

# **Collana Ravenna Capitale**

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# RAVENNA CAPITALE

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# Traces of legal business in the letters of Gregory the Great

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(University of Oxford)

**Sommario:** 1. Introduction. – 2. Management of financial resources. – 3. Redemption of captives of war. – 4. Property and transfer of ecclesiastical goods. – 5. Use of revenues of the Church. – 6. Private matters. – 7. Conclusion.

## 1. Introduction

The Catholic Church disposed in the 6th century of considerable worldly goods, extending all over Europe.<sup>1</sup> The purpose of these worldly goods was to assist in the spiritual and material needs of the faithful and to upkeep the Church. But they required management: buildings had to be maintained and artisans hired, land should be worked on by labourers or be leased out, food or slaves had to be bought, revenues of the land should be sold. It all required managers. They also had to deal with donations, legacies, inheritances and conveyances. Managers were, or had to be, in the first place the bishops who were responsible for all that but they of course had assistants to do the daily work. The Pope as foremost bishop had not only the goods of his bishopric Rome under his surveillance, but had to exercise supervision over the other bishops too. Certainly not an easy task! Yet one which Pope Gregory the Great (pope from 590 till 604) mastered excellently.<sup>2</sup> He had been educated in law and rhetoric, had fulfilled several offices amongst which the urban prefecture before he entered the Church, so the fundamentals for exercising such a function were already present. Although we do not possess direct testimonies of his financial and other transactions, there are still some

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<sup>1</sup> See I. WOOD, *Entrusting western Europe to the Church, 400-750*, in *Transactions of the RHS* 23, 2013, 37–73. He estimates that one-third of Europe around 700 was under ecclesiastical control. Even if this figure is too high, it still indicates that the Church was one of the greatest if not the greatest landowner.

<sup>2</sup> For Gregorius I Magnus (ca. 540–604), see s.v. 8) Gregor I, *PW* 7, 1912, c. 1868–1870 (Jülischer) for the basic facts.

letters which give an indication of his legal knowledge and of how he managed legal business and the legal aspects of financial affairs. He will have acted on straightforward reports of his agents, but the style of his reactions is usually courteous. He preferred to persuade his people. That makes it difficult to extract hard facts. Still, be it from this particular point of view, we can get some idea of how the affairs of the Church were managed, including the legal matters. The agricultural exploitation had to be left out.<sup>3</sup>

As Gregory's letters show, the Church (both Rome and local churches) owned much real estate (land, buildings) in Italy, Sicily, Sardinia and other places in the west. Most of it was agricultural land and farms, administratively organised in *massae*, managed by *conductores*, where *coloni* lived who were tied to the land, or by tenants. The revenues consisted of *pensiones*: payments, tenancy fees. It seems the *coloni* could sell their revenues to the *conductores* for a fixed price and in this way disposed of money. The Church also owned buildings in cities, like churches and hospitals. Here too it was necessary to make dispenses for their upkeep. They of course did not yield worldly income. Then there were also the abbeys which often were in themselves agricultural enterprises. Further, donations and legacies were often made and formed a sizeable income and an increase of possessions. The total of revenues and costs (upkeep, interests, taxes etc.) formed, if there was a saldo, a financial fund for the bishops and the pope, who could deal with it as he liked.

It is certain that Gregory or in any case a member of his staff had a good knowledge of or access to the law. In ep. 13.50 [M 13.49]<sup>4</sup> the Pope cites, accurately, texts from the Novels 90 and 123, and from Justinian's Code 1.3.10; 1.12.2; 7.48.4; 9.1.20; from the Digest 48.7.4.3. All these are with indication of book, title and number of the fragment. It means that the papal administration in Rome disposed of the Digest, the Code, the Novels and, as another letter (ep. 8.3) shows, the Institutes. Also what is said about succession law in ep. 6.33 [M. 6.35] is correct, as in ep. 8.3 (C. 6.37.10 and I. 2.20.4).

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<sup>3</sup> I shall deal with this in my forthcoming *The colonate in the Roman empire*, in the section on the colonate in the letters of Gregory the Great.

<sup>4</sup> The standard edition of Gregory's letters is the one by P. EWALD, L.W. HARTMANN, *Gregorii I papae epistolarum registrum*, Berolini 1891 et 1899 (*MGH Epistolarum* Tomi I, II). A translation with commentary of Gregory's letters is provided by J.R.C. MARTYN, *The Letters of Gregory the Great*, Toronto 2004. It appears that his numbering is not always the same as those of the standard edition. MARTYN does not give a concordance. For that reason his numbering is also mentioned, preceded by M, if it deviates from the standard edition.

## 2. Management of financial resources

**2.1.** An example of the management on local level gives ep. 9.236 of 599, which mentions possessions in and probably nearby Syracuse. The patrician Venantius, an ex-monk, and his wife Italica, who were dear to Gregory, had promised revenues of their estates to the church of Rome.<sup>5</sup> They lived in Sicily, in Syracuse, but apparently had an estate in Palermo too.<sup>6</sup> In 596 a quarrel between Venantius and John, the bishop of Syracuse, required the intervention of Gregory. For unknown reasons Venantius had his men enter the house of the bishop and commit improper acts (ep. 6.40 [M 6.42]). Was it because John did not accept the offerings (*oblaciones*) of Venantius and did not allow Mass being said in his house (ep. 6.41 [M 6.43])? Gregory tried to pacify both. But it seems adversarial feelings remained with John, because in 599 it appears he had appropriated the revenues (*oblaciones*) of land, situated in suburban Syracuse and in the *massa* Gelas, belonging to the couple, to use these for the needs of these areas, notwithstanding that their revenues as object of the said promise were reserved for Rome. Were these the *oblaciones* of 596? And had John thought that this justified his appropriation? Gregory wrote John, saying that it was up to Venantius and Italica whether they had wanted to give revenues of a real estate part of Syracuse or of Palermo. Had John argued that the promise concerned revenues of estates in Syracuse so that he could cash those straightaway? Had the couple simply promised a part of the revenues of their estates in Palermo and Syracuse, leaving it open from which the money would come from? Gregory's wording leaves it open. Gregory wrote that John had merely to worry about what he needed and accept the revenues according to a *promissio pacti vel cautionis* which he sent him. Meanwhile the Church of Rome should receive what it was entitled to.<sup>7</sup> The

