

Novel 15.

Concerning defenders (of the people).
(De defensoribus.)

Emperor Justinian to Johannes, praetorian prefect the second time.

Preface. Unless we quickly put the office of defender in proper order, we shall no longer even recognize the proper meaning (thereof) from the ancient name. As different names were given by antiquity to different things by which the meaning thereof was clearly indicated so the name of defenders clearly shows that antiquity placed some persons in charge of certain things in order to keep them free from wrong. Hence we call such persons defenders in the language of our fatherland, who may extricate those that have been wronged from their evil condition. But the office of the defender has in many parts of our state been so trampled on and despised that it is a disgrace rather than a dignity. Thus obscure men become defenders and are elected as such rather through pity than choice. Men who have no sufficient means of support obtain the office by begging for it, and are exposed to, I know not what whims of the presidents. For the latter remove them when they wish, for no or only slight offense, and put others in their place, making them substitutes for the defenders. And they do this several times a year, so that the defender is regarded with contempt by the apparitors, magistrates and inhabitants of the cities. Transactions before them are the same as none at all. Unless the presidents of the provinces have given an order, the defenders do not even dare to make records of oral proceedings before them, serving the presidents in all things and acting only at their beck and call. If they make any (such) records, they sell them; next, since they have no archives in which to deposit records made before them, whatever records they have made perish, and no proof of (any of) remoter times can be found in their possession; the parties who need them must look for them among the possessions of (the defenders') heirs and other successors; some that are found will not be worthy of credence; some of them have perished and have been destroyed to the extent so as to equivalent to no records at all. Now since we

have well provided for the magistrates (presidents, etc.) and have so broadened the scope of their powers in the provinces, that their supervision over cities is even more out of reach, we have therefore deemed it proper also to define matters relating to defenders. Suitable harmony will be created if defenders of cities are put in the category of magistrates, letting the president of the province rather be a magistrate of magistrates and so more honored than the former; for his own dignity will be increased in proportion to the power of those who are subject to his control.

c. 1. We must ordain, then, in the first place, that no one shall have the right to decline the election as defender, but all citizens of good standing must, each in turn, perform the duties of this office for them (the cities). That, as we learn, was also the custom and practice in former times. No one shall be permitted to decline the office, through the magnificent, illustrious dignity has been conferred upon him, or though he has been honorably discharged from military service, or though he may show a special imperial exemption granted him, though that may be by pragmatic sanction. But the inhabitants of the city, who are taken into account, must each fill the office in turn, and when all have filled it in their turn, they must do so again, and give the city the aforesaid care, so that the defender of each city will seem to be a magistrate rather than such defender, put in office by the common suffrage, under oath, of all the property owners who inhabit the city with them, not by those who stay there temporarily. **1.** He must take an oath that he will act according to law. He must be confirmed, as we hereby determine, by the order of our glorious prefect, to serve for two years and then to be relieved of the office. Nor shall the president of the province have power to remove him, but shall report any malfeasance to the glorious prefect, so that such defender may be deprived of his charge by the authority that confers it on him.

c. 2. No one who has the governorship (of a province), nor the defenders themselves, shall appoint a representative (vicar) for the defenders; but this shall be entirely forbidden them. The presidents shall not even appoint representatives of their own in the cities except these defenders; for we want the latter to represent

the former in the cities and to look after all the interests of the cities in which they are located.

c. 3. Testaments and gifts may be filed for the record with the defenders, and they may do everything that is proper in connection with documents of that kind; the presidents of the province shall not hinder them in making a record, or tell them not to make a record of a certain thing, or not to furnish a copy of such record. For we allow the latter to have no such power, considering it absurd that men should lack necessary (records of) transactions, because of some inconsiderate impulses or orders of the governors. The defenders shall rather be permitted to make such records as are desired and furnish copies thereof (edant), and the fact that they may touch the president of the province or some magnate, shall be no hindrance. For persons who are governors or have some (other) position of dignity, should not forbid the making of any records against themselves, but their manner of living should be so pure, as not to give anyone any occasion to make any complaint against them. And whether the governor lives in the city or not, no one must be hindered in having any record he wishes made, before the defender concerning anything whatever, excepting those things which require the (exercise of) jurisdiction (of the governor), and which depend on his authority. **1.** Defenders shall also lend their aid in every way to collectors of public taxes, and shall act zealously in making a record, if that is necessary, of contumacious conduct of ungrateful subjects; and if it is necessary for them to be present to see those who conduct themselves improperly, they shall bear witness thereto, and (do the same when it is necessary) to calm popular tumults; and they shall (in general) act in the place of the magistrates (governors), particularly when these are not there. The apparitors of the province, too, who are in the city where the defender is, shall obey him and be by his side, so that when the president of the province is absent, the cities may not seem to be in need of anything by reason of the latter's absence. The defender shall have a shorthand writer (exceptor) from the provincial staff, to serve him, and shall have two apparitors to carry out any orders which he may make. He shall have power to sit as judge in all civil cases involving not more than 300 gold pieces; and no one

shall be permitted to drag a defendant before the president of the province, if the suit involves not more than the above mentioned sum of 300 gold pieces.

