

Novel 17.

Mandates of the emperor.

(Mandata principis.)

In the name of our Lord, Jesus Christ, our God, the Emperor Caesar Flavius, Justinian, Allemannicus, Gothicus, Franciscus, Germanicus, Anticus, Alanicus, Vandalicus, Africus, pious, fortunate, renowned victor and triumphator, ever Augustus.

Headnote.

Title 15 of this book deals with mandates of the emperor; that is to say, orders issued from time to time by the emperor, which, in most cases were required to be in writing. Now it is stated in note to C. 12,7,1, that there were general forms for general instructions in the office of the chief of the tribunes and notaries who made out the letters-patent or certificates of appointment. Novel 17 represents one of these forms, filled out. It contains general instructions to the governors of provinces, these general instructions being called mandates of the emperor, and which had been in use for a long time. These instructions constituted part of the law of the land the same as other directions given by the emperor.

Preface.

By a general law of our piety, everything has already been stated according to which those who occupy a magistracy must conduct their office, mindful of the oath which they take in connection therewith. Still we have also thought it necessary now to give proper orders to you, who are about to assume a magistracy, following herein the custom initiated by former emperors of our state, who gave those who were sent to take up an office specific

orders, called mandates of the emperor, according to which they were to conduct their magistracy.

c. 1. As you, accordingly, assume office cleanly and without bribery, you should, above everything, keep your hands clean for God, us and the law; you should touch no bribe great or small, and do nothing fraudulent against our subjects, but you should be content with what is paid you out of our treasury (fisc), and personally as well as through those around you, preserve justice undefiled for our subjects. You should, first of all, take care to collect public taxes, leave nothing for the good of the public treasury (fisc) undone, investigate whether the fisc has suffered any damage and preserve everything in every respect that belongs to it. For as we aid private individuals who suffer wrong, so we want the fisc to remain unharmed. Our taxpayers, now protected against all wrongs (from extortions), can readily and promptly pay their taxes; and while those previously paying out their money on thefts continued to be debtors for taxes, these amounts being now paid directly to the fisc, enables them to be easily released from their debts due to it.

c. 2. Next, you must take care to prevent all tumults among the people and keep complete peace in the cities, (which you can best do) by acting justly toward all and by taking no sides either because of bribery or partiality.

c. 3. In the third place, you must deal out full justice in the trial of cases, dispose of and decide short and unimportant affairs orally (summarily), and release people from mutual contentions. You must not permit litigants to be burdened by court expenses beyond the amount fixed by law, if they are able to pay. If not able to pay,

you must try cases without expense, and must not, through indolence, permit men from the province over which you preside, to run to this city to make trouble for us. And you must know, that in case a man comes here before us and is asked whether he first appealed to you, and he says that he did, but was unable to obtain justice, our wrath will turn upon you if we find his statement to be true. But if he dares to come to this city without first calling upon you, we shall send him away with censure and without answer.

e. 4. Next it is proper for you to see that those who come from this city, whether imperial messengers (magistriani) or men in the office of any other magistrate, do not wrong our subjects or demand greater amounts than allowable. You must investigate complaints made as to that, and see that our subjects are indemnified. You must not permit damage to be inflicted on our subjects by anyone on the pretense of a mandate, such as are accustomed to be issued as to construction of aqueducts, ports, roads, bridges, (imperial) statues, walls and buildings, or for tearing down structures erected in public places, or for other like reasons. We do not want damages to be inflicted on them on any such pretext. You yourself must attend to these matters without damage to anyone. If anyone comes with a mandate of that sort, you must not accept him, unless he shows a pragmatic sanction in writing; (if he produces one) you will then accept it, but must do nothing pursuant to it, until you make a report of it to us and receive our (further) order. 1. You must also see to it, that the cities are not in lack of necessary things and of public works, and take care that the fathers of the cities construct such necessary public works with municipal funds, and that bridges, roads, ports - in the places of your province in which there are ports - and walls are kept in repair; and if there is anything that is useful to the fisc or to the cities, you must consider it, give it your at-

tention and report it to us. 2. You will have soldiers in your province to obey your orders in any matters in which their services are properly needed; if you find them delinquent in their duty, you will subject them to proper chastisement and further see to it that those who suffer wrongs at their hands are indemnified out of their allowance.