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<sup>5</sup> On Venantius and Italica, see MARTYN, *ibidem*, 152 on ep. 1.33, further 2.49, 3.57, 6.40 [M 6.42], 6.41 [M 6.43], 9.232, 9.236, 11.18, 11.19, 11.23, 11.25. It may concern two different Venantii, one a patrician ex-monk (in 591), married to Italica, with two daughters Barbara and Antonina, the other a patrician from Palermo who lived in Syracuse (9.13, 9.38, 9.120, 11.19, 13.14 [M 13.12]). However, in view of Gregory asking the assistance of the 'other' Venantius it is likely that we are dealing with the same person.

<sup>6</sup> Ep. 9.232, ep. 3.57 (593). Ep. 9.236 with the option of paying in Syracuse or Palermo suggest they lived in Syracuse but were from Palermo (and may have resided there also), and in that case the ex-monk Venantius would be identical with the other Venantius. For that also ep. 6.40 [M 6.42] and 6.41 [M 6.43] argue, the first addressed to the ex-monk, the second referring to the *dominus* Venantius.

<sup>7</sup> Ep. 9.236 of 599, to Johannes, bishop of Syracuse: *Filii nostri Pascasinus vir magnificus et Blanca vir clarissimus questi nobis sunt sanctitatem vestram redditus, qui sanctae Romanae ecclesiae debentur, non alibi nisi aut in suburbano civitatis aut in massa quae dicitur Gelas velle percipere. ... Sive in Syracusana sive in Panormitana parte dare voluerint, hoc solum*

real estate will have been owned by the couple, or they had a real right in it like *emphyteusis*, so that they were able to promise (*promiserunt*) the revenues to the Church of Rome. That may have been formally done by a stipulation or *cautio*. What did Gregory mean by *promissio pacti vel cautionis*, terms which are rather legal? Did Gregory mean the promise of the couple as laid down in a formal document<sup>8</sup> to make clear to John what he might expect on the basis of this? It is the logical reading but the construction remains strange. Assuming that the couple had indeed left open from which estates they would give revenues to the Church of Rome, John's expectation was only founded if the couple or Venantius had also promised revenues to the Church of Syracuse, without specifying from which estates it would come. Perhaps that were the *oblaciones* which John refused in 596, three years earlier, and perhaps he refused it because there was a condition that he should allow the Mass in their house, an unconsecrated place. Sending over the document would make the matter clear. John had apparently an entitlement to revenues, but would have to wait till Venantius had decided from which estates it would come. We also see that such promises were laid down in formal documents. Whether that would help if Venantius changed his mind?

2.2. Ep. 9.236 shows how income and expenditure took place on local level (Syracuse) but that transfers were possible. Gregory may have wanted the revenues go to Rome but he may also have used it for expenditures in Sicily. That would create local funds. Another local fund we find in Ravenna. In ep. 9.240 of 599 to Domnellus Gregory deals with 600 solidi, entrusted<sup>9</sup> to the treasury of the Church of Ravenna, which subsequently were borrowed by the Exarch of Ravenna for the daily expenses of the military of the prefecture. Domnellus was *erogator*, dispenser or paymaster, viz. of the Church.<sup>10</sup> He had already offered a sum for military expenses but that had been returned. The 600 solidi had not been paid back and he must now carefully investigate why. The Exarch had said that because peace would come, Domnellus should pay first out of the money that was available there to certain parts. It seems that this concerns parts of the Exarchate because later on Gregory warns that if the prefecture does not succeed to recover the borrowed money these parts may suffer from a lack of soldiers.<sup>11</sup> Where would it recover

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*vestra sanctitas sit intenta, ut utiles per omnia reditus accipiat secundum promissionem pacti vel cautionis quam misimus.*

<sup>8</sup> For *pactum* as equivalent of *stipulatio, instrumentum, chirographum* etc., see M. KASER, *Das römische Privatrecht*, Bd. II, München 1971, 378.

<sup>9</sup> MARTYN translates *commendati* with 'recommended from' but that makes no sense.

<sup>10</sup> Why MARTYN translates this with petitioner is unknown.

<sup>11</sup> The Longobards were the threat here. They were constantly trying to conquer land and the peace which the Exarch hoped for would not come until 610. In ep. 9.66 of Nov.–Dec. 596

from? Presumably from the imperial treasury. MARTYN suggests it concerned mercenaries who had to be paid. Gregory advises Domnellus about the 100 solidi, which must have been the returned sum of money for military expenses. If there are new expenses (on the part of the Exarch), they should be used to pay for these (and in that way the money would after all be used for the defense of the empire). He should deduct from it what is due to others. Would that be the interest on the 600 solidi? The circumspection with which Gregory wrote this letter makes conclusions difficult but one thing is clear: he kept control over the finances of the Church while at the same time remaining on good terms with the authorities.

