Edict 9.

Concerning contracts of money-changers (bankers).

Emperor Justinian to Tribonianus, city prefect.

Preface. The members of the guild of bankers in this city have addressed a general petition to us, asking that in addition to the relief heretofore given them, we also aid them in another manner. They have pointed out that some persons who have owed or are owing others, and the money or property (so owing) is demanded, and they have no means with which to pay, they ask the bankers to enter into an unconditional suretyship (constitutum) for them, at times entering into a written obligation for that purpose, and at times asking the bankers to do this without any written request, on account of the trustworthiness of the party making it; that they, the bankers, yielding to the request of such persons, fix a time within which they guarantee that the principal debtor will pay the debt to those who press the latter; that they, the bankers, entering into such suretyship make unquestioned payment on the day fixed to those who have accepted it, the principal debtors perchance receiving back their written promise or statement of the loan, or receiving a receipt (apocha) because of the security furnished through the guaranty. (The bankers further state) that many persons, when they have wished or wish to acquire some property, ask them that they enter into a guaranty (constitutum) to give money or other things for them; that they, who make such request, get what they seek, they themselves, the bankers, furnishing the money or other things without question, and entering into the guaranty in a simple way without[a] being directed not to pay over the money or other things until the party receiving the guaranty gives a receipt for the money or other things or otherwise acknowledge that he has received

the same; that they, the bankers, pay over the money or property, but afterwards get into a controversy with the principal debtors who demand such receipt for such money or property. (And they say) that this is troublesome in many ways(b) and makes it difficult to guard past or future transactions, and is one of the impossible matters. For who of those for whom money or property is guaranteed would not like to do so upon condition that a receipt be made of what was given or that a statement be entered on the records that it has been received?(c) And they, the bankers, (say that they) frequently become worn out, and assign the action to others, and that this objection is set up not only against them when they bring an action, but also against those to whom the action has been or is assigned. And the bankers ask that they be freed from this trouble, and that if an absolute and unconditional mandate has been or is given for them to pay money or other things within a certain time, the person giving the mandate should, as soon as the time fixed has elapsed, be liable to them and to those to whom the actions have been or are assigned; and that not only in case where the mandate given is in writing, but also in cases when the whole transaction has been carried on without writing.

(a) The translation of Otto, Schilling and Sentennis follows Agylaeus in striking out the negative "non" or its Greek equivalent, and thus completely misses the meaning of the sentence.

(b) Often the receipt would not be obtainable for a long time, because of the fact that the money might have to be paid in a distant part of the empire. And the gist of the bankers' petition evidently was that the principal debtor should be compelled to pay the money due to them, as soon as the due-date arrived, without waiting for the receipt.

(c) The sense of this sentence is obscure.

c. 1. Desiring to bring help in this matter (equitably and justly, however, so that everything will be safe), we ordain that bankers should not enter into a suretyship (constitutum) until a written mandate is given them in reference thereto stating how the transaction shall be carried on, and not fall, through over-confidence, openly into a visibly trap of ruin. If in some manner, however, no writing has been executed, but a definite time was fixed, and the person for whom the suretyship was entered into has kept silent during all this time without making complaint, and that time passes by, and he has made no complaint in reference thereto for another two months, he must pay the debt to the surety which is shown to have been guaranteed by a banker according to his desire and such objection (that it was not done according to orders) shall not be set up against the banker, his heirs or those to whom the action has been or is assigned; but whatever the contents of the mandate were shall prevail, the judge carrying out the written provisions if in writing, and if the contract was not in writing, the provisions according to the proof adduced in conformity with law. These provisions shall apply to suretyship heretofore and hereafter entered into in this manner.