Note.

While the governor of the province was required to see to it that public works in cities were constructed and kept in repair, he was forbidden to cause the accounts for such works, constructed by municipal funds or private gifts, to be audited, this duty being left to the bishop and three, later five, citizens. C. 1,4,30; C. 8,12,1 and note; C. 10,30,4 and note, and Novel 128, cc. 16,17 and 18 appended to C. 10,30,4. And, it seems, that the praetorian prefect had formerly sent special men from his department of public works to inspect and audit them. This was henceforth forbidden. See in addition to the foregoing chapter, the chapter of Novel 128, supra; Novels 24, c. 3; 25, c. 4; 26, c. 4 (appended to C. 1,39), and Novel 30, c. 8.

c. 5. You must permit the use of any privilege to those about to commit wrong, but you will consider such privilege as an aid to them only if they prove themselves unstained by, and innocent of, any offenses of which they are accused. You must prosecute homicide, adultery, rape of virgins, attacks and oppression with severity and must punish those guilty thereof according to our laws, so as to preserve the many by punishing the few. 1. You must especially restrain the officials under you, and not permit them to despoil our subjects, and they should not simply seemingly be subject to you while in fact controlling you. 2. You must take care to select a counselor (assessor) and any one else about you who is good, honest and content with the salary paid him by the fisc. If you find him (the counselor) unequal to your expectation and to be unworthy of your confidence,

you will discharge him, and get another who will preserve law and justice with clean hands. You should conduct yourself, in public and in private, that offenders and contumacious taxpayers, will fear you, and you should be gentle and mild toward all honest and dutiful persons and care for them as a father.

c. 6. You should not easily give protection (by letters granting the right of asylum) - called ^(a) logoi - or for a long time, but only after investigation and for a suitable time, not exceeding thirty days, so that the contentions of men may not be dragged out indefinitely. If such letter is granted by you to anyone, and some one sues the recipient, you must cause him to be brought to court, while preserving the protection granted him, and must examine the proofs, without violating the right granted him, and if a decision is necessary to be rendered against him, you will do so, giving him the option to do one of two things - to renounce the right of asylum granted him and comply with the judgment, or, if he objects doing so, you will restore him to the sacred asylum, but you will, nevertheless, execute the judgment there, but moderately, and with the reverence due to the place.

c. 7. You must not grant any right of asylum to homicides and ravishers of virgins, but must drag them out and impose punishment on them. Such offenders should not be spared, but rather the survivors, so as not to suffer such deeds at the hands of the audacious. The protection of temples is not given by the law to those that inflict, but to those that suffer, wrong, and it would be intolerable to grant the protection of an asylum to both the former as well as the latter. 1. You will collect the public tribute even within sacred places, in a becoming manner, since taxes are not only useful but necessary for soldiers, for private persons, even for these sacred places themselves, and for the state, and the God-loving de-

Novel 17, c. 7 cont'd.

fenders and the stewards of the churches, must assist you in this. They must not shield anyone against exaction from whom public tribute is demanded in the province, and must not permit collectors thereof to suffer violence or opposition, and must know that if they do anything of the kind, they must make satisfaction to the fisc out of their own property.

