

Novel 38.

Concerning decurions, so that they shall leave nine-twelfths of their property to their curial children.

(De curionibus ut filiis suis decurionibus relinquunt novem uncias.)

Emperor Justinian to Johannes, glorious Praetorian of the Orient the second time, ex-consul and patrician.

Preface. Those who founded our republic thought it best to organize, in pattern of the imperial city (Rome), the foremost men in each city and to create a senate in each city which would look after public business and to see that everything would proceed properly and in regular order. This arrangement worked so well and appeared so splendid that the foremost and most-populous homes were those of the curials, so that there were plenty men of that order and the burden connected therewith did not appear heavy; for divided, as it was, among many, it did not seem heavy to those who sustained it. But when men began, one by one, to withdraw from the order and invent excuses that might serve to release them therefrom, the senates gradually decreased and a thousand pretexts were found by which private affairs were indeed furthered, but the common and the public interests damaged. So it came to pass that the burdens fell to but few, who lost their property and brought the cities to such a condition that they fell into the hands of those mercenaries called vindices.^a Thus it happened that the curia was deserted and became filled with every injustice. **1.** Having frequently considered these things, we thought it necessary to apply a remedy, but the more we labored in that direction, the more tricks of various kinds were found by the curials, to evade laws, properly and justly enacted, and against the interests of the fisc. For when they found that they were in any event compelled to leave one-fourth (of their property) to the curia, they commenced, immediately after this provision was embodied in our laws, to dissipate their property, so as to die in poverty, and instead of leaving such fourth to the curia, left it in want. And then they bent their mind upon the most impious of all things in order to deprive the curia of members; for they abstained from legal marriage, preferring to die without legitimate children, rather than be of benefit to

their kind and to the curia. They then brought it about that a law was recently passed which permitted them to make a gift of their property without authorization (from court), although the law provided that such authorization should be obtained in case of sale; and this law was so remarkable that it only subjected a sale to the necessity of authorization, and the requirements arising thereunder, permitting them to do everything else as they wished. By reason thereof, the property of curials was transferred to one person and another, so that the curia got none of it. So if a man wants to count the curias of our republic, he will find them extremely poor, some of them having but few members and no property at all. **2.** We, therefore, passed several laws which required authorization, in the manner set forth therein, for sales, simple gifts and every act involving any alienation of immovable property of curials. After that they made donations on false grounds, and we forbade them to make a simple gift to any person.^b We justly excepted prenuptial gifts, since they are not really gifts, but a sort of contract, making it possible to raise children, which is the greatest of our objects in regard to curials. And when we subsequently perceived that many frauds were perpetrated also in this connection, we enacted a law, that whether curials have offspring or not, they must, in any event, leave a fourth (of their property) to the curia, and no one may leave it any less, and that portion cannot be diminished by any trickery, whether the curial has a son in the curia, or whether the curia itself (as a corporate body) receives such fourth. **3.** And we have not stopped there, but have provided that women, too, must give up (a part of) their share of an inheritance, so that the fourth part of all the property of a curial that is destined for the curia may not be diminished by any pretext. Further than that, we have eliminated numerous and wasteful gifts (of exemptions) and do not permit anyone to be exempted from the curia unless he has received one of the highest dignities, the patriciate, consulship and prefecture, civil or military—for the mastership of the soldiers is also recognized by law as a prefecture—so that if a man actually officiates as prefect, civil or military, he will be released from the curia, but all other exemptions are taken away and we have ordered that men upon whom the dignity of prefect, and the equivalent, the dignity of master of the soldiers, has been bestowed only as an honorary title, shall not be

exempted from the curia.^c We made these provisions together with others, at a former time, and may be found by perusal of the laws themselves. We have also exempted a few person from the curial condition by special pragmatic sanctions. These shall remain in force, and the present law shall be effective from the beginning of the 11th indiction, recently gone, in which this law came to our mind. **4.** And since we find some men to be so hostile to their native cities, that they prefer to leave their property to others, and hardly leave the fourth thereof to the curia, and that only on account of law, we have deemed it best to increase that portion in the absence of children.

- a. Appointed by Anastasius.
- b. C. 10.34.3 and note.
- c. C. 10.32.67 and note.

c. 1. So, when a curial dies, after the enactment of this law, and has no children, male or female, he must leave three-fourths of his property to his curia; he may leave the remaining fourth as he wishes. He will have the whole curia in the place of one or more children, or, what comes to the same thing, he will have the inhabitants of the city, in place of children, and he will acquire good reputation and perpetual fame, and receive such profits as he could hardly receive through children.