2.3. In another letter, ep. 9.40 of 598, a Jew, Nostamnus, appears to be indebted to several creditors, amongst whom the *defensor* of the Church in Sicily, Candidus. Apparently Candidus had lent him Church money or else Gregory would not have been involved. Nostamnus could not repay his debts and so his ship and other possessions had been sold. All creditors except Candidus had returned the *cautiones*, i.e. the acknowledgements of debt. As Nostamnus said, the capital (*sors*) was repaid, so it should be returned. The *defensor* of Palermo, Fantinus, is charged to investigate the case. This is a regular application of the law. Martyn perhaps suggests the loan was a bottomry loan in which the ship was security, but that is not likely.<sup>12</sup> The creditors must have sued Nostamnus and when he was condemned to pay, applied for an execution order, after which his assets were auctioned and the creditors paid out of the revenues, apparently to the full.<sup>13</sup> It was normal that upon payment of a debt the *cautio* was returned.<sup>14</sup> Gregory wanted to treat Jews fairly, as ep. 9.38 of 598 and ep. 9.195 of 599 prove.<sup>15</sup>

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Gregory refers to a peace by the Longobard king Agilulf, in ep. 9.195 of 599 he speaks of a truce with Agilulf which will not lead to a peace once it is over.

<sup>12</sup> MARTYN, *ibidem*, 570 n. 122. First, there is no indication it concerned such a loan, although it is not impossible, secondly it was not a characteristic of such a loan that the ship served as security.

<sup>13</sup> KASER, Bd. II, 317–318 if Nostamnus had pledged his possessions; M. KASER, K. HACKL, *Das römische Zivilprozessrecht*, München 1996, 624 ff.

<sup>14</sup> Theoretically a *stipulatio* should be undone by a formal *acceptilatio*, but in the later period the proof of the debt, the *cautio* (a chirograph), was either destroyed or returned to the debtor. See KASER, *Das römische Privatrecht*, Bd. I, München 1975, 641–642; KASER, Bd. II, 443, and 444.

<sup>15</sup> The bishop of Palermo had occupied the synagogues and hostelries of the Jews and consecrated these into churches. This was done without ground and rashly. Since the consecration could not be made undone, Gregory order his defensor Fantinus to force the bishop to pay damages as determined by the patrician Venantius and the abbot Urbicus, Their manuscripts should be sought and restored. Apparently the bishop had to pay the damages from his own Church funds.

2.4. Another case in which the Church came to the aid of an indebted person is related in ep. 3.55 of 593, a request to the Pope for assistance by a certain Cosmas. It appears that this man had been mixed in several kinds of business, probably commercial ones, and was now indebted for 150 solidi.<sup>16</sup> Not having any goods according to his petition, he was not able to repay his debts. Apparently his creditors were not convinced of that excuse. They took one or more of his sons in hostage. Gregory instructs the deacon and *rector patrimonii Siciliae* Cyprianus to investigate Cosmas' story and if it appears to be true, to estimate the sum involved. From ep. 4.43 of a year later, to the *defensor* Fantinus, we know the sequel.<sup>17</sup> The Pope now believed Cosmas' story, probably due to Cyprianus' report. He thinks, probably also on basis of the report, that the debt may be reduced to 80 solidi. But that sum too is too much to ask from Cosmas. He therefore sends 60 solidi in order that Fantinus confers with the creditors to reach an agreement with them (in other words, to reduce the debt from 120 to 60, a reduction of 50%), apparently in the expectation that the prospect of being directly paid will make the creditors give in and accept 60 solidi (which apparently is what Cosmas can pay back to Gregory). Then, so Gregory, one cannot hold a debtor personally responsible for the debt if he is unable to pay. By this he refers to the legal device of *beneficium competentiae*.<sup>18</sup> KASER thought that the son was already heir but that does not follow from the text.<sup>19</sup> The practice to take a family member of the debtor in hostage was contrary to this principle and also forbidden in Nov. 134.7 of 556.

<sup>16</sup> Ep. 3.55 of 593, to the deacon Cyprianus, *rector patrimonii Siciliae*: *Cosmas ex variis periculorum necessitatibus multis se dicit debitis obligatum, ita ut pro eis a creditoribus suis suos dicat filios detineri. ... Et ei inveneris eum praedictis debita veraciter involutum, ut non sit substantia, unde possit haec ipsa persolvere, praedictos creditores eius videas et propter recolligendos filios eius quanta cognoveris quantitate componas.*

<sup>17</sup> Ep. 4.43 of 594, to the *defensor* Fantinus: *Lator praesentium Cosmas Syrus in negotio quod agebat debitum se contraxisse perhibuit, quod ex multis aliis et lacrimis eius adtestantibus verum esse credimus. Et quia centum quinquaginta solidos debebat volui ut creditores illius cum eo aliquid paciscerentur, quoniam et lex habet, ut homo liber pro debito nullatenus teneatur, si res defuerint, quae possint eidem debito addici, ad octoginta solidos consentire possibile est. Sed quia multum est, ut a nil habente homine octoginta solidos petant, sexaginta tibi solidos per notarium tuum transmisimus, ut tu cum eisdem creditoribus subtiliter loquaris, rationem reddas, quia filium eius, quem tenere dicuntur secundum leges [Nov. 134.7] tenere non possunt.*

<sup>18</sup> KASER, Bd. II, § 254.III, 331, and KASER, Bd. I, § 113.IV, 482–483: *id quod facere potest.*

