

Book I.  
Title III.

Concerning bishops and the clergy and superintendents of orphanages, founding hospitals, strangers' inns, hermitages and monasteries and their privileges, and concerning special military property, the redemption of captives and forbidden or permitted marriages of the clergy.  
(De episcopis et clericis et orphanotrophiis, etc.)

Headnote.

This title relates to the rights, privileges and duties of clergymen and monks and nuns. (A number of novels are appended at the end of this title, since it has not been deemed best to append them to one of the laws herein, some of them being lengthy, and some of them containing various provisions.) Novels 123 and 131 are summaries in a measure of the provisions of this title. Immediately following this note are contained some laws which related to the churches in Africa and the church of the birth place of Justinian.

Monasteries and churches and other pious institutions are considered. Monasteries were under the control of the bishop, as may be noted at various places, and the abbot was appointed by him, though nominated by the inhabitants of the monastery itself.

The highest church officers were the patriarchs of the sees of Rome, Constantinople, Alexandria, Antioch and Jerusalem, the patriarch at Rome later assuming the title of pope. The patriarch at Constantinople was frequently addressed as "ecumenical patriarch," that is to say, universal, or general, patriarch. Those of Rome and Constantinople were of the same rank. Below them in rank were the metropolitan bishops, bishops of the metropolitan cities, and below them the ordinary bishops. The bishops, presbyters and deacons were considered as belonging to the higher order of the "priesthood." There were also singers, readers and others. Specially mentioned should be the steward *oeconomus*, who had charge of the property of the church; the defender of the church, who defended the interest of the church—he acted as advocate of the church and at times performed other duties. We also meet with the term *apocrisiary*, or *responsalis*. The men were so called because the response or decisions of their principal were communicated to the court to which they were sent as legates. They were deputies of their principal. When Constantine removed the seat of empire from Rome to Constantinople, such legates from Rome and other chief sees were instituted at the imperial court. It is sometimes uncertain whether the term "priesthood" was intended to refer to the bishop alone, or also the presbyter. That is true also with the term "antistes." The term "clergyman" is defined by Novel 123 c. 19 as including presbyter, deacon, sub-deacon, reader and singer. See notes 1, 3, 19 and 32.

1.3.1. Emperor Constantius to the clergy, saluting, says:

According to the sanction, which you have long ago received, no one shall obligate you and your slaves to new contributions, but you shall be free therefrom. Further, you shall not (be compelled to) receive strangers.  
Given August 27 (343).

1.3.2. The same Emperor to Felix, bishop.

The clergy shall be protected against every wrong from a demand not owing and against the impudence of any iniquitous exaction and they shall not be called on for any sordid (degrading) liturgies (public burdens). And though traders are called upon to make some payments that are proper, that situation shall not touch any of them (the clergy). If they have accumulated anything by parsimony, foresight or trading, not inconsistent with honorable conduct, that should be considered again for religion.

1. And provisions of the divine emperor, our progenitor, have likewise in many ways taken care of their employees, who are occupied with merchandising, so that the same clergy should abound in many privileges.

2. Thus the necessity of extraordinary burdens and trouble shall not be imposed on them.

3. Neither they nor their property shall be called on to furnish any haulage for the by-ways.

4. All clergy shall enjoy the privilege that their wives, children, slaves, male and female, together with their children, shall remain exempt from such liturgies (burdens).<sup>1</sup>  
C. Th. 16.2.14.

1.3.3. The same Emperor to Taurus, Praetorian Prefect.

Your sublime Authority must [not] alone not<sup>2</sup> permit the clergy who possess lands to exempt the lands of others, but you must also compel them to pay the fiscal dues for the lands possessed by themselves. We order that all the provincial clergy who are landowners must pay the fiscal dues and do haulage (translations).<sup>3</sup>

This letter dated at Milan, June 30 (360).

1.3.4. The same emperor to Taurus, Praetorian Prefect. If the apparitors of the imperial comptroller (rationalis), having neglected the care of the imperial post and the necessities of the governor's quartermaster (primipili), and also being guilty of embezzlement in connection with fiscal accounts, think of passing over to the honorable position of clergy, they shall be dragged back to their former condition.<sup>4</sup>

1. But if they are not subject to keep accounts or to (other) duties, they may, with knowledge of the judges and the consent of the official staff, be transferred, if that is warranted by the course of a commendable life, without fear of the loss of their property.

2. But if they undertake to sneak in by clandestine practices, they shall give two-thirds of their property to their children, or if they have none, to their relatives, retaining one-third; if they have no kin, then two-thirds shall be left to the office in which they served, retaining only one-third.

Given August 29 (361).

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<sup>1</sup> [Blume] See note C. 1.2.5.

<sup>2</sup> The typewritten ms. reads: "Your Sublime Authority must not alone permit..." Blume has penciled in "not" immediately preceding "permit" but failed to strike the original "not." It would seem as if his intention may have been to translate it as "must not only not..."

<sup>3</sup> [Blume] Gothofredus (in note to C. Th. 16.2.40) thinks that the "translations" here mentioned referred to haulage on the by-ways and highways (C. 12.50), and shipping duties. As to the subject of special burdens, liturgies, of church property and clergymen see note C. 1.2

<sup>4</sup> In one of his notebooks, Blume has a page headed "Changes in CJ to Conform to Pharr," in which he wrote: "prinipilus—military supply officer, C.J. 1.3.4."

C. Th. 8.4.7.

Note.

The law as it originally stood dealt not alone with accountants in the office of the imperial comptroller but also with apparitors of the provincial governor (beneficiarii—see Gothofredus on this law). In the law as found in the Justinian Code, the latter are not mentioned, though the provisions as to the imperial post and the governor's quartermaster (or to his office) are retained.

The "other duties" here mentioned probably contemplated the curial condition (see C. 10.32 and headnote). Novel 123, c.15 provides that curials and provincial apparitors should not be made members of the clergy, and if made members, they should be expelled and returned to their former condition. Some exceptions were made. The thought behind all this legislation was that persons subject to public duties could not escape them by joining the clerical order. At the same time it was the aim to have men of honor constitute the clergy.

1.3.5. Emperor Jovian to Secundus, Praetorian Prefect.

If any one shall dare merely to solicit virgins, let alone ravish them for the purpose of marrying them, he shall be punished by death.

Given at Antioch February 9 (364).

C. Th. 9.25.2.

Note.

There was a strong feeling in the early church, largely Gnostic in origin, that the sexual relation involved sin. Some of the sects went so far as to reject the institution of marriage, and by the fourth century it was generally held that the celibate life was superior to the marital. In recognition of this sentiment, Constantine repealed the disabilities which the Roman law had imposed on the celibate. The legislation of the instant law was the outgrowth of that sentiment. Constantius had provided that if the violated woman should withdraw the accusation, the prosecution should end. But the instant law made escape from the penalty impossible. See Boyd, The Ecclesiastical Edicts of the Theodosian Code 62. See also C. 1.3.53.

1.3.6. Emperors Valens, Gratian and Valentinian to Cataphronius.

We direct that presbyters, deacons, sub-deacons, exorcists, readers and sextons shall be exempt from personal liturgies.

Given March 5 (377).

1.3.7. Part of the transactions had in the imperial council before the emperors Gratian, Valentinian, Theodosius, in the consulship of the honorable Syagrius and Eucherius, at Constantinople, on the 28<sup>th</sup> day of June (361). The emperor Theodosius said:

"Neither by (reason of) the honor (due him) nor by the laws is the bishop required to give testimony." The same emperor said: "It is not becoming that the bishop should be permitted to give testimony; for his person is burdened thereby and the high privileged dignity of his priesthood is lowered thereby."<sup>5</sup>

C. Th. 11.39.8.

Note.

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<sup>5</sup> [Blume]Following this sentence Blume has penciled in "(besmirched)."

The instant law, as suggested by Gothofredus, related to testimony in a criminal case. Part of the bishop's duty was to intervene for the afflicted, and it would have been becoming that any one should have been convicted through his testimony. Novel 123, c. 7, which, perhaps relates to civil cases, provides that no judge could compel a bishop to come into court and give testimony, but that some officers should be sent to take his deposition.

1.3.8. The same Emperors to Paulinus, Augustal Prefect.

Presbyters may give testimony without submission to torture, but they must not make false pretenses. The remainder of the clergy who follow them in grade and order must, if testimony is sought from them, be heard as the laws direct. But litigants shall have an action for false testimony if the presbyters, perchance, who on account of their superior position, have been directed to give testimony without corporal injury, suppress the truth because of the fact that they are in no fear. For those upon whom much honor is conferred by our direction are the more worthy of punishment if discovered in secret crime.

Given July 25 (385).

C. Th. 11.39.10.

Note.

Members of the clergy below the grade of presbyters were treated like any other witnesses. If they seemed to lie, they could be put under torture. C. 4.20.13. On the subject of torture of witnesses, see generally headnote C. 9.41. Presbyters were exempt from such torture pursuant to this law. Novel 123, c. 20 provides that if presbyters and deacons should give false testimony in civil cases, they should be expelled from their ministry for three years and put into monasteries; if they testified falsely in criminal cases, they should be expelled from their order and punished according to law; if other members of the clergy, below them in rank, should give false testimony, they should be expelled from their order and submitted to torture.

1.3.9. Emperors Valentinian, Theodosius and Arcadius to Tatianus, Praetorian Prefect.

No woman under sixty years of age shall, according to the precept of the apostle, be accepted into the society of deaconesses.

Given at Milan June 21 (390).

C. Th. 16.2.27.

Note.

This law was modified by Novel 123, c. 13 by reducing the age to 40.

1.3.10. Arcadius and Honorius to Theodorus, Praetorian Prefect.

If anyone shall commit sacrilege by going into any Catholic Church and committing outrage upon the priest or servants or the religious worship itself (*ipso cultui*), or on the church, he shall be punished for his acts by the rectors of the province.

1. And so the moderator of the province shall visit capital punishment upon those convicted of or confessing an outrage upon the priests and servants of the Catholic

Church, or on the place itself, or the worship therein, nor shall he wait till revenge for the outrage upon him is demanded by the bishop, to whom holiness leaves the glory of forgiveness. And it shall be praiseworthy in all to prosecute as public crime the atrocious outrages committed upon priests and their servants, and receive atonement at the hands of such criminals.

2. But if a violent multitude cannot be arrested and brought to court by the power of the civil authorities, with the help of the members of the order (of curials) and of the land proprietors, because it is protected by arms or the difficulty of the places, then let not the presidents of the provinces delay to visit proper punishment for such outburst by military aid, summoned by public letters.

Given at Milan April 26 (398).

C. Th. 16.2.31.

Note.

See Novel 123, c. 31 for disturbance in the church.

1.3.11. *Idem* to Eutychianus, Praetorian Prefect.

The clergymen who are ordained for churches located on the property of various persons, as happens, or in a village or in any other places, shall not be taken from any other estate or village than that where the church is located, so that they may (more readily) acknowledge the weight and burden of their own capitation tax, and the number of clergymen to be ordained in the churches shall be in proportion to the size and importance of each village, according to the judgment of the bishop.

Given at Mnizum July 27 (398).

C. Th. 16.2.32.33.

Note.

The law speaks of a capitation tax, and just what this tax means at this place is doubtful and in dispute. The term was used for poll-tax, and land tax, and animal tax—a certain amount of land or certain number of animals constituting a taxation unit. The law has been cited to show that clergymen paid a poll tax. The law is discussed at length by Leo in his “capitation plebeian u. d. capitation humana” 159. His view is that it refers to the land tax for the land held by the person selected as clergyman; that such person was probably a free serf—*colonus*—who had a certain amount of land, and the state was interested that this land should not be deserted. That there was a great deal of deserted land in the later empire is well known. See C. 11.59. As to serfs generally and the taxes that were to be paid by them, see C. 11.48.

1.3.12. The same Emperors to Eutychianus, Praetorian Prefect.

If any curial shall have been ordained as a clergyman, and he is not returned to his former condition immediately upon a demand for him, he shall be recalled to his prior fate by the vigor and swiftness of the judges, such as by arresting him. For we no longer permit the benefit of the law to the clergy under which decurions were not forbidden to become upon assignment of their property (to the city).

C. Th. 9.45.3.

Note.

It seems that previous to this time it was permitted a curial to join a religious organization, provided that his property was given to the city. See C. 10.32.26. But all rights whatever of joining such organization was taken away by this law, confirmed by Novel 123, c. 15. See also law 52 of this title.

