

Novel 60.

Dying persons and their remains shall not be outraged by creditors. Assessors shall not commence trials, have issues joined, or give a decision, without the magistrates.

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

Preface. Persons who love the truth should not be blamed if they search for it. It is not surprising that there are men who indulge in censure on account of the multitude of laws constantly brought forward by us, not considering that we are constantly compelled to fit the laws to conditions, since unexpected events arise continuously which cannot be remedied by already existing laws. Some such condition arose recently. For someone who claimed that someone else owed him, took some soldiers, slaves and many others and invaded the house of his debtor, when he knew him to be at the point of death. The debtor, enduring this with difficulty, did not cease to complain till, overcome by such onslaught, he gave up his life. The creditor also put his own seals on the debtor's property, on his own authority, without the presence of any magistrate and without observance of any rule of law. And he did not stop at that, but did not hesitate to outrage the dead body, first forbidding its burial, then, when he finally permitted it to be carried out of the house, he seized the bier, stopped the funeral procession and stated that he would not desist till his debt was satisfied. He finally received some surety and he then permitted the deceased to be buried. The instance in which this took place was disposed of in a becoming manner; still we thought it best to regulate this matter by a general law, lest, in the absence thereof, such act may be committed again.

c. 1. We therefore ordain that if a man invades the house of his debtor while the latter is living (and on his death bed) and vexes him and his family, that is to say, his wife and children and his remaining household, and even puts the property under lock without any order of court and without waiting for orderly procedure after the death of the debtor, he shall lose his right of action, whether just or not, shall pay an amount equaling his debt to the heirs of the outraged deceased, shall be punished by

the confiscation of a third part of his property, as Marcus, the great philosopher-emperor mentioned in his laws, and shall become infamous. For a man who so disregards human nature is a fit subject to lose his property and his good name and to be otherwise punished. **1.** For a case where a man commits an offense in connection with the sepulture of a deceased and hinders the funeral, a law had already been enacted by our father<sup>a</sup>, but we fix a severer penalty, namely the penalty imposed by the present law, upon those who commit the offense above stated against a man still surviving. The glorious prefect of this fortunate city, who now looks after such matters, and the glorious praetorian prefect and the glorious master of the imperial offices and their respective official staffs, must give this matter their special attention. For it behooves all the magistrates to avenge outrages upon human nature that affect all alike. These provision shall apply not only in this fortunate city, but in all places which God put under our sway in the beginning or subsequently or, as one of the ancients said, which He shall put under our sway in the future, and shall be enforced by the provincial magistrates, military and civil. If magistrates and their official staffs disregard these provisions, they shall, upon complaint, be fined twenty pounds of gold, if in this city, and five pounds of gold if in the provinces.

Note.

<sup>a</sup> C. 9. 19. 6.

c. 2. And we have also deemed it proper that - as already provided by a constitution of Zeno, of blessed memory, and by one of ours - assessors of magistrates should not alone hear cases pending before magistrates or judges appointed by us. For it is much better to try cases before the magistrates in the presence of the assessors, rather than before referees, to whom assessors may be likened; for in the former case the court attendants and witnesses, perchance present, are impressed with greater awe, and a dignity is lent to the occasion. But since it becomes necessary for the magistrates immediately surrounding us, because they are occupied with our transactions and orders, to resort to this expedient (of letting the assessors alone look after the cases), a law fitting such condition should be enacted. **1.** We therefore

ordain that issues shall be joined in all cases before the magistrates, whether of the greater or lesser rank, and the case shall again be brought before them during its pendency, so that they may learn what has previously been done therein. When the final decision is to be rendered, the matter must not be heard by the assessors without the magistrates, but the latter must, with the proper solemnity, already heretofore defined, with the holy gospels before them, listen to all points in dispute in a suitable manner, decide the cases and accept appeals, if anyone appeals, without delay, in cases where the law permits them. Appellate judges, likewise, must hear cases personally, and refrain from doing otherwise. If they do, the magistrates themselves must stand in fear of a fine of twenty pounds of gold; if assessors violate this law, they shall, if they are advocates, be stricken from the roll of that order; if they are not advocates, they shall be deprived of their girdle of office if any they have and shall further be fined by ten pounds of gold. And these who violate the constitution of Zeno, of blessed memory, and our own prior constitution and the present one, must not think that they will evade the penalty herein prescribed by simulation. For the glorious, officiating Count of the Crown Domain must give his attention to this matter, and take care to collect and pay into the fisc any penalty that is incurred; and he, too, must know that he must satisfy the fisc out of his own property, if he fails to give the proper attention to this matter. **2.** These provisions are made for those magistrates who are excused from hearing the whole cause on account of being occupied with many matters of the fisc and with our orders. Other judges, however, who occupy no magistracy, but are delegated by us to hear cases in this fortunate city or in other places, and their assessors who hear cases in conjunction with them, will be visited with severe punishment, if they do not hear the whole cause in conjunction with their assessors. For we threaten them also with the loss of their position of dignity, and with a penalty of twenty pounds of gold, and the assessors shall be expelled from the city, where they violate this law, and shall further be branded with infamy.

Epilogue. Your Sublimity, therefore, will cause this, our will, declared by this imperial law, to be known to all in the usual manner, by the use of edicts in the

provinces, so that none of our subjects will be ignorant of our sanctions. In this fortunate city, the glorious prefect will publish it.

Given December 1, 537.