

**THE JUSTINIAN CODE
FROM THE CORPUS JURIS CIVILIS**

Translated from the original Latin, edited, and
compared with all accessible systems of jurisprudence
ancient and modern.

BY

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From The Seventeen Volume Set of the Entire Civil
Law Codified By Justinian

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TABLE OF CONTENTS

BOOK II.

**TITLE I. CONCERNING THE BRINGING OF AN
ACTION**
**TITLE II. CONCERNING THE SUMMONS TO
COURT**
**TITLE III. CONCERNING INFORMAL
AGREEMENTS**
TITLE IV. CONCERNING COMPROMISES
**TITLE V. CONCERNING ERRORS IN
CALCULATION**
TITLE VI. CONCERNING LITIGATION
**TITLE VII. CONCERNING THE ADVOCATES OF
DIFFERENT TRIBUNALS**
**TITLE VIII. CONCERNING THE ADVOCATES OF
DIFFERENT JUDGES**
**TITLE IX. CONCERNING THE ADVOCATES OF
THE TREASURY**
**TITLE X. CONCERNING THE ERRORS OF
ADVOCATES & THOSE WHO DRAW UP
PETITIONS OR APPLICATIONS**
**TITLE XI. THE JUDGE MUST SUPPLY
ANYTHING WHICH THE ADVOCATES OF
THE PARTIES HAVE OMITTED**
**TITLE XII. IN WHAT CASES INFAMY IS
INCURRED**
TITLE XIII. PAGE CONCERNING ATTORNEYS

**TITLE XIV. PERSONS IN AUTHORITY ARE NOT
PERMITTED TO APPOINT ADVOCATES FOR
LITIGANTS, OR TO HAVE THEIR RIGHTS
OF ACTION TRANSFERRED TO THEM**
**TITLE XV. CONCERNING THOSE WHO PLACE
UPON THEIR LANDS PAPERS BEARING THE
NAMES OF POWERFUL PERSONS, OR WHO
MAKE USE OF THE NAMES OF SUCH
PERSONS IN LEGAL PROCEEDINGS**
**TITLE XVI. NO PRIVATE PERSON SHALL
PLACE THE IMPERIAL INSIGNIA UPON HIS
OWN PREMISES OR UPON THOSE OF
ANOTHER, OR SHALL RAISE THE
IMPERIAL STANDARD OVER THEM**
**TITLE XVII. NO ONE SHALL BE PERMITTED TO
PLACE A SEAL UPON PROPERTY
BELONGING TO ANOTHER, WITHOUT THE
AUTHORITY OF A JUDGE**
**TITLE XVIII. NEITHER THE TREASURY NOR
THE STATE SHALL PROVIDE AN
ATTORNEY TO DEFEND ANYONE IN COURT**
**TITLE XIX. CONCERNING THE ACTION BASED
ON VOLUNTARY AGENCY**
**TITLE XX. CONCERNING ACTS PERFORMED
THROUGH THE INFLUENCE OF FORCE OR
FEAR**
TITLE XXI. CONCERNING FRAUD
**TITLE XXII. CONCERNING COMPLETE
RESTITUTION GRANTED TO MINORS OF
THE AGE OF TWENTY-FIVE YEARS**
**TITLE XXIII. CONCERNING COMPLETE
RESTITUTION IN THE CASE OF A MINOR
UNDER PARENTAL CONTROL**
**TITLE XXIV. CONCERNING THE SURETIES OF
MINORS**
**TITLE XXV. WHERE A GUARDIAN OR A
CURATOR INTERPOSES TO OBTAIN
COMPLETE RESTITUTION**
**TITLE XXVI. WHERE COMPLETE
RESTITUTION OF PROPERTY OWNED IN
COMMON IS DEMANDED**
**TITLE XXVII. WHERE RESTITUTION IS
DEMANDED IN A CASE IN WHICH A
DECISION HAS BEEN RENDERED**
**TITLE XXVIII. CONCERNING RESTITUTION ON
ACCOUNT OF A SALE**
**TITLE XXIX. WHERE RESTITUTION IS
DEMANDED ON ACCOUNT OF THE SALE OF
PLEDGES**
**TITLE XXX. WHERE RESTITUTION IS
DEMANDED ON ACCOUNT OF A DONATION**
**TITLE XXXI. WHERE RESTITUTION IS
DEMANDED ON ACCOUNT OF A GRANT OF
FREEDOM.**
**TITLE XXXII. WHERE A MINOR APPLIES FOR
COMPLETE RESTITUTION AGAINST A**

COMPROMISE OR A DIVISION OF PROPERTY
TITLE XXXIII. WHERE RESTITUTION IS DEMANDED ON ACCOUNT OF PAYMENT MADE BY THE GUARDIAN OF A MINOR OR BY HIMSELF
TITLE XXXIV. WHERE RESTITUTION IS DEMANDED AGAINST A DOWRY
TITLE XXXV. WHERE A MINOR APPLIES FOR RESTITUTION ON ACCOUNT OF A CRIME COMMITTED BY HIM
TITLE XXXVI. WHERE A MINOR DEMANDS RESTITUTION BY WAY OF RELIEF AGAINST USUCAPTION
TITLE XXXVII. WHERE A MINOR DEMANDS RESTITUTION BY WAY OF RELIEF AGAINST THE TREASURY
TITLE XXXVIII. WHERE A MINOR DEMANDS RESTITUTION BY WAY OF RELIEF AGAINST A CREDITOR
TITLE XXXIX. WHERE A MINOR REJECTS AN ESTATE
TITLE XL. WHERE A MINOR DEMANDS RESTITUTION FOR THE PURPOSE OF OBTAINING AN ESTATE WHICH HE HAS REJECTED, OR THE POSSESSION OF PROPERTY OR ANYTHING ELSE
TITLE XLI. IN WHAT INSTANCES COMPLETE RESTITUTION IS NOT NECESSARY
TITLE XLII. PAGE WHO CANNOT OBTAIN COMPLETE RESTITUTION, & AGAINST WHOM IT CANNOT BE OBTAINED
TITLE XLIII. WHERE A MINOR ALLEGES THAT HE IS OF AGE
TITLE XLIV. WHEN COMPLETE RESTITUTION IS DEMANDED MORE THAN ONCE
TITLE XLV. CONCERNING THOSE WHO OBTAIN A RELEASE FROM THE DISABILITY OF NON-AGE
TITLE XLVI. WHERE A MINOR RATIFIES HIS ACT AFTER HAVING ATTAINED HIS MAJORITY
TITLE XLVII. WHERE, & BEFORE WHAT JUDGE APPLICATION FOR COMPLETE RESTITUTION SHOULD BE MADE
TITLE XLVIII. CONCERNING REFLECTIONS MADE IN A JUDGMENT FOR COMPLETE RESTITUTION
TITLE XLIX. PROCEEDINGS TO OBTAIN COMPLETE RESTITUTION CAN ALSO BE INSTITUTED BY AN ATTORNEY

