

Book XI.
Title LIV. (LIII)

That no one shall take any villages or rustics under his protection.
(Ut nemo ad suum patrociniū suscipiat vicos cel rusticanos eorum.)

Headnote.

The subject of patronage, protection by the stronger of the feeble, is dealt with quite extensively in the Code. C. 2.13 to C. 16 deal with that subject in one form or another, although some of the laws there contained also refer to forcible taking of the property of another, which subject is also considered in C. 8.4 and C. 8.5. The titles in book 2 above mentioned should be read in connection herewith. So, too, C. 4.47.3 and C. 10.19.8 refer to patronage, and it was therein provided that persons to whom property was transferred should acknowledge, that is to say, pay, the taxes thereon showing that property was transferred to powerful persons, in order that the payment of such taxes might be evaded. That is shown also by law 1 of the instant title.

The relationship of patron and client was long recognized in Roman law. But in the time with which we are dealing, and for several centuries previously, such patronage had been used unlawfully for the purpose of evading taxes. Any person might be a patron who was strong enough, but the main patrons were the nobility, civil and military. It was not always extended through force; influence frequently accomplished the same result. A military commander, for instance, might overawe a local judge. The method frequently taken was, as already indicated, to transfer the property to the patron who frequently held land that was not under the jurisdiction of the cities, as already stated in headnote to C. 10.32 and thereby also withdrawing the transferred property therefrom. Hence the provision of C. 10.19.8 that the transferee should pay the taxes on such lands, and hence also the provision of C. 11.48.4 that the proprietor - the person who through transfer became the patron of a serf - should be responsible for the collection of taxes or performance of duties on the part of the unfree serfs. De Zulueta, De Patrociniis Vicorum p. 13, says: "There is really no qualification for the position of patron except power, and though we have laid stress on the special opportunities for patronage conferred by office, we must not forget that the class from which the high officials were largely drawn, the great land-owners simply as such, had opportunities of their own, which were due to the fact that large estates were, from a variety of historical causes, in many cases 'agri excepti,' that is, outside the network of civitates, and in direct dependence on the central government. Often lands were exempt as being the property of Caesar, the divina domus, the church, or senators, but in other cases the privilege rested on express grant. These estates which might include whole villages, were ruled by the territorial magnates through their procurators. **** In theory the agri excepti were not exempt from imperial taxes, though no doubt in practice they enjoyed better treatment than other lands, but they were in any case free from heavy municipal charges. It is not surprising to find owners of these estates extending them by every means in their power, and the humbler possessors struggling to be included within the charmed circle. These operations frequently took the form of a patrociniū (patronage)." The clients, the persons protected, consisted not only of individuals, but even of whole villages, as is indicated by law 1 of the instant title. These villages were under the jurisdiction of the

city, were part of the territory of the city, which was responsible for the taxes assessed against the whole territory, including the villages situated therein. Hence patronage of a village might mean to the city the loss of a whole slice of its territory, and not merely of a single decurion; that is to say, a loss of a large part of its revenue without necessarily a reduction in the taxes to be collected. De Zulueta, supra 19. Hence the prohibition mentioned in C. 11.56.1, under which a transfer of property in a village could be made only to a person already registered as an inhabitant therein. All these laws, including C. 10.19.8, C. 11.54.1, and C. 11.56.1, were enacted because a transfer of property to a powerful patron made collection of taxes difficult. De Zulueta, supra 26. See also Gelzer, Studien 72-90; Dill, Society in the Last Century, etc. 268-292.

In this connection should be mentioned C. 9.5 which shows that private prisons were maintained in some parts of the empire, particularly in Egypt. Of course, only very powerful persons could have dared to do so, but the very fact that two different laws, at different times were directed against such practice, shows the existence of some powerful feudal barons during the later empire. See M. Gelzer, Studien 81. It is a well known fact that the wealth of the empire became more and more concentrated in the hands of a few private individuals. See, Rostovzeff, Soc. & Econ. History of Rome. One man, in Egypt, for instance, had an income from his estate of 180 pounds of gold in addition to produce. M. Gelzer, Studien 90. Reid, Municipalities in the Roman Empire 319, 324. See also note C. 11.59.1.

11.54.1. Emperor Leo and Anthemius to Nicostratus, Praetorian Prefect of the Orient.

If anyone after this ordinance of our majesty in fraud and circumstances of the public taxes takes refuge under the patronage of another, everything done on such account, under pretext of a gift, sale, lease or any other contract, shall be void. Scriveners (tabelliones) who venture to draw up such documents shall be punished by confiscation of their property, provided they do so knowingly, and the villages and estates of those who seek such patronage shall be confiscated. 1. The persons, moreover, who are discovered to have taken such tax payers under their protection, contrary to the public interest, shall, if they are nobles, pay a fine of 100 pounds of gold; if men of median station, they shall be punished by the loss of their property. The same penalty shall be visited upon those who have dishonestly assisted in such nefarious acts. 2. This rule shall be in force and have effect as of the time when the constitution of Marcian, of blessed memory, was promulgated, namely, in the Thracian diocese as of thirty years ago, that is from the sacred consulship of Aetius and the consulship of Sigisbuldus, in the diocese of the Orient, however, and in Egypt and Pontus and Asia as of 28 years ago, that is, from the consulship of Cyrus.
Given September 1 (468).

11.54.2.

No one shall promise patronage to the villagers, or take peasant into his protection under a promise of rent or any (other) gain in return. If any person violates these provisions, he shall be subjected to the above mentioned punishment, as well as other and greater, punishment. 1. The farmers also, if they are slaves (douloi, servi) shall be chastised, and returned to their masters, if they are free, they shall be fined 20 pounds of gold, and, together with the first ten of the village, shall be chastised and perpetually

banished, provided they (the farmers) seceded (to become clients) with the knowledge of all.

Note.

Some persons were more powerful than others. An owner of property might have unfree serfs or slaves cultivating his farm, but a more powerful person might take these slaves or unfree serfs under his protection against their master. That situation is indicated by the foregoing law. That was forbidden. But the various laws against patronage did not stem the tide of feudalism in the West.