

Book I.
Title XV.

Concerning imperial mandates.
(De mandates principum.)

Bas. 2.6.18.19; D. 1.4.

1.15.1. Emperors Gratian, Valentinian and Theodosius to Eusignius, Praetorian Prefect.

If anyone claims to have been entrusted with our secret mandates, all must know that on one is to be credited with anything except what he proves in writing, nor need any one be terrified by the rank of anyone, whether that of a tribune, notary or count; but in all cases reference must be had to our imperial letter.

Given at Verona, June 16 (383).

Note.

By the term “mandate,” as used in connection with 8imperial orders, is meant an administrative order directed to some officials. The instant law directs all such orders to be in writing. The next law makes an exception. These orders were sent through various officials, including the *agentes in rebus*—imperial messengers. The instant law mentions counts. It is not clear what counts were meant. Notaries and tribunes (of notaries) are also mentioned. The latter (tribunes of notaries) may be termed imperial secretaries. C. 12.7. He was at the head of the notaries, who assisted him in his work. Persons sent as messengers from among their number were called referendaries, as noted in the next law and as more fully mentioned in headnote to C. 12.7. See note to next law.

1.15.2. Emperors Justin and Justinian.

We ordain that no one of our magistrates, whether of the highest or medium rank, shall add to his decisions that we have orally directed anyone to be brought or exhibited before any judicial tribunal, or that he should make any certain order in connection with any matter before him, except that an order as to appointment of a (special) judge or an associate judge is rightly made which states that our direction by which the (special) judge or associate judge was appointed was issued orally.

1. Similarly, the quaestor of our imperial palace and the worshipful referendaries of our Piety should duly cause to be made known by their order¹ our imperial direction made orally when those who come before us and ask us for the appointment of a (special) judge or associate judge, or other similar matters pertaining to litigation. In such case alone do we permit mention to be made that an order of ours has been made orally. (527)

Note.

The general temper of this law is the same as that of law 1. Probably all judges were hereby prohibited from stating in their decisions that the emperor had ordered certain things orally. The purpose was to have judges act according to law and not to use secret orders of the emperor as a cloak. Novel 113 makes this still plainer. Novel 124, c.4 confirms this law and directs that referendaries should not in any way intermeddle in any suits and should confine their activities to communicating written or oral orders to the judges. It will be noticed that oral orders were permissible. Bury, 21 Harvard Studies

¹ [Blume] C. 1.3.1. “Depositionem”—probably an order made of record.

in Classical Philosophy 27, says of referendaries: “It was their duty to report petitions to the emperor, to transmit the imperial answers to the officials concerned, to convey unwritten...mandata of the emperor to judges (both in the capital and the provinces), certifying them by a deposition.” Yet law 1 of this title forbade orders without writing and it is hardly credible that the deposition of the referendary was intended to suffice, except as mentioned below and in the instant law. Gutherius, De off. Domus Augustae 155, holds that all such mandates were required to be in writing. Perezius, in his commentary on this title, holds the same, except as to the modification by Novel 113 already mentioned, which in c. 2 provides: “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 the 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.” It may be noted here that the emperor could interfere in any matter and direct the judges to proceed. Further than that, Justinian did not want to go. In fact by Novel 125, Justinian directed the judges to decide cases without first referring them to him, as had been customary to a great extent, as already mentioned in note C. 1.14.2. It may be mentioned here that associate judges were at times appointed when the regular judge was thought to be prejudiced. Note C. 3.1.18. And special judges might be appointed at any time. It may further be noted here that if oral orders were given by the emperor to the referendaries or other persons, they were required to be reduced to writing-deposition. And when the order was communicated to a governor or other person, this deposition was filled for record, as appears from c. 2, Novel 113.