c. 2. If a compensation has been or is promised them in writing or without writing, and there is sufficient and legal proof thereof either in writing or by the testimony of witnesses, such promise shall be effective and the amount agreed upon may be collected without meeting any opposition from any law to the effect that the business should have been done free of charge and without compensation. Their whole life is spent in paying out interest and rents of houses (acting as agents for others) and acting for the common benefit of all, and they should not be damaged or deprived of all sustenance, but should have this (compensation) as a reward for

their troubles. 1. If they render a mutual account to each other, the bankers to the parties contracting with them, and the latter to the former, or autographic writings containing a statement of the money received and paid out, (the former) containing the handwriting of the manager of the bank and of his clerk (scribae), called harmarita, and the statement of the parties contracting with the bankers being written in their handwriting or being subscribed by them, these contracting parties cannot simply acknowledge as correct the amount of money stated under the signature or autographic handwriting of the banker to have been received, and make a demand accordingly, while at the same time denying the statement as to the money paid out, as though not actually paid out; and on the other hand, the bankers may not simply demand the amount of money (shown by the statement made to them) to have been paid out, without acknowledging the money received. 2. On the contrary, if mutual statements of account, or autographic writings, are produced which show the amounts received and paid out, credence must be given to both, and what is against them (the parties making the statement) shall not be considered valid and what is for them invalid, but the (balance of the) amount shown by the accounts may be demanded, unless one or both of the parties show an error in calculation or that they have suffered a wrong by reason of a charge of interest. For if that is clearly shown, it shall be corrected in a legal way, so that each party will be dealt with justly and equitably.

c. 3. They have also informed us that some of them, having received a promise from a number of men, pursuant to a mutual suretyship[a] or mandate, and after having been paid the greater part of the debt, leaving but a small portion, receive a separate promise from one or more of them to pay the remainder of the amount due within a certain time, they themselves giving, perchance, receipt

or acknowledgment (that the debt has been paid), and it happens that the person or persons who agreed to pay such remainder dies or die, and the heirs refuse to pay such remainder promised by him or them. We therefore ordain, that if that happens, the money promised in writing by the decedent or decedents, shall, together with the stipulated interest, be paid by the heirs.

(a) See note to Nov. 99, appended to C. 8,40,29.

c. 4. If any persons have received or are receiving a loan against property that is pledged, and have permitted or permit the bankers in the written evidence of the loan signed by them, to make a sale of the property pledged as to the bankers seems best and credit the price thereon on the loan, and the bankers do this, they shall not be molested or implicated in trouble on account of this, but their oath as to the price for which the property pledged was sold, shall be believed, and shall suffice against all (imputation of) dishonesty. If anyone borrows money, pledging property, sealed or unsealed, the borrower must pay the principal and the promised interest, receiving back the property pledged, acknowledging his seal (if the pledge was sealed), or the undisturbed pledge; of if the debtor has no money, he must relinquish the pledge at a fair value and pay the remainder that is due, and cannot claim that the lender should be satisfied with the pledge, though of less value (than the loan), but he must pay the whole debt, together with interest thereon. If the time for the loan is fixed, and pledges, sealed or unsealed, are given at the same time, and the loan is not paid within the time fixed, and a period again as long has passed, the bankers may have an accurate appraisement of the value made by appraisers in the presence of notaries and the holy scriptures, and charge themselves with it, whether it pays all or only a part of the debt.

c. 5. Since their earnings are derived from giving and receiving loans and entering into suretyship (constitutum) for others and paying out interest, they have also asked that they ought not to be hindered, in making loans, by our constitution in which we provided that no one should be permitted to take more than double (the amount of principal), if he (the debtor) has paid principal and interest to that amount.(a) We do not want that law to be violated hereafter, but we shall remedy the matter for them as to the past which can no longer be subject to any trickery, and ordain that as to contracts heretofore really entered into with bankers, the latter shall have the right to collect the principal together with the agreed interest, although interest for more than double (of the amount of the principal) has been paid on such debts, without being compelled to credit the amount paid over and above the amount of the principal, on the interest (still due) or on the original debt, and in this respect only shall our constitution not prejudice them, but they may collect the amount due according to the provisions of the contract. But they themselves shall not abuse our constitution against those who have contracted with them, and cannot themselves (in connection with loans made to them) count the interest already paid by them as paid on the principal or to make up the double of interest (and principal).