TITLE L. NO NEW PROCEEDING TAKES PLACE WHEN A DEMAND FOR COMPLETE RESTITUTION IS MADE
TITLE LI. CONCERNING THE RESTITUTION OF SOLDIERS & OF PERSONS WHO ARE ABSENT ON BUSINESS FOR THE STATE
TITLE LII. CONCERNING THE WIVES OF SOLDIERS & OF THOSE WHO ARE ABSENT ON BUSINESS FOR THE STATE
TITLE LIII. CONCERNING THE TIME DURING WHICH MINORS & OTHER PERSONS, AS WELL AS THEIR HEIRS, WHO HAVE A RIGHT TO COMPLETE RESTITUTION, CAN OBTAIN IT
TITLE LIV. FOR WHAT REASONS PERSONS WHO HAVE ATTAINED THEIR MAJORITY OBTAIN COMPLETE RESTITUTION
TITLE LV. CONCERNING AN ALIENATION MADE FOR THE PURPOSE OF CHANGING AN ACTION
TITLE LVI. PAGE CONCERNING THE APPOINTMENT OF ARBITERS
TITLE LVII. CONCERNING THE FURNISHING OF SECURITY
TITLE LVIII. CONCERNING THE SUPPRESSION OF FORMULAS & CLAIMS, OR RIGHTS OF ACTION
TITLE LIX. CONCERNING THE TENDER OF THE OATH WITH REFERENCE TO CALUMNY

BOOK III.

TITLE I. CONCERNING JUDGMENTS
TITLE II. CONCERNING THE COSTS & EXPENSES INCURRED IN DIFFERENT CASES, & THE EXECUTIVE OFFICERS OF THE COURT
TITLE III. CONCERNING SPECIAL JUDGES
TITLE IV. WHAT JUDGES CAN DELEGATE THEIR JURISDICTION, & WHO CAN BE DELEGATED
TITLE V. NO ONE SHALL DECIDE HIS OWN CASE OR INTERPRET THE LAW FOR HIMSELF
TITLE VI. WHO HAVE THE RIGHT TO APPEAR IN COURT, & WHO HAVE NOT
TITLE VII. NO ONE SHALL BE COMPELLED AGAINST HIS WILL TO BRING AN ACTION, OR TO ACCUSE ANOTHER
TITLE VIII. CONCERNING THE ORDER OF JUDGMENTS
TITLE IX. CONCERNING JOINDER OF ISSUE
TITLE X. CONCERNING CLAIMS FOR MORE THAN IS DUE

- TITLE XI. CONCERNING DELAYS**
TITLE XII. CONCERNING FESTIVALS
TITLE XIII. CONCERNING THE JURISDICTION OF ALL JUDGES & THE COMPETENCY OF TRIBUNALS
TITLE XIV. WHEN THE EMPEROR TAKES COGNIZANCE OF THE CASES OF MINORS, WIDOWS, OR OTHER PERSONS WORTHY OF PITY, THEY SHALL NOT BE COMPELLED TO APPEAR
TITLE XV. WHERE IT IS NECESSARY TO PROCEED IN CRIMINAL CASES
TITLE XVI. WHERE AN ACTION TO OBTAIN POSSESSION MUST BE BROUGHT
TITLE XVII. WHERE THE EXECUTION OF A TRUST SHOULD BE DEMANDED
TITLE XVIII. WHERE HE WHO PROMISED TO MAKE PAYMENT IN A CERTAIN PLACE SHOULD BE SUED
TITLE XIX. WHERE AN ACTION IN REM SHOULD BE BROUGHT
TITLE XX. WHERE AN ACTION RELATING TO AN ESTATE SHOULD BE BROUGHT, & WHERE TESTAMENTARY HEIRS SHOULD DEMAND TO BE PLACED IN POSSESSION OF THE SAME
TITLE XXI. WHERE AN ACTION TO COMPEL THE PRODUCTION OF EITHER PUBLIC OR PRIVATE ACCOUNTS SHOULD BE BROUGHT
TITLE XXII. WHERE SUITS WITH REFERENCE TO THE CONDITION OF PERSONS SHOULD BE BROUGHT
TITLE XXIII. WHERE ANYONE BELONGING TO THE CURIE, OR THE COURT ATTENDANTS, OR OF ANY OTHER CONDITION, CAN BE SUED
TITLE XXIV. WHERE SENATORS OR PERSONS OF ILLUSTRIOUS RANK MAY BE PROCEEDED AGAINST EITHER CIVILLY OR CRIMINALLY
TITLE XXV. IN WHAT CASES SOLDIERS CANNOT AVAIL THEMSELVES OF AN EXCEPTION ON THE GROUND OF JURISDICTION
TITLE XXVI. WHERE CASES RELATING TO THE PUBLIC TREASURY OR THE IMPERIAL PALACE, OF TO PERSONS ATTACHED TO THE SAME, SHALL BE BROUGHT
TITLE XXVII. WHERE ANYONE MAY BE PERMITTED TO AVENGE HIMSELF OR THE PUBLIC, WITHOUT APPLYING TO THE JUDGE
- TITLE XXVIII. CONCERNING INOFFICIOUS WILLS**
TITLE XXIX. CONCERNING INOFFICIOUS DONATIONS
TITLE XXX. CONCERNING INOFFICIOUS DOWRIES
TITLE XXXI. CONCERNING THE DEMANDS FOR AN ESTATE
TITLE XXXII. CONCERNING THE ACTION FOR THE RECOVERY OF PROPERTY
TITLE XXXIII. CONCERNING USUFRUCT, LODGING, & THE SERVICE OF SLAVES
TITLE XXXIV. CONCERNING SERVITUDES & WATER
TITLE XXXV. CONCERNING THE AQUILIAN LAW
TITLE XXXVI. CONCERNING THE ACTION IN PARTITION
TITLE XXXVII. CONCERNING THE DIVISION OF PROPERTY OWNED IN COMMON
TITLE XXXVIII. MATTERS WHICH APPLY TO BOTH THE ACTION IN PARTITION & THAT FOR THE DIVISION OF PROPERTY OWNED IN COMMON
TITLE XXXIX. CONCERNING THE ESTABLISHMENT OF BOUNDARIES
TITLE XL. CONCERNING PERSONS INTERESTED IN THE SAME CASE
TITLE XLI. CONCERNING NOXAL ACTIONS
TITLE XLII. CONCERNING THE ACTION TO COMPEL THE PRODUCTION OF PROPERTY IN COURT
TITLE XLIII. CONCERNING GAMBLERS & GAMES OF CHANCE
TITLE XLIV. CONCERNING RELIGIOUS PLACES, & THE EXPENSES OF FUNERALS
- BOOK IV.**
TITLE I. CONCERNING PROPERTY LOANED & THE OATH
TITLE II. WHERE A CERTAIN THING IS DEMANDED
TITLE III. CONCERNING SUFFRAGE
TITLE IV. CONCERNING THE PROHIBITED SEQUESTRATION OF MONEY
TITLE V. CONCERNING THE RECOVERY OF A DEBT WHICH WAS PAID WITHOUT BEING DUE
TITLE VI. CONCERNING THE ACTION FOR RECOVERY OF PROPERTY GIVEN FOR SOME CONSIDERATION
TITLE VII. CONCERNING THE ACTION FOR RECOVERY ON ACCOUNT OF A DISHONORABLE CONSIDERATION

