

Book XII.
Title XXIX.

Concerning the privileges of the scholarians (palace troops).
(De privilegiis scholarum.)

Headnote.

The scholarians were household troops, stationed at the imperial court, and never leaving the capital except to accompany the emperor. They were, ordinarily, 3500 in number. More details are found at headnote C. 12.17. They were under the general control of the master of officers, but each troop - seven in all - were under the direct control of a tribune, who had the privilege of adoring the emperor and of being invited to his meals, and who probably ordinarily became a count of the first order. Boak says: "Each of the scholae (troops) had its own commander, at first a tribunus, later regularly a count." Master of Offices, p. 63.

12.29.1. Emperors Theodosius and Valentinian to Phlegetius, Count and Master of Offices.

We deny to the worshipful counts of the scholarians the right to punish corporally or reduce in rank senators and ducenarii. For we want the matters deserving such punishment should be referred to Your Sublimity. 1. Besides, we decree that their private secretaries (domesticos) shall not be made a senator or ducenarius or centenarius, under penalty of five pounds of gold, for the person who violates this imperial command, and the bureaus of barbari (barbarorum) if it suffers anything of the sort to be done, or shall fail to report any violation, shall be punished by a fine of ten pounds of gold. 2. This, too, should, not without reason, be observed, that if we have decided to forbid anyone the position of private secretary (domesticus) during his term of office, or for the period of five years, that he may not, by pretended friendship with the count, accomplish his end in another manner.

Given at Constantinople April 17 (441).

Nov. Th. 21.

Note.

Domesticus.

A domesticus seems to have been a private, personal secretary, found, says Boak, Master of Offices 105, in the staff of practically all the high civil and military officials, and not mentioned in the Register of Dignities because they acted in a purely personal relation to their superior. See Hodges, Letters of Cassiodorus 9, 13; C. 1.42.2.

Barbari.

These seem to have kept records for various statistics, but little is known of them. Boak, supra 103; see note to C. 12.20.5.

The domesticus was forbidden to become a senator, ducenarius or centenarius (Boak at 103, has it the other way round). These three officials are identified by Cujacius and by Boak as members of the imperial messengers (agentes in rebus), but the connection between the scholarians and the agentes in rebus is not shown.

Willems, Le Droit Public 571, note, also says that there were several grades among the scholars, *senatores*, *ducenarii*, *centenarii*. This would seem to be borne out by C. 1.31.3. See, in 2 Pauly-Wissowa, 2nd series at 623, says that the *senatores* were the men of the first rank among the scholars, followed by the *ducenarii* and *centenarii*, which is more reasonable. The *agentes in rebus* were counted as military order, though, in fact, they belonged to the civilians. Thus it is not surprising that we find the same or similar ranks, orders or grades among the scholars as we find among the *agentes in rebus* (imperial messengers).¹

12.29.2. Emperors Leo and Zeno to Eusebius, Master of Offices.

We decree by this law, that those who serve among the several corps of scholars, and who, after completing the grades of service have acquired the rank of chief (*primicerius*), and who having adored the purple of Our Divinity, shall have received the title of honorable count, shall enjoy their girdle as well as all privileges appertaining thereto, and thence forward to the end of their life be subject only to the forum of Your Highness, and shall not be compelled to answer a lawsuit by the order of anyone else. 1. In criminal controversies, however, and in matters pertaining to the public tribute, we want the jurisdiction of the governors of the province to extend over these persons, lest under cover of a granted privilege, crimes increase or the public advantage suffer.²
About 474.

12.29.3. Emperor Zeno to Longinus, Master of Offices.

Whenever the scholars, or their wives - whether in the lifetime of their husbands or after they have become widows by reason of the death of their husbands - or their mothers remaining in widowhood, or their children who have not specially chosen a position subject to the jurisdiction of another judge, and servants belonging to them, shall be summoned into court in a civil or criminal case by order of Your Highness; they shall not be harassed by the exaction of an outside surety, but according to ancient custom, always followed, shall furnish as such surety only the accountant (*numerarius*) of the troop. 1. In criminal causes, forsooth, the rule must be observed that they shall furnish as sureties along with the accountant, five other primates from among thirty men, reckoning from the chief back to the thirtieth, provided they are willing and do not refuse; but if these five refuse, then an outside surety shall be furnished along with the accountant. They shall pay no more than one *solidus* to the process-servers (*executores*) whether they prefer to answer in person or by a procurator. 1a. In submitting to trial, they shall, whenever a case shall be referred to a referee, pay one *solidus* for the joinder of issue, and another *solidus* for the recitation of the decision by the referee, and no more. 2. But if the case is tried in the tribunal of Your Highness from the joinder of issue on, or pursuant to reference to you by a judge, or an appeal to you, they shall pay no more than three *solidi* for bringing the case to trial (*pro inducenda cognitione*), and only two *solidi* for the papers or reading the documents at the trial, as well as for a copy of the record of

¹ Blume wrote at the end of this manuscript volume: “12.29.1—end of note wrong.” He also wrote: “Who were principals of *agentes in rebus*?”

² [Blume] See headnote C. 1.31.

the proceedings. 3. If a case is tried against the excellent scholars or their wives, children or servants, before the honorable moderators of the provinces, pursuant to an assignment of the case to him by Your Magnitude, no more than half of the customary fees shall be paid. 3a. This too is to be added, that no action - a criminal case and proceedings relating to taxes being excepted - shall, within five months within which they may return, be commenced against those who have gone to the provinces on leave of absence. 3b. Even after the expiration of the five months for the leave of absence, they shall not, when summoned by order of Your Magnitude, be troubled by any demand for sureties, but shall be committed to their own sworn recognizance. 4. Whenever the same brave scholars, or their mothers or wives, as has been said, or their children or slaves are summoned verbally, without a written order, they or their mothers or children - according to the above mentioned distinction,³ or slaves, shall pay no fees at all for the citations. 5. If the amount involved in the transaction is so small, that trial may be had regarding it without writing, upon consent of the parties, then, after waiting for the outcome of the trial, which is had, as stated, without writing, they shall, if they lose the case, pay a fee of one solidus to the process-server. 6. If, however, the nature of the case demands that the proceedings be reduced to writing, then upon the entering of an interlocutory order in writing, the provisions above mentioned as to the amount of fees and decisions of cases shall govern.

Note.

Similar provisions as to costs and sureties are mentioned in C. 12.25.4. As to costs and sureties in cases generally, see C. 3.2. As a rule all the proceedings in a case were taken down in writing. In cases of small importance, however, writing might be dispensed with and the trial be had summarily. Note C. 2.2.4; note C. 7.44.3.

³ [Blume] i.e. if the children were not under the jurisdiction of another judge.