

Novel 44.

Concerning notaries and that they must leave the identification signs (protocoll) on a document.

(De tabellionibus et ut protocolla in chartis relinquunt.)

Emperor Justinian to John, praetorian prefect the second time, exconsul and patrician.

Preface.

We heard of a lawsuit a short time ago which gave rise to the present law. A woman produced a document, which did not, it is true, contain her writing, for she did not know how to write, but it was drawn up by the notary, the signature of the woman affixed by a municipal clerk (tabularius) and purporting to have been executed in the presence of witnesses. Then a doubt arose as to the document, since the woman stated that the contents of the document were not authorized by her. The person hearing the suit wishing to learn the truth called the notary before him. The latter stated that he indeed recognized the handwriting of the completed document, but that he knew nothing of its contents; that he had not taken down the orders given by the woman, but had entrusted that to another, and that he was not present at the time of the execution of the document, but had entrusted that, too, to another. The person who was present at its execution appeared also, who stated that he knew nothing - for he did not draw the document - except only that he was present at its execution. The person to whom the orders of the woman were given was not found, so that if there had been no witnesses enabling the cause to proceed, there would have been danger that all knowledge of the transaction would have failed. That particular case was indeed properly examined and decided.

c. 1. But we thought best to give everyone relief in such matters and make a law governing all. So all notaries who hold such office shall personally draw such document and be present at its execution; they shall not permit it to be (finished) unless they have personal knowledge of the transaction and are able to give answer when asked

in relation thereto by the judges. Particularly must this be done when those who direct the document to be drawn are unable to read and write, since they are prone to deny the truth of the matter, which in such case, may be difficult to establish. We are enacting the present law in order to prevent such denials and direct all notaries, whether in this city or in the provinces, to observe the provisions hereof. They must know that if they do anything contrary hereto, they shall be deprived of their place (statione), and the person delegated by them to draw the instrument and who is present at its execution, shall, instead, have the management over such place, so that the situation will be changed, and such delegated person will thereafter occupy the position which the former manager had, the latter losing it or to become a clerk in such office. For since the latter considered it beneath his dignity to do what was entrusted to him, and voluntarily caused the former to do so, we inflict this punishment upon him, so that the notaries, in fear thereof, may do their duty, and be cautious in connection with the execution of documents and not, through sloth and ease, destroy the fortunes of others. 2. But if after the enactment of this law the person to whom the making of a document is delegated contrary to the provisions hereof, is unworthy to be manager of the place, the notary shall, in any event, be deprived of his right, but someone else shall replace him, but the owner of the place, if he is a stranger and not himself the notary, shall not be damaged thereby and shall not lose the income from the place. Only the person who is guilty of such conduct and who deems it beneath his dignity to do his duty shall lose the management thereof, and all other rights of the owner, in connection with such station as to the notaries who offend in the manner aforesaid, shall remain in force. 3. Nor need the notaries invent pretexts, trying to excuse themselves by reason of sickness or occupation in other matters. For if anything like that happens, they must summon those who gave them the orders, so that they may transact their own business, particularly because

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things which happen but rarely, should not throw doubt on transactions universally valid, since there is nothing so unquestioned in human affairs which, however just it may be, may not admit of doubt. Nor let the notaries advance the pretext that their income will, as a result, be diminished, because of the slowness of those authorizing them to draw documents, since it is better to draw a few well than many badly. 4. But in order that they may not deem this law too harsh, we, considering human nature, conformed our other laws thereto and on account of such possible reasons for excuse, we gave each of them authority to appoint one substitute, such appointment to be registered with the master of the census of this city in the usual manner, and to give him power to undertake the drawing of documents on behalf of contracting parties at the place aforesaid, and to be present when they are completed; but no one else of those at this place shall have authority either to accept any mandate for drawing documents or to be present when they are finished, and only the notary or the person appointed by him as substitute shall have such authority. If anything is done contrary hereto and a mandate (to draw documents) is given to any other person, the notary exercising authority, will be subjected to the punishment above specified, but the documents themselves shall not, because of their benefit to the contracting parties, be invalid on that account. We know, moreover, because of fear of this law, that the notaries will hereafter observe our precepts and that documents will be safe.

c. 2. We add hereto, that notaries shall not make the final draft of a document on any paper other than that which has in front what is called a protocoll,^(a) containing the name of the officiating glorious count of the Imperial Exchequer, the time when the document was drawn and other things usually contained thereon; nor shall the protocoll be cut off, but bound with the paper; for we know that many documents

written on such papers have in the past been and are now being proven to have been forged. Hence, if there is any paper - for that too is known by us - which does not contain the protocoll, thus inscribed, but containing another inscription, they shall not use it, as being counterfeit paper and not fit for such purpose, but they shall draw documents only on such paper as we have mentioned above. But these provisions as to the quality of paper and as to cutting off of what are called protocalls, shall be valid only in this imperial city, where many contracts are drawn, where there is an abundance of paper, and where it is easy to enter into contracts in a legal manner without giving any occasion for forgery, for which those who dare to do anything contrary hereto are liable.

(a) A protocoll, as here understood, is the first sheet of a document containing the name of the count of the Imperial Exchequer, etc.

Epilegue. Your Sublimity will take care to put this, our will, declared by this imperial law, into force and effect.

Given August 17 (537).