

Novel 69.

That all shall yield obedience to the presidents of the provinces in criminal as well as civil cases; that cases shall be examined there and no one shall be exempted therefrom except by a pragmatic sanction.

(Ut omnes oboediant prasidibus provinciarum tam in criminalibus quam in pecuniariis causis, et ut ibi causae examinentur neve quisquam ex privilegio quodam excipiatur praeter sacram pragmaticam sanctionem.)

Emperor Justinian to the people of Constantinople

Preface. One virtue is to be considered the most perfect, namely that which grants everyone his rights. We call it justice and it derives its name from the act itself. Unless its benefits follow each of the other virtues, the things that are proper do not come about. So we shall not even praise bravery if it is not joined to justice, although the language of our native country names as the only virtue the strength that exists in arms. For if you take justice away from it, it is only the source of evil and not of any good. And as we see justice neglected in the provinces, we have thought it best to strengthen it by a law acceptable to God, and give suitable force back to it. For many, relying upon imperial letters, privileges, pragmatic sanctions, orders of magistrates or many other excuses, commit torts in the provinces, but contend that suits against them should be tried at some other place. But if a person is wronged in a place or has lost some of his property, or litigates about boundaries, ownership or possession, pledge or any other thing, how can he produce the proofs of matters in which he has been injured in some other place? Men who do this, do so merely in order to show their power and strength which has no confidence in justice, thinking that their power will last forever and without considering the innumerable examples which show with how great a difficulty and in how few instances people of power spring from people of power and rich from rich; that, on the contrary, weaklings generally spring from men of power, and paupers from the rich, as though the injustices of the fathers were visited upon their offspring; nor do they think or reflect that the power which they use for their advantage will be used against their children who do not have the power of their fathers.

c. 1. Reflecting upon these things, we have thought it best to enact the present law. We, therefore, give orders to all who live in the provinces and who obey our scepter in any part of our realm, in the Orient and the Occident, and in the part of either side (the north and the south), that if anyone commits an offense in a province or becomes a defendant in a civil or criminal case, whether relating to boundaries of fields, ownership, possession, pledge or any other matter, must render an account thereof in the court of that province and cannot hope to get an advantage outside the boundaries thereof. This has, indeed, been variously stated by previous legislators, although not so distinctly, and we have thought it out. **1.** Though, therefore, the offenses are great or the dealings between men are of importance, the suits and accusation in relation thereto, if necessary, and the investigation thereof shall, on account of the facility to produce proof thereof, take place in the province. Even though the wrong committed is small, it would be a greater wrong if a plaintiff could not enforce his rights in relation thereto but take the risk to go into another province, there to sue and litigate with an offender whom, on account of his absence (therefrom) or on account of his power or on account of his own weakness, he could not sue (there) with advantage. For what would be worse, than [to] compel a man who is wronged by driving away his cow, horse, beast of burden or other cattle, or—to mention a small thing—his cook, not to sue in the province from which the property is taken, but to run to some other place and there prove his damage, and incur expenses greater than the value of the property, or, on the other hand, to suffer the loss with a sigh? By reason of such facts, a great multitude appeals to us daily, importunes us generally in matters of small importance and cause us a great deal of trouble. We see a great crowd of men and women compelled to leave their home and come to this city, many of them begging and collecting alms; some of them even die here.

c. 2. If, therefore, both the plaintiff and the defendant are in the province, the case shall not be dragged into another province or to this city, either by reason of any privilege or pursuant to any order, but shall be decided there. If one of them is present and the other absent,^a and the person who is present suffers wrong at the

hands of parties subject to an absent person, the party actually committing the wrong shall be summoned, whether that is the procurator, lessee or any other like person. But he shall have the right to have the suit postponed, the time depending on the distance from the province according (generally) to the law formerly enacted (C. 3.11.1), that he may report the matter to his principal. If the province in which the suit is commenced is near (to the province where the principal lives), with one or two provinces intervening, four months' delay shall be given; if the distance is greater, six months; if the place (in which the principal lives) is in Palestine, Egypt or a remoter place, eight months suffice for the purpose; finally, if the place is in the Occident, in the north or in Libya, then the time which was deemed sufficient by previous law-givers is fixed; that is to say, nine months; so that such principal may entrust the suit to the person who reports to him, if he has confidence in him, or, if not, he may send some other person to defend the action and pay the judgment rendered, whether the case is important or not, unless an appeal is taken. If such report is made but the principal entrusts the suit to no one, and the time fixed has passed, the judge sitting in the case shall compel the person summoned to appear, even against the latter's will, treating him as though he were empowered to act for the principal, try the case in his presence and condemn him if he appears to be liable, and in addition thereto also condemn the principal, who, after such report, refused to send anyone to the province, provided that he is found to be liable. And if the person is rich, he must pay the judgment; if poor and unable to pay any part of the judgment, the damage shall be paid out of the property of the absent person.