1.3.13. The same Emperors to Sapidianus, Vicar of Africa.

If the privileges of any venerable church are either rashly violated or neglected through dissimulation, the crime shall be punished by a fine of 5 pounds of gold.

Given at Brixia June 25 (399).

C. Th. 16.2.34.

1.3.14. The same Emperors to Hadrianus, Praetorian Prefect.

If anyone is expelled from the position and honor of a bishop by the assembled clergy, and he is found to have attempted anything against his custody (custodium)<sup>6</sup> or public peace, and to seek to be re-admitted to the clerical order from which he was expelled, he shall pass his life at a distance of 100 miles from the city which he put in disorder. Neither shall he come to our audience chambers, nor hope for (a favorable) rescript; but he shall also be deprived of those he had already received. His defenders, too, will also incur our displeasure.

Given at Ravenna February 4 (400).

C. Th. 16.2.35.

1.3.15. The same Emperors to Studius, City Prefect.

We forbid unlawful (religious) assemblies in private house[s], outside of the church. A house will be in danger of confiscation if its owner admits clergymen thereto who hold rebellious and disturbing assemblies outside of the church.

Given at Constantinople August 29 (404).

C. Th. 16.2.37.

#### Note.

Unlawful assemblies were forbidden by many laws, for instance in C. 1.5.3 and Novel 131.8, Novel 37, and Novels 58 and 132.

1.3.16. Emperors Honorius and Theodosius to Anthemius, Praetorian Prefect.

Whoever (is a serf and) is inscribed in the census list should entirely refrain from joining the clerical order without consent of the owner of the land, so that, even though he becomes a clergyman in the village in which he lives, he must assume the religious priesthood upon the condition that he may be compelled by such owner to acknowledge the burden of the capitation tax, and that he must perform his rural liturgies, (though he may do that) through any substitute whom he may choose, provided that he may enjoy

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<sup>6</sup> [Blume] The term “custodiam” has given some trouble. Gothefredus did not solve it, but wondered what it could refer to. Possibly Novel 123, c. 11 may shed some light upon it. It provides that if a bishop who was expelled should re-enter the city from which he was expelled, or should leave the place where he was ordered to live, he should be put into a monastery. It seems, accordingly, that it was customary to assign a place to an expelled bishop in which to live. He was virtually in custody in that place. And it would seem that the instant law probably referred to the action which such person might take against the order so made

that exemption which is granted to venerable churches from certain capitation taxes.<sup>7</sup> No rescript shall be of any validity as against this law.  
Given February 28 (409).

Note.

This law, as law 11 of this title, speaks of a capitation tax, and, as the provisions of that law, so those of this are in dispute. Leo, “Capitatio plebeian u. d. capitatio humana” 160, discusses this law at length. His view is that the law refers to the land and animal tax of the owner of the land, but which was required to be paid by the serfs on the land. By law 36 of this title, unfree serfs were entirely forbidden to join the clergy without express permission of the master. But Justinian by Novel 123, c. 17 practically reinstated the instant law. In other words, the fact that the serf became a clergyman did not relieve him from the burdens which he was already required to bear. See as to serfs, C. 11.48. Serfs were bound to the soil, just as curials were bound to their city (C. 10.32), because it was to the interest of the state that they should stay on the land and cultivate it, so that the taxes might be paid. The state would not permit curials to join the clerical order (law 12 of this title and note), and as seen by the instant law, it discouraged serfs from joining.

1.3.17. The same Emperors to Monaxius, Praetorian Prefect.

It pleases our Clemency that the clergy shall have nothing to do with public matters or matters pertaining to the municipal senate to which they do not belong.

1.<sup>8</sup> Besides we do not permit attendants upon the sick, who are called parabanin, to attend any public spectacle or meeting place of the municipal senate or court, unless, perchance they go before a judge in connection with their own matters, to sue some one, or if they are sued by another, or when they are appointed as agent (syndicus) in a cause common to the whole corporation, with this provision that if any one of them violates these orders, his name shall be expunged from the register (of his corporation); he shall be subjected to proper punishment, and he shall never again be admitted to the same position.

Given February 28 (409).  
C. Th. 16.2.42.

Note.

C. Th. 16.2.42 provided that the attendants on the sick in the city of Alexandria should not exceed 500. See next law. They formed a guild or corporation. When a guild or corporation was compelled to be in court, it was represented by an agent called syndicus.

1.3.18. The same Emperors to Monaxius, Praetorian Prefect.

We direct that the number of attendants assigned to the care of the sick, shall be fixed at 600, to be chosen for this duty in the discretion of the reverend bishop of the city of Alexandria from among those who were such formerly and are experienced in the practice of curing, excepting persons of positions of honor (honoratis) and curials.

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<sup>7</sup> Blume has penciled in below this sentence: “What were these?”

<sup>8</sup> Blume follows Krueger in using the subdivision 1 without any additional number to follow. This will occur at various places throughout this manuscript.

1. If some one of their number, moreover, is taken by nature's fate, then another shall be substituted for him, in the discretion of the same bishop, excepting persons of positions of honor and curials, and these 600 shall obey the directions and dispositions of the reverend bishop and be under his supervision. All other laws long ago enacted as to them, concerning their attendance at spectacles or courts and other matters, must be preserved in force.

Given at Constantiople February 3 (418).

C. Th. 10.2.43.

1.3.19. The same Emperors to Paladius, Praetorian Prefect.

It is not becoming to a person who lives a life in consonance with the discipline of (this) age to be tainted by living with a so-called "sister." All persons, therefore, who have reached any grade in the priesthood, or are honored by a membership in the clergy, must take notice that the society of all outside women is forbidden them. Permission only is given them to have within their house their mother, daughters, and sisters, for their natural tie forbids any thought of any dishonorable crime.

1. Chastity, further, admonishes that those women should not be deserted, who prior to the priesthood of their husbands, lived in lawful wedlock; nor are those women improperly united to members of the clergy, who by their association have made the men worthy of the priesthood.<sup>9</sup>

Given at Ravenna May 3 (420).

C. Th. 16.2.44.

Note.

By Novel 22, c. 42., which should be read in this connection, it was provided that members of the clergy of higher rank than reader or singer should not marry. By Novel 6, c. 5, it was provided that a bishop should not marry. The usual practice prior to that time had been that bishops, presbyters and deacons should not contract any second marriage, and no marriage after ordination, although the practice in the east was more liberal than in the west. Kurtz, Church History § 45-2.

1.3.20. The Emperors Theodosius and Valentinian to Taurus, Praetorian Prefect.

If any presbyter, deacon, deaconess, sub-deacon, or clergyman of any other rank, or a monk, or a woman who is devoted to a solitary life, dies without a last will and testament and shall leave no parents of either sex or children or persons united to them by agnation or consanguinity on the father's or the mother's side, or wife, then the property belonging to him or her shall in all cases fall to the holy church or the monastery to which he or she was united; excepting, however, that property which is left by clergymen, or monks, of either sex, who, perchance, are enrolled on the tax lists (as unfree serfs) or who are subject to a patron, or bound to their curial condition, for it is unjust that the property or peculium (special property) which belongs under the law either to a patron or to the owner of the land to which any of the above mentioned are bound, or to municipal

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<sup>9</sup> In the clause following the semicolon, Blume appears to have changed "nor" to "for," but I have kept his original translation as making more sense. Scott translates this sentence as "The love of chastity induces Us not to exclude any who, before the ordination of their husbands, were worthy of lawful marriage, for those may not improperly be permitted to associate with members of the clergy, who, by their companionship, have rendered their husbands worthy of the priesthood" (emphasis added). 6 [12] Scott 36.



senates, under a certain rule of a constitution long ago enacted, should be held by churches or monasteries; reserving, indeed, to the holy churches or monasteries, a right of action if any one, perchance, who is subject to the above mentioned conditions, is obligated to them as a result of business or any other ecclesiastical transaction (carried on for them by him).

Given December 15 (434).

C. Th. 5.3.1.

Note.

If clergymen or monks had no heirs, testate or intestate, their property went to the church and monastery respectively. A similar provision was made by Novel 5, c. 5. Rights of creditors were preserved. The clergyman might have been a former unfree serf, who had, similar to a slave, but a peculium, special property, which in reality belonged to the master. As to serfs, see C. 10.48. The clergyman might be a freedman, and in that case, the former master, now patron, had certain rights in the property left by the freedman. See C. 6.4. So a curial, that is to say, member of a municipal senate, was bound to his position. C. 10.32. and headnote; and the policy was to leave all property of curials within their native city, so that the survivors might properly perform their public functions, like the collection of taxes and other matters. C. 10.35. In these cases, the property of a clergyman or monk who left no heirs did not, according to the instant law, go to the institution with which he [had] been connected. He might, however, be liable in sums of money to such institution, and this liability could be enforced. See also Novel 131.13.

1.3.21. The same Emperors to Thoma, Praetorian Prefect.

Just as in the case of bishops, presbyters and deacons of the orthodox faith, persons who have received the honorary title of “illustrious” may perform their duties to curia by substitutes.

Given at Constantinople February 26 (442).

Note.

C. 10.32.60 provides that persons with the illustrious rank could perform their functions in a city by substitutes. These functions were called liturgies, and consisted of tax-collection, looking after the imperial post, looking after highways, etc. See C. 10.32 and headnote and subsequent titles in book 10, where that subject is fully considered. Persons of rank below the honorary illustrious rank could not perform these functions by proxy. C. 10.32.60. As to the various dignities in ranks in the empire, see C. 12.1 and headnote, and C. 12.8.

1.3.22. The same Emperors to Florentius, Praetorian Prefect.

We direct that if any criminal complaint is maliciously laid before a competent judge against any bishop of the holy church, for the purpose of causing his appearance, he (the accuser) shall be punished by a fine of 30 pounds of gold, to be paid to the public treasury.

1. And so also shall all privileges which are granted by the laws to the holy churches for refugees, clergymen, deans or other ecclesiastical persons remain intact and unimpaired.

2. Besides, we order that all clergymen and monks who come from their own towns to this famous city on account of ecclesiastical business or on account of religious worship, shall be fortified by letters from the bishop to whom the person making the journey by be subject, and all must take notice that, if they come without this precautionary security, they will have themselves to blame, if they will not be considered as clergymen or monks.

Given at Constantinople February 11 (445) in the 6<sup>th</sup> consulship of Valentinian and of Nomus.

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

Since Flavianus, of blessed memory, bishop of this famous city, in the venerable synod of almost innumerable priests who convened at Chalcedon, was furnished with so much and such testimonial, that Eutyches, who had a contrary opinion was, with his wicked words, unanimously condemned by all, let the contemptible Eutyches be forgotten, but let the praiseworthy remembrance of Flavianus be renewed.

Done at Constantinople July 6 (452).

1.3.24. The same Emperors to Palladius, Praetorian Prefect.

The provisions leaving property to the poor in a last will or in a codicil, shall not be invalid as left to uncertain persons, but shall be in full force and effect.

Dated April 24 (455).

Note.

As to “uncertain” persons, see C. 6.48 and headnote. See also C. 1.3.28 and note and references C. 1.3.48.; C. 1.3.51 and 52.

1.3.25. Emperor Marcian to Constaninus, Praetorian Prefect.

Since the bishop’s court, with plaintiff’s consent, is open to all clergymen hailed into court, if the plaintiff does not want to submit to the jurisdiction of the holy archbishop then he must sue the catholic clergy, who are under the reverend archbishop of this city or the reverend steward in all matters pertaining to his own affairs, as well as those of the church, in your high court; nor shall he attempt to enmesh in suits or entangle in his civil or criminal cases any clergy in any other forum or before any other judge.

1. The above mentioned reverend clergymen of the orthodox churches under the jurisdiction of the pious bishop of this famous city shall, in the case in which they or the procurators appointed by them are summoned pursuant to your order, give to the process-server by whom they were summoned, the steward of the holy church of this city, or the defender (of the church) as surety, up to 50 pounds of gold. The reverend steward of this famous city, against whom an action is commenced, need not furnish a surety for himself, since he who is to act as surety for others should be entrusted to his own good faith. But if the amount involved in the action of the different clergymen, except that of the reverend steward, exceeds the above mentioned sum, the clergyman who is sued shall give his guaranty (for his appearance) to the process-server for the excess, in which guaranty, however, no oath shall be inserted, because clergy are by ecclesiastical regulations and by the canon adopted long ago by the blessed bishops forbidden to swear.