TITLE VIII. CONCERNING THE ACTION FOR THE RECOVERY OF STOLEN PROPERTY
TITLE IX. CONCERNING THE PERSONAL SUIT FOR RECOVERY UNDER THE LAW, WHERE THERE IS NO CONSIDERATION, OR WHERE THE CONSIDERATION IS UNJUST
TITLE X. CONCERNING OBLIGATIONS & ACTIONS
TITLE XI. ACTIONS SHOULD BE BROUGHT BY HEIRS & AGAINST HEIRS
TITLE XII. A WIFE CANNOT BE SUED ON ACCOUNT OF HER HUSBAND, OR A HUSBAND ON ACCOUNT OF HIS WIFE, OR A MOTHER ON ACCOUNT OF HER SON
TITLE XIII. A SON CANNOT BE SUED ON ACCOUNT OF HIS FATHER, OR A FATHER ON ACCOUNT OF HIS EMANCIPATED SON, OR A FREEDMAN ON ACCOUNT OF HIS PATRON, OR A SLAVE ON ACCOUNT OF HIS MASTER. A NEW CONSTITUTION OF FREDERICK
TITLE XIV. WHETHER A SLAVE IS LIABLE FOR HIS OWN ACT AFTER HIS MANUMISSION
TITLE XV. WHEN THE TREASURY, OR A PRIVATE INDIVIDUAL, CAN OR SHOULD SUE DEBTORS OR THEIR DEBTORS
TITLE XVI. CONCERNING HEREDITARY ACTIONS
TITLE XVII. FOR WHAT AN AMOUNT HEIRS CAN BE SUED ON ACCOUNT OF THE CRIMES OF DECEASED PERSONS
TITLE XVIII. CONCERNING THE SUM OF MONEY AGREED UPON
TITLE XIX. CONCERNING PROOFS
TITLE XX. CONCERNING WITNESSES
TITLE XXI. CONCERNING THE CONFIDENCE TO BE REPOSED IN WRITTEN INSTRUMENTS, & THEIR LOSS, & WHEN RECEIPTS & COUNTER-RECEIPTS SHOULD BE GIVEN, & CONCERNING WHAT THINGS CAN BE DONE WITHOUT THEIR BEING COMMITTED TO WRITING
TITLE XXII. WHAT HAS ACTUALLY BEEN DONE HAS MORE FORCE THAN WHAT HAS BEEN SIMULATED & EXPRESSED IN WORDS
TITLE XXIII. CONCERNING LOANS FOR USE
TITLE XXIV. CONCERNING THE ACTION OF PLEDGE
TITLE XXV. CONCERNING THE ACTIO INSTITORIA & THE ACTIO EXEKCTORIA
TITLE XXVI. WHEN BUSINESS IS SAID TO HAVE BEEN TRANSACTED WITH ONE WHO

IS UNDER THE CONTROL OF ANOTHER, OR WITH REFERENCE TO PECULIUM; OR WHERE SOMETHING HAS BEEN DONE BY THE ORDER OF ANOTHER; OR WHERE ANYTHING IS EMPLOYED FOR THE BENEFIT OF THE PROPERTY OF THE PERSON IN CONTROL
TITLE XXVII. BY MEANS OF WHAT PERSONS PROPERTY CAN BE ACQUIRED BY US
TITLE XXVIII. CONCERNING THE MACEDONIAN DECREE OF THE SENATE
TITLE XXIX. CONCERNING THE VELLEIAN DECREE OF THE SENATE
TITLE XXX. CONCERNING MONEY WHICH IS NOT COUNTED OUT
TITLE XXXI. CONCERNING SET-OFF
TITLE XXXII. CONCERNING INTEREST
TITLE XXXIII. CONCERNING MARITIME LOANS
TITLE XXXIV. CONCERNING THE ACTION ON DEPOSIT, & THE COUNTER ACTION
TITLE XXXV. CONCERNING THE ACTION OF MANDATE, & THE COUNTER ACTION
TITLE XXXVI. CONCERNING A SLAVE WHO HAS DIRECTED A STRANGER TO PURCHASE HIM
TITLE XXXVII. CONCERNING THE ACTION OF PARTNERSHIP
TITLE XXXVIII. CONCERNING THE CONTRACT OF PURCHASE & SALE
TITLE XXXIX. CONCERNING THE INHERITANCE OR SALE OF RIGHTS OF ACTION
TITLE XL. WHAT PROPERTY CANNOT BE SOLD, & WHAT PERSONS ARE FORBIDDEN TO SELL OR PURCHASE IT
TITLE XLI. WHAT PROPERTY SHOULD NOT BE EXPORTED
TITLE XLII. CONCERNING EUNUCHS
TITLE XLIII. CONCERNING FATHERS WHO HAVE SOLD THEIR CHILDREN
TITLE XLIV. CONCERNING THE RESCISSION OF A SALE
TITLE XLV. WHEN IT IS PERMITTED TO KEFUSE TO COMPLY WITH A CONTRACT OF SALE
TITLE XLVI. WHERE A SALE IS MADE ON ACCOUNT OF PUBLIC CONTRIBUTIONS
TITLE XLVII. LAND CANNOT BE PURCHASED WITHOUT THE PAYMENT OF TAXES OR BALANCES WHICH ARE DUE

TITLE XLVIII. CONCERNING THE RISKS & ADVANTAGES ATTACHING TO PROPERTY SOLD

TITLE XLIX. CONCERNING THE ACTIONS OF PURCHASE & SALE

TITLE L. WHERE ANYONE HAS PURCHASED PROPERTY FOR ANOTHER, OR FOR HIMSELF IN THE NAME OF ANOTHER, OR WITH MONEY BELONGING TO ANOTHER

TITLE LI. CONCERNING THE PROHIBITED ALIENATION & HYPOTHECATION OF THE PROPERTY OF OTHERS

TITLE LII. CONCERNING THE ALIENATION OF PROPERTY OWNED IN COMMON

TITLE LIII. THOSE WHO HAVE CHARGE OF THE AFFAIRS OF OTHERS ARE NOT FORBIDDEN TO ALIENATE THEIR OWN PROPERTY

TITLE LIV. CONCERNING AGREEMENTS ENTERED INTO BETWEEN VENDOR & PURCHASER

TITLE LV. WHERE A SLAVE IS SOLD FOR THE PURPOSE OF BEING SENT OUT OF THE COUNTRY

TITLE LVI. WHERE A SLAVE HAS BEEN SOLD ON CONDITION THAT HE SHOULD NOT BE PROSTITUTED

TITLE LVII. WHERE A SLAVE HAS BEEN ALIENATED UNDER THE CONDITION THAT HE WILL OR WILL NOT BE MANUMITTED

TITLE LVIII. CONCERNING JUDICIAL ACTIONS

TITLE LIX. CONCERNING MONOPOLIES, UNLAWFUL AGREEMENTS OF MERCHANTS, THE ARTIFICERS OR CONTRACTORS, & THE ILLEGAL & PROHIBITED PRACTICES OF BATH PROPRIETORS

TITLE LX. CONCERNING FAIRS & MARKETS

TITLE LXI. CONCERNING DUTIES ON MERCHANDISE, & OFFENCES TO WHICH THEY ARE SUBJECT

TITLE LXII. NEW DUTIES ON MERCHANDISE CANNOT BE ESTABLISHED

TITLE LXIII. CONCERNING COMMERCE & MERCHANTS

TITLE LXIV. CONCERNING THE EXCHANGE OF PROPERTY & THE ACTIO PRESCRIPTIS VERBIS

TITLE LXV. CONCERNING LEASING & HIRING

TITLE LXVI. CONCERNING THE LAW OF EMPHYTEUSIS

THE THREE PREFACES OF THE CODE OF JUSTINIAN

FIRST PREFACE.