<sup>19</sup> KASER, Bd. II, 542 n. 4: 'Gregor I. ep. 6, 33 (I 411) [M 6.35] beruht dagegen wohl auf justinianischem Recht. In ep. 3, 55 (I 215) läßt er die Gläubiger aus dem Kirchenvermögen befriedigen, statt auf die Unzulässigkeit der Zwangsvollstreckung in die Person des Erben (Nov. 134, 7 [556]) einzugehen (Levy, o. § 280 n.5)'. 'Befriedigen' is not quite to the point here because the creditors have not a right to the ecclesiastical goods: the Church had not given a

### 3. Redemption of captives of war

Ecclesiastical goods could not be alienated<sup>20</sup> and revenues should be applied to ecclesiastical purposes, but there was one exemption on the alienation prohibition: it was allowed for the redemption of captives of war. Since the invasion of the Longobards in 568 there existed a permanent war situation between the Byzantines and them, many people were taken captive and as we may assume were held in ransom if not enslaved. C. 1.2.21 of 529 and 1.2.23 of 530 made an exemption for the purchase of freedom for ransomed people.<sup>21</sup> Councils in the West also allowed for that: Orléans c.5 and Reims c. 22. The exception was meant for private persons and not soldiers. Several letters deal with this: ep. 3.16, 4.17, 5.46, 7.13, 7.35, 9.52, 9.84. In ep. 4.17 the clerk Tribunus figures, in ep. 7.35 the two daughters of Faustinus,<sup>22</sup> in ep. 9.52 the clerks Demetrianus and Valerianus, and in ep. 9.84 Stephanus, the husband of a servant of the Church. The charity of the Church seems to care primarily for its dependents, but this will be due to the nature of our collection: in other letters Gregory refers to unnamed ransomed persons.<sup>23</sup>

### 4. Property and transfer of ecclesiastical goods

**4.1.** In ep. 2.10 [M 2.46] of 591 Gregory orders that the garden of Felicianus must be conveyed to the monastery of Euprepia: *iure proprietario possidendum tradere*.<sup>24</sup> We are confronted here as elsewhere with the exclusive possession of immovables of the Byzantines which had become the *dominium* through Justinian's abolition of the *nudum ius Quiritium* in 530–531 (C. 7.25.1). In ep.

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guarantee. Fantinus must negotiate to reach a composition for 60 solidi. If he succeeds, he will pay and Cosmas does not have to repay, hence it is a gift.

<sup>20</sup> C. 1.2.21, Nov. 7, 45, 65, 120.

<sup>21</sup> Novels: 7.8 of 535 (*vasae sacrae* may be sold), 65 of 538 (also for *vasae sacrosantae* exception), 120.10 of 544 (*idem*), 123.37 of 546, 131.11 of 545 (general exception for the sale of *alimenta*, moveables and immovables).

<sup>22</sup> Ep. 7.35 of 97, to Donus, bishop of Messina: *Et sacrorum canonum et legalia statuta permittunt ministeria ecclesiae pro captivorum esse redemptione vendenda. Et ideo quoniam Faustinus lator praesentium, ut filias suas de iugo potuisset captivitatis exuere, CXXX solidorum probatur debitum contraxisse, ex quibus XXX redditus ad reliqua quantitatis restitutionem eum certum est non posse sufficere, ...*

<sup>23</sup> See MARTYN, *ibidem*, 95–96 with texts.

<sup>24</sup> Ep. 2.10 [M 2.46], of 591, to the subdeacon Sabinus: *hac auctoritate praecipimus, ut hortum Feliciani quondam presbiteri positum regione prima ante gradus sanctae Sabiniae excusatione postposita monasterio Euprepiae, in quo ancillarum Dei congregatio esse cognoscitur, iure proprietario possidendum tradere sine ambiguitate festinet, quatenus nostrae iutae beneficio largitatis in Dei servitio ipso quoque suffragante securis mentibus perseverent.*

3.18 Gregory tells that the slave boy Acosimus must *iuri dominioque tuo dari tradique* to Theodorus.<sup>25</sup> But Theodorus already had the slave and therefore it was a *traditio longa manu*. Because of that Theodorus must confirm the transfer so that he will possess him now as *dominus*. His having the slave was a *detentio* which now, with the *iusta causa* of gift and the *traditio longa manu* changes into legal possession which leads to ownership. It is the same with the gift in ep. 9.98 [M 9.99] of Johannes, a slave *iuris ecclesiastici* (see for this expression below).<sup>26</sup> Gregory donates him *iure directo*, so *ut eum habeas, possideas atque iuri proprietatque tuae vindices atque defendas*. The donation is *iure perfecto* but Gregory has also a formal document made and signed. Thus the gift is one from hand to hand, the *mancipatio* being abolished along time ago, the *traditio* sufficed. The document served merely as evidence.

