

Plagmatic sanction concerning money-changers (bankers).

In the name of our Lord Jesus Christ, Emperor Caesar, Flavius, Justinian, Alamannicus, Gothicus, Fracicus, Germanicus, Anticus, Alanicus, Vandalicus, Africus, pious, fortunate, renowned victor and triumpher and ever Augustus to Julianus.

Preface. As the force of virtue ever shines forth in adversity, so imperial foresight and government appears when our subjects are in straits. We are, indeed, anxious that no adversity may affect our republic; but when either the instability of human things or the divine will brings human ills, the mild chastisement from heaven lends the occasion for imperial providence and benevolence. This has happened at present, and needs no further comment. The danger of death^(a) has penetrated every place, and it is unnecessary for anyone to hear what each one has experienced. So when so many unexpected things have happened, as hardly any other time brought about, the members enrolled in the Guild of bankers have come before us, saying that some heirs and successors of those who without written acknowledgment have received gold, silver or other things, have turned to dishonesty, inasmuch as those who received it or them are no longer alive and no writing exists as definite proof against the heirs and successors.

(a) Reference is doubtless made to the pestilence in the latter part of 541 A.D. and the beginning of the next year. Otto, Schilling and Sentennis.

c. 1. Desirous, therefore, to correct this matter, we ordain that those who are called into court in this manner must have regard for a clear conscience and without hesitation confess what was given by the bankers to those of whom they are the successors, and that the same must be done by those of the same guild (of bankers)

who still survive (as to money loaned them by their colleagues). We order the same thing to be done by the suppliants when they are sued by their adversaries. All parties must know that if dishonest ones are defeated by the testimony of the assistants, by the account books fortified by an oath or by other suitable testimony, they must pay double the amount which they fraudulently or dishonestly denied, whether they concealed the truth, or neglected to know it.

Note.

There were other cases in which a denial entailed a penalty, if the case went finally against the party denying his liability. Thus if a man was sued for damages to property under the Aquilian law he exposed himself to a penalty for double the amount of loss, unless he admitted the wrong done. Inst. 4,6-19; 26.

c. 2. Another point has been reported to us by the same guild of bankers, namely that they should not be compelled, when they produce a confession or statement or an account signed by the borrower with his own hand and it is then called in question, to prove it by comparing it with a public document,^(a) because their guild loans money to many people, particularly nobles who do not like to have their contracts or the condition of their property made public and who prefer, as is likely, to appear rich to others rather than poor; that their own writing, accordingly, as has been stated, given to them (the bankers), should have the force of public documents. 1. Therefore, adopting a medium course in this matter, which bankers shall pursue against borrowers who raise a dispute in such matter, and which the latter shall pursue against the former, we ordain, that if such autographic statement of a borrower is produced, which he, whose statement it purports to be, or his heirs or successors, cannot deny under oath to have been written by him whose name it bears, the defense that the money (therein mentioned) was not paid, cannot be made. And if, in addition,

the banker can show the genuineness of the writing by comparison with a public document, or, in case he neglects to do this, the adversary cannot show it to be fraudulent by comparing it with a public document, then a comparison may be made between autographic writings that are unquestioned and confirmed by the signature of witnesses and the autographic documents produced by or against the bankers, and (if the writing is the same), the latter shall be considered valid and shall have the force of public documents, since they are not lacking in strength but only in form. Nor shall it prejudice the suppliants (bankers), that the contracts entered by them with the borrowers mention no alien nor the name of heirs or successors.

(a) See Nov. 49, c.2; Nov. 73.

c.3. The members of the same guild, as well as those who contract with them and bring similar actions against them, shall, in case decedents have no heirs on account of poverty, but leave debtors or have property which has been deposited with others or has been mortgaged to others, to bring the proper actions and thereby obtain satisfaction of their debts. The same rights shall exist as (to the property) of contracting parties still living and as to their debtors, so that the plaintiffs, as well as the defendants, if they wish, may institute hypothecary actions, though no mention of hypothecation was made in the documents, the same as though (these actions) were connected naturally in connection with contracts entered into between bankers and those that contract with them, and they shall have a preference over subsequent creditors. For it is unjust, and contrary to the justice of our times, that creditors should be deprived of their property, and that debtors should enjoy the property of others.

c. 4. We also give them the following additional assistance. For since the contracts made by them are altogether repugnant to our recent law^(a), which forbids creditors to sue those who purchase anything from debtors until it appears by bankruptcy that the principal debtors are unable to pay - a matter that is burdensome for them, since purchasers, by custom, require sureties and obtain other security, which is not permitted to bankers either by custom or by the celerity with which their contracts are made, - we ordain by this pragmatic sanction, made for their special benefit and which will not avail any other person, guild, corporation or trade, that they and those who contract with them, in case an action is brought against them, to enjoy the privileges in connection with the demand and suit for the recovery of property in connection with which they have, by reason of time, a preference, which they enjoyed previous to our (aforesaid) legislation, so that, if they are not paid by the principal debtors, they may, without being burdened by showing the bankruptcy of the latter, pursue the property sold by the latter which has been mortgaged to them specially or generally, and in which, as stated, they have rights prior to those of other creditors. For we believe that the rights granted the members of the aforesaid guild of bankers and those that contract with them, are for the common benefit, since the former are serviceable in connection with contracts, made not only with a few but in connection with nearly all that are made in the republic.