CONCERNING THE ESTABLISHMENT OF A NEW CODE.

The Emperor Justinian to the Senate of the City of Constantinople. Those things which seem to many former Emperors to require correction, but which none of them ventured to carry into effect, We have decided to accomplish at the present time with the assistance of Almighty God; and to diminish litigation by the revision of the multitude of constitutions which are contained in the Three Codes; namely, the Gregorian, the Hermogenian, and the Theodosian, as well as in those other Codes promulgated after them by Theodosius of Divine Memory, and by other Emperors, who succeeded him, in addition to those which We Ourselves have promulgated, and to combine them in a single Code, under Our auspicious name, in which compilation should be included not only the constitutions of the three above-mentioned Codes, but also such new ones as subsequently have been promulgated.

(1) Therefore, having in view the accomplishment of this extensive work, as well as the maintenance of the public welfare, We have chosen, as being competent for a task involving such labor and care, John, a most eminent man, Ex-Quęstor of our Sacred Palace, and of consular, as well as patrician dignity; Leontius, a man of the highest standing, an officer in the army, an Ex-Prętorian Prefect, of consular and patrician dignity; Phocas, a most illustrious man, an officer of the army, also of consular and patrician dignity; Basilis, a most excellent man, Ex-Prętorian Prefect of the East, and of patrician rank; Thomas, a most glorious man, Quęstor of our Sacred Palace, and Ex-Consul; Tribonian, a distinguished man of great authority, and invested with magisterial dignity; Constantine, an illustrious man, one of the Stewards of Our bounty, Master of Requests, and of Our Judicial Inquiries; Theophilus, a most eminent man, and one of the members of our Sacred Consistory, a Doctor of Laws in this Fair City; and Dioscorous and Pręsentinus, most learned jurists of the Prętorian Tribunal.

(2) To these We have especially entrusted the suppression of superfluous preambles, so far as this can be done without affecting the efficacy of the laws, as well as of such enactments as are similar or contradictory, and, in addition to this, the division of the laws; and it will be to the advantage to omit such as have fallen into desuetude, to give expression in concise terms to those which are included in the said three Codes, and in the New Constitutions, and to place them under suitable

titles, adding and omitting portions of the same, and, indeed, changing their phraseology where convenience requires it.

Bringing under one head enactments which are scattered through various constitutions, and rendering their meaning clearer; so that the order of the said constitutions may appear not only from the days and the consulate when they were enacted, but also from their composition itself, by placing those primarily published in the first place, and those which follow in the second. And if any laws should be found in the three ancient codes without the date and the name of the consul, or if any new constitutions have been inserted among them, they should be so arranged that no doubt may arise with reference to their general application, in such a way that rescripts addressed to certain individuals, or originally issued by pragmatic sanction, may obtain the effect of general constitutions, where, for the public welfare, they have been included in a new code.

(3) Hence We have hastened to bring these matters to your notice, in order that you may be informed to what an extent Our daily care is occupied with matters having reference to the common welfare, by collecting such laws as are certain and clear, and incorporating them into a single code, so that, by means of this code, designated by Our auspicious name, the citation of the various constitutions may cause decisions to be more readily rendered in all litigation.

Given at Constantinople, on the *Ides* of February, during the reign and second Consulship of the Emperor Justinian.

SECOND PREFACE.

CONCERNING THE CONFIRMATION OF THE CODE OF JUSTINIAN.

The maintenance of the integrity of the government depends upon two things, namely, the force of arms and the observance of the laws: and, for this reason, the fortunate race of the Romans obtained power and precedence over all other nations in former times, and will do so forever, if God should be propitious; since each of these has ever required the aid of the other, for, as military affairs are rendered secure by the laws, so also are the laws preserved by force of arms. Therefore, We have, with reason, directed Our attention, Our aims, and Our labors, in the first place, to the maintenance of the public welfare, and have corrected matters relating to the army in many ways, and thus provided for everything; as We have by means of old laws not only brought matters into a better condition, but We also have promulgated new laws, and by Our just administration, or with additional expense, We have preserved those already enacted, and afterwards by publishing new ones, have

established them most firmly for the obedience of Our subjects.

(1) But as it was necessary to reduce the vast number of the constitutions contained in the three old codes, as well in the others compiled in former times, and to clear up their obscurity by means of proper definitions, We have applied Ourselves with willing mind to the accomplishment of this work for the common good; and, after having selected men conspicuous for their legal learning and ability, as well as for their experience in business, and tireless zeal for the interests of the State, We have committed this great task to them under certain limitations, and have directed them to collect into a single code, to be designated by Our auspicious name, the constitutions of the three ancient codes, namely the Gregorian, Hermogenian, and Theodosian compilations, as well as all those subsequently promulgated by Theodosius of Divine Memory, and the other princes who have succeeded him; together with such constitutions as have been issued during Our reign; and to see that any preambles which are not confirmed by subsequent decrees, and any constitutions which are contradictory, or should be suppressed, as well as such as have been repealed by others of later date, or which are of the same character — except those which, by conferring upon them Our sanction to a certain extent, We have considered to be susceptible of division, and by such division of these ancient laws some new principle may appear to arise.

In addition to all this, many other matters relative to the composition of this Code have been placed by Our authority in the hands of these most wise men; and Almighty God has afforded this protection through Our zeal for the welfare of the State.

(2) The following persons have been chosen for this work, and the completion of a task of such importance, namely: that most excellent man, John, Ex-Questor of Our Palace, and of consular and patrician dignity; as well as that most eminent man, Leontius, Ex-Prætorian Prefect, of consular and patrician dignity; and also the most distinguished Phocas, officer of the army, also of consular and patrician dignity; and that most accomplished man of patrician dignity, Basilis, Ex-Prætorian Prefect of the East, now Prætorian Prefect of Illyria; also, the most illustrious Thomas, Questor of our Sacred Palace and Ex-Consul; and the eminent Tribonian, of exalted magisterial dignity; the distinguished Constantine, Steward of Our Imperial Largesses, Master of Requests, and of Judicial Inquiries; Theophilus, former magistrate and Doctor of Laws in this Fair City; as well as those most learned jurists, Dioscorus and Præsentinus, members of your bar; and all that We have directed them to do, they with God's assistance have, through assiduous

and untiring industry, brought to a successful conclusion, and offered to Us this new, systematically arranged Justinian Code, compiled in such a manner as to contribute to the common benefit, and meet the requirements of Our Empire.