Note.

As to the right of making public records of oral statements or proceedings and of recording documents so as to make them public, see full note at C. 1.56.2.

c. 4. And plaintiffs shall not value the sum involved in the suit at a greater amount (than it actually is), in order to injure defendants and compel them to go before the president of the province, rather than the defender of the city. If they do anything of the sort, and the decision shows that the amount involved is less than 300 gold pieces, but was stated in a greater amount on purpose so that the action might be tried before the president of the province rather than the defender of the city, the plaintiff alone shall pay all the expenses of the suit.

c. 5. Appeals shall lie from the defenders to the presidents. If any apparitor inflicts any wrong on the defenders, the president of the province shall lend his aid and chastise the offender. If he neglects to do so, the defender shall have the right to report it to Your Sublimity, so that proper assistance and satisfaction may be given them from that source. They shall be real defenders against wrongdoers, and imitate the dignity of magistrates. **1.** If a man (on the regular list of eligibles) falls out, another man shall be immediately selected from the list on regular order, under oath, as stated, who shall enter upon his duties immediately, but his selection shall be reported to and confirmed by Your Sublimity. No representative for the defender shall be appointed, as stated before, so as to give any plausible occasion for reinstating the former disorder. **2.** Your Sublimity must issue orders to the various provinces that some building in the cities be assigned where the defenders may file their records; and someone in the province shall be appointed as custodian thereof, so that they may be kept from destruction and may be found readily by those who have need of them, and that the defenders have archives, and that whatever has been heretofore neglected in the cities should be corrected.

c. 6. The defenders of the cities shall also be appointed without paying any compensation therefore, and the fee to be paid to the office of Your Sublimity for the decree (confirming their election) shall be four gold pieces where the city in question is large, and only three gold pieces if the city is small, as has already been provided by our law.^a If they (the defenders) have (the right to) any public salary, they shall receive that in the customary manner. They shall try all smaller offenses, administering proper punishment, and shall guard those arrested for graver crimes, sending them to the president of the province. In that way each city will be guarded by a magistrate and the whole province put under a greater magistrate, will enjoy more watchful attention. By attending to certain transactions, the defenders will take a number of them off the hands of the (provincial) magistrates, and will lighten the labors of the latter, in looking after the general interests of all, by settling particular matters, by deciding cases of those who have been wronged or seek redress at law, and by demonstrating, as we have often stated, that persons in power are men of dignity. If some persons are negligent in paying public tribute, the presidents shall order the defenders of the cities to collect them from the delinquents and thus aid them (the presidents) in this matter also. In case these provisions as to the appointment of a defender are not observed, or if anyone declines the office on the pretext of any position of dignity, military service, privilege or anything else, he may know that he will be punished by a fine of five pounds of gold, and after paying that sum, to be expended on the public works of the city, the delinquent must nevertheless perform the functions of the office. For it is proper that each of the men of standing should perform public duty in the city where he lives and pay this debt of gratitude for his habitation there.

a. Novel 8, edict to bishops.

Epilogue. Your Sublimity will cause this, our will, declared by this imperial law to be made known by your own orders in all the provinces under you, so that all will understand that we have all important, mediocre, and unimportant matters at heart, and that there is nothing that we consider outside of the scope of our care. And you will direct by your orders that the presidents of the provinces take care that

defenders are appointed in each city, from among those who enjoy a good reputation, each in turn, as has been stated, by common suffrage, under oath; that the order (in the list of eligibles) mentioned be fixed (beforehand), and that (they in their turn) fill the office for two years, and that if one falls out, another shall be put in his place. The ballots shall be cast under oath, and the appointee must take the prescribed oath when he takes the office. The choice shall be made by the bishop, beloved of God, the clergy and the inhabitants of good reputation. This should be done immediately, so that everything will proceed, as stated, according to the provisions of this general law. If those who now fill the office are of approved character, they shall be inserted in the list (of eligibles) and fill the office for two years. If they have already functioned for two years, they shall be released from their charge, unless, by consent of the voters, they are willing to continue in the office for two more years. If they have not yet filled the office for two years, but they are found worthy to have a place in the list mentioned, they may fill out the remaining time. No one shall be defender beyond that time, but shall be limited to that, unless the voters re-elect him without dissent. If that happens, they may serve for another two years, but must then quit the office and cannot fill it again until they are called to it again in their turn, lest it become perpetual by uninterrupted continuance in the office and by keeping certain ones therein by artful methods. All these provisions shall be in force for all time, since we have given them to our subjects after thinking them out with great care, during sleepless nights, guided by our devotion to God.

Given at Constantinople, August (or July 17), 535.