, or appoints our Lord Jesus Christ heir to one-half, or other unequal, portion and some one else as heir to a half or other portion, and as this has been done in many testaments and many things have thereby, in view of the ancient laws, become uncertain, therefore, correcting these things, we ordain, that if anyone appoints Our Lord Jesus Christ as heir, either of all or part of the property, the holy church of the village or city where the decedent lived shall be considered as having been appointed as the direct heir, and the whole or part of the inheritance for which such appointment was made shall be collected by the reverend stewards. The same shall be true if a legacy or trust is left; and such property shall belong to the holy churches, to be expended in support of the poor.

1. But if anyone names any holy archangel or venerable martyr, and fails to make mention of a house—as we know to have been done by a person born of illustrious rank, and who had knowledge of the laws and of the art of writing—then if there is in his city or district a chapel in honor of such reverend archangel or holy martyr, that shall be considered as having been appointed heir; if there is in that city or district no such house, then the venerable houses in the metropolis (shall be considered such heir); if there is a house in the metropolis which is dedicated to the archangel or martyr, then such inheritance, legacy or trust shall be considered as having been left to it; if not, all of the holy churches therein shall receive it;

2. All other places must yield to the holy churches, unless it is clear that the decedent intended to designate another house. We know this to have been done in the

³⁸ Blume has written in pencil by this line “What expenditures?” He also has a penciled note asking what “impensam” and “inferter” mean in this line.

³⁹ This clause represents Blume’s penciled corrections and shows his continued uncertainty. The question mark following chartularii is in the original. Blume also penciled in here: “Paragraph obscure. German translation different.”

⁴⁰ [Blume] The chartularii here appear as book-keepers. For an account of such persons, see headnote C. 12.49.

case of a testament in Pontus and we ordered in that case that the true wish of the testator should prevail over the writing.

3. And if the testator has named no definite place, and several chapels are found in his city or district, then if the decedent constantly attended one of them and had the greater affection for it, the legacy shall be considered as having been left to such chapel. If none such is found, such legacy or inheritance shall be considered as having been left to the poorer one of that class and the one needing the greater help.
(530 A.D.)

Note.

Under the old law, an inheritance, legacy or trust left to Jesus would probably have been invalid, as being left to an “uncertain” person. The subject of “uncertain” persons is considered in C. 6.46. See also C. 1.3.24 and 28 and note; C. 1.3.48.1 and 2; Nov. 131, c. 9 and 11.