(a) Nov. 4, appended to C. 8,40.

c. 5. We have also decided to concede to the petitioners (the bankers), that when they sue anyone and a promise of the tenth part^(a) is asked of them, they shall not be compelled to furnish a surety, but their own promise shall suffice, since they, whose good faith suffices for others, should be personally trusted. It is clear, however, that if they are defeated, the fact that they have not furnished a surety

shall not avail them any, but they shall nevertheless pay the penalty of a tenth part, just as the parties who sue them, and the parties who are sued by them, must pay the same penalty, and the only difference in that respect is, that, as stated before, the giving of a surety by plaintiff who are members of the guild of bankers, is, by reason of our special favor, not required.

(a) See Nov. 112, c.2, appended to C. 2,2.

c. 6. Since it appears that they (the bankers) not only suffer damage but that also a hindrance is put in the way of general business by reason of the fact that the petitioners (the bankers) are dragged before many tribunals, we, therefore, imitate our former care in their behalf and direct that they shall have special judges in all cases where they either sue or are sued, namely Your Eloquence and Peter, the glorious count of the Imperial Exchequer, exconsul and patrician, so that any suits that shall arise between them and others, or that have already been commenced before judges heretofore appointed for them but now deceased, shall be examined before one of you, and quickly finished in consonance with our laws, so that the petitioners, freed from the vexation of attendance at court, will have time to attend to their business, and the more generously occupy themselves with contracts made by our subjects, as they themselves experience less dishonesty, or as the persons who attempt to be dishonest, are not permitted to inflict any unjust injury upon them.

c. 7. They have also made known to us another fraud of dishonest men. They report that some persons that have borrow'd or are borrowing money from members of the aforesaid guild, have bought or are buying immovable property in the name of their wife or of some other related person, in fraud of the general mortgage against the property which they have or will have; that some of them, receiving from their own debtors payment of their debts, either in money or in im-

movable property, do not have the payment, assignment or sale made to themselves, but as stated, in the name of their wife or other relative, and as a result of such trickery pretend that they are poor; that the members of the guild of bankers who have been kind enough to lend them money, cannot sue such persons (who receive the property), because no contract was made with them. On this point too, we extend to the money-lenders and to those that bring similar actions against the former, and direct that if a debtor is shown to have committed a fraud, so as not to have his own property in his possession, but has secretly transferred his rights to someone else, the plaintiffs may, by an action in rem or by some other legal action, prove that fact and pursue the aforesaid property as the property of the debtor, and so overcome the fraud and make themselves whole as to their debt and as to the expenses incurred by them on that account. We know that the diligence of Your Eloquence and of the aforesaid glorious person, is such that you will adjudicate the actions commenced but not finished and the actions that will hereafter be commenced, in such a manner that neither the petitioners will suffer an unjust loss through the dishonesty or inconsiderateness of their debtors, nor that innocent people will sustain untimely damage by unjust vexations, and that the favors recently extended to the petitioners remain in force and effect, and that in respect to what we have granted them by the present imperial pragmatic sanction, our purpose will be fulfilled, inasmuch as we have taken this action so that all our subjects will enter into contracts justly, and without inconsiderateness, and so that those that are of service in connection with transactions in our republic, may enjoy a tranquil life, and that they may not, through the trickeries of dishonest persons, be drawn into courts and into troubles arising therefrom, and be compelled to incur expenses.

Note.

As to remedies for fraudulent alienations in general, see Hunter 1042.

c. 8. We have deemed it proper to put in the conclusion what we mentioned in connection with each of the stated points, namely, that in all the foregoing cases the privileges of the members of the aforesaid guild of bankers and their heirs and successors, and (of those who contract with them and) bring actions against the bankers, shall be equal. For it is proper that the parties on each side should observe the same honesty in connection with their contracts and transactions which they want the parties on the other side to observe. 1. Finally we add to what we have directed in this imperial pragmatic sanction that Your Eloquence and all the high magistrates aid the members enrolled in the aforesaid guild, so that, be it through edicts, letters or in other customary manner, they, under observance of the rules of law, may receive the necessary assistance and may be protected against dishonest people, in order that they may not be compelled to act in an evil manner toward others, but on the contrary show themselves kind and just toward those with whom they contract, since that accords with the benevolent spirit of our times and is proper in connection with all contracts made in our republic, the most important and the most necessary ones of which are made by the aforesaid guild.

Epilegue. Your Eloquence and every other judge in our republic must firmly uphold this our will, declared by this imperial pragmatic sanction, and the petitioners shall have the right to produce this imperial pragmatic sanction in every court, and receive it back, and obtain the assistance therein granted, and it shall, on the subject under discussion and on the points therein mentioned, have the same force which our general laws have in other matters.

Given March 1 (542).