2. We decree, moreover, that the same reverend steward or other clergymen who are under the jurisdiction of the blessed archbishop of the splendid city, and who are

summoned by the authority of your order, shall give only two solidi to the process-server for the summons and for the appointment of a procurator if they want to carry on the litigation through the latter.

3. We order that this shall also govern the other various apparitors of your Eminence in cases of the aforesaid clergy, in connection with matters in which fees are customarily paid to officials, so that the outlay for expenses of litigation paid by the clergy shall be smaller and lighter.

About 456.

#### Note.

Certain clergymen mentioned in the instant law had a privileged court in that they could not be summoned except before the bishop or the praetorian prefect at Constantinople.

The law further mentions fees to be paid in connection with litigation, and that bonds were to be given. These subjects are succinctly dealt with in note to C. 2.2.4(d) and references are there given where the further details are mentioned. The instant law was enacted to lighten the burdens of the clergymen here mentioned in both respects, for bonds and costs were required from every defendant who was sued. See also Nov. 123. 28. The subject of the Episcopal court is treated in title 4 of this book. See especially note to C. 1.4.8.

As to exclusive jurisdiction of the praetorian prefect over clergy in Constantinople, see further C. 1.3.32. and note. See further C. 1.4.13, which seems to be connected with the instant law.

#### 1.3.26. Emperor Leo to Vivianus, Praetorian Prefect.

We decree that hereafter neither monks nor anybody else of whatever station or fortune shall attempt to carry the venerable cross or the relics of holy martyrs into public buildings or into any places erected for the pleasures of the people, nor shall they dare to occupy places constructed for public uses or for the amusement of the people. For, since religious houses are not wanting, they can upon consultation as is proper, of the pious bishops, place the relics of martyrs there, not by force, but in the discretion of the reverend bishops. Therefore let every monk, and every person of any other (religious) profession retain and strive perpetually to observe the forbearance and modesty which our laws, public discipline, and the name of the monks themselves demands. Given September 17 (459).

#### 1.3.27. Emperor Leo to Evythrius, Praetorian Prefect.

Whoever having served out his term of military service, or having performed his duties and services to which he was bound by any condition or by custom or by law, betakes himself to the society of churchmen, and has wished and chosen to be numbered among the ministers of the true orthodox faith, shall in no manner be recalled by the harshness of any order; nor shall he by any unjust claims be dragged from the temples of God to which he has consecrated himself, but he shall remain safe and secure in the blessed services to which he was attracted through a wise resolution, to enjoy, after the weariness of long labor, peace in his remaining years. He must, however, answer in accordance with the provisions of law the actions which by legal petition are legally brought against him or his property. Excepted herefrom are the primipilares (governor's

quartermasters) who by the imperial constitutions are decreed to be constantly subject to the orders of Your Highness and to the public service.

Dated at Constantinople March 6 (466).

Note.

During the later Roman Empire a virtual caste system existed; men were bound to their occupation, and sons inherited the position of their fathers. Thus curials were bound to the city, provincial apparitors, ship owners engaged in service for the state, fishermen of the purple fish, and numerous others, as shown in C. 10 and 11, were bound to their position, which became hereditary. While they were thus bound, and before the time of their service had elapsed, they could not become members of the clergy. See note to law 16 of this title. As to primipilares, see note C. 12.37.9.

1.3.28. The same Emperor to Nicostratus, Praetorian Prefect.

We ordain that no one shall be permitted, whether he is appointed as heir by testament, succeeds to one who dies intestate, or is a beneficiary of a trust or a legatee, to break or dishonestly attack the testament of a pious testator by claiming that a legacy or trust left for the redemption of captives is uncertain, but the same shall be paid according to the will of the testator and benefit the pious transaction.

1. And if the testator has designated any one through whom he desires the redemption of captives to be made, such person so specially designated shall have the right of demanding such legacy or trust, and so carry out scrupulously the wish of the testator. If, however, the testator has not designated any person, but has only named the amount of the legacy or trust that should go for the benefit of the purpose mentioned, then the reverend bishop of the city, where the testator was born, shall have power to demand what was left for that purpose to carry out without delay, as is proper, the pious purpose of the deceased.

2. When, moreover, the bishop has obtained the money left with pious intention, he shall immediately make the amount thereof and the time when he received it known, making a record thereof before the rector of the province. After the interval of one year he shall make known the number of captives and the price paid for them; so that such pious wishes of decedents may in all things be fulfilled. And the bishop shall do the afore said acts free and without outlay (of court expenses), so that under the appearance of benefaction the money left may not be paid out for court costs.

But if the testator who has left this sort of legacy or trust without designating any person belongs to a foreign people, and doubt arises as to his fatherland, the reverend bishop of that city in which the testator died shall have the right of claiming the legacy or trust to carry the intended purpose into full effect.

4. But if the testator has died in a village or rural district (territorio), the reverend bishop of that city under whose jurisdiction the village or rural district is shall have the right to demand it.

5. And lest the pious purpose of decedents be concealed by dishonest cunning of cheats, all who in any manner are cognizant thereof are free to notify the honorable rector of the province or the bishop of the city of what has been left for such purpose, without fearing the name or suspicion of an informer, since, when they have brought the truth to the public ear and light, their good faith and activity will not be wanting in praise and honor, and likewise (will be considered as an act of) piety.

Given at Constantinople, August 18 (468).

Note.

The subject of “uncertain” persons” is considered at C. 6.48. and see C. 1.3.24; C. 1.3.48.1 and 2. The rule was that a testator could leave nothing to uncertain persons; but the rule was very much relaxed in time. The subject of redemption of captives is considered more fully in C. 8.50. Gifts for that purpose are dealt with in C. 8.53.38. and other places. Such gifts were favored, due mainly to the many wars carried on and the number of captives taken from time to time. See also Novel 131. 9 and 11, and C. 1.2. 25.

1.3.29. The Emperors Leo and Anthemius to Zeno, Duke.

Those who live in monasteries are not permitted to depart therefrom, or dwell in Antioch or other cities, excepting herefrom only those who are called delegates (aprocrisarii). To them we give permission if they wish to go there for the purpose, however, only of carrying out the duties which they have undertaken. But they shall not discuss religious worship or dogmas, or pervert by counsel which leads to sedition and tumult, the simple minds of the people, and they must take notice that if they neglect the orders of Our Piety, they will be subjected to the severity of the laws.

Dated at Constantinople, June 1 (471).

1.3.30 (31). The same Emperors to Armisius, Praetorian Prefect.

If it happens that anyone, with God’s help is in this imperial city or in the provinces scattered over the whole globe, raised to the dignity of bishops, this shall be done with purity of mind, by free choice, and by the uncorrupted judgment of all.

1. No one shall purchase a rank of priesthood by bribes; he shall be judged not by what he can pay, but by what he deserves.

2. Surely, what place could be safe, what cause defended (exausata), if the venerable temples of God are captured by money? What, finally, could be protected or made safe if uncorrupted holiness is corrupted?

3. Let unholy ardor of avarice cease to hang over alters; let sinful crime be repelled from sacred shrines. So let an unpolluted and humble man be chosen as bishop in our time, one who by the spotlessness of his own life may purify everything in whatever place he is.

4. Let him be ordained, not by money, but by prayers. He should be so far removed from corrupt solicitation (ambitus) that he will be sought out, in order to be forced; who when asked, will turn back when invited will flee.

5. To such a person, necessity only shall be ground of excuse. And surely he is unworthy of the priesthood; unless he is ordained unwillingly. For he who has obtained the holy and venerable position of bishop by the help of money, or who is discovered to have accepted anything for ordaining or choosing another, shall, upon accusation, as though of a public crime and of treason, be removed from the rank of priesthood. Nor shall he alone be deprived of this honor, but he shall also be condemned to perpetual infamy, and those who are tainted by the same, and are equal in, crime, shall suffer the same punishment.<sup>10</sup>

Dated March 8 (469).

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<sup>10</sup> [Blume] See also Novel 123, c. 2.; Novel 137, c. 2.; and C. 1.3.47.

1.3.31. The same Emperors to Dioscorus, Praetorian Prefect.

We order that keepers of orphans who, without any subtlety in the law stating to the contrary, are quasi-guardians of minors under the age of puberty, and are quasi-curators of adolescents, shall, without being burdened by giving surety, represent and protect, in matters as they arise, in and out of court, and in a manner similar to guardians and curators, the persons of the minors and their transactions, if they have any; provided that their property shall be delivered to those who take care of such minors, in the presence of public persons, that is to say, the city clerks (tabularii), or upon a record (thereof) being made, before the master of the census in this famous city, or before the moderators or defenders of the cities in the provinces. If they think that some of the property (of the minors) should be alienated because, perchance, of the burden of interest, or some other pressing reason, or because it cannot be preserved, they are permitted, upon an appraisal being first made, to enter into a contract for the alienation (thereof), and the price thereof, collected from that source, shall be preserved by the same persons.

1. It is proper that the persons, who, for the time being, act as keepers of orphans, should perform such pious and religious function without being liable for an accounting required of guardians and curators. For it would be burdensome and unjust that those who in the fear of God maintain minors deprived of parents and property, and who raise them as though through paternal affection, should be troubled, if that should happen, by the tricky machinations of some persons.

Given at Constantinople June 1 (472).

Note.

The subject of guardianship and curatorship is considered in book 5 of the Code, commencing with title 28. As to tabularii, see headnote C. 10.71. For similar provisions as here mentioned, see Novel 131, c. 15.

1.3.32 (33). The same Emperors to Erythrius, Praetorian Prefect.

All priests present and future, and clergymen of the orthodox faith everywhere, of whatever rank they are, and monks, shall not in any manner, in civil cases, be dragged by the order of any superior or inferior judge to any outside court, and shall not be compelled to leave the province, place, or region in which they live. No one of them shall by any deplorable compulsion be ordered to leave churches or monasteries in which they live for the sake of religion, but shall answer the actions of complainants against them before their ordinary judges, that is to say, the rectors of the provinces, in the places in which they live and perform their ecclesiastic duties, so that at least in those hours and times in which the clergy are free from troublesome waiting at court, and when they have a breathing spell from the vexatious assertions of claimants, they may betake themselves to their monasteries and venerable churches, and with wisdom and earnest prayer, may more easily devote themselves to the service of the nearby holy altars while they are at their own fireside and home.

1. If it shall happen, however, that bishops, presbyters, or other clergymen who are devoted to the holy churches, or monks from any province shall for any reason be

found in this imperial city and anyone shall desire to sue them, they shall not be permitted to do so in any court except that of Your Sublimity, where the honor due their holiness shall be extended to them and ample opportunity to obtain counsel for defense shall be given.

2. Besides, when they are summoned in the provinces by the order or interlocutory decree of the person governing the province, then whether they are priests or churchmen of whatever rank, or monks, if only they are orthodox, and they are sued in regard to their own transactions and contracts, they need furnish no other sureties than the defenders of their own church or the so-called stewards, lest, when other sureties are demanded by the obstinate and covetous impudence of the process-server, manifold injury may be inflicted on innocent poverty.

3. When, moreover, the reverend priests of the orthodox faith, stewards, or defenders of the church or clergymen found in this imperial city, from whatever province they have come, are sued in the court of Your Amplitude, which alone we have assigned to them, they shall not, in their own civil suit, or suits relating to the church, be troubled by the affront of giving surety, but they may be surety for each other, which, however, shall be supported by the solemn precaution of a stipulation, or they may be released on their guaranty and pledge of their property.

4. It must further be observed that in ecclesiastical causes none other shall be summoned than he whom the bishop himself has selected as paymaster of the poor, that is to say, the steward of the church; for there is no doubt that he is to be ordained by the bishop (sacerdote). We direct that when he is sued, he shall be entrusted (without giving bond) to the defender of the church.

5. The process-server in all minor courts shall, in summoning priests or clergymen, neither hope for, nor receive, more than half a gold piece. If, pursuant to your order, an apparitor of Your Magnitude, summons those of them who live in a province, he shall receive no more than two solidi as a fee. In this city, however, the same apparitor of Your Magnitude shall be content with one solidus as a fee from provincial clergymen no matter what sum is claimed to be due from the person sued.

6. Besides, no process-server shall attempt to vex any of the clergy by insults, torment them by importuning them, heap reproaches upon them or molest them by corporal outrage upon them. Those who do anything of the sort, shall, after loss of the girdle of their office and of their property be forthwith visited with the severest punishment.