(a) See Novels 121,138,160, attached to C. 4,32. No more than "double" could be demanded in connection with the repayment of a loan; that is to say, if the amount paid thereon was double the amount originally loaned, the whole loan was paid; in other words, if interest equalling the amount of the principal was paid, and further, an additional amount equalling the principal, the debt was paid.

c. 6. Inasmuch, moreover, as we have permitted managers of banks to acquire in this fortunate city any position in the imperial service, except in the armed service, and they have thereafter, when making a loan, stipulated for eight per cent interest per annum, which we have permitted bankers to do, dishonest borrowers have set up such position against them, claiming that it is just that such bankers should receive the rate of interest properly due, not to bankers, but to persons in the imperial service.(a) We order such absurd and dishonest objection to cease, and that the agreement as to the interest shall be the interest to be paid. 1. And this, too, does not please us, namely, that some persons ask in connection with contracts with bankers, that they should either not pay the principal or the interest, or what is worse, that the legal interest paid should be computed on the principal. In this case, too, the contract entered into with the bankers, shall control.

(a) Different parties were, under Justinian's law, permitted to charge different rates of interest. See C. 4,32.

c. 7. This, too, is one of the points of their petition, namely, that often some of those who are liable to them, and who, in turn, have debtors that owe them, do not cause payment to be made to themselves, but cause payment to be made to their wife on the pretext of dowry or special property (parapherna)(a), or other debt (owing to the wife), (the debtors) receiving a receipt or acknowledgment of payment from her. Later, when the debtor becomes poor, or dies, and they, the bankers, want to recover their debt, the wife sets up her debt, although she has received it secretly, thereby robbing the bankers of any hope. And they ask, that if anything of the kind has happened, or perhaps happens in the future, the debtors, who have received such receipt or acknowledgment of debt or any other document, should be compelled to exhibit it to them,

or to their heirs, to show the transaction, lest the wife receive something not owing to her, and lest those to whom a debt is due, should be defrauded. We ordain that if anything of the kind has been or is done, the parties (to whom they were given) shall produce these documents, but without any damage to them, and so that they cannot sustain any detriment by reason of such production - for we remember our constitution[b] which provides that forcible production of documents shall be without detriment to the producers - but they shall show these documents and receive them back. If the parties who compel such production against the wife, can get any benefit therefrom (as against the wife), they shall have it, according to law; but those who produce must not be permitted to suffer any detriment by reason of such production. 1. If they themselves (and the parties dealing with them) have issued any (duplicate) acknowledgment or quittance to each other or have some sort of pact, and the writings remaining with them have perished in some manner, the parties having the other copy must produce it, or take an oath that they do not have it or cannot produce it. If they take this oath upon the records, they shall not be disturbed any further. Further, no one shall overstep the limitation of our constitution under the pretext of fees or court expenses and must be in fear of the penalty, which hangs over violators thereof.

(a) C. 3,23,9,3.

(b) C. 4,21,22.

c. 8. Since, moreover, they (the bankers) seek in the beginning of their petition, that Your Excellency should take care of their interests and should hear the cases brought against them, and that if others are indebted to them, or they to others, you should give a hearing as a special judge, because of your exact knowledge of the law and enforcement of justice and ready manner in solving the

questions, which appear to be difficult and cannot be solved by others, we direct that, according to the provisions made by us[a], you hear them as special judge, whether they are plaintiffs or defendants, settle past transactions according to this law, and take care of future matters, as may appear to be equitable, so that we may give them legal and proper assistance. For it is just that those who become debtors for all and are zealous to be useful to all, should enjoy a large measure of assistance. All provisions now or heretofore made for their benefit by our laws or pragmatic sanctions shall remain in force, and shall apply to past and future transactions.

(a) Edict 7, c. 6.

Epilogue. Your Glory and every other judge of our republic must uphold this our will, declared by this imperial pragmatic sanction.

(No date).