c. 8. You must compel the collectors of taxes to note everything in the receipts given by them, that is to say, the number of (tax units called) capita, juga or juliae, or in whatever other manner they are called in the province; for what and for what kinds of lands the taxes are collected, and the amount of such taxes that are paid either in kind or in gold; and you will threaten such collectors with dire penalty and amputation of the hand, unless they hereafter fully comply with this requirement, which has always been ordered but has not heretofore been observed. If, forsooth, they give some excuse, saying that it is impossible for them to report the number of tax-units (juga), we shall consider them as acting fraudulently, unless neither the fisc nor our subjects suffer any damage by reason thereof; for the fisc shall, without question, receive all that is due it, the tax-payers, from whom nothing further shall be demanded, shall receive the usual receipt, and no damage shall result (from non-compliance with the requirement above mentioned). (When a controversy arises) the customary tribute shall be paid by them (the taxpayers), and deposited in the treasury, and the matter shall be reported to our glorious prefects, who, after they first have the tax-clerks make an accurate tax-roll (expositiones) for them, shall, with that help, decide the matter. The customary amount of tribute being paid in the meantime, the points of controversy shall be adjudicated by our glorious prefects and their decisions shall be binding; and the collectors shall, after the truth as to the points in controversy is determined, also thereafter insert in their quittances the number of tax-units and other matters according to the provisions already made by us. 1. You must not, when sales or other divisions of lands are made and possessions transferred to others, permit curials or clerks of the tax-list, to use any pretences whereby vendors are prevented from transferring such lands to purchasers, but must compel them, to permit such transfers to be made (and the tax-lists corrected) without expense. If they say that the

purchasers are poor and they have not made the transfers because of that, you must examine this without any expense. If the purchasers are well-to-do, you must compel those that manage tax-matters to make the transfer (on the tax-books) without any detriment; but if you do not find the transferees well-to-do, you must compel the vendors to acknowledge upon the records that the change on the tax roll from them to the purchasers is made at their own risk (holding the former still responsible for the taxes), as we know that to be the custom in many provinces of the Orient. In this manner, the fisc is kept from harm, and at the same time the taxes are paid by possessors; one party will not be the possessor, while another pays the taxes. For it is highly proper that possessors should pay the taxes - not those who neither occupy nor possess the land.

Note.

This chapter provides in detail what tax receipts should contain. It also deals with a subject already mentioned in note C. 4,47,3, namely that while ordinarily the parties to a sale of property had the right to have the tax lists corrected so as to show the purchaser of the property, to the end that the former owner might be relieved and the purchaser might be compelled to pay the future taxes, such right of transfer was not, according to the provisions of this chapter, absolute, and when the sale was made to a poor person, the seller was required to guarantee the payment of future taxes. The rule previous to this enactment was doubtless otherwise, but the officials controlling the tax list had evidently at times refused to show the transfer on the list, so as to keep the seller responsible for the payment of taxes. The reason lay in the responsibility of officials and of municipalities for the full collection of all taxes assessed, as appears in various places of the Code. See also Edict 2, c.2, appended to C. 10,19,10.

Novel 17, c. 9

c. 9. We want you to know, that if we order you, at some time, to go into other provinces, you must be content with what you receive from the fisc, and must not burden our subjects to support you without compensation, but must defray your expenses, when you are in another province, out of the same allowance out of which you defray your expenses while in your own province. You must not burden taxpayers by requiring them to furnish transportation (angaria) to you or to the members of your official staff with you, but you must make your journey with your own transportation-animals, and with your own money. This applies also where you do not go outside the limits of your own province, and for some necessary reason visit the cities thereof.^a

(a) Similar in effect is Novel 128, c. 22.

c. 10. We do not allow magistrates of provinces over which they preside to appoint what are called representatives (vicarious), whether these are of worshipful or honorable rank or presidents themselves. And you must not permit any soldiers under you to live at the expense of others, but they must do so out of their own allowance (annona). If they fail to do so, live at the expense of our

Novel 17, c. 10, cont'd.

subjects and accept (gratuitous) transportation (angaria), you must, at your risk, see that the damage to our subjects is made good to them out of the former's allowance.

Note.