7. Every privilege granted the various churches of the orthodox faith, the hospitals for strangers, or poor houses, generally or specially, shall be perpetually preserved; and we direct that neither they nor their bishops or clergy, of whatever rank, or monks, or keepers of poor houses or hospitals for strangers, devoted to the orthodox faith, shall be weighed down by extraordinary liturgies (burdens). For we consider it as unbecoming that the weight of the burdens from which, for various reasons, we release many persons, should, in our time, be imposed upon holy men.

8. Besides, in order that recklessness may be of no profit to any one, and that the impudent audacity of false accusers may be curbed, we order that those, who in an intended action summon priests (sacerdotes) clergymen, monks of the others above mentioned, either to the court of Your Magnitude or to the provincial court, and they, when the cause has been heard, shall be shown to have brought the action against the

latter without just and lawful claim, they shall be compelled to repay the latter all proper expenses and outlay, which the latter shall appear to have incurred through the plaintiff's fault from the time that the controversy was set in motion, so that, restrained at least by the fear of this just punishment, they, who are assiduously occupied in dishonest strife, may, after their clamors of contention are put to rest, with necessity as a teacher, hold themselves in check.

Given at Constantinople April 4 (472).

Note.

According to C. 1.3.25 pr., the praetorian prefect was given jurisdiction over suits against the orthodox clergy etc., located in Constantinople. By this law (subdiv. 1), he was given exclusive jurisdiction over the orthodox clergy etc., who were temporarily in Constantinople.

The instant law begins by stating that the bishops, presbyters, and clergy living in the provinces could not be taken out of their province in any suit. That did not, however, it would seem, apply to the praetorian prefect, for in subdivision 5 of this law, it seems that the latter might send apparitors into the province to summon such men. If the apparitor, it seems, was sent into the province he was entitled to receive a fee of two solidus; if he summoned the men mentioned in the city of Constantinople, he was entitled to half of that amount. The right of the praetorian prefect to summon anyone in the provinces is mentioned in headnote C. 1.27 in considering the powers of that officer. The minor courts mentioned in subdivision 5 of this law included the courts of the governors of the provinces.

Ordinarily, defendants were required to give bond with surety. Fees, too, were required to be paid. These subjects are more fully considered in note C. 2.2.4 where further references are given. The subject has also been mentioned in law 25 of this title.

Justinian provided that the only jurisdiction over clergy should be in the bishop's court. That subject is more fully considered in note C. 1.4.8. As to liturgies, see headnote C. 10.32.

The term priest (*sacerdos*), and priesthood (*sacerdotium*) was a term sometimes applied to the bishop alone, and sometimes to him and the presbyter, so that it is at times somewhat uncertain as to what was meant. See the word "priest" in Smith & Cheetham, Dictionary of Christian Antiquities.

1.3.33 (34). The same Emperors to Erythrius, Praetorian Prefect.

The bishops, presbyters and deacons of the holy orthodox church, who have by approved morals and spotless purity deserved to obtain their rank, may claim as their own, all property which they, while living, were able to acquire and possess while occupying their rank and place, although they are in the power of living father,<sup>10</sup> grandfather or great grandfather, and are still considered as offspring (survivors), and they have free permission, whenever they wish, to alienate it by will, gift or in any other manner; and this property shall at no time become that of the brothers, or sisters, or their descendants, but that of their own children, (other) descendants, or outside heirs

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<sup>10</sup> Blume's typewritten translation of this phrase was "although they were and still are in the power of..." He penciled in "are," put "and still are" in parentheses, and wrote in above it "constituti sunt—not past perfect?" Scott translates this in the present tense as well. See 6 [12] Scott 46 (in which this provision is C. 2.3.32).



(appointed by them), and may not be claimed by their fathers, grandfathers, or great grandfathers, but by the children of the clergy as their own property. It shall without question become the property of those to whom it has been granted (by the alienation) during life, or by a last will and testament, if only by wish clearly known.<sup>11</sup>  
Given April 4<sup>th</sup> (472).

Note.

The property of a child under paternal power belonged to his father, or other remoter ancestor who was the head of the family. Unless a child was emancipated, he remained under such paternal power, until that power was terminated by death. Certain privileges were, however, extended from time to time to certain children, as soldiers, some persons in the imperial civil service and others. In the instant law, the privilege was extended to bishops, presbyters and deacons to hold the property acquired by them while serving the church, as their own. See headnote C. 8.46; note C. 8.46.2 and headnote C. 6.60. By Novel 81, bishops were entirely released from paternal power. The special property thus granted might be disposed of by testament, and such disposition could not be attached. See law 49 of this title, construing the instant law.

1.3.34 (35). The same Emperors to Dioscorus, Praetorian Prefect.

All privileges which have been granted by former emperors or by Our Serenity, either by (our) judicial orders, or by our liberality at various times, or customarily, whether as to the right of quartering or as to other matters;<sup>12</sup> to orphanages, hermitages, churches, poor houses, hospitals for strangers, monasteries, and to other men and the property belonging to them, in charge of Nico, pious presbyter and superintendent of orphanages, or in charge of those who will succeed to his place shall, pursuant to this pragmatic sanction, just as in the case of Loticus, of blessed memory, who is said to have been the first to institute beneficences of that kind, forever be kept undiminished and untouched. This, forsooth, seems to be necessary, since the means to maintain and raise orphans, and the poor, and for the use of churches, poor houses and hermitages are derived from that source.

1. We also decree that the houses and other things above mentioned, in the keeping of the above mentioned person, or which will hereafter in any manner fall under his care or under the care of those who will, after him, be called to the management of the same orphanage, shall for the sake of piety, perpetually enjoy the same privileges, which are now or hereinafter enjoyed by the venerable and holy church of this famous city.<sup>13</sup>

1.3.35 (36). Emperor Zeno.

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<sup>11</sup> At the bottom of this law Blume has penciled in: "Note—'ad huc superstites habentur' uncertain; refers to father, etc.? or does *superstites* mean 'persons under power' and are still so considered?"

<sup>12</sup> This wording reflects Blume's penciled corrections. The typewritten text reads: "All privileges which have been granted by former emperors or by Our Serenity, or by judicial orders, or by special grants for various times, or by usage or by custom, whether as to the right of quartering or as to other matters." Blume placed question marks by "at" in "at various times" and after "whether as to" and wrote "*jus metatorum*" above "quartering or as to other matters." Scott gives this as: "We decree that all the privileges which have been granted by the Emperor who preceded Us, or by Our Own Majesty; or by judicial decisions, or by any liberalities bestowed at any time; or by custom or by a constitution; or by surveyors; or which are derived from any source whatever..." 6 [12] *Scott* 47.

<sup>13</sup> [Blume] See note C. 1.2.5. For the *jus metatorum* see C. 12.40.

We ordain that all cities, whether heretofore restored, or whether formerly cities or not but made so by imperial rescript, shall have their own bishops, who shall have the management of church matters therein. No one, therefore, is in any manner permitted not even pursuant to an imperial command, to deprive any city of its own bishopric or of the territory assigned to it, or of any other right; and make it in that respect, or in any other matter, tributary to other cities.

1. If anyone dares to act contrary hereto, or attempts to take from any city now or hereafter restored, or any place now or hereafter raised to the rank of cities, the right to have its own bishop or deprive it of some other privileges which have been or will be granted them, his attempt shall not alone be futile, but he who opposes provisions which are useful for the common good and for individuals shall become infamous and be deprived of his property. The same punishment awaits him who as stated attempts any such thing by virtue of an imperial rescript.

2. These are general provisions. But considering the status of the holy churches under the jurisdiction of Tomis in the province of Scythia, these holy churches have been troubled by continuous incursions of the barbarians, or have otherwise been afflicted by want, and they cannot be preserved except by the care of the blessed bishop of Tomis—which city is also the capital of the people—we therefore ordain that they shall be excepted from the present enactment, and shall in no manner be subjected thereto, but they shall retain their present status.

3. We, likewise, desire to except from the provisions of the present enactment, the city of the Isaurians, which was recently raised to the rank of city in honor and veneration of Canon, who gloriously suffered martyrdom, namely, Leontopolis, so that it too shall retain its present status. For it has been hotly debated whether it ought to have its own bishop or should remain under the management and care of the pious bishop of Isauropolis. It shall remain a city, shall perpetually and fully enjoy the rights thereof, but shall remain entirely under the care of the above mentioned bishop.

1.3.36 (37). The same Emperor to Sebastianus, Praetorian Prefect.

We order that according to an ancient constitution, the election of an unfree serf (adscripticius) as a member of the clergy, without express permission of the lords of the domain from which they come, shall be of no force, but the lords of the domain who have not, as stated, expressly consented to such election, may exercise their lawful right over their unfree serfs just as in the case of free serfs (coloni), as if no election had taken place. The same thing shall hold true as to farmers, who are bound by the ties of serfdom, and who desirous, forsooth, of seeking solitary life, have thought of dedicating themselves to some monastery against the wish of their lords.

1. We entirely forbid slaves to be joined to societies of the clergy, even with the consent of their lords; since these lords have it in their power, by first giving liberty to their slaves, to open to them, if they wish, the lawful road of receiving the honors of the clergy.

2. Besides, all persons subject to presidential jurisdiction, whether bishops, clergymen, or persons of any other condition, shall alike, without any difference by reason of privilege, answer to the orders of the persons governing the provinces. It shall not be necessary hereafter for the honorable rectors of provinces to go to the places where accused persons reside; since it is not only in accordance with law, but also in accordance

with natural right that those who are cited as the occasions my demand, by judicial order, should proceed to court, rather than that judges—which even to mention is unjust—shall go to those under their power, but that the examination of the cause in the place where the accused reside, should rather be made by referees appointed by them.

Given at Constantinople, April 1 (484).

Note.

The subject of serfs, free and unfree, is fully considered in C. 10.48 and notes thereto.

Under law 16 of this title, unfree serfs were permitted to join the clergy under the condition that they performed the agricultural duties to which they were subject. The instant law required express permission of the landlord. But Justinian substantially reinstated C. 1.3.16 by novel 123, c. 17.

In the early part of the empire, and during the republican period, judges went on a circuit. Caesar did so during the time that he was conquering Gaul. Later that custom disappeared and judges had a fixed residence, as also clearly appears from the instant law. It may be that even after that time, they continued to go to places where accused persons resided, in order to try or to examine them. But the instant law definitely settled the point that they were not required to do so.

1.3.37 (38). The same Emperor to Sebastian, Praetorian Prefect.

We do not deny to slaves the right of participating in leading a solitary life, if only they have the consent of their masters; and these masters must take notice that if they give the right to their slaves to join the cult of the monks, they will be deprived of dominion over these slaves as long as they retain the garb of monks; but it is certain that if the slaves desert the solitary life and change their condition of life, they will return to the yoke of servitude, which they escaped by joining the cult of the monks.<sup>14</sup>

Given April 5<sup>th</sup> (484).

1.3.38 (39).<sup>15</sup>

Those who leave their monasteries shall not receive the movable goods back which they brought there, no matter how much, and although no record (of the gift) was made.

1. But the law relating to gifts should apply in case of immovable property as long as the donor is not deprived of the right of revocation.<sup>16</sup>

2. We ordain further that no bishop, suffragan, or itinerant presbyter or clergyman shall compel unwilling laymen to bring products as an expiatory offering which, in the province are called “first fruits” (primitiae)<sup>17</sup> or gifts (munera) which they demand as an impost; nor shall they impose on farmers, received into the clergy, and particularly those who are not under the jurisdiction of the pious bishops or the holy churches belonging to

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<sup>14</sup> [Blume] See also Novel 123, c.17.

<sup>15</sup> Blume omits this heading, and others subsequently, following Krueger.

<sup>16</sup> [Blume] Certain gifts were required to be registered. See C. 8.53.

<sup>17</sup> [Blume] The offering of “first fruits” was required by Jews, and that custom was introduced by the early Christians. Tradition handed down one-sixtieth as the minimum; those who were more religious gave one fortieth, others something in between. See the term “First Fruits” in Smith & Cheetham, Dictionary of Christian Antiquities. That custom was partially abolished by the instant law. For visitator (periodeutos) see Sophocles, Greek Lexicon.

them, any duty of furnishing haulage for the imperial post on the highways,<sup>18</sup> or other burdens or servitudes of that kind, nor shall they place upon them interdicts or anathemas, and thereby deprive them—a matter not mentionable without insult—of the communion of the sacred mysteries and of the venerable and salutary baptism. For we have learned that this has been suffered by some; and that whole village, clergymen and people outside of the ranks of the clergy, have been subjected to such interdicts and anathemas. Such senseless acts committed impiously, tending also to cause dislike of the orthodox faith, are entirely forbidden; nor shall any custom have validity which introduces such harsh exaction.

