

Book III.
Title XXIII.

Where anyone may be sued as to his status as a curial or provincial apparitor, or as to any other status.

(Ubi quis de curiali vel cohortali aliave condicione conveniatur.)

3.23.1. Emperors Arcadius and Honorius to Florentinus, City Prefect.

If a person who belongs to a curia or to a judges' staff (in a province)¹ or to any other guild has fled, but is seized, in the province by his associates whom he deserted, then without awaiting the cognizance of the judge under whom, through unlawful solicitation he had commenced to serve, and the defense of his position of honor which solicited, being entirely cut off, he shall be heard (tried) by the judge before whom he is taken,² in the place (where he is seized), and convicted by manifest proof, he shall be remanded to the society of those whom he deserted.

Given at Milan July 21 (397).

Note.

As the soldiers were bound to the army, so many others were bound to their service, particularly if such service was for the benefit of the state. Thus the apparitors of a president of the province, that is to say, the members of his official staff, were bound to their positions. That was true, e.g. with curials, members of municipal senates (C. 10.32 et seq.) and shipmasters (C. 10.2 et seq.). It was true even of farmers who became serfs (C. 11.42 et seq.) and with many others. The condition of curials became so burdensome, as will be seen by examining laws relating to them, that many fled. And others, too, bound to their service, doubtless at times wished to better their condition. Thus an apparitor of a provincial president might want to become an apparitor of the master of the soldiers or the master of offices. But this was not permitted. Bound as he was to his service, he could not change it and seek a better one, and could be arrested and dragged back to the service from which he fled. See also C. 2.7.17; C. 12.57.12. And while ordinarily, as stated in note to C. 3.13.7, the highest state officials had the only jurisdiction to try cases against their subordinates, in a case such as here contemplated, that rule did not prevail. Where a man was a soldier, the question as to whether he was or was not—for example—a curial, was tried, as stated in the next law, by the governor of the province where he was claimed, and if it was found that he was, he was then, though serving in the army, returned to his former station. See headnote C. 11.21.

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

¹ Blume has written in the margin: "In what province?"

² Blume has written in the margin: "By what judge?" Scott translates this convoluted passage thusly: "If anyone belonging to the curiae or attached to the office of a judge, or to any other body, should be arrested in a province by those from whom he was fleeing, without any notice having been received from the magistrate from whom he obtained his position by men's of corrupt practices, and he is tried before the judge who has jurisdiction in the place where he was arrested, without any attention being paid to the exception based on official privilege to which he is not legally entitled, and he is convicted by satisfactory evidence, he shall again be placed in the class which he abandoned." 6 [12] Scott 285.

By this ever-enduring law, we ordain no objection as to venue can be raised before the provincial judges by curials, provincial apparitors, persons subject to any other guild, or by those who are guilty of excessive exactions or of extortion, excepting herefrom persons who are in the armed military service, or who are protected by some special imperial rescript. Provided, however, that when a soldier is claimed as a curial or as provincial apparitor, the rector of the province shall report his name both to the office of Your Magnificence as well as to the master of the forces or to (other) competent authority, so that those who are claimed to be subject to the aforesaid condition may be turned over to the provincial court, where such questions are by law directed to be tried, and to await the outcome there.

1. If a person is sued for taxes or a public debt, he can raise no objection to the venue unless he be one of those who have been specially exempted.

2. As to others, they cannot decline to appear before the court of your high office or of the rectors of the provinces, and if they stubbornly violate this salutary law, the moderators of the provinces will punish them as contumacious persons.

Given at Constantinople September 21 (440).