

Decrees of Emperor Justinian

Justinian, as is well known, had been a great legislator and religious organizer. Providing for the interests of the Churches, he issued, in 535, the very important *Novella XV*, "Concerning the Prohibition of Alienating or Exchanging Immovable Ecclesiastical Property, or of Giving it to Creditors under Special Hypothecation, a General Hypothecation Being Sufficient", which he addressed to the Archbishop of Constantinople and Ecumenical Patriarch Epiphanius. This particular *Novella* forbids all Churches, including the Church of Jerusalem, to dispose of its immovable property – "buildings, gardens, fields" etc. The offender of this law, either seller or buyer, will not only be severely punished, but he will also be obliged to reimburse the Church or the foundation that has suffered damages. A few excerpts from the *Novella* are cited here, indicative of Justinian's interest in ecclesiastical affairs. "Hence we decree" the Emperor writes, "that the Holy Principal Church of Our Most Fortunate City, or any of those which are subject to its jurisdiction, and are maintained by it, and any other churches in this Most Fortunate City, or within its confines, which are subject to the Patriarchal See, the archbishops of which obey its patriarch or any other patriarch or bishop, and all who are distributed throughout our entire dominions... including the bishops of the West, from Rome even to the ocean, who have charge of the holy Orthodox Churches, as well as superintendents of hospitals, orphan asylums, infirmaries for the poor, abbots and abbesses of monasteries, and presidents of sacred colleges, shall not be permitted to alienate any immovable property, whether it consists of buildings, fields, gardens or anything of this kind [...] Therefore, if anyone should presume to buy property belonging to either a church or a hospital, he shall lose the purchase-money, and be deprived of whatever he acquired, together with all its income in the meantime; and he shall be entitled to no right of action

against the said church or religious house, but he can sue the stewards or other officials who sold him the property, and recover damages out of what personally belongs to them, so that if they are not deterred by the fear of God from engaging in transactions of this kind, the apprehension of losing their own property may prevent them from doing so. If anyone should presume to accept as a donation anything belonging to a church or a hospital, he shall, by all means, lose what was given, and shall surrender to the said holy church or venerable religious house a portion of his own property equal to that which he received, so that he may realize the wickedness of his conduct in violating this law by suffering the loss of his private fortune. [...] Where a creditor chooses to take security for money loaned on immovables belonging to a church or hospital, which consist of buildings or fields... he shall be deprived of such property, and the holy church which received the money shall keep it... The same punishment shall be inflicted upon those who, in violation of our law, either pledge, sell, or melt for the purpose of alienation, any sacred vessels, for we think that they who presume to commit an impious act with reference to sacred utensils consecrated to God should be punished with the same, or even with a greater penalty. For the reason that it is probable that someone, for the purpose of evading this law, may attempt to obtain from us a pragmatic sanction authorizing the purchase of ecclesiastical property, we hereby prohibit everyone... from doing anything of this kind; and we decree that it shall, under no circumstances, be lawful to produce a pragmatic sanction for the purpose of acquiring immovable property belonging to churches, monasteries, convents, or any other religious establishments. [...]As we forbid injurious alienations to be made, so also we prohibit the acquisition of property which is unprofitable. For many questions have been submitted to us in cases where persons have bestowed worthless lands upon a church or other religious house, or have sold such lands as being valuable, when this was not the case, as they were barren in the beginning, and, on this account, the

religious house suffered a loss... and the steward, abbot, or official in charge of the said religious house or orphan asylum shall be personally liable for the loss resulting from the transaction”.

With this imperial prohibition, the Church of Jerusalem, and particularly the administration of the Holy Resurrection of Christ, is obliged to abstain from any disposal of immovable property. So interested was Emperor Justinian in the Holy Lands, that he erected numerous and magnificent Churches, Monasteries and Charity Institutions in Palestine, whilst he also provided for the improvement of the economic situation of the Church of Jerusalem, for the relief of its multiple needs, and mitigated the rigidity of the previous *Novella*, issuing various statutory provisions to this purpose, as everyone knows that the Most Holy Resurrection receives and nurtures numerous pilgrims from across the world and, hence, undertakes excessive and unpredictable expenses. And of course with *Novella* 51, Justinian addresses, in 536, His Beatitude Petros, Patriarch of Jerusalem, and partly removes the ban in favour of the Holy Resurrection, providing, on an exceptional basis, the Church of Jerusalem with the special privilege of divestment of its buildings within the Holy City. This particular *Novella* establishes that the Reverend Presbyter Eusebius, Guardian of the Relics of the Most Holy Church of Constantinople, was delegated to Jerusalem in order to study the economic situation of the Church of Jerusalem and suggest means for finding new resources; and that after the completion of his mission, he would return to Constantinople and suggest the Emperor manners in which the revenues of the Most Holy Church would be increased. Taking into consideration the present statutory provision and fully understanding the financial measures for the Church of Jerusalem, Justinian proceeded to take new steps to increase revenues, which demonstrated his exceptionally preferential treatment of the Holy Lands. Subsequently, in 544, the Emperor issued *Novella* CCXLVIII (248) “Concerning the alienation and emphyteusis of

ecclesiastical property" which allows the Church of Jerusalem to dispose of the buildings it owns and manage them in any way It deems profitable.

As demonstrated by the aforementioned statutory provisions of Justinian, Palestine, and of course Jerusalem, during the 6th c. was thriving and receiving great pilgrim traffic. Because of the prevailing calm during the 4th and 5th centuries, numerous pilgrims flooded the Holy Lands from everywhere in the world.