3. For it is obvious that each person should rather voluntarily bring to God and his servants of the result of his labors what to him seems right, and he should not be compelled to do this (otherwise) perhaps, forcing a poor person to do so, or one who, on account of some misfortune, receives no income from his tillage of the soil.

4. We hereby abolish the necessity to do so, though not only not repressing voluntary giving but even praising it.

5. Wherefore, fortifying the provisions made by us by heavy penalties, we order that he who shall dare to violate any of the foregoing provisions shall be expelled from the holy church entrusted to him and from the property thereof; and all who attempt to do anything of the kind shall be removed from the property which belongs to the houses, the management of which is entrusted to them, and from the management itself, since they have shown themselves unworthy thereof, and of the priesthood itself. They shall, in addition, be punished by a fine of ten pounds of gold. The things, however, decreed by us by this sacred pragmatic sanction, shall be valid and observed only in this imperial city, and its territory, and in the remaining places and regions under the jurisdiction of the patriarch of this famous city or under that of the blessed metropolitan bishop ordained by him; and so, too, the bishops who, under these metropolitans, are in charge of an episcopate priesthood,<sup>19</sup> or other prefectures administrative districts, are subject to, and must obey, the same enactments.

1.3.39 (40).

We ordain that no one shall be in charge of two monasteries. These shall be under the jurisdiction of the pious bishop of the territory where they are situated; each of them shall be in the charge of its own abbot; the bishop shall be responsible for the appointment and acts of the abbot, the abbot for those of the monks. In this manner, good discipline will be preserved, nor will anything disorderly be done, or rather through haughtiness, by those who have embraced this holy order. These provisions must be observed now and in perpetuity.

1.3.40 (41). Emperor Justinian to Archelaus, Praetorian Prefect.

By this second promulgation, it is best to again to warn not only judges of any tribunal, but also defenders of the churches of this famous city, who have stealthily engaged in the disgraceful conduct of (opening and) making of record the last will of

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<sup>18</sup> [Blume] As to “angaria” and the imperial post see 12.50 and headnote thereto.

<sup>19</sup> [Blume] Sacerdotium: Here “priesthood” and “bishopric” are clearly distinguished and the former probably referred to the position held by the presbyter, while at times referring also to the bishopric or to the latter alone. See note to C. 1.3.32

decedents, not to touch a matter, which, according to the direction of all constitutions is in the power of no one except the master of the census. For it is unbecoming, nay opprobrious, for the clergy to want to be skilled in forensic disputes. The violators of this ordinance shall be punished by a fine of 50 pounds of gold.

Given at Constantinople November 19 (524).

Note.

This law also appears in C. 6.23.23. The main purport of this was to forbid defenders of the churches to interfere with the master of the census in Constantinople in his jurisdiction of probating, that is to say, opening and recording, wills. It speaks of churchmen affecting to be skilled in forensic disputes. Just what was meant is somewhat indefinite. By reason of the existence of the episcopal courts (C. 1.4.8 note), the defenders of the churches were to some extent required to be familiar with court procedure, and it is possible that they also attempted to meddle with civil courts, in matters of wills, as well as other matters. See Steinwenter, Beitrag 36.

1.3.41 (42). Emperor Justinian to Atorbius, Praetorian Prefect.

Taking every care of the holy churches in honor and glory of the holy, undefiled and consubstantial trinity, through which alone, we know and are safe, and believing also in the doctrine of the holy apostles, according to which (only) priests who are free from every vice should be ordained, since it is their special duty to incite the benevolence of the merciful God toward us in things common to us all by their prayers, we ordain by the present law that, whenever it happens in any city that the bishop's seat is vacant, an order shall be made by the inhabitants of the city nominating three persons, whose orthodox and honorable life and other virtues are unquestioned, so that the most suitable of them may be promoted to the bishopric.

1. For if the holy and glorious apostles, who received the priesthood from our Lord Christ, our God, and filled the earth with virtues, and spread His gospel among all, not even sparing their life in this world for our safety, how could it be anything but right that those who succeed to their place and are appointed as bishops (sacerdotes) of the holy churches, should have a pure purpose, should despise worldly goods, and should devote their life to the merciful God.

2. Hence it is proper that such bishops be selected and ordained who have neither children nor grandchildren, since he who is occupied by the cares of daily life which children bring upon their parents cannot devote his mind and every thought to divine worship and ecclesiastical matters.

3. For since some men, on account of the hope which they place in God and to make their souls safe, resort to holy churches and bring to, and leave with, them their property to be expended upon poor houses, upon the poor, and for other pious purposes, it would not be becoming that bishops should turn these things to their own gain or expend it on their children or relatives.

4. For it behooves a bishop to be untrammelled by the affection of children of the flesh and to be the spiritual father of all the faithful. We therefore forbid any one to be ordained bishop who has children or grandchildren.

5. We, moreover, deprive present or future bishops of the right of making a will or gift or in any manner or by any trickery alienating any of their property which they acquired after they became bishops, whether by testament, gift or in any other manner,

excepting only that which they had from any source before they became bishops, or which has or shall come to them thereafter from parents, paternal or maternal uncles or brothers.

6. All property which, as has been said, comes to them after their installation, from persons other than those mentioned, shall belong to the church of which they are bishops, and shall be claimed by it, nor shall any other person be able to take any of it as his own.

7. For who doubts that those who have left or may leave them their property, or who have transferred or may transfer it to them, have left it to the bishopric itself, confident that not only what they so left would be expended for pious purposes, but that they (the bishops) would also add their own property thereto?

8. From this, our general law, we expect only the property which Epiphanius, holy archbishop and patriarch of this fortunate city, has acquired up to this time; but as to the property which he may acquire from now on, our law shall apply, and we decree that to belong to the holy and Great church.

9. After the death of the pious bishops, the officiating stewards must demand an accounting of the things left by the former, and which according to this law should belong to the holy Great church.

10. The stewards themselves also must be appointed after due reflection and consideration, knowing that they must annually render an account of their administration to the holy bishops, and if any ecclesiastical property has suffered damage, or has been converted to their own benefit, they must restore it to the church-property. Even if they have rendered such an account while living, the things provided shall be done; if, however, they have died before rendering an account, their heirs shall be subjected to that sort of inquiry and shall be compelled to make restitution of the things which they appear to won on that account (i.e. on account of the matters mentioned).

11. We have also believed it necessary to make some regulations concerning those who have undertaken or will undertake the management of venerable hospitals, infirmaries, poor houses, orphanages and foundling hospitals. We have taken all permission also from them after they have undertaken the above mentioned management, to transfer to others by testament or in any other manner, or by any trickery, any property which they have acquired, except what property they had before, or what they shall thereafter receive from parents, paternal and maternal uncles and brothers.

12. Whatever property belongs to the above mentioned venerable houses, and whatever has or will come to their superintendents after having taken charge of them, shall be the property of these venerable houses, and we order it to be religiously expended on those who live there or are there under his care.

13. For it is manifest that he who, with our without writing, leaves or gives anything to the keeper of any hospital, infirmary, poor house, or orphanage, gives it to him so that it may be dutiously paid out, since he has many opportunities for the exercise of kindness through those who are under his care.

14. Neither is it just that the property which he receives on account of those who are under his care should not expend it on or for them, but should be converted to his own use and benefit, forgetting the fear of God.

15. For what person who is entrusted with such management would not think that he was entrusted to thus expend not only the property received from others, but also his own?

16. We order further, that if anything happens to be left after the expenses are paid on behalf of those under his care, and in connection with the matters and buildings under their charge, then the remainder shall be put out on interest.

17. For we strive persistently that the property destined for pious uses should be increased and augmented; for then the person who desires to do anything for the salvation of his soul will give more readily, since he will be confident that the things which he has given will be dutiously administered.

18. But if it happens that anyone resigns the management which he has had, then his successor in fear of our Lord God shall demand of the former an accounting of his whole administration, as is provided by this law, such successor knowing that he must render an account concerning the matter to the Lord God.

19. We further forbid, as provided in the sacred canons, any bishop, suffragan, or itinerant presbyter (visitor), or presbyter, or other clergymen of whatever rank to be appointed as the result of bribery.

20. Likewise, no steward, defender of the church, superintendent of a hospital, infirmary, poor house, orphanage, or alms house shall be appointed through any bribery, but he shall be promoted according to the judgment (and the result of) inquiry of the pious bishops of the place.

21. But if anyone shall be found who has given or received anything by reason of the ordinations or positions of superintendent above mentioned, the, whether he be bishop or clergyman, both the giver and taker shall be deprived of their positions, aside from being subject to the vengeance of the Lord God.

22. And if anyone has been appointed through patronage (influence), and is found to have given anything, he shall be removed from the clerical order.

23. If it appears that a steward, defender of the church, suffragan, or itinerant presbyter, keeper of a hospital, infirmary, poor house, orphanage, foundling hospital, or person in charge of an alms house has given anything for his appointment, he too shall be removed from his charge.

24. In addition to this, we ordain that all clergymen appointed for the various churches shall themselves chant morning, vesper, and nocturnal prayers and shall not when bearing the name of clergyman only appear to be such, while consuming the substance of the church, but withdrawing themselves from the service of God, which is the duty of churchmen.

25. For it is absurd (since it is their own duty), that substitutes<sup>20</sup> should chant prayers for them. For if many of the laity, on order to consult the interests of their soul, flock to holy churches and are intent upon psalmody, it would be absurd that clergymen who are ordained for that purpose should not fulfill their duty.

26. Hence we order all clergymen to chant and to be examined by the officiating bishops and by two archpresbyters and the person called archon or exarch, of each church, and those who are found not to be conscientious in the performance of their duty shall be ousted from the clerical order.

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<sup>20</sup> Blume underlined "substitutes" and penciled in a question mark in the margin.

27. For those who have instituted and founded holy churches for their own salvation, and for the public good, have left them property by means of which sacred rites might be performed, so that the clergymen ministering therein might worship God.

28. We permit anyone who knows of any violation hereof to report it and make it known.

29. We order that the things ordained by us shall, by the grace of God, be carried into effect. Those who attempt to violate these provisions may expect, first, the judgment of the Lord God, and next, the punishment contained in this law.

Given at Constantinople March 1 (528).

1.3.42 (43). The same Emperor to Epiphanius, Archbishop and Patriarch of Constantinople.

Since we constantly exercise every care for the holy churches, by which, we are confident, our empire is sustained and the common welfare is, through the grade of God, protected, and since we look out, no less for our own souls as for the souls of all, and therefore are very solicitous that the rights beneficial to the holy churches in the various cities shall not in any manner be abridged; that the sacred rites shall not, by the absence of the pious bishops, be impeded or less becomingly performed; and that the possessions of the holy churches shall not be consumed by the expenses which are paid out on journeys by the bishops coming hither, attended by clergymen and slaves as attendants, so that often the necessity of contracting debts arises, the burden of which weighs heavily on the churches themselves, aside from the fact that the administration of ecclesiastical possessions is not conducted as [it] ought to be while the bishops are absent—therefore we deemed it necessary to employ this letter to Your Blessedness.

1. By it we order you to instruct all pious bishops<sup>21</sup> in metropolitan cities of each province under your jurisdiction that it is not becoming to them or to the pious bishops under metropolitans in other cities of the provinces, whatever matter may arise, to leave the holy church governed by them and depart for this city; but that they must send hither one or two pious clergymen under them in order to communicate to Our Piety what they want, either by coming to us directly, or through the intervention of Your Blessedness; so that in this way they may straightway obtain our just and instant help.

2. Whenever anything reported by them to us shall appear to us to require the presence of the pious bishops, we shall then order them to come here. And without such order we shall not permit them to come. Those who transgress these commands and neglect the orders rightly and piously given by us in honor of the holy churches will find our indignation great, and will be removed, if a metropolitan, by your Blessedness, if from the cities under the jurisdiction of the metropolitan, then by the metropolitan himself. For we have not deemed it necessary to fix a penalty for those who violate this law, lest detriment might result to the churches, the possessions of which we are anxious shall not be diminished.