(3) Therefore We have had in view the perpetual validity of this Code in your tribunal, in order that all litigants, as well as the most accomplished advocates, may know that it is lawful for them, under no circumstances, to cite constitutions from the three ancient codes, of which mention has just been made, or from those which at the present time are styled the New Constitutions, in any judicial inquiry or contest; but that they are required to use only the constitutions which are included in this Our Code, and that those who venture to act otherwise will be liable to the crime of forgery; as the citation of the said constitutions of Our Code, with the opinions of the ancient interpreters of the law, will be sufficient for the disposal of all cases. No doubt as to their validity should arise where any of them appears without a date and without the name of the consul, or because they may have been addressed to certain private individuals; as there can be no question whatever that all have the force of general constitutions; and even if there should be some of them from which anything has been taken, or to which anything has been added, or which have been changed in certain respects (which We have specially permitted the most excellent men aforesaid to do), We grant to no one the right to cite the said constitutions, as they are stated in the books of the ancient authorities, but merely to mention the opinions of the latter, as being of legal effect when they are not opposed to the constitutions of this Our Code.

(4) Moreover, the pragmatic sanctions that are not included in Our Code, and which have been granted to cities, corporate bodies, bureaus, offices, or private individuals, shall remain in every respect valid, if they concede any privilege as a special favor; but where they have been promulgated for the settlement of some legal point We direct that they shall only hold when not opposed to the provisions of Our Code. But in any matter which comes before your tribunal, or in any other civil or military proceeding, or in one which has reference to accounts forming part of the public expenses, or in such as have any relation to the public welfare, We decree that they shall remain valid as far as public convenience may require this to be done.

(5) Therefore let your illustrious and sublime authority, actuated by a desire for the common good, and with zeal for the execution of Our orders, cause information of this Code to be communicated to all peoples, by the promulgation of an edict in the customary way, and by sending into each province, subject to Our

Empire, a copy bearing Our signature, so that in this manner the constitutions of this Our Code may be brought to the knowledge of all persons; and that during festival days, that is to say, from the sixteenth day of the *Kalends* of May of the seventh current indiction, and during the consulate of that most illustrious man Decius, citations of the constitutions shall be made from this Our Code.

Given at Constantinople, on the sixth of the *Ides* of April, during the Consulate of the illustrious Decius.

THIRD PREFACE.

CONCERNING THE AMENDMENTS OF THE CODE OF OUR LORD JUSTINIAN, AND THE SECOND EDITION OF THE SAME.

Our heart, Conscript Fathers, always induces Us to pay the strictest attention to matters concerning the public welfare, so that nothing which has been begun by Us may be left imperfect. Therefore, in the beginning of Our reign, we formed the design of collecting in a single body the Imperial Constitutions which were scattered through several volumes, and the most of which were either repetitions or conflicting, and free them from every defect. This work has now been perfected by certain most distinguished and learned men, and has been subsequently confirmed by Us, as is shown by Our two Constitutions prefixed hereto.

(1) But after We decreed that the ancient law should be observed, We rendered fifty decisions, and promulgated several constitutions relative to the advantages to be derived from the proposed work, by means of which the majority of the former enactments were amended and abridged; and We divested all the ancient law of superfluous prolixity, and then inserted the same in Our Institutes and Digest.

(2) But, as Our new decisions and constitutions, which were promulgated after the completion of Our Code, were distinct from the body of the same, and seemed to demand our care and attention, and as some of them, which were afterwards inserted, appeared to require alteration or correction, it seemed to Us necessary to have the said constitutions revised by that eminent man Tribonian, Ex-Questor and Ex-Consul, the authorized minister of our work; and also by the illustrious Dorotheus, Questor and Doctor of Laws of Berytus; and, in addition to these Menna, Constantine, and John, most eloquent men, and distinguished advocates of the bar of this City, who were ordered to divide said constitutions into separate chapters for the purpose of rendering them more available; to place them under proper titles; and to add them to those constitutions which had preceded them.

(3) We permitted the aforesaid distinguished and most learned jurists to do all these things, and when there

was need of any correction, allowed them to make it without hesitation, relying upon Our authority; and where any of the constitutions were superfluous, or had been annulled by any of Our subsequent decrees; or where they were found to be similar or conflicting, to remove and separate them from the compilation of the Code itself; as well as to complete such as were imperfect, and to bring to light those that were shrouded in obscurity, so that not only the way of the Institutes and the Digest might appear clear and open, but also that the splendor of the Constitutions of Our Code might be manifest to all, and no constitution which resembled another, or was contradictory or useless, should be retained, and no one should have any doubt that what was confirmed by the revision was both valid and sufficiently perspicuous. For, in the ancient Books, the authorities of former times not only called the first, but also the second editions, revisions; which can be readily ascertained from the works of that eminent jurist Ulpianus, on Sabinus, by those who desire to know.

(4) These things having been accomplished according to Our intention, and the Justinian Code having been purified and elucidated by the aforesaid most illustrious and learned men (all of this having been done in compliance with Our order, and the work offered to Us with its amplifications, and changes), We ordered that it should be copied in accordance with the second edition, and not in accordance

with the first, but as it was revised; and, by Our authority, We directed that it alone should be used in all tribunals, whenever the Divine Constitutions were applicable, from the fourth day of the *Kalends* of January of the most auspicious Consulate of Ourselves and that illustrious man Paulinus; and that no constitution not contained in this Our Code should be cited, unless in the course of events some new question may arise which requires Our decision. For, if something better should be found hereafter, and it becomes necessary to revise a constitution, no one will doubt that We should do so, and incorporate into another compilation those laws which are designated by the name New Constitutions.

(5) Therefore, having repeated Our order that We shall permit none hereafter to quote anything from Our decisions, or from other constitutions, which We have previously promulgated, or from the first edition of the Justinian Code; but that only what may be found written in this Our present purified and amended Code shall be regarded as authority, and cited in all tribunals, We have ordered it to be transcribed without any ambiguity, as was done in the case of Our Institutes and Digest, so that everything which has been compiled by Us shall be clear and intelligible, not only in the chirography, but also in

the laws themselves, although on this account the matter contained in this Code has been considerably extended.

(6) Therefore, Most Reverend and Illustrious Fathers, in order that Our labors may become manifest to you and obtain authority through all time, We have presented this collection of laws to your most distinguished Order.

Given at Constantinople, on the seventeenth day of the *Kalends* of December, during the Consulate of Our Lord Justinian, for the fourth time Consul, and of Paulus.

THE CODE OF OUR LORD THE MOST SACRED
EMPEROR JUSTINIAN.
SECOND EDITION.
BOOK I.

TITLE I.
CONCERNING THE MOST EXALTED TRINITY
AND THE CATHOLIC FAITH, AND PROVIDING
THAT NO ONE SHALL DARE TO PUBLICLY
OPPOSE THEM.