4.2. In ep. 9.78 [M 9.79] of 598, we meet a certain Gentio, a *scribo* i.e. a recruiter of soldiers (*tirones*) who claims a *possessionem ecclesiastici iuris sub libellorum specie tenere*.<sup>27</sup> That is, he wants to hold under the cover of a certificate an estate which falls under the law of the Church. Martyn reads this as ‘possession of an ecclesiastic right, in the form of a legal certificate’, which should prove that he was acting according to Church law. With all due respect, what ecclesiastic right could have been meant, and how could one have possession of that? Gentio

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<sup>25</sup> Ep. 3.18, of 593, to the consiliarius Theodorus: ... *Quia igitur te Theodorum virum eloquentissimum, consiliarium nostrum, mancipiorum cognovimus ministerio destitutum, ideoque puerum nomine Acosimum natione Sicula iuri dominioque tuo dari tradique praecipimus. Quem quoniam traditum ex nostra voluntate iam possides, huius te necesse fuit pro futuri temporis testimonio ac robore largitatis auctoritate fulciri, quippe ut dominus valeas possidere. ...*

<sup>26</sup> Ep. 9.98, of 599, to the bishop Felix of Portus. *Caritatis vestrae gratia provocati, ne infructuosi vobis videamur existere, praecipue eum et minus habere vos servitia noverimus, ideoque Iohannem iuris ecclesiastici famulum natione Sabinorum ex massa Flaviana annorum plus minus decem et octo, quem nostra voluntate diu iam possides, fraternitati tuae iure dilecto donamus atque concedimus, ita ut eum habeas possideas atque iuri proprietatque tuae vindices atque defendas et, quicquid de eo facere volueris, quippe ut dominus, ex hac donatione iure perfecta libero potiaris arbitrio. Contra quam munificentiae nostrae cartulam numquam; nos successoresque nostros noveris esse venturos. Hanc autem donationem notario nostro perscriptam relegimus atque subscripsimus tribuentes etiam non expectata professione vestra, qua volueris tempore, allegandi licentiam stipulatione et sponsione interposita. Actum Romae.*

<sup>27</sup> Ep. 9.78, of 598, to the defensor Romanus. *Quoniam filius noster Gentio vir magnificus scribo tantae Deo propitio bonitatis est, ut valde sit diligendus si quid potuissem ei conferre, debuimus. Voluerat enim possessionem iuris ecclesiastici sub libellorum speciem tenere. Sed propter malos scribones iudicavimus in hac nos causa nec bono committere. Proinde excepta quae de possessione potuerunt in eius utilitate verti, ea te volumus eius magnitudini annis singulis offerre, id est porcos XX, qualiter ipse praevideris, verbices XX et gallinas LX. Quae omnia in exceptis volumus reputari.*

simply wanted to have a *possessio*, an estate. But as said above, the Church could only alienate property to redeem captives of war, all other alienations were forbidden. That created a special property régime which must have been indicated by *ecclesiastici iuris*. We find it also used in ep. 3.18 (see above) and in ep. 1.39a [M 1.38a] regarding slaves who had fled from their masters and claimed they belonged to the Church: *ut mancipia que ab aliis possessa sunt, etiam si iuri ecclesiastico se in dominio ecclesiae propria sponte subdiderint, prius restituantur et ita demum per iudicium repentantur*. – ‘that slaves who are owned by others, even if they have subjected themselves of their own to the ownership of the Church according to ecclesiastical law, must first be restituted and then directly in law be reclaimed.’<sup>28</sup> Gento apparently knew that and therefore he merely asked for possession with a special permit which justified his having possession of the estate, perhaps an emphyteutic deed. Martyn suggests that Gregory had no high opinion of recruiters and therefore rejected the request, giving Gento instead from the estate revenues 20 pigs, 20 sheep and sixty hens.<sup>29</sup> It is possible, but it is also possible that Gregory feared that such a grant might turn in time into an unassailable possession for Gento. If he would pay the taxes, his possession might turn into property because in those days the *census* also functioned as registration of ownership and its archive was used as such (C. 7.38.3 = 11.67.2).<sup>30</sup> Thus a donation of slaves could be made by letting the donee register them in his name in his census (this already in 290).<sup>31</sup>

<sup>28</sup> Perhaps inspired by the term *publici iuris*, cfr. ep. 9.144. In that letter also the expression: *se liberum nullique conditioni obnoxium*, i.e. not subjected to any condition, included the colonate or municipal service. MARTYN, *ibidem*, 157 n. 215 translates this in 1.39a [M 1.38a] as: ‘even if they were owed to Church control and subjected themselves to the rule of the Church’, what rather diffuse is.

<sup>29</sup> Ep. 9.78 [M 9.79], p. 591 n. 212.

<sup>30</sup> Originally C.Th. 10.1.15 and issued in 396 in the east. Considering that in the provinces only possession was possible, which would be protected by the *longi temporis praescriptio*, yet in every law suit proof had to be submitted, the recourse to the census as evidence of exclusive entitlement is understandable. This may have begun with the constitution of Constantine of 313 or 337 on the transfer of land (FV. 35). But the fact that proprietary transfer of land had to be accompanied by a transcription in the census implies that the must have been a previous prescription, which is likely one, issued in the context of Diocletian’s reforms of the taxation. See also M.C. BARTUSIS, *Land and privilege in Byzantium, The institution of pronovia*, Cambridge 2012, 188–199, where in the period 1204–1261 paying taxes on land is used as proof of ownership.