3. Your Holiness will, therefore, hasten to bring these provisions to the knowledge of every metropolitan bishop under you, and to send to us the answers sent by

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<sup>21</sup> Blume underlined “bishops” and penciled in a question mark in the margin.



each of the metropolitans or by each of the bishops of the other cities of the province, that they have received knowledge thereof.<sup>22</sup>

Given at Constantinople March 1<sup>st</sup> (528).

1.3.43 (44). The same Emperor to Mena, Praetorian Prefect.

Looking out for the honor of the holy churches and the venerable monasteries, we forbid all who pass their days in the latter to dwell with holy women, or invent an excuse of communicating with them; for it excites just suspicion when they constantly, and whenever they wish, associate with them. But they shall be so segregated that there shall be no communication between them on any pretext whatever, nor shall any pretext be invented, by the former or the latter,<sup>23</sup> of association with each other.

1. The men shall live in their respective monasteries by themselves, separated from the holy women, who, for any cause, are joined to it, and the women shall live by themselves, not mingling with the men, so that every suspicion of indecorous conduct will be allayed.

2. And if the greater part consists of men, the women must be transferred, by the order of the bishop of each (respective) city, to some other convenient place and assigned to a monastery in which they may thereafter live honorably by themselves.

3. If, however, the women are found to be greater or equal in number, the men shall be transferred, and the women shall remain in that monastery.

4. The movable, immovable, and self-moving property of the monastery shall be divided in proper proportion between those that go and those that remain.

5. For the necessary business, however, of the women who live by themselves, one aged person shall be designated by the blessed bishop of the city to perform divine service and administer the holy communion; one presbyter and one deacon, of honorable life, shall be assigned who shall do only the things mentioned, and shall not linger or live there.

6. If these provisions are carried out, a fortunate life is in store for those who live a solitary life, and help for our common weal will be more likely granted by the merciful God.

7. These are the things which we at present have considered of benefit for the common good and have believed that it would be clear that we have added.<sup>24</sup>

8. There is need, however, of diligent care that these provisions be not in any manner transgressed. This will not be true unless the bishop of each place carefully watches the life of the monks living in the monasteries which are under his care, and whenever he observes a violation of that kind, represses the attempt, punishes those who, contrary to our law persevere in the violation thereof and compels them to live a life pure and free from association with females.

9. For it must be known to the bishops themselves, if they look at the matter rightly, that if the life of the devoted monks is honorable and nothing unbecoming or

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<sup>22</sup> Blume has penciled in above the last clause "what they have learned concerning this matter" and has placed a question mark in the margin.

<sup>23</sup> Blume inserted this clause by pencil and placed a question mark after it.

<sup>24</sup> This is language penciled in by Blume, with a question mark in the margin. As typewritten the sentence reads: "These are the things which we at present consider of benefit for the common good and to which, we believe, no little benefit will be added hereby."

dishonorable is done, then the merciful God will be well-disposed in matters common to all.

10. And that the pious bishops may not deem our order useless, we want them to know that if they are found not to have investigated these things carefully, or fail to correct a plain offense in the manner above mentioned, they will be subject to the judgment of the Lord God; will call down upon themselves our imperial wrath, will endanger their position, and they will not be free from even greater punishment.

11. Your Excellency, therefore, will make this imperial law known to the pious metropolitan bishops and to the honorable presidents of the provinces, adding that the latter must, if necessary, give every aid to the devoted bishops of the cities, so that what we have decided to abolish will be prevented; and that if they find them (the bishops) neglectful, they shall report to us, so that all may know what they must do and what awaits the negligent.

12. The metropolitans, moreover, shall make known our law to the other bishops of the cities of the same province and exhort all to carefully observe it under fear of the fixed penalty.

13. Lest, moreover, complete observance of our law be delayed, and lest the devoted monks, who at present live a communal life with nuns, may think the time given for carrying out the provided separation short, we fix one year, to be computed from the day of the promulgation of this law, so that, if after the lapse of a year such communal life shall appear to continue, the punishment provided in our law shall be meted out. Given this 18<sup>th</sup> day of February (529).

1.3.44 (45). The same Emperor to Julian, Praetorian Prefect.

Although the sacred canons permit neither the pious presbyter, nor the devoted deacons or subdeacons to contract marriage after their ordination as such, but permit that to be done only by the devoted singers and readers, yet we see that some of the former, in disregard of the sacred canons, have children by women with whom, according to sacerdotal regulation, they may not cohabit.

1. And since there was no punishment provided for the offense except loss of the priesthood, and since our laws want the sacred canons to have no less force than statutes, we ordain that, as to what pertains to them, the sacred canons shall have the same force as to the above mentioned ecclesiastics as if the provisions were contained in civil laws, and they shall be deprived of their priesthood, their sacred ministry and the dignity itself which they hold.

2. For as these things are prohibited by the sacred canons, so likewise are they forbidden by our laws, and aside from the above mentioned punishment of being expelled, the children born, or to be born, of such irrational embraces shall not be legitimate, but shall be contaminated by the disgrace, which accompanies this kind of procreation.

3. For we want them to be such as the law designates those to be who are procreated in incest and in nefarious nuptials; so that they shall not be known even as natural or spurious children, but as outcasts, unworthy of succession to the property of their fathers; neither shall they or their mothers be able to take gifts from them, even through intermediate persons; but all grants made to them by their father shall fall to the holy church to which those committing such acts belong.

4. For whatever the sacred canons forbid, that, too, we prohibit by our laws.

5. But if some pretended due-bill is executed, under the guise of a loan or other contract, which obligates him who participated in such defilement, this too shall be invalid, and that sort of gift shall not go to the person designated in the writing, but to the holy church.

Given at Constantinople October 18 (530).

1.3.45 (46). The same Emperor to Julian, Praetorian Prefect.

We ordain that, if any dying person makes a charitable bequest either by the institution as heir, or by a legacy or trust, or makes a gift in expectation of death or in any other manner, whether he enjoins upon the officiating bishop to carry out this disposition, or whether he is silent in regard thereto, or whether on the contrary he forbids him (to do so), it will be incumbent on the heirs to do and perform all things which were provided; if they do not do so voluntarily, then the pious bishop of the place shall request and summon them to perform all things according to the wish of the deceased.

1. And if the deceased ordered a church to be built, they shall see to the erection thereof within three years; if a hospital, they shall be compelled to finish it within a year, since this time suffices for carrying the will of the deceased into effect, and they can (if necessary) hire a house and put the sick into it during the construction of the hospital. If anything has been left to charity to be paid over at once, they shall be compelled to do so immediately; that is, after the testament has been opened and they (to whom the property is left) have acquired the inheritance or legacy. But if the above mentioned time elapses and neither the church nor hospital is built, and there is no superintendent<sup>25</sup> to whom this is entrusted, then the bishops shall demand what is left for such purpose, which shall in a suitable manner be sought out for that purpose, and they shall<sup>26</sup> cause the construction of the holy churches, hospitals, old men's homes, orphanages, poor houses, or infirmaries, or the redemption of captives or do any other charitable act which the decedent desired, and place in charge thereof superintendents or administrators, or curators, so that after the lapse of the above mentioned time and the neglect referred to, they shall have nothing further to do with the administration of the matter, and shall no longer have the right to exclude the pious bishops therefrom.

2. The honorable presidents of the provinces shall enjoin upon the heirs to fully carry out these provisions. Indeed it was already provided in the ancient laws that those who were permitted to hold what the decedents left must fulfill his wishes.

3. If the decedents have provided for special managers like superintendents of hospitals, poor houses, infirmaries, foundling hospitals, orphanages, old men's homes, or churches, or for stewards, or in a word, administrators of charitable bequests, the bishop shall permit such persons to have the management thereof, and shall not undertake it themselves, but they shall watch over it, and if proper, approve of it; if neglected, correct such neglect; if things are managed badly, they shall expel the managers and appoint others who have the fear of God in mind and the terrible day of the great and final judgment with which in view they should, with their mind intent on God, do everything.

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<sup>25</sup> Blume underlined "superintendent" in pencil and put a question mark in the margin.

<sup>26</sup> This represents penciled edits by Blume; the clause beginning with "which shall in a suitable manner..." was typewritten as "shall collect it in a suitable manner and cause the construction of the holy churches..."

3a. If the decedents, however, have placed no one specially in charge but have left everything to the decision of the heirs, and they neglect it, then the pious bishops shall take charge, appoint for the poor houses, hospitals, infirmaries, orphanages, old men's homes, or churches, superintendents, stewards or administrators, who greatly revere God, so that charitable bequests may be carried into effect in every way and manner and by every aid.

4. The fruits, returns, and lawful increases from the time of death of the testator from and during the time that the appointed heirs neglect to execute the orders given, shall be demanded from them; liability for delay shall not exist only from the time of joinder of issue or demand; but as though set in motion by the law itself, shall exist as to the fruits, returns, and other accessions.

5. The same rule holds true if a charitable trust is ordered paid, not by an heir, but by a trustee or legatee, who has acquired the property left him; for in such case, too, the pious bishop is permitted to call upon those thus honored, to carry out such bequests.

6. If the pious bishop of the place neglects to do so, perhaps corrupted by the heir, legatee, or trustee, then the metropolitan or archbishop of the diocese, who receives information, may inquire into the matter and see to it that the charitable work or gift is carried out in every respect. And this is permitted also to any citizen who wishes to do so. For since charity affects all, so too, the desire to carry it out should be of common interest. Anyone, therefore, is by this law permitted to bring and prosecute a personal action (*condictio*) according to law, so that the bequest may be carried out.

6a. The bishop who is negligent in such matter must take notice that he will, through such negligence, call down upon himself the punishment of heaven as well as incur the imperial displeasure.

7. That, moreover, terrified by a greater fear, the heirs of the deceased or those upon whom such benevolent work is imposed, may not delay to do it, we also ordain, that if the persons upon whom the duty rests still delay after demand made by the pious bishop, so that an action before the president is necessary, they shall be sued not only for the amount left by the bequest but for double that amount. For if there were cases in the ancient law in which the right to recover double damage arose through denial, why is it not proper that in this case, too, those should be chastised by double exaction who fail to act voluntarily but waste time, and who though afterwards admonished by the pious bishops, do not obey even then, but await the presidential order?

8. If the decedents have ordered something to be done after the death of the heirs and not while they are living, this too must be performed; nor shall these heirs be compelled to do (before their death) what the testator desired to be done; but after their death, all things ordered shall be done. If delay is caused by their heirs, then the provisions above made shall apply.

9. If what are called annuities are left or given to, perchance, the clergy, monasteries, hermitages, deaconesses, poor houses, hospitals, infirmaries, foundling hospitals, the poor of the holy churches, or, in a word, some charitable corporation or even a society not prohibited, and those who are (in the association) for a certain time should wish to compromise and take a lump sum of money at once, they shall not be permitted to do so, and if it is done, the transaction shall not only not be binding, but the person who redeemed or compromised such bequest shall also lose the money.

10. Otherwise, it would necessarily happen that those who are in the association temporarily would abound in money; but those who would come after them would wholly lose what is left them; neither would the name of the annuity nor the perpetual memory of the deceased, on account of which he left the annuity be preserved, but after the destruction of what he left, would be immediately obliterated.

11. Wherefore those (heirs, etc.) who are required to pay over such gifts shall remain obligated perpetually, so that if an alienation of property<sup>27</sup> has been made, it shall be void, and the superintendents of the venerable houses may sue to recover them, nor shall any prescriptive period stand in their way, since such right of action accrues each year.

12. The property of the deceased will, moreover, be subject to a lien on account of such legacies, so that by this means the charitable bequests may be satisfied not only as to the principal but also as to the fruits, income, and every legal increase thereof; nor shall any prescriptive period as has been said, be of any avail to those who detain them, whatever the time that may have elapsed,

13. unless he upon whom the annual legacy is imposed, and he who according to the sacred canons and our law manages the fund, have entered into a contract that in place of the annual legacy an abundant rental be paid, not burdened with many public burdens; but it must be greater (than the bequest) by not less than one-fourth of the net rental, or to a greater extent, as may be bargained between them.

14. If such an agreement is made in writing, and the (fact of) the rental (to be paid) is mentioned and contained in the document of the pact and compromise, and this is done openly by making a record thereof, then the exaction of the annuity from him who owed it shall cease, the rental shall for all time take its place, and no one shall for any reason whatever bargain it away.

