

Appendix 7.¹

(Commonly called the pragmatic constitution.²)

Headnote.

Justinian had nearly reconquered all of Italy by the year 541 A.D., when he recalled Belisarius, the general under whose guidance the reconquest had been made. The Goths had practically despaired of retaining any portion of the country, when they invited Totila to the Gothic throne. He [Belisarius] was a man of great energy, and the war was renewed and kept up until Totila fell in battle in 552 A.D. The instant law was enacted for Italy in 554 A.D. Totila is called the tyrant, and many acts done during his control were invalidated. The laws of the empire were re-extended to Italy and a number of provisions were made which were intended to specially apply to the reconquered territory, although some of the provisions merely enunciated the principles of the general laws applicable through the empire.

c. 1. That all grants made by Amalasuinta or Atalaricus or Theodatus shall be valid. Upon petition of Vigilius, venerable bishop of ancient Rome, we have thought it best to make some directions which are for the benefit of all those who live in the West. We order therefore in the first place, that everything that was granted by Atalaricus or Amalasuinta, his imperial mother, or Theodatus to the Romans, including what was granted upon request of the Senate, shall remain valid. We also want to remain valid everything that was granted by us or by Theodora Augusta, of blessed memory, formerly our spouse, and no permission is given anyone to do anything against that which was by the aforesaid persons given or granted for any purpose or for any reason, excepting herefrom the gift of the property of Marcianus made by Theodatus to Maximus, the half of which we

¹ At the top of this manuscript page, Justice Blume penciled-in "To C. 1.27." This is the Code title "Concerning the office of the Praetor Prefect of Africa and concerning the whole organization of that diocese."

² At the end of chapter 27 in this appendix Blume also gives this as "pragmatic sanction," which is its most common designation.

remember to have given to the glorious Liberius, leaving the remaining portion to the magnificent Maximus; these portions shall firmly remain in their respective possession.

c. 2. That all the gifts made by Totila³ shall be void.

If anything was done for or given to any Roman or other person by the tyrant Totila, it shall not remain of any force or effect, but we direct that the things taken shall be restored to the former owners by these persons who detain them. For whatever is found to have been done by him during his tyranny shall not stain our time of legitimacy.

c. 3. The loss of instruments shall not prejudice those living in captivity.

Although it is provided by a general law,^a that the loss of instruments, executed for them, shall not prejudice any persons as to their property, nevertheless we think it best to specially renew it in those places,^b since we know that through various calamities and hostile incursions in the city of Rome and in other places, men have lost their instruments. In order, therefore, that no one may be unjustly sued or sustain any detriment, we ordain that the loss of instruments or the spoliation thereof shall not prejudice owners, possessors or creditors for whom instruments were executed, as to their ownership, possession or debt.

a. See C. 4.21.4 and 5.

b. I.e. in Italy.

c. 4. And if anyone has upon his own initiative or by order of anyone seized the property, for instance the flocks, of an absent person or of a captive or holds it by claiming it, we direct it to be restored to him (the absent person) without delay, upon his return or liberation, or to his heirs. As the authority of law provides, it must be restored to his heirs if he succumbs to death.

³ In the body of this constitution, Blume spells this name Totilas, even though he spelled it Totila in the headnote. I have standardized it as he first used it, and as seems most common.

Note.

For seizure of property of absent persons, see also C. 8.52.

c. 5. No one shall seize the property of another.

Since we think it likely that various persons, in the time of the tyranny, alienated their property through fear to persons who held some office or were commissioned by Totila for some transaction, or who had power or favor under him, making such alienation by sale or by virtue of some other contract, but now desire to rescind what was formerly done, because done through violence or fear in the time of the tyranny, we ordain that everyone shall have the right to receive his property back or reclaim it or demand possession from the judge, forsooth upon the restoration of the price, which, upon proof by the party who alleges it to have been paid, is shown to have been so paid, without subsequently being taken away again and received back in some manner or through some fraud. For we believe it to be not without reason that many things were done during that time through fear or violence, which the justice of our times demands to be rescinded. Any penalty specified in instruments shall, because of the foregoing provisions, be invalid in every respect.

c. 6. Concerning the time of postliminium, that is, after captivity.