1. *The Emperors Gratian, Valentinian, and Theodosius to the people of the City of Constantinople.*

We desire that all peoples subject to Our benign Empire shall live under the same religion that the Divine Peter, the Apostle, gave to the Romans, and which the said religion declares was introduced by himself, and which it is well known that the Pontiff Damasus, and Peter, Bishop of Alexandria, a man of apostolic sanctity, embraced; that is to say, in accordance with the rules of apostolic discipline and the evangelical doctrine, we should believe that the Father, Son, and Holy Spirit constitute a single Deity, endowed with equal majesty, and united in the Holy Trinity.

(1) We order all those who follow this law to assume the name of Catholic Christians, and considering others as demented and insane, We order that they shall bear the infamy of heresy; and when the Divine vengeance which they merit has been appeased, they shall afterwards be punished in accordance with Our resentment, which we have acquired from the judgment of Heaven.

Dated at Thessalonica, on the third of the *Kalends* of March, during the Consulate of Gratian, Consul for the fifth time, and Theodosius.

THE CODE OF JUSTINIAN.
BOOK II.

TITLE I.
CONCERNING THE BRINGING OF AN ACTION.

1. *The Emperor Antoninus Pius to Æmilius.*

You, yourself, must ascertain the proof necessary to establish the fact that you are entitled to the money which you allege you have deposited, for your demand that your

adversary produce his accounts cannot be conceded; as to order this is the exclusive duty of the judge, after proper cause has been shown.

Given on the fourth of the *Kalends* of October, during the Consulate of Sabinus, Consul for the second time, and Severus, 156.

2. *The Emperors Severus and Antoninus to Faustus.*

He before whom proceedings are brought shall order public documents, both civil and criminal, to be produced, for the purpose of being examined, in order to ascertain the truth.

Given on the *Nones* of July, during the Consulate of Severus and Albinus, 193.

3. *The Same to Valens.*

An action having been begun only presents the image of the future proceeding, as it can either be amended or changed in accordance with the authority of the Perpetual Edict, or when equity permits the court to grant it.

Given on the second of the *Kalends* of September, during the Consulate of Severus, Consul for the third time, and Antoninus, 203.

4. *The Emperor Antoninus to Epaphroditus.*

Persons who wish to bring an accusation must have the evidence, for neither law nor equity permits that power be granted to inspect the documents of the other side. Therefore, if the plaintiff does not prove his allegations, the defendant shall be discharged, even if he himself furnishes no evidence.

Given on the fifth of the *Ides* of March, during the Consulate of the two Aspers, 223.

5. *The Emperor Alexander to Valentiniana.*

It is not new for a party from whom money is demanded in a suit to ask that the accounts of his creditor be produced, in order to establish the truth of the claim.

Given on the seventh of the *Ides* of March, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

6. *The Same to Uranius.*

It is but just that the request of him, against whom an action to collect money is brought, should be granted to permit him to examine the public records, after their production, so as to ascertain how much has been paid in his name, even where the Government is plaintiff.

Given on the sixteenth of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

7. *The Same to Valens.*

The Agent of Our Private Affairs shall, as is customary, order that you be given authority to take copies of instruments in which you say both you and the Treasury are interested; and if the case should require any of them to be proved before another judge in order to establish the truth of your claim, and the party against

whom the action is brought desires that the originals be produced, the Agent aforesaid shall order this to be done.

Given on the tenth of the *Kalends* of March, under the Consulate of Fuscus and Dexter, 226.

Extract from Novel 119, Chapter III. Latin Text.

Where anyone in one document refers to another, no attention ought to be paid to this unless the document alluded to in the second one is produced, or some other evidence of the amount of the debt is given, because the original sum of which mention is made is considered to be correct. This rule is found in the ancient laws.

8. *The Same to Florus.*

The Rescripts published by the Divine Antoninus, My Father, and Myself, conform to the principles of law and equity, as they are not different from, or contrary to one another; for a great distinction exists between a party who brings an action for a claim, who can be barred from recovery by an exception on the ground of fraud, when the defendant desires accounts to be produced by which he alleges that he can protect himself, which the justice of the case itself requires; and where the plaintiff demands evidence to be produced by the party who is sued for the claim, when, in this instance, it is not proper that the prayer of the petition should be established by instruments belonging to him against whom suit was brought.

Given during the *Kalends* of October, during the Consulate of Fuscus and Dexter, 226.

TITLE II.

CONCERNING THE SUMMONS TO COURT.

1. *The Emperor Alexander to Trophinius.*

The rules of ordinary courtesy demand that respect be shown by a freedman to the wife of the person who manumitted him; hence he is forbidden to summon her to court, even when this is necessary, without obtaining the consent of the Prætor.

Given on the fourth of the *Kalends* of April, during the Consulate of Agricola and Clamentinus, 231.

2. *The Emperor Gordian to Nocturnus.*

The law is perfectly clear on the point that where the benefit of the Edict is not invoked, a patron or a patroness, their parents, their children, and also their heirs, even if they are strangers, cannot be summoned to court by their freedmen, or the children of the latter; nor in a case of this kind can ignorance be alleged as an excuse, since in accordance with natural reason, honor is due to persons of this description. Therefore, when you acknowledge that you have summoned the son of your patron to court without previously obtaining the permission of the Governor, you will, in vain, ask to be exempted from the penalty prescribed by the Perpetual Edict by virtue of a rescript which has been given you.

Given on the eighth of the *Ides* of November, during the Consulate of Gordian and Aviola, 240.

3. *The Emperors Diocletian and Maximian to Rosana.*

Persons who are under the control of their fathers cannot bring suit against them. But, if you have been emancipated, you will not be forbidden to do so, provided you have claimed the benefit of the Edict; and this rule also applies to the mother.

Given on the eighth of the *Ides* of November, during the Consulate of Diocletian, Consul for the second time, and Maximian, 287.

TITLE III.

CONCERNING INFORMAL AGREEMENTS.

1. *The Emperors Severus and Antoninus to Philinus.*

The uncertainty of a condition can be terminated between two brothers by an equitable agreement. Therefore, when you allege that, by the terms of a trust, if your father should die without issue, he will leave his share of the estate to Licinius Fronto; the agreement with reference to the sixth part of the estate being given to the said Licinius Fronto, which was made at the time when Philinus had no children, will not, for that reason, appear to be unjust, because after the division had been made, as was intended, he died leaving you his son.

Given on the seventh of the *Kalends* of December, during the Consulate of Severus, Consul for the second time, and Victorinus, 204.

2. *The Emperors Severus and Antoninus to Claudius.*

If, after the sale of the estate has been made by you, you can prove that the creditors of said estate have brought suit against the purchasers, and the latter have voluntarily undertaken the defence, you can then very properly protect yourself on the ground of an implied agreement.

3. *The Same to Restitutus.*

The slave of a creditor can improve the condition of his master, but he cannot, by means of a new agreement, render an obligation already legally contracted disadvantageous.

Given on the eighth of the *Kalends* of April, during the Consulate of Severus, Consul for the third time, and Antoninus, 203.