15. But if nothing of the sort is done, then those burdened therewith must, as we have said, pay the annuity continuously, to that the name and memory of the deceased and of the annuity itself may by the deeds themselves be forever preserved in the establishments.<sup>28</sup>

Given at Constantinople October 18 (530).

Note.

As to annuities see note C. 6.37.22. Subdivisions 9 and 10 are amplified by C. 1.3.55, which should be read in connection therewith.

1.3.46 (47). The same Emperor to Julian, Praetorian Prefect.

We have deemed it best to add this to our imperial laws, which assigns (concedit) the positions of superintendents of monasteries according to excellence and not time (in the monastery, etc.)<sup>29</sup>; so that, if an abbot or abbess of a venerable monastery or hermitage dies, the first or next in order shall not at all (by reason of that fact) become the successor. For we are conscious of the fact that nature does not make all men equally good or bad. But the one called as superintendent (and successor) shall be the person

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<sup>27</sup> The typewritten original has "thereof" rather than "of property," which has been penciled in.

<sup>28</sup> The typewritten original read: "may by thereby be forever preserved." Blume made the penciled corrections reflected above but added a question mark in the margin.

<sup>29</sup> Blume penciled in this clause; originally he had translated it as "that excellence and not time (in the monastery, etc.) shall lead to the position of superintendent of monasteries."

whom a pure life, good habits and constant devotion commend, whom the remaining monks or the majority of them deem fit, and whom they, with the holy new testament before them, select.

1. If the person next in order to the deceased, accordingly, is suitable and worthy to govern the monks, he shall have the preference over the others; (on the contrary, if the suitable and worthy person is) the one who is next in order to him, then, similarly, the choice of the superintendency shall fall to him.

2. If, however, neither of them seems worthy, then the one out of their whole number who appears to be suitable, whatever may be his grade, shall be appointed superintendent, provided that his life and status are honorable, so that he may look after those committed to his charge. For it is proper that every superintendency and management of men should come into being not by reason of time (of service), lot, or fortuitous circumstances, but by election and preeminence, and that the testimonials of all should determine the appointments for the establishment.<sup>30</sup>

3. These things shall be communicated to the pious bishop, who, when he has learned of the selection, shall, if he thinks it proper, give his approval, and install the person selected in his office as abbot.

4. The election shall also be examined by the officiating patriarch and pious bishops of the (other) places, who themselves are in judgment before the Lord God, and who must fear future condemnation if they give their approval less through (honest) choice than because of being influenced by human affection; for the punishment of God awaits them in this and in the future life, if by reason of their negligence they are the cause of others sinning.

5. These provisions shall also apply to holy women and virgins (nuns) who are placed in charge of hermitages and monasteries.

6. In the other consecrated orders of the servants of God, promotions shall take place according to rank, and no innovation is made in reference to them in the present law.

Given at Constantinople November 17 (530).

Note.

A provision similar to the within is contained in Novel 5.9 and Novel 123, c. 34.

1.3.47. The same Emperor to Johannes, Praetorian Prefect.

We order that no one shall be ordained bishop unless he is otherwise suitable and honorable, cohabits with no woman, is not the father of children, but, instead of a wife, is true to the holy church, and who has the whole orthodox Christian people as his children—knowing that we decided this concerning the succession of pious bishops from the very beginning that the law was enacted for that purpose<sup>31</sup> and that those who neglect or shall neglect these provisions are unworthy of the bishopric. And those who, after this constitution, shall attempt to make or be made bishops contrary to the spirit hereof, shall neither be bishops nor remain in the holy orders, but shall be expelled therefrom and give place to others who shall be substituted by a careful selection and one in every way pleasing to God.

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<sup>30</sup> This last clause is as penciled in. The typewritten original was: “and that the constitution of the association be determined by the testimonials of all.”

<sup>31</sup> [Blume] See C. 1.3.31 and Novel 123, c. 1 and Novel 137, c. 2.

Given at Constantinople July 29 (531).

1.3.48 (49). The same Emperor to Johannes, Praetorian Prefect.

If anyone to evade the Falcidian law because he desires to leave all of his estate for the redemption of captives designates these captives themselves as heirs, we ordain, lest he may seem to have left his will open to attack, because of having instituted uncertain persons as heirs, that such appointment, because of its pious purpose, shall be valid and is not to be rejected.

1. And if anyone has appointed the poor as his heirs, and it is not found that the testator had any definite church in mind,<sup>32</sup> but the poor were appointed as heirs by indefinite terms, such disposition shall in like manner be valid.

2. And if he appointed captives as his heirs, the bishop and the steward of the city in which the testator is known to have lived and passed his life, shall take charge of the inheritance and use it for the redemption of captives, either spending the annual rental or the proceeds of a sale of movable or self-moving property, and no gain shall accrue therefrom either to the steward, bishop, or holy church. For if no one special person was appointed as heir, so that the Falcidian law would not apply, it is not to be tolerated that property devoted to a sacred purpose should be diminished through the Falcidian law or in any other manner.

3. When the poor have been constituted heirs indiscriminately, then the hospital of the testator's city shall have possession of the inheritance and expend it through its superintendent for the benefit of the sick, as we have provided in the case of captives—either expending the annual income, or selling the movable or self-moving property with which to buy immovable property, the annual rental of which may be expended on the sick. For who could be poorer than men who have succumbed to want, and placed in a hospital and, sick in body, are unable to supply themselves with necessary sustenance?

4. Permission is given in both the first and in the second class of cases to bring an action and demand the accounts due, so that they may be expended on the captives or the sick. For if we give them the right and the name of heirs, without (deduction), however, of the emolument given under the Falcidian law, they should be able to demand payment of accounts due as well as be responsible to creditors.

5. If there are several hospitals or poor houses in the city, then lest the gift may appear uncertain, the property or money shall be turned over to that hospital or poor house which is known to be the poorest among them and that fact shall be decided by the reverend bishop of the place and the clergy under him.

6. But if no hospital is found in the city, then, as mentioned in the provisions concerning captives, the officiating steward of the holy church, or bishop, shall receive the inheritance, and the money shall be distributed among the poor who are beggars or are otherwise in need of support, without any deduction under the Falcidian law.

7. The provisions herein shall have force only whenever the testator has not named a definite hospital, poor house, or church, but his intention is indefinite. If, however, he has named a definite person or venerable house, then the inheritance or legacy shall go to such person or house and without application also in such case of the Falcidian law.

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<sup>32</sup> Blume penciled question mark into the margin after this line.

8. In all these cases the administrators of holy property must expect the celestial wrath if they make any gain out of such management, or if they know that to be done by another, and they fail in their zeal to correct any such wrongful action by heavy penalty and by threats.

Given at Constantinople August 23 (531).

Note.

To understand this law, it must be borne in mind that the so-called Falcidian law provided that a person appointed as heir under a will was entitled to one-fourth of the inheritance willed him and was not compelled to pay out in any manner any more than three-fourths of the net estate left him. See C. 6.50. and headnote.

The instant law refers to cases in which the testator desired to evade this law so that it should not be necessary that one-fourth of what he left for charitable purposes should be paid to or rather remain in the hands of a person appointed as heir, but to cases in which the testator appointed captives or the poor or other like persons as his heirs. If he did so, the will was valid, and the Falcidian fourth was paid to no one, and no one was entitled to it. It had been doubted whether such bequest was valid, because of the fact that under the ancient law, no uncertain person could be heir, and paupers, captives, etc., in general were considered uncertain persons. See C. 6.48 and headnote.

The Falcidian fourth here mentioned must not be confused with the so-called birthright portion of near relatives, which, too, at times was called, though wrongly so, the Falcidian fourth.

1.3.49 (50). The same Emperor to Johannus, Praetorian Prefect.

Since by the law of Leo, the reverend bishops and presbyters and deacons were permitted to have their own special property as quasi-special military property, and to make a will disposing thereof, a doubt has arisen as to whether such testaments could be annulled as ungrateful, that question arising as to all the persons entitled to that kind of property. 1. We therefore ordain that the reverend bishops and presbyters and deacons who possess this kind of property may not alone make a last will, in due form of law, disposing of property of that kind—but only as to the property which is quasi-special military property—which is already permitted in the law of Leo, but these testaments relating only to such property shall not at all be subject to be set aside as ungrateful.<sup>33</sup>

Note.

The instant law interprets, and perhaps extends, law 33 of this title, which mentions the fact that bishops etc. were entitled to the property which they acquired while holding office as their own special property, and that such property did not belong to the father, as was usually the case when a child earned his own money. This special property could be willed away. The instant law further provides that such will could not be attacked as ungrateful. That action lay in favor of descendants, ascendants, and sometimes brothers and sisters, if they had been left nothing in a will, whereas, had the testator died intestate, they would have received a certain amount under the law. In other words, these persons were ordinarily entitled to what is called a birthright portion, and if that was not left, an action to set the will [aside] as ungrateful was granted under the law.

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<sup>33</sup> Blume's typed original reads: "to set the will aside as ungratified." Scott translates this as: "...their last wills...shall, under no circumstances, be subject to a complaint on the ground of inofficiousness." 6 [12] Scott 52 (where it is C. 1.3.38).



For full particulars on that subject, see C. 3.28 and headnote. That rule was held not to apply to the persons mentioned in the instant law, as to the special property.

1.3.50 (51). The same Emperor to Johannus, Praetorian Prefect.

If any one has affirmed in a written document that he will not question the venue of an action on account of his priestly privilege, he will not be permitted to violate his agreement and deceive the other contracting parties, since it is a rule of ancient law that all may renounce the privileges introduced for their benefit. We ordain that this general law shall be in force in all cases which have not yet been terminated by judicial decision or amicable agreement.<sup>34</sup>

1.3.51 (52). The same Emperor to Johannus, Praetorian Prefect.

We ordain generally that all reverend bishops and presbyters, or deacons and subdeacons, and especially monks, thought they do not belong to the clergy, shall, by operation of law, be free from the duty of guardianship, whether testamentary, statutory, or made by the court. And not only shall they be free from the duty of guardianship, but also from that of curatorship, and that not only of minors under and over the age of puberty, but also of the insane, mute, deaf, and of other person for whom, under ancient laws, guardians or curators are appointed.

1. But we ordain that only those clergymen and monks shall possess such privilege who (actually) belong to the holy churches or monasteries, not those who wander about or are negligent in their divine services, since we grant this privilege only so that when free from all other duties they may devote themselves constantly to the services of the omnipotent God.

2. This shall apply not only in ancient Rome, or in their imperial city, but also in the whole world, wherever the Christian name is cherished.

Given November 1 (531).

#### Note.

Certain near relatives were subject to the duty of acting as guardians or curators of minors, etc. That involved considerable responsibility when property was involved, for all guardians and curators were held to the strictest accountability. See generally on that subject, and treated at length, C. 5.28. and subsequent titles. Monks and clergymen were exempted from this duty by the instant law, and such exemption was considered an important privilege.

1.3.52 (53). The same Emperor to Johannus, Praetorian Prefect.

We ordain that no curial or provincial apparitor shall hereafter be made bishop or presbyter. Those who have heretofore been found worthy of the priesthood are not affected by this law, but hereafter no one of the aforesaid status shall occupy such priestly position, especially if he has already performed functions (as curial) or, perchance, has obeyed orders as provincial apparitor.

1. For it would not be just that a person who is nourished by violent exactions and sins which<sup>35</sup> (are apt to) occur in connection therewith, should at one time be provincial

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<sup>34</sup> [Blume] See also C. 2.3.29 which, too, states the rule herein announced.

<sup>35</sup> This has been penciled in. The typewritten original reads “who has been brought up amid harsh orders and amid transgressions which...”

apparitor or curial, performing the harshest acts of all, and then be made a priest, teaching and preaching the precepts of kindness and innocence, unless, perchance, he was received among the monks in his infancy, before passing the age of puberty, and remained therein; who, forsooth, 'till this happens, and he shall show himself worthy of the clerical order, my remain in the priesthood and be free from municipal liturgies (burdens);<sup>36</sup> but he shall give a fourth of his property to the curia and the public treasury (fisc) according to the constitution which we have recently made concerning such fourth, or to the fisc alone, if he, perchance, was subject to act as provincial apparitor.