<sup>31</sup> C. 8.53.7 *Idem* [scil. *Imp. Diocletianus et Maximianus*] *AA. Iulio. Censualis quidem professio domino praeiudicare non solet. sed si in censum velut sua mancipia deferenti privigno tuo consensisti, donationem in eum contulisse videris.* [a. 290] *PP. id. Iul. ipsis AA. IIII et III cons.*, C. 8.53.8 *Idem* [scil. *Imp. Diocletianus et Maximianus*] *AA. Florae. Si praeses provinciae non donandi voluntate filiorum tuorum nomine praedia in censum detulisse te*

## 5. Use of revenues of the Church

**5.1.** As said, alienation of church property was forbidden with the exception of acquiring money to buy captives free. Thus when the Longobards conquered the South of Italy and clerks had taken this opportunity to sell the plate of a church, Gregory ordered his notary Pantaleon to search for this and reclaim it.<sup>32</sup> The sale was of course void. Similarly, when an abbess had made a testament, bequeathing goods which subsequently had been taken from the monastery, the Pope observed that ordination had two consequences. The ordained person lost all his property which went to the monastery, and he lost his right to make a testament, according to the law, by which he meant Nov. 5.5 and 123.38. Thus the legacies were void as being contrary to the law (C. 1.14.5.1). Even though the abbess had never worn the monastic habit but merely the dress of elderly widows, her ordination was enough for these consequences. He ordered to recover the goods, but after first checking whether it might not have been acquired by contract.<sup>33</sup> In that case the price would have to be returned.

**5.2.** Bishops had the authority to manage the properties of their church and to use the revenues, of course within the restrictions as described above. However, abuses were possible: as in the case of Pascasius, bishop of Naples. He neglected his duties and dedicated himself to his favourite past-time, boating. He had a boat made, completely useless for the church according to Gregory. It was said that he spent 400 solidi or more on this, a large sum. Once the boat was ready, he sailed every day in it, presumably in the bay of Naples, taking one or two clergymen with him, which made him the subject of no doubt vile gossip. Gregory reproached the subdeacon Anthemius of Campania for not having corrected the bishop and lectured Pascasius over his behaviour.<sup>34</sup> What is amazing is that Gregory is

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*manifestis probationibus cognoverit, quod fides veri suggesserit, statuet.* [a. 290] *PP. VIII id. Sept. ipsis AA. IIII et III cons.*

<sup>32</sup> Ep. 8.26 of 598, to Johannes, bishop of Syracuse: *Quia pervenit ad nos, quod quidam ex Italiae ecclesiis clerici vasa sacra in Sicilia venumdarent, idcirco Pantaleonem notarium nostrum direximus, ut eadem vasa sollicita investigatione requireret.* MARTYN: ‘unlawful sale of church plate’.

<sup>33</sup> Ep. 9.197 [M. 9.198] of 599, to Ianuarius, bishop of Caralitana: *Quia ingredientibus monasterium convertendi gratia ulterius nulla sita testandi licentia, sed res eorum eiusdem monasterii iuris fiant, aperta legis definitione decretum est.* MARTYN: ‘their property should come under the control of that monastery’. That is too vague where the original says ‘their goods become property of the same monastery’.

<sup>34</sup> Ep. 13.29 [M 13.27] of 603, to Anthemius, subdeacon of Campania: *... ut quod per se nequit attendere ab alio saltem possit addiscere, sed rebus quae ad pastoris curam pertinent praetermissis ad fabricandum navim toto se studio inutiliter occupare. Unde, sicut fertur,*

silent about the 400 solidi, which must have been a sizeable sum. But perhaps he refrained from this because the money was lost anyway.

5.3. The Church should spend its income on the faithful, e.g. support the poor, the sick, build hospitals, chapels and churches. But converting Jews was also one of its aims. In ep. 2.38 of 592, Gregory writes to Petrus, the *rector patrimonii Siciliae*, that there are many Jews living on the *massae ecclesiae* there, as farmers. If there are some who would like to convert, he should reduce their *pensum*, that is, their tenancy fee. That might increase their wish to convert and motivate others to do the same.<sup>35</sup> It reduced the revenues but it was apparently a good way to spend money in the service of the faith. Whether it worked is doubtful. In ep. 5.7 of 594 the Pope complains that the Jews on the Sicilian estates are totally unwilling to convert (*converti ... nullatenus volunt*). Cyprianus must offer them a reduction of their *pensio* of one-third or one fourth as a stimulus. Gregory does not fool himself that those who do this have much faith, but their children will have more faith (*Aut ipsos ergo aut filios eorum lucratur.*)

## 6. Private matters

6.1. Next to such cases which concerned the Church there are also some letters with references to private financial affairs. One of these is the case of Maurus.<sup>36</sup> Maurus had agreed with Felix, an important man, to sell some

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*contigit quadringentos aut amplius illum iam solidos perdidisse. Hoc quoque eius culpis adiungitur; quod ita cotidie despectus cum uno aut duobus clericis dicitur ad mare descendere ut et apud suos in fabula sit et extraneis sic vilis ac despicabilis videatur; ut nihil in se habere episcopalis genii vel reverentiae iudicetur: Quod si ita est, non sine culpa tua esse cognoscas, qui eum obiurgare atque coercere, ut dignum est, distulisti. Quia ergo hoc totum non solum ipsum reprobatur, sed etiam ad sacerdotalis officii pertinere probatur opprobrium, volumus, ut eum coram aliis sacerdotibus vel quibusdam de filiis suis nobilibus contestari debeas ac hortari, ut vitio torporis excusso deses esse non debeat, ... MARTYN, *ibidem*, 846 n. 81: 'This seems to be a very large sum of money, no doubt collected for Church purposes from a wealthy community.'*

<sup>35</sup> Ep. 2.38, of 592, to Petrus, subdeacon, rector patrimonii Siciliae: Quia autem multi Iudeorum in massis ecclesiae commanent volo, ut si qui de eis Christiani voluerint fieri, aliquanta eis pensi relaxentur, quatenus isto beneficio provocati, tali desiderio et alii adsurgant. M 2.50