c. 2. If the decedent remained silent, and leaves no legitimate offspring, the fourth of his property will fall to his intestate heirs; his natural children may offer to become curials and they shall be received, whether one or more, and the three-fourths of the decedent's property shall then fall to such curial or curials. **1.** And if the decedent has children by a female slave, and he manumits them either during his life or in his testament, and presents to them (to the curia), in such case, too, such children shall be received and become curials, in accordance with the testator's wish or in accordance with the wish of those of such children who offer themselves to the curia, and they shall receive, as stated, three-fourths of the property. For whether the decedent died testate or intestate, we want those (decedents) who become members of the curia to receive three-fourths of his property. If the decedent

manumitted such children, but did not present them (to the curia), but one or more of them wants to go into the curia, the three-fourths shall be turned over to such of them as become a curial, in equal shares. If, however, there is no such natural child that is presented to, or wants to join, the curia, the curia itself will receive the three-fourths of the property.

c. 3. But if a man has legitimate children, a distinction shall be made, i.e., whether they are only male, female, or both, in order that the law may be perfect and useful for the curia. So if he has only male children, or perhaps grandsons of predeceased sons, three-fourths of his property shall be divided among them according to the testator's wish, provided that the law in reference to undutiful testaments^a shall not be infringed, unless, perchance, by reason of ingratitude. The laws on that subject are not changed. And in any event, three-fourths of the property must be distributed among the children that are not ungrateful, and each of the children must perform the father's curial duty in proportion to the father's property that he received. One-fourth of the property only is left to the father's discretion, and he may give it to his children or to someone else as he chooses.

a. C. 3.28.

C. 4. But if all the children are daughters, and they have married curials of the same city, the father may leave to them all of his property, but must leave them three-fourths of his property, to be distributed among them as he wishes; but he must not disregard the law as to intestate successions. If some of the daughters have married curials, but others have not, three-fourths of the property shall be distributed among the former, as the father wishes, the other fourth may be left to those that did not marry curials of their native city, or to them or to others, the legal (Falcidian) portion being left to such daughters. If the daughters are not yet married, the father may appoint one or more of them as heirs to three-fourths, upon condition that they shall marry curials of the same city; but if he does not want to do this, or if he does it, but the daughters refuse to comply (with such condition), then three-fourths shall

go to the curia, the other fourth being distributed in the proportions prescribed by law, taking into consideration what such daughters may have received as dowry.

c. 5. If there are both males and females, the males shall in any event have one-half (of the property), and the females the other half, with a limitation. For those of them that do not marry a curial shall give a fourth^a to their brothers. If they enter such alliance and marry a curial of their own city, they are released from the delivery of such fourth, since they indirectly, through their husbands, while these are living, themselves participate in such office. We have thought it necessary to make this enactment, not in order to deprive men of the disposal of their own property, but in order to prevent cities from being deprived of their local senates and to prevent such senates from being diminished by, perhaps, impious frauds. For we have learned that illegal marriages have been entered into, so that the children would be illegitimate and in order to leave them property as strangers and in that manner cheat the curia of its property.

^a Probably a fourth of the whole, or one-half of what they themselves received.

c. 6. We have also learned from experience the following to be done against the interests of curias, namely that some men allege that the mother belonged to the imperial domain, or to the villages (vicani), or to the fishermen of the purple fish or to some other class of people, and enroll as a member thereof to avoid the curia. We, therefore, ordain that no such device shall be used against the public, but a son born of such mother (and a curial) shall himself be a curial. For there are but few curials in the whole republic, but many that belong to the imperial estates or are fishermen of the purple fish or villages; hence, it is better to increase the senates of the cities, on account of the paucity of their members, rather than to add a crowd to a multitude. And if any men have attempted or shall attempt to escape the curia on any such pretext, all such attempts whether through a rescript or otherwise, shall be fruitless from the tenth indiction, just past, and such men shall hereafter be curials. Anything done (for that purpose) prior to the tenth indiction, shall be valid. We

except from this imperial constitution Theodosius and his brothers, and the sons of Johannes, with the cognomen of Xiscan, who, though sons of curials, enrolled as persons belonging to the imperial estates before the tenth indiction, and we annul everything that has been done to release them. They shall not enjoy any benefit granted to them, but they shall be curials, do what a curial should do, and give their attention to curial duties, without being able to be relieved therefrom in any manner, although an exemption has been granted them by the imperial count or by some other authority.

Epilogue. Your Sublimity will observe and carry the provisions of this law, made for the benefit of the cities and the curias embodied in this imperial law, into effect, and a penalty of twenty pounds of gold will be visited upon those who violate this law. Given February 15, 536.

Note.

It will be noted that persons sought to enroll in the imperial service, namely on the Imperial Domain, in villages—those here referred to doubtless belonging to the Imperial Domain—or as fishermen of the purple fish—purple being used only by the imperial court. This chapter repeals C. 10.32.29, which provided that children born of a mother from the imperial estates and a decurions hold follow the condition of the mother, and C. 11.8.12, providing that children born of the daughter of a fisherman should follow the condition of the mother—the latter law being repealed in so far as affecting the children of a decurion and a daughter of a fisherman of the purple fish.