2. If he has become an abbot, and remains such, we also give him freedom from the status of his birth provided he too gives a fourth of his property, as we have mentioned above; otherwise he shall not be ordained, nor do we permit any one who ordains to do anything of that kind.<sup>37</sup>

3. Your Excellency must take notice that all pious bishops must observe these provisions, and must expect the penalty (of removal) from the priesthood itself if they are guilty of violation hereof, aside from the fact that though ordained, they shall not remain in the priesthood whatever rank therein they may have held, but shall be numbered among the laity and perform duties to which they were previously subject.

4. The provisions hereof shall apply only in the future, because they have been made only now, nor, as stated shall this law affect those who have once been received in the priesthood, and they may perform their liturgies (duties as curial or provincial apparitor) by substitute according to the constitution of Theodosius and Valentinian of blessed memory written to Thomas.

5. We further order that also the following matter is just, shall obtain and be in use, which, though provided for from the beginning and observed, has now, we know not to what extent, been neglected. We remember of having met up with a constitution of Arcadius and Honorius of blessed memory, which provided that clergymen who deserted their order and enrolled in any branch of the army, or who after being deposed by the pious bishops, should dare to join the army, they should be ousted therefrom and delivered to the municipal senate of the cities, so as to serve the city thereafter, since they abandoned the service of the Lord God for Military service.

6. We ordain that these provisions shall, pursuant to this our law, be in effect, ordering that such persons shall immediately become curials of the city in which they were born, unless that city abounds in the number of curials, in which case such persons shall be assigned to a neighboring city or to a remoter one, or to one in a neighboring province, where there is the greatest want of curials.

7. And if they hide, perchance, we give permission to the curials to immediately seize their property, hold it and cause satisfaction to themselves to be made therefrom according to law.

8. These provisions shall be forever in force as to the clergy of whatever rank, and shall apply also to those who have already offended, since the law is ancient.

9. We have, however, found a constitution which treats of monks and prohibits them from leaving the monasteries and roam about in cities. Some persons, however,

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<sup>36</sup> The typewritten original of this clause is: "and 'till he becomes such, and as long as he show himself worthy of the clerical order, may remain in the priesthood and be free from municipal liturgies (burdens)";

<sup>37</sup> Blume has penciled in this last clause; his typewritten original, which he did not strike through, read: "or if ordained, perform the duties of his office."

consider this constitution to have been made (only) for a certain time and taking that as an occasion, we believed it best to perfect the law on this point, revising it to apply for all time. No monk, therefore, shall in the future do anything of the sort; he shall not lay the garb of a monk aside and take on any military service, girdle of office or position of rank, or engage in any judicial proceeding or to know any worldly occupation or prefer it to the service of God.

10. If he does so, he shall be delivered over to the curia of the city in which he was born, or of another city, as we have mentioned above, so that if he is rich, he may undertake pecuniary burdens aside from corporeal duties. In this case, too, permission is given to curials, as we stated above, to seize the goods, if they hide themselves, and cause satisfaction to themselves to be made therefrom.

11. In all cases, however, in which for any reason we order the curiae to seize anything, we want half thereof to be taken by the curiae, not in gold, but in land, whether that is at hand, or which is to be bought, according to a new law formerly enacted. The other half shall go to the common chest of Your Excellency. Your office must diligently see to it that nothing of the kind (herein forbidden) will remain undiscovered, but, as soon as committed, apply the proper remedy to it, unless the offenders have voluntarily left the military service or other position, in earnest and in good faith have returned to their monastical life, and have acted so zealously as to (again) be assigned to the devoted monks. If the offenders shall do this within a year from the date of the present law, we remit their penalty, thinking that a reform that has been brought about by experience in life is sufficient.

12. We want these provisions to apply in future without, however, exempting from the above mentioned punishment those who become monks and have committed such (rotations) since the beginning of our reign;<sup>38</sup> we forgive everything as to the time before that, partly for the sake of kindness, partly blushing for the manner of the times,<sup>39</sup> since nothing definite had previously been enacted.

13. We further enact that if a father or mother or any other person, who has no children, have enjoined upon men or women (who are appointed as their heirs), that someone else should be substituted as heir and receive the property (in case the originally appointed heirs should not marry and leave no children), but the latter (heirs), on account of a religious life, have refused to marry, such provisions for substitution and restitution shall be rescinded (by operation of law), and they (the appointed heirs) shall be permitted to consecrate the property received from that source in any manner they wish, provided it is for a pious purpose, and either expend it while living or dispose of it upon death. Even if the property is left them upon the (express) condition of procreating children, they shall receive it then without it being incumbent upon them to procreate children.

14. We extend this law also to women who have consecrated themselves to virginity, and to the clergymen to whom matrimony is forbidden, and (thus) show this our gratitude worthy of our times, to God.

15. Besides, if a man wishes to lead a solitary life, or if a woman, leaving her husband, shall go to live the life of a nun, that fact shall be no cause of penalty (giving the spouse the right to retain part of his or her property), but they shall receive back their

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<sup>38</sup> Blume has placed a question mark in the margin after this clause.

<sup>39</sup> This clause has been penciled in; the original was "partly in view of the times." After "manner," Blume has in parentheses (ratione?).

own property—the woman her dower, the husband his prenuptial gifts; no gain shall be claimed by reason thereof, as though a divorce had taken place, or remain with the party who has not renounced (the marriage relation), but (in such case) the property shall go according to the agreement (if made) which would have been in effect in case of death, since the person, deserting the society of the other appears to be dead so far as matrimony is concerned, seeing that such person is plainly useless to the other; and the sum specified in the dowry-documents, as the amount that should be due (to the survivor) in case of death having been received (by the deserted party), the remainder shall be turned over to the person choosing the religious life. The woman (deserted by the man choosing a religious life) shall not, on account of the uncertainty of offspring, look for another marriage before the lapse of a year. If anything of the kind (namely retirement of one spouse to a solitary life), the party who has not chosen a religious life, may send what is called a bill of divorce “bona gratia” and do what he pleases, he (or she) receiving the gain (in property) in the manner stated; but this gain, so accruing from such causes, shall be preserved for the children, if any, born from this marriage, just as if the marriage between the wife and the husband had continued.

Given at Constantinople November 27 (531).

Note.

As to obligations (liturgies) to a city, see C. 10.32 and headnote. Curials were bound to their city; provincial apparitors, that is to say, the members of the official staff of a governor of a province were bound to their station, and their children were, as a rule, compelled to follow the occupation of their father. See C. 12.57.12 and note. There was practically a caste-system in the later Roman empire, when nearly all, except the governing class were bound to the station in which they were born, children following the occupation of their father. So, in the instant law, the clergy or monks could not take up any military service or employment in the civil service of the government, and if they did so, they were expelled therefrom and made subject to curial duties, which were burdensome, as noted in headnote C. 10.32. See Novel 5, c. 6.

Ordinarily when a person was appointed as heir, and he was directed to turn property over—that is to say, that it should belong to another in a certain event, this direction was valid. A trust was thereby created, the substituted party being the cestui que trust. And the common expression in Roman literature was that such property was to be “restored” to the cestui que trust. See C. 6.42 and notes thereto. But according to the instant law, a trust to turn property over to another, in case the trustee did not, for instance, have any children, was declared invalid. This was done, of course, in order to favor the acquisition of property by the church or monasteries.

As to divorces bona gratia, see note Novel 22, c.4. To understand the matter as to the regulation of property herein in case one of the spouses desired to retire to a solitary life, it must be borne in mind that marriage contracts were usually entered into, and these contracts provided what should become of the property brought to the marriage in case of the death of either. See headnote to C. 5.3.

1.3.53 (54). The same Emperor to Hermogenus, Master of Offices.

The raper<sup>40</sup> of virgins, widows, or deaconesses who are dedicated to God, committing the worst of crimes, shall be punished by death, because such deed is not only an outrage on men, but is also in mockery of the omnipotent God himself.

1. Those who commit a crime of this kind, and those who furnish them aid at the time of the attack may, if shown to have been discovered in the act of abduction [rape],<sup>41</sup> and seized in the commission of the crime, be killed by the parents of such consecrated virgins, widows, or deaconesses, or by their relatives, guardians, or curators.

2. If the abductor [rapist], after commission of such detestable crime, is able to defend himself through power, or to escape by flight, the exalted praetorian prefect and the glorious city prefect, in this imperial city, and the eminent praetorian prefect of Illyria, as well as the masters of the military forces in the different regions of the empire, as well as the worshipful prefect of Egypt and the vicars and proconsuls, as well as the worshipful dukes and the honorable rectors of the provinces, and also the other judges of whatever rank who may be at the place, shall likewise exercise zeal and care, that the guilty may be seized, and when seized, after proper proof recognized by law in such crimes, are afflicted by the heaviest punishment and condemned to death without defense as to the venue of the action.

3. Their property, if the crime was committed against a nun living in a hermitage or nunnery, whether the virgin has been appointed deaconess or not, shall be assigned to the nunnery or hermitage to which she is consecrated, so that she herself may receive ample solace therefrom while living, but the holy hermitage or monastery shall have complete ownership thereof.

4. If the woman is a deaconess of some church, but is not located in any monastery or hermitage, living by herself, the property of her abductor shall be assigned to the church of which she is deaconess, so that she, while living, may receive from the church the usufructs derived therefrom, but the church, by our beneficence, shall have the full title and possession thereof. No judge or any other person whatever must dare to ignore this provision.

5. The punishments, moreover, which we have mentioned above, that is to say, death and loss of property, are fixed not only against abductors [rapists] but also against those who accompanied them in the attack and abduction [rape]. All others, moreover, male or female, of whatever condition, rank, or title, who have been convicted of having guilty knowledge of or were assistants in such crime, or who received the abductors [rapists] or have given them any aid whatever, shall be subjected only to capital punishment (without loss of property), and all guilty persons shall be subjected to this punishment, whether the crime has been committed with or without the consent of the consecrated virgin or other woman above mentioned.

Given at Constantinople, November 17 (533).

Note.

This law is largely duplicated in C. 9.13.1, which should be consulted; see also C. 1.3.5.

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<sup>40</sup> This has been penciled in above the original "abductor." In the margin, Blume has also penciled in "I think this refers to rape, not abduction."

<sup>41</sup> Blume did not change "abduction" to "rape" elsewhere in this section, but his marginal note indicates that was his intent.

1.3.54 (56). The same emperor to John, Praetorian Prefect.

We want, with the help of God, [to] confirm by law, and carry out by works, everything which we strive to have done for the honor of the holy catholic church, according to God's will.

1. We have already with his help decreed many things of benefit to the status of the ecclesiastical doctrine and status; and we have, moreover, thought after pious deliberation, to correct what heretofore has been done contrary to the fear of God.

2. For we know that if a betrothed person, after giving or taking of earnest money, wanted (heretofore), in order to devote himself or herself to the service of God, to withdraw from worldly society and live a consecrated life and remain in the fear of God, the man (in such case) has been compelled to lose what he gave as earnest money, and the woman has been compelled to return double of what she had received. This has appeared to our Clemency contrary to religion.

3. Hence we order by this law, to be perpetually in force, that if any betrothed person, male or female, desires, despising the life of worldliness, to live in the company of the consecrated, the bridegroom shall receive back, without diminution what he gave as earnest money on account of the future wedlock; the bride shall restore to the bridegroom, not double, as heretofore, but that only which she received as earnest money, and she shall be compelled to return no more than she is shown to have received.

4. For it has already been provided by us in regard to husbands and wives that whether the husband or the wife leaves the other for religion and chooses to live a solitary life, each shall receive back the property given as dower or prenuptial gift, and that only the amount of fain will be reserved from the one choosing the solitary life, which is legally or pursuant to agreement received in case of death.

5. We also consider another matter known to us to be worthy of correction, namely, that if anyone, still under paternal power, as one, perchance, released therefrom, chooses to join a monastery or the clergy, and wishes to spend the remaining life piously, the parents shall not be permitted in any manner to keep them from it, nor, for this cause alone, disinherit them as ungrateful, but parents shall in all (such) cases, when they make their last will, either in writing or in some other legal manner, leave them the fourth according to the provisions of our laws, giving permission to give a larger amount if they wish.

6. But if the parents have not made their last wish known either by testament or some other last statement, those heirs may claim the property of the parents who have the right to it according to our laws in case of intestacy; and their pious association shall not hinder them therein, whether they are called to the succession alone or together with others;

7. We want the benefits of this perpetually enduring law to accrue only to those who have remained in the monastery or the clerical order. If any of those for whom we make the present law shall choose a pious life, but shall thereafter return to a worldly life,