4. *The Same to Valeria.*

After you have abandoned an action brought with reference to a tract of land, no reason will permit you to revive it after it has once been disposed of:

Given on the fourth of the *Ides* of February, during the Consulate of Albinus and Emilianus, 207.

5. *The Emperor Antoninus to Demagoras.*

When you have paid your creditor a part of the debt, and it has been informally agreed between you and him that he will not demand the remainder, on account of

your defence of his affairs, undertaken in good faith with your support, you will be released from this obligation, partly by the Civil, and partly by the prætorian law, for a perpetual exception based on an informal agreement, or on the ground of had faith, will bar the collection of the remainder, as whatever has been paid through ignorance can be recovered.

Given at Rome, on the eighth of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

6. *The Same to Basilia.*

It is an undoubted legal rule that informal agreements made contrary to the laws and constitutions, or against good morals, have no force or effect whatever.

Given on the *Kalends* of August, during the same Consulate, 214.

7. *The Same to Julius Maximus.*

If you become the heir of your debtor, the action against him to which you are entitled will be extinguished by merger, as soon as you enter upon the estate. If, however, after you have obtained the estate in court, you should deliver it to the party against whom you have obtained the judgment, under the condition and agreement that if you do not accept the estate, he shall satisfy the other creditors, as well as yourself, for what is due to you; a contract of this kind must be observed, and if this is not done, an action based on the stipulation will be granted, provided an agreement was made; or the action *prescriptis verbis* will lie, if no stipulation was entered into.

Given on the third of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

8. *The Same to Mucatraulius.*

Where flocks are taken to be pastured on shares, that is to say, when it is agreed by the parties that their increase shall be divided between the owner and the shepherd, and it is proved that Apollinaris agreed to the contract, he can be compelled by the judge to execute it.

Given on the fourth of the *Kalends* of October, under the Consulate of Alexander and Marcellus, 227.

9. *The Emperor Alexander to Dionysius.*

After your mother's adversary has lost his case, and has taken advantage of her by making her furnish security that she will not raise any controversy with reference to slaves, this agreement having been made in bad faith, is void. And when he brings an action based on this agreement against your mother, the judge must release her from liability.

Given on the day before the *Ides* of September, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

10. *The Same to Nicas.*

The condition which you prescribe when you give a dowry for your foster-daughter must be observed; and the common statement that a right of action does not arise from an informal agreement cannot be employed against you; for We make use of this rule when the contract has no consideration; otherwise, when money is given, and anything is agreed upon as to its repayment, a personal action for its recovery will lie.

Given on the third of the *Kalends* of March, during the Consulate of Albinus and Maximus, 227.

11. *The Same to Capito.*

You allege that an agreement was made between your father and your stepmother, at the time when she gave a tract of land as a dowry, to the effect that she would pay the interest to the creditors to whom the land was hypothecated. You cannot bring suit against her, even though it may be proved that the agreement was made a part of the stipulation. If, however, a tract of land, which has been appraised, is given by way of dowry (and this appears in the instrument), an action on sale will lie, in order that the agreement may be carried out.

Given on the *Nones* of December, during the Consulate of Alexander, Consul for the third time, and Dio, Consul for the second time, 230.

12. *The Same to Flacilla.*

Law, as well as equity, requires that the most recent informal agreements shall be observed; for which reason, if, by a prior agreement consent was given that the claim should not bear interest, and especially if (as you propose), the parties made the same statement before the Governor, you will not be forbidden to bring the action to which you would have been entitled under the first agreement.

Given on the third of the *Kalends* of March, during the Consulate of Agricola and Clement, 231.

13. *The Emperor Maximin to Marius.*

In *bona fide* contracts, an action on an informal agreement will only lie when the agreement was made at the same time; for if it was made afterwards it will not give rise to an action, but to an exception.

Given on the fifth of the *Ides* of January, during the Consulate of Maximin and Africanus, 237.

14. *The Emperor Gordian to the Soldier Caelius.*

If a stipulation was added to the agreement under which you allege that your adversary promised to pay a certain sum by way of penalty if he did not abide by it, you can, by virtue of the stipulation, compel him to do what is included in the agreement, or you can, in the usual way, exact the penalty provided by the stipulation; as, without observing the ordinary legal formalities, you will in vain demand that the property of your adversary be transferred to you.

Given on the *Kalends* of April, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

15. *The Emperors Valentinian and Gallienus, and the Cæsar Valerian to Pactumeius.*

The agreement included in the dotal instrument, namely, that if the father should die, the daughter who was to be married should, with her brother, be heirs to equal portions of the estate, gives rise to no obligation, and does not deprive the father of the woman of the power to make a will.

Given on the tenth of the *Kalends* of March, during the Consulate of Emilianus and Bassus, 267.

16. *The Emperors Diocletian and Maximian to Diaphantus.*

When you allege that sons who have been appointed testamentary heirs are so charged that the one who dies first must transfer to the other his share of the estate, and as you assert that this precarious substitution of the brothers has been abandoned by common consent, the reason for the execution of the trust no longer exists.

Given on the third of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Acquinus, 286.

17. *The Same to Deximachus.*

The Governor of a province shall cause an agreement, which is shown to have been made in good faith, to be executed according to law, even if it has not been committed to writing; when the truth of the transaction can be established by other evidence.

Given on the ninth of the *Kalends* of July, during the above-mentioned Consulate, 287.

18. *The Same to Julius and Emilius.*

If you prove that your creditors have permitted one of your co-debtors to pay a portion of the debt in his own behalf, the Governor of the province shall, in accordance with his dignity, see that neither party is sued for the indebtedness of the other.

Given on the seventh of the *Ides* of January, during the Consulate of Diocletian, Consul for the third time, and Maximian, 287.

19. *The Same to the Soldier, Victorian.*

Although a document drawn up between private persons, which provides that the survivor shall obtain the property of the other, does not present the appearance of a donation *mortis causa*, still, as the testament of a soldier, disposing of his estate, and reduced to writing during his last moments, in anticipation of death, has all the force of a last will; and you state that your brother and yourself, being about to go into battle, made a reciprocal agreement in view of the common fortune of death, in such a manner that the property of him who died first should belong to the survivor; and the condition having

been complied with, it is understood that, by the will of your brother (which rule is confirmed by the Imperial Constitutions), his entire property is transferred to you.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Diocletian, Consul for the fifteenth time, and Maximian, Consul for the third time.

20. *The Same to Martial.*

The ownership of property is transferred by delivery and usucaption, and not by informal agreements without consideration.

Given on the *Kalends* of January, during the fifth and fourth Consulates of the Same Consuls, respectively, 293.

21. *The Same Emperors, and the Cæsars, to Eusebius.* When you state that it was agreed between you, without having been committed to writing, that the inheritances of your brothers should be divided into equal shares, and that it can be proved by the form of the transaction that this agreement was actually made, you can protect yourself by an exception, if you have possession of the property.

When, however, your adversary has possession, you must understand that no right of action will arise from such an agreement, if you did not provide for it by a stipulation, and your adversary will not be permitted to avail himself of the transaction, unless he is ready to carry out what was agreed upon.