a. For citing absent persons accused of a crime, see headnote C. 9.40.

c. 3. If even the person summoned—who was ordered to call the principal of the suit to court or a procurator to act for him—fails to appear, he shall be called by the voice of the law,^a and if he disobeys, he shall be condemned in his absence, as in case of a person in default. For a person who is purposely absent will be dealt with in the same manner as the person who is present. If he appears or sends an agent, but the accuser is absent, the defendant will be dismissed and the plaintiff will be

compelled, as a false accuser, to indemnify him for his damage. In this manner parties will be curbed, desist from doing wrong, and cease to think that justice may be overcome by riches. **1.** We are not unaware that even this may not suffice as a perfect cure in the matter, since judges may favor the powerful rather than those who live in the province and who ask for nothing but their rights. Still we are persuaded that this law will cure the greater part of the evil; or rather, it will be entirely rooted out, so far as we can do. For we do not confer magistracies unless the persons who receive them, first take an oath that they will decide cases justly and keep their hands clean, and we do not think that this law will hereafter need any addition, if they will decide the cases according to law and are mindful of their oath.

b. See note C. 2.4.4, and C. 4.1.13, note.

c. 4. Nor shall anyone take offenders away from provincial magistrates by virtue of any privilege, authority or order, unless such offender has, perchance, been ordered to appear here by a pragmatic sanction for a public reason, or unless the law so provides, as is true in case of an appeal. But we have even cured a great part of the evil in connection with that (appeal), inasmuch as we have appointed many of our higher magistrates in the provinces as judges on appeal, so that the appeal may be heard before them rather than in this city, if it does not involve a matter of the greatest importance.^a **1.** We shall make the present law, dedicated to justice, more just, if we permit no one to set up any privilege against this law and allow no one to be excepted therefrom by reason of any privilege, whether such privilege is granted to a holy church, a stranger's hospital, a place of veneration, or to one of the imperial houses, either of our private patrimony or of the Crown Domain—which rightly occupy a place next to the highest—or to any magistrates, persons of power or any of our subjects. All shall obey the law, and, being subject to the precept of justice, shall honor and uphold it in all things. They should not simply consider themselves, but future generations as well, remembering that few earthly things remain in the same condition, and that nature, like a stream, constantly evolves many and unexpected changes which can neither be foreseen nor foretold. God alone, and after God the emperor alone, regulate these things with moderation and justice. **2.**

If anyone uses any imperial sanction, pragmatic or otherwise, given him in regard to such matter, it shall be void, and if a magistrate accepts it, he will be subject to a heavy penalty. And we do not alone remedy things of the past but things of the future also. For if any such exemption is hereafter granted to any of our subjects or to anyone of those whom we have mentioned—including, as stated above, churches, monasteries and imperial houses of the Crown Domain and of the private patrimony—it shall be invalid; and this law, justly applicable everywhere, shall both regulate the future and remedy the past. **3.** You, our subjects, therefore, whom God gave to our progenitors and to us, may know that we have enacted this law for your benefit and for your security; you will no longer need to take long journeys, complain against powerful persons, or blame us because we do not remedy these evils; but each one, aware of the swift penalty that has been provided for those who may hurt or damage him, and considering the remedy provided for his benefit, will praise God who gave us light to enact this beautiful and just law. Magistrates who violate or neglect these provisions will be punished by the loss of their office and by a fine of ten pounds of gold.

a. Headnote C. 7.62.

Epilogue. The glorious praetorian prefects under our sway, shall publish this law, when they receive knowledge thereof, in all dioceses under their jurisdiction, and in all Italy, in Libya, in the islands, in the Orient and in Illyria; and all our subjects may know in what manner we take care of them, since we dedicate this law to God who enabled us to see all these things, and it, in turn, will bring aid to us, who enacted it for the safety of our subjects.

June 1, 538.