Since everything has been restored to us by the propitious God, we ordain that the prescriptive periods of thirty and forty years and others shall apply and be in force, according to the tenor of our laws, provided that the times during the warlike confusion since the advent of the tyrants shall not be included in the prescriptive periods.

Note.

This chapter is also appended to C. 8.50, which deals with the subject of postliminium—rights after captivity. [It is not appended in this edition.]

c. 7. That instruments shall not be revoked as void.

Since, moreover, we have learned that various contracts were made between besieged Romans, or documents were written, while hostile arrogance besieged the

city of Rome or other places, and that some persons are now rescinding the aforesaid contracts and are revoking the documents as void, we ordain that although such documents perished through hostile incursion, no right shall exist to invalidate what has been done, but all contracts made at the time of the siege shall remain in force, all documents having their proper effect, without prejudice to their owners from such loss. For no rule of exactness permits that whatever has been rightly done should be overturned by the fortuitous circumstance of war.

c. 8. Concerning movable and immovable property.

The property, moreover, movable, immovable or self-moving, which Romans, by any right or title from the time of the king Theodoric to the advent of the nefarious Totila, possessed personally or by usufructuaries or other persons, through whom the owners were in possession, shall, without disturbance, be preserved for them hereafter, in the order, forsooth, in which they possessed it during the aforesaid time.

c. 9. As to immunity in regard to the tribute.

In order that the inhabitants of any province may not suffer any trouble in regard to the exaction of tribute, we ordain that no apparitors of any official of major dignity shall be sent for such collection, but (shall be made) by the provincial magistrates and their official staff, (so that the provincials will not) sustain any damage in regard to the collection of tribute. Permission, however, shall not be denied the magistrates of major dignity, in case the tribute is not all paid in, to call upon these (provincial) magistrates and their official staff, and collect the deficiency from them, so that both the public account and the benefit of the taxpayers is looked after.

Note.

The rule here stated was the general rule, with some exceptions. For a full discussion see note C. 10.19.9.

c. 10. Concerning confirmation of exemption from tribute.

Payment of public tribute is directed to be made in the usual places and during the usual times in the customary manner, and no innovation shall be made in regard to the payment of tribute by reason of the incursion of the enemy, but each shall make payment hereafter, either to the treasury (ad arcam) or in the province, in accordance with custom or the tenor of our benefactions.

c. 11. That laws of the emperor shall be extended into his provinces.

The laws, moreover, and the statutes included in our Code, which have long ago been sent into Italy by edict, shall be in force. The constitutions, too, which we thereafter promulgated, shall be published by edict, and shall be in force in the land of Italy from the time that they were made public by edict, so that the state being united by God's will, the authority of our laws shall also be extended everywhere.

c. 12. Concerning fees (suffragia)^a of taxpayers.

We direct that suitable and competent provincial magistrates shall be chosen for their respective places by the bishops and chief men of each region, and from the province which they are to govern, without purchase money (suffragio), the letters-patent also being furnished them by the proper magistrate, so, nevertheless, that if they are found to have inflicted any wrong upon taxpayers, or to have demanded anything above the fixed tribute, or to have damaged any landowners by too great a measure in connection with forced sales,^b or by other detriment or burden, or my unjust weights or gold pieces, they must make it good from their own property. And if any magistrate or tax-official (actionariis) is found to have done so during the time of the nefarious tyrants, we direct him to indemnify the person from whom he took from his own property, since we want our subjects to be kept free from harm everywhere.

Given at Constantinople, August 13, 554.

a. See Novel 149, appended to C. 1.40, and note [not appended in this edition].

b. See C. 10.27.

c. 13. That ownership shall be restored to each.