Given on the *Kalends* of May, during the Consulate of Faustus, Consul for the second time, and Gallus, 298.

22. *The Same Emperors, and the Cæsars, to Archelaus.*

The agreement of a curator to accept a smaller amount than is due does not have the effect of injuring a minor of adult age, for guardians and curators, in collecting what is due to their wards or minors, cannot release the debtor from his obligation, even if they remit the debt.

Given on the eighteenth of the *Kalends* of December, during the Consulate of the same Emperors; the first, Consul for the seventh time, and the second, Consul for the sixth time, 299.

23. *The Same, and the Cæsars, to Honoratus.*

A son, by entering into an agreement, or accepting payment of a debt, does not diminish the obligation due to his father.

Given on the seventeenth of the *Kalends* of December, during the Consulate of the same Emperors; the first, Consul for the seventh time, and the second, Consul for the sixth time, 299.

24. *The Same, and the Cæsars, to Domina.*

If you have a right of action growing out of a legacy or a trust against the heirs of your former husband, and it is proved that you have relinquished it in favor of others of the heirs, understand that where you bring suit against

the debtors, an exception based on the agreement cannot prejudice you in any way.

Given on the seventh of the *Kalends* of January, during the third Consulate of the Cæsars, 300.

25. *The Same, and the Cæsars, to Euthemerus.*

The rights of creditors cannot be extinguished or altered by agreements made by their debtors with one another.

Given on the fourth of the *Kalends* of May, during the third Consulate of the Cæsars, 300.

26. *The Same, and the Cæsars, to Cornelia.*

Under the Law of the Twelve Tables, an agreement entered into by the heirs of a debtor by which the indebtedness of the estate was divided in proportion to the shares cannot bind one of the debtors to the creditor for the entire amount, and this also takes place where the heirs succeed under the prætorian law; hence, you can, so far as your interest is involved, bring an action against one of the co-heirs for the production of their common acknowledgment of the indebtedness in writing, or to establish the fact that no agreement for such an appointment was made.

Given on the third of the *Ides* of October, during the Consulate of the Cæsars.

27. *The Same, and the Cæsars, to Aurelius Chresimus.*

Anyone who brings suit under a stipulation which has been added in order to insure the execution of a contract, whether an informal agreement was made previously, or immediately afterwards, demands that a decision be rendered in accordance with the provisions of the latter.

Given at Heraclea, on the sixth of the *Ides* of November, during the Consulate of the Cæsars.

28. *The Same, and the Cæsars, to Leontius.*

Where money has been paid for some years under an agreement without consideration, he who made payment cannot afterwards compel the other party to refund what was received on the ground of its not having been due, unless a stipulation to that effect has been added.

Given on the third of the *Nonas* of December, during the Consulate of the same Emperors; the first, Consul for the eighth time, and the second, Consul for the second time.

29. *The Emperor Justinian to John, Prætorian Prefect.*

Where anyone, when drawing up an instrument, states that he will not avail himself of any exception to which he is entitled on account of his military rank, his dignity, or his prerogative as a member of the priesthood, although it formerly might have been doubted whether it was necessary to comply with this agreement, if the person who made it did not repudiate it, or whether he had the power to violate it and exercise his right, We

order that no one shall be permitted to repudiate his written agreement and deceive the contracting parties, for it is provided by the Edict of the Prætor himself that informal agreements which are not contrary to law, or which have been entered into with fraudulent intent, must, under all circumstances, be observed; wherefore would not such agreements be valid in this instance, as there is another rule of ancient law which provides that all persons have the right to repudiate anything which has been done for their benefit. Hence, all Our judges must observe this rule in litigation, and it applies to ordinary judges of inferior jurisdiction,¹

¹ These were special, permanent deputy judges (*judices delegati*), to whom were assigned the decision of unimportant matters, or the ascertainment of the facts of a case, by magistrates of superior jurisdiction. The name was derived from the fact that they, as it were, sat at the feet of the court (*quasi ad pedes prætoris*).

The *judices pedanei* of later times constituted an important branch of the Byzantine judiciary. They were twelve in number; were appointed from the ranks of the aristocracy and from those members of the profession most distinguished to mediators and to arbitrators, and they are notified that if they fail to comply with it, they shall be understood to have made the case their own.

Given at Constantinople, on the *Kalends* of September, after the Consulate of Lampadius and Orestes, 331.

30. *The Same to John, Prætorian Præfect.*

We have been asked the following question by the Bar of Cæsarea: "Two or more persons expected to receive an estate, either on account of their relationship, or because of informal agreements entered into between them with reference to the said estate, in which agreements it was expressly stated that if the owner of it should die, and the estate should go to them, certain arrangements should be made concerning the same; or if any of said persons should receive any particular benefit from the estate, certain provisions were to be carried out; and a doubt arose whether agreements of this kind should be observed."

The difficulty arises from the fact that the agreement had been entered into while the owner of the estate was still alive, because agreements of this kind are not based upon the fact that the parties are, under all circumstances, certain to receive the estate, but are dependent upon two conditions; namely, that the owner of the same should die, and that those who made such an agreement should be called to the succession.

All contracts of this kind, however, seem to Us to be abominable, and capable of producing the saddest and most dangerous effects; for why should any persons make an agreement concerning the property of a person who is

still living, and not be aware of what they have done? Therefore, in accordance with the rules of the ancients, We order that agreements of this kind, which are entered into against good morals, shall be absolutely void, and that nothing in them shall be observed, unless the person with reference to whose estate the agreement was made gives his consent, and from that time to the end of his life remains of the same kind. For, under these circumstances, all untimely expectations having been removed, it will be lawful for the agreements to be carried out, as the owner of the property is aware of, and consents to them.

This rule was not unknown to former laws and constitutions, but it has been presented by Us in a clearer manner. For We order that neither donations of such property, nor hypothecations of the same, shall be permitted under any circumstances whatsoever, that no one shall make a contract for this purpose; and also that after Our reign, for their attainments and reputation, and took cognizance of questions of both law and fact. Suits involving sums to the amount of three hundred *solidi* (about \$8,100, at the present value of money) were heard and decided by them, without reducing the proceedings to writing.

Many eminent provincial lawyers, some of whom had already served in the capacity of magistrates, were raised to this dignity. An appeal lay from this tribunal either to that of the Emperor alone, or to officials appointed by him for this purpose. — ED.

it shall not be permissible for anything to be done or contracted for with reference to the estate of another, without his consent.

Given at Constantinople, on the *Kalends* of November, after the Consulate of Lampadius and Orestes, 531.

TITLE IV.

CONCERNING COMPROMISES.

1. *The Emperor Antoninus to Celerius.*

No agreement or compromise made with certain curators or guardians shall be of any advantage to the others, so far as any property which they have, or should have administered, either separately or conjointly, is concerned; and, therefore, if you have three curators and compromise with two of them, you will not be prevented from suing the third.

Given on the *Kalends* of May, during the Consulate of Gentian and Bassus, 212.

2. *The Same to Luctatius.*

As you allege that you have made a settlement with your sister, with reference to an estate, and that you have given security to her for a certain sum of money that you owe her, although