

Novel 113.

A constitution that no imperial sanctions or orders be issued during the pendency of a suit (concerning the same), but that cases shall be decided according to the general laws, and that the present law be made a part of the records (of each case) before the appointment of a procurator (for a party) is confirmed.

(Constitutio ne in media lite sacrae sanctiones vel sacrae iussiones fiant, sed secundum generales leges causae decidentur. Et ut praesens constitutio ante personarum confirmationem actis inseratur.)

Emperor Justinian to Theodotus, Praetorian Prefect.

Preface. Since we want all things done according to our laws and are anxious that the force thereof be preserved, we enact the present law in behalf of the observance of these laws. For we have learned that some judges who want to delay litigants, but seek to cover up their delays, frequently give as a pretext that some imperial sanctions or commands or some orders of our worshipful referendaries have been filed with them, as though these directed in what manner the cases should be tried and decided.

Note.

Referendaries, among other duties, carried messages of the emperor to the various governors. See C. 1.25 and notes, and headnote C. 12.7.

c. 1. And we therefore ordain that while a case, civil, criminal or any other, is being examined by a judge, here or in the provinces, that no pragmatic sanction, rescript, imperial command, written or unwritten, or deposition,^a made in this imperial city by our worshipful referendaries or by anyone else, which directs the judge as to how to examine or decide a pending case, shall be filed of record with such judge, or if made of record, have any validity, but the case shall be examined and decided according to our general laws; for whatever is adjudged by authority of the laws needs no other order. If any cause comes before us, either one that has already been tried before a judge or one that has not yet been begun in court and we are pleased to dispose of and decide it ourselves, it is not in need of any decision on the part of another judge; for any matter which, as has been stated, is disposed of and decided

by imperial decision is in no need of an examination, decision or review on the part of others. If we, to whom God has also given the power to enact laws, give a decision in any case, we entrust to no other judge, either by a sanction or the orders of the worshipful referendaries or the deposition of anyone else, as to how such case is to be examined or decided, since whatever has once been decided by us cannot be reviewed by anyone else. This applies when a written decision has been given by us. If any judge has any doubt as to a law, he may refer it to us and receive from us an explanation or interpretation and decide the case accordingly.

1. But if, while a case is tried, a pragmatic sanction or any deposition of our worshipful referendaries or of anyone else, or any order of the kinds mentioned is filed of record with a judge, giving any direction as to how he should try or decide the case, he shall take no account thereof whatever, but all such shall be void and without force, and he shall examine the case and bring it to a conclusion in accordance with our general laws. If a judge disobeys these provisions, he shall pay a fine of ten pounds of gold and suffer even greater displeasure at our hands. The person who dared to dictate such sanction or who gives him any assistance, and our worshipful referendaries making such disposition, shall be subject to the same punishment. These provisions apply whether anyone sits in judgment pursuant to an imperial sanction or upon order of a magistrate or as arbitrators chosen by the parties, and whether the proceedings are reduced to writing or are without writing. If anyone of these judges, disdainful of his safety, dares to give his decision pursuant to any of the foregoing orders, it shall be void, so that no appeal even is necessary, and no one incurs any penalty which arises out of an arbitration-agreement; for we want all the judges to examine and decide cases according to the general laws. It is, of course, clear that no order of a magistrate can be valid as against the provisions of this law.

Note.

Deposition: This term is mentioned several times in this chapter. It refers to a written statement made by a referendary of an oral order given by the emperor. These referendaries carried oral and written orders of the emperor to the judges, as

clearly appears here. If the emperor gave an oral order, the referendaries were required to make a deposition—written statement thereof, as shown by C. 1.15.2.

c. 2. Judges must further know that causes which are now pending should be decided according to our general laws, although someone has already obtained an imperial sanction which directs (the method) of examination and decision of the judge. The parties who have already obtained such sanction, prior to final decision of the case, cannot obtain any assistance through the former, and if a final decision has already been rendered, it cannot in any way be disturbed by reason of this law, although an appeal has been taken and there is hope that the decision may be reversed. But an order, whether in writing or not, which does not direct any judge how to conduct the trial or to give his decision, but simply directs that a case shall proceed with due speed or that a copy of records be furnished, or that a lawful decision be rendered, or, according to our laws, joins another judge to hear the case, is not hereby forbidden to be issued or declared invalid.

Note.

Imperial orders were generally required to be in writing, in order to have any validity. C. 1.15.1. Some orders, however, might be oral, as already mentioned in note to c. 2 hereof, and as herein enumerated; and see a further exception in C. 1.15.2. The instant chapter has been referred to in note to C. 1.15.2.

c. 3. In order that all our subjects, and particularly those who are troubled with lawsuits, may know of our forethought in their behalf, and in order that no one may ignore this law or pretend to have no knowledge thereof, we ordain that this law shall be made part of the records in every case commenced before a judge, before the appointment of the procurator is confirmed.^a And thus appearing prominent upon the records, it will forbid anything undertaken in violation of it in all respects including, perhaps, even in respect to the confirmation of procurators, and while it threatens the punishment of those who violate it, it will curb them in the attempt, and prevent the occasion of the infliction of penalties. We have enacted this law to banish iniquity and injustice from all things, keeping it in every respect safe and free

from snares, and through it the other laws of the state according to which we received its government, through God, and we always wish that our state be preserved and protected by them.

a. I.e., before the sureties are given and accepted for the procurator or agent appearing for a party; for ordinarily security was required. C. 4.11.3; see headnote to C. 2.12.

Epilogue. Your Sublimity will obey this, our will and the provisions herein made, making them known to all, causing this law to be published in this city and sending edicts to the presidents of the provinces, so that all may thereby know how we look after their interests.

Given November 22. 541.