Since, moreover, we have learned that when the enemies were, by a propitious God, driven from the various provinces, some persons, finding flocks that were left by the enemy, appropriated such flocks to their own use, although they formerly belonged to others, we ordain that they shall have as much as, upon investigation, is found to belong to them. But if anything is recognized by any persons as their own, they shall receive their own, but of whatever property the owner is not known, shall be distributed among those who are found to have lost flocks in the same province, the division to be made pro rata.

c. 14. If anything is taken from anyone, it shall be restored.

And if any taxpayer is wronged as to his money or his products through the occasion of the collection of tribute or on the pretext of any burden or in any other unreasonable manner, this shall be paid back to the party from whom it was taken, so that the inhabitants of the provinces everywhere may legally receive back their own, and may enjoy the felicity of our times.

Note.

This is also appended to C. 11.57 [not appended in this edition].

c. 15. Concerning slaves who married free women in the time of the tyrants.

We have also thought best to add to the foregoing topics that if slaves are found to have married free women during the nefarious times of Gothic ferocity, or female slaves were married to free men, the free persons shall, by the present law, have the right to separate from the spouse that is slave, but the female or male slave must remain in control of the master, and no prejudice shall result to masters out of the past as to such slaves. But if (the free persons) want to continue such marriage, they shall not be prejudiced as to their own liberty, but the children will follow the status of their mother; we direct that this shall also apply to children (already) born of such marriage.

c. 16. Concerning virgins dedicated to God.

Since it is without doubt that the arrogance of tyrannical ferocity committed unlawful acts as though legal, we ordain that if men (forcibly) married women dedicated to God or who lived in religious places, they shall have no right to hold them or to collect any dowry that perchance was promised in writing, but unwilling women shall rather be taken from them and again be restored to their monasteries or churches or holy purposes to which they were dedicated.

Given August 13, 554.

c. 17. That taxpayers shall not be burdened by forced sales.

In order that taxpayers may not sustain any detriment by reason of forced sales (buying up property for public purposes—comptiones), we ordain that forced sales shall be made in every province (only) of the (particular) product which is known to be abundant therein; we do not permit such forced sales of a product known not to be abundant there; the price for such products shall be fixed at the sum then prevailing on the market at that time, and the amount thereof shall be credited on the taxes of each taxpayer. Commerce on ships shall not be hindered in any manner, so that our army may be nourished, and so that the taxpayers may pay their taxes payable in gold with products of which they have an abundance. The forced sales shall be distributed according to the judgment of the bishop and of the chief men (primates) of each place, so that the taxpayers will suffer no oppression in any manner through the avarice of apparitors.

Note.

For forced sales generally, see C. 10.27, to which this chapter is also appended [not appended in this version].

c. 19. Concerning measures and weights.

In order that there may be no occasion to perpetrate fraud or injury on provincials, we ordain that money and products shall be given and taken according to the measures and weights which Our Piety has for the time being delivered to the blessed Pope or the noble Senate (of Rome).

Note.

See C. 10.73.1 for this subject generally.

C. 20. Concerning the change of gold pieces, that is, coins.

Since we know that gold pieces of ancient Roman emperors are easily found in those places (i.e. Italy), but that merchants and other persons cause a loss to our taxpayers on account of the change of the gold pieces, we ordain that gold pieces stamped with the portrait of Roman emperors shall (freely) pass through all the provinces without detriment by reason of any change, and contracts shall be made by means thereof. Anyone who presumes to inflict any detriment by reason of the change of gold pieces, shall for each gold piece give another to the person with whom he contracted.

Note.

See C. 11.11.3, dealing with this subject generally, and to which this chapter is appended [not appended in this edition].⁴

c. 21. That the value of property taken shall be paid.

If anyone is found to have taken any ornament or other material from immovable property that belongs to another, he shall fully restore it, or if it is already joined to a building, he shall be compelled to pay the value, so that the authority of our laws will be upheld everywhere. We also direct that documents belonging to another and detained by anyone shall be restored to their former owners, so that all persons may everywhere enjoy the assistance of our laws. If a document is found to have perished, and another has a copy thereof, two originals having been executed as is customary in contracts, a copy shall be made from the document which one of them has and given to the party whose copy has been lost, so that he may have the proper protections. And if anyone takes or accidentally finds another's document and maliciously burns, conceals, spoils or in any manner ceases to possess it, then the

⁴ An earlier draft of this footnote is as follows: "The places spoken of here were in Italy. This edict was issued upon Narses reconquering Italy from the Goths shortly before this edict was issued."

party guilty of the fraud shall pay to the party to whom the documents belong his damages.

c. 22. That food (bread) supply (annona) shall be given to doctors and others.