The defenders of the cities were the proper representatives of the governors therein. See C. 1,55, and Novel thereto attached.

c. 11. You must not permit anyone to despoil the province on the pretense of inquisition into religion or heresy, or in any other manner carry out any mandate of that kind in the province over which you preside. You will personally investigate such matters with dignity and with the public good in mind, and you will not permit anything to be done in the name of religion contrary to our orders. If a case involves the (orthodox) faith, disputed either by bishops or others, you, together with the metropolitan (bishops), must try it and give a decision, and give the matter a pious and dignified ending, which guards the honor of the orthodox faith of which it is worthy, and protects the public treasury, and keeps our subjects from harm.

c. 12. You must also take all possible care that, when anyone appears to deserve punishment, you must, indeed, visit it upon him, but you must not lay your hands on his property, but must leave it to his family and to the law and in the order provided by law. For crime is not committed by property, but by the possessors thereof, and judges reverse the proper order of things when they release those who should be punished, and seize their property, thereby punishing, instead of them, other parties whom the law, perchance, calls as successors to their property.

c. 13. You must prosecute all unlawful patronage, which, we learn, is extended in our provinces. You must not permit anyone to make any gain out of protecting others in return for an interest in rights of action or to seize lands which do not belong to him, or to exert his influence to the prejudice of the fisc. You need not inquire whose underlings the parties are who do so, since the law and our imperial will suffice to give you plenary power in the matter.

Note.

This chapter is noted in note to C. 2.14.1, where the subject of patronage is more fully discussed.

Novel 17, c.14

c. 14. No One Shall Presume to Harbor Serfs Belonging to Other Census Tenants.

You will entertain great aversion for persons who harbor the serfs of others, and you must compel them to return immediately what they have illegally received; and if they should remain for a considerable time disobedient, you will impose all the expenses of the province upon those having serfs in their possession. Where the serfs are said to be in other provinces, you will address public letters to the Governors of the same, stating therein that they are fugitives, and requesting that they be surrendered along with any property in their possession, and returned to the province of which you are Governor; and you will punish those who have harbored them by forcing them to pay the amount of depreciation suffered, through the absence of the serfs, by the land to which they are attached. Hence, they will make good the diminished value of the said land, and will understand what it means to injure others.

You will see that these provisions are executed, whether owners of land have harbored the fugitive serfs, or whether this was done by persons holding the property under lease or by virtue of any other lawful contract; for both of them must avoid obtaining what does not belong to them, thus wickedly profiting by the injury of others.

[The translation in italics above is that of S.P. Scott. This chapter was missing from Blume's manuscript.]

c. 15. You will threaten persons who undertake to put up their signs and their names on lands and on workshops in cities that do not belong to them, with the danger that if they do so, they will forfeit their property to the fisc. For if a man attempts to seize property that belongs solely to the state and to the fisc, he will pay the penalty therefore with his own property, and the public signs put thereon will be an example to others that they will be subject to the same penalty if they commit like acts. You will carefully obey all these provisions, bearing in mind what will be our opinion of, and our disposition toward, you if you neglect to do so, and what it will be, on the other hand, if you comply with our orders and the law.

Note.

This law is noted in note to C. 2.14.1.

c. 16. As soon as you enter the province, you will convoke the bishop, beloved of God, and the clergy and the chief men of your metropolis and make these imperial orders known to them by making them part of the public records. And you will post up a copy thereof in a public place not only in the metropolis but also in the other cities of the province, sending it by members of your official staff without expense (to the cities), so that all may know upon what condition you assume your position, and observe whether you comply with it and are worthy of our choice.

c. 17. If you observe these provisions, your present power will be longer, and you will make yourself more notable if, further, you will permit no one except soldiers, to carry any arms. And that will make you dearer to God and the laws and to us. You will also see to it that if a disturber of the public peace attempts to flee from this great city, either alone or with others, and comes to the province over which you preside, you will pursue him, investigate him, examine his property with all care, hold him in custody and report him here, so that if he is, perchance, one of the persons wanted here, he may be sent to this fortunate city to suffer the penalty prescribed by law.

Given April 16 (535).