<sup>36</sup> Ep. 9.108 of 599, to the subdeacon Anthemius: Maurus praesentium portitor in quadringentis se solidis quasdam merces a Felice viro magnifico asserit suscepisse atque promississe sex siliquas per solidum lucri causa persolvere pretii; qua lucri quantitate in uno congesta duas se cautiones, id est unam de quadringentis quinquaginta et alteram de quinquaginta solidis, emisisse spondens certo tempore quod debeat exsolvere. Sed quia, ut perhibet, in eisdem mercibus passus est non leve dispendium et restitutus quadringentis decem solidis, quod reliquum lucri est, implere compellitur atque ex hoc maiori se necessitati ac

merchandise with a value of 400 solidi and to pay him six *siliquae* per solidus<sup>37</sup> on the price as profit. That implied a profit for Felix of 25%: 100 solidi. This was an agreement of *aestimatum*<sup>38</sup> and not a loan at interest, because Maurus had taken the merchandise (*se ... quasdam merces ... suscepisse*). This is probably the only testimony of this kind of agreement in all antique sources. Maurus had laid down his promise to repay the value of the merchandise with profit in two documents (*cautiones*), one for 450 solidi, the other for 50 solidi, with the promise to pay at a certain moment. But he had incurred heavy expenses and turned over only 410 solidi. The 10 solidi was all that remained as profit (of course, according to him). Now he must pay the missing 90 solidi, which makes him desperate, and he turns to the Pope for help. How the matter ended we do not know. Maurus will have expected to make more profit than 25% in order to earn himself also something. It was not an unrealistic expectation. Both *cautiones* are executable since they are *obligationes litteris*.<sup>39</sup> It is not impossible that Felix did not believe his story and for that reason insisted on full payment. After all, his profit was now only 2,5%. He might have got the same or more if he had set the sum out at interest, the interest limit being 6%. Gregory wants that two respectable men (otherwise there is no hope of influencing Felix, we may assume) will talk with Felix and persuade him to accept the 400 solidi with the little profit and not want to enrich himself at the expense of another (*lucrum de damno alterius non expectet*). God will multiply what he leaves the poor man. In short: Gregory wants him to release Maurus from his obligations (*hunc ab afflictione possit obligationis exuere*). It concerns therefore an *acceptilatio*, but in 599 this formal mode of release had disappeared and was replaced by a *pactum de non petendo* or, more likely, by the mere act of returning or destroying the *cautio*.<sup>40</sup>

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*potius desperationi ingemit subiacere et propterea aliquo sibi subveniri petit auxilio, ... lucrum de damno alterius non expectet, sed recepta pretii sit sorte contentus, quatenus, quicquid pauperi cesserit, omnipotens ei Deus multiplicata, sicut promisit, restitutione compenset.* MARTYN, *ibidem*, 608 n. 271: 'From the *sex siliquas*, coins worth one twenty-fourth part of the gold coin (*solidus*). This is a quarter, or 25% on each gold coin, a very high rate of interest, that has already added a hundred coins to his debt. The sum suggests trade, and it seems an odd request for a pope to handle, although Gregory was clearly expert in financial matters'. MARTYN, *ibidem*, 608, n. 274: This letter is quoted by A.H.M. JONES, *The Later Roman Empire*, Oxford 1964, Vol. II, 291 n. 108 on bottomry rates, fixed at 12 % by Justinian ...'. It appears JONES compared the 25% with legal interest rates, but it is not a loan.

<sup>37</sup> A *solidus* was worth 24 *siliquae*.

<sup>38</sup> See KASER, Bd. I, 581; KASER, Bd. II, 420.

<sup>39</sup> KASER, Bd. II, 365, 377–378.

<sup>40</sup> KASER, Bd. I, 641–642; KASER, Bd. II, 443, et 444.

6.2. The case of Victorianus concerns a *depositum*.<sup>41</sup> The priest Victorianus had entrusted various items and some money to the care of bishop Sisinnius in Reggio. This was a contract of *depositum*. Perhaps it was not such a good idea because, as Gregory relates, Sisinnius was said to commit idolatry and sodomy, both considered very wicked things, certainly for a bishop; although these allegations should be investigated first. As it appears Sisinnius refused to return the deposit when called upon. In a following process he was condemned to deliver the objects. Unfortunately Victorianus died and according to Gregory's account his sons could not execute the judgment. The reasons for this remain obscure. According to the law one who holds in deposit is obliged to return the deposit to the depository. The depository can claim his goods with the *actio depositi* (as depositor) or the *rei vindicatio* (as owner), probably also called at that time *actio in rem*. Which action Victorianus had chosen we do not know but since it involved ornaments of the church it will have been the *actio depositi* for these and then included the rest. It had led to an executory title through the *actio iudicati*<sup>42</sup> because Sisinnius is said to be *addictus*, which means that he has been ordered to obey the judgment.<sup>43</sup> Victorianus' sons had succeeded their father in the process and consequently should have been able to execute the judgment. If the ornaments were of the church of their father, they should after recovery have to return these to the church. Perhaps Sisinnius retained them with the argument that as bishop he could receive and keep it for the church. We do not know. It may also be that he was a greedy bishop who wanted to take advantage of young people and was too powerful for two orphans.