We direct that the food supply which Theodoric was accustomed to give to the Romans and which we also have given them, shall continue to be given in the future, and we also direct that the food supply (salary) which was formerly customarily given to grammarians, orators, physicians and lawyers, shall also hereafter be given to those of them who are engaged in their profession, so that youths instructed in the liberal arts may abound in our state.

c. 23. That civil judges shall hear cases.

We direct that cases between two Romans or when a Roman is sued shall be heard by civil judges, since order does not permit that military judges should have anything to do with such transactions or cases.

c. 24. That exchanges made shall remain valid.

Exchanges or acquisitions made by the state (*rei publicae*) or agreements with the public treasury up to the time of the arrival of Totila of infamous memory, shall remain valid, provided that one is not entitled to something that another possesses.

c. 25. That public workshops shall be preserved.

We direct that the customary allowances and favors for the repair of the city of Rome or of public workshops, the channel of the river Tiber, the forum, the port of Rome or water pipes shall be continued, provided that they shall be paid from the sources provided for that purpose.

c. 26. We have further learned that an extra tax on each thousand (i.e. a taxation-unit) has been levied on the possessors of Calabria or Apulia for not delivering the property bought up (on forced sales for the public supply); that therefore the products had annually been bought up by merchants; that at present, however,

merchants are attempting to avoid doing so, and that the property owners of the province are burdened both by the extra tax as well as the work of buying up the products. Since there are plenty of merchants who could attend to the buying, we ordain that if Your Magnitude, upon examination finds that it is possible to have the products bought up delivered by merchants, the taxpayers of the province shall not be burdened (therewith), since, when an extra burden is imposed on them, it is impossible for them to also bear the burden of delivering such products.

Note.

The chapter is somewhat uncertain in that it speaks both of buying up the products, as well as of delivering it [them]. The intent evidently seems to have been to relieve the taxpayers from delivering the property, since they paid an extra tax for that, and where the law speaks of buying up the property, it was probably intended to refer to the delivery of the products bought up.⁵

c. 27. That those who want to sail to the imperial court shall not be hindered therein.

We also permit that illustrious and magnificent senators, who want to come to the imperial court, may do so without hindrance, and no one shall have the right to prevent them, in order that the right to go before the emperor, which is due to our senators or taxpayers, may not, in some manner, seem to be denied. We also grant them the right to go to the province of Italy and remain there as long as they wish for the purpose of restoration of their possessions, inasmuch as to do so and put them in proper state of cultivation is very difficult for owners who are absent.

⁵ An earlier draft of this footnote reads as follows: "While this chapter is not very clear, it seems that merchants had functioned as officials to buy up supplies for the army and for other public needs; that the taxpayers were relieved from hauling the products, but paid an extra tax therefore; that thereafter the merchants unwillingly continued functioning as officials to buy up the property, and were attempting to shift this duty onto the taxpayers. This and the preceding chapter of Appendix VII were enacted for Italy, when Narses had reconquered it from the Goths.

Your Magnitude, therefore, will carry these provisions, made in this imperial pragmatic sanction, into effect and cause them to be observed and a penalty of ten pounds of gold will be hanging over those who violate our orders.

Given August 13, 554.

Note.

See also C. 12.1.18. It is apparent that the right to come and go where they wished had been denied to senators here mentioned, though that rule was modified to some extent by C. 12.1.18. Italy was in bad condition; whole districts in the country had been devastated. It was necessary to devote time and labor to restore it, so senators here mentioned were permitted to go and stay there. And those already living there were permitted to freely go to Constantinople because of the governmental conditions that had arisen, so that they could personally present their grievances to the imperial court.