6.3. A woman, Stephania, and her young son Callixenus which she had by her late husband Peter, turned to Gregory for help. Callixenus owned according to her a house in Catania but her mother in law, his grandmother, Mammonia had donated it to the church (of Catania). Stephania's arguments were that Mammonia did not have the right to donate and that the house belonged to her son, who now suffered poverty. The deacon Cyprianus refused to return the house, arguing that her claim was unjust and that she could not claim for her son. The Pope first states that what is property of the church cannot be alienated nor returned, but it

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<sup>41</sup> Ep. 10.2 of 599, to the regional sub-deacon Sabinus: ... *qui dum depositum abnegaret, iudicio habito convictus et, ut reddere debuisset, addictus sit; et quia eo restituere id quod condemnatus est diferente is qui deposuisse dicitur obiit et necessitate eius perhibentur filii laborare, et hoc experientis tua diligenter inquirat atque ita salva ratione ad finem hanc causam perducatur, dum modo si ita est, nec ille res alienas perfide mente retineat et orfani, quod suum est, vel amisso patre recipiant.*

<sup>42</sup> KASER, Bd. II, 623–625.

<sup>43</sup> KASER, Bd. II, 387, 623 ff.

may be given out of compassion.<sup>44</sup> That seems rather strange. If the donation was done without title, it was invalid and the church was not owner. The argument of Cyprianus, who apparently sat over the case in *episcopalis audientia*, that Stephania could not act for her little son, does not come over as fair, particularly if it was in the *audientia*.<sup>45</sup> First, women could in these times be *tutor* or *curator* over their children. If Stephania was by testament appointed *tutor* over her son, she could act for him.<sup>46</sup> But perhaps there was no testament: in that case Mammonia had become *tutor*<sup>47</sup> and she could have donated the house, while Stephania in law could not act for her son. In the *episcopalis audientia*, however, this argument should not have played a role. Yet, was the donation in the interest of Callixenus? That will, *vide* the reference to the poverty in which Callixenus now lived, Stephania's argument have been. But Cyprianus also judged Stephania's claim as unjust. Was this out of reluctance to return the house? Or was Callixenus not so poor at all? Or had Mammonia truly had some title, apart from the possibility that she acted as *tutor*? First, it is possible that she possessed it but that ownership lay with her son Peter, and that Peter had left the house by testament to Callixenus. Her donation would have been in that case valid if she was *tutor* but questionable if it drove Callixenus into poverty, if not invalid: C. 5.71.1 refers to a *senatusconsultum* which prescribes that *tutores* and *curatores* must first obtain approval of the governor before they may alienate real estate of their wards.<sup>48</sup> Or, if Mammonia and Peter had jointly

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<sup>44</sup> Ep. 9.48 of 598, to the defensor Romanus. *Quamvis ea quae ad ecclesiae iura perveniunt alienari legis ratio non permittat, temperanda tamen interdum censura districtio est, ubi misericordiae respectus invitat, maxime quando tanta est quantitas, quae nec dantem onerat et accipientis pauperiem iuxta aliquid consolatur. Et ideo quia Stephania praesentium latrrix cum Callixeno filio suo parvulo, quem de Petro quondam viro suo se suscepisse et nimia asserit pauperie laborare, huc veniens adsidua obsecratione et lacrimis a nobis exigit, ut domum possessionis in civitate Catenensium, quam Mammonia quondam socrus ipsius praedicti Callixeni avia ecclesiae nostrae titulo donationis optulerat, eidem Callixeno restitui faceremus, asserens memoratam Mammoniam alienandi eam non habere licentiam, sed antefati Callixeni filii sui per omnia iuris esse; cui rei dilectissimus filius noster Cyprianus diaconus, qui causam cognitam habuit, contradictor extitit inquiring praedictae mulieris querimoniam non habere iustitiam nec posse rationabiliter ad filii sui nomen domum ipsam vindicare sive repetere; sed ne suprascriptae mulieris lacrimas inanes relinquere et plus sequi rigoris viam quam causas videamur pietatis amplecti, hac tibi praeceptione mandamus, ut memoratam domum saepe fato Callixeno, simul et donationem a Mammonia factam de domo ipsa, quia illic in Sicilia esse cognoscitur, reddere debeas, quia, sicut diximus, melius est in dubiis non districtioem exequi sed ad benignas potius partes inflecti, praesertim dum ex parvae rei cessione nec ecclesia gravatur et orfano atque pauperi misericorditer subvenitur.*

<sup>45</sup> KASER, HACKL, *Zivilprozessrecht*, 639 ff.

<sup>46</sup> KASER, HACKL, *Zivilprozessrecht*, 559.

<sup>47</sup> KASER, Bd. II, 227–228.

<sup>48</sup> The text in D. 27.9.1.1.

owned the house and Peter had left his part to Callixenus, Callixenus would be owner and the donation would be invalid for his part but not for Mammonia's. However, Stephania maintains that Callixenus was *per omnia* owner. Hence it is likely that Mammonia was *tutor* but had donated without good reason but probably with gubernatorial approval, yet that Stephania could not act in law for her son. Gregory clearly does not want to enter into the details but orders restitution on ground of compassion with the little boy and to protect him from poverty. It has the appearance that he does not want to challenge the judgment of Cyprianus but is at the same time not happy with it. Then, if Callixenus is owner, the donation is most likely to be invalid, yet difficult to challenge in secular law. To set this right in the *audientia*, where Stephania could in any case raise a claim, is difficult. Perhaps for that reason he insists that the house is now of the church. It enables him to dispose of it and attribute it to Callixenus on a different ground. By acting in this way he avoids discrediting Cyprianus.

## 7. Conclusion

The letters of Gregory the Great are not an abundant source for legal business around the turn of the fifth to sixth century, but then, we do not have much for that period. Still, through these responses to actual cases by a person who knew the law we can deduce some information on how the law was applied. It appears that Gregory in as far as we can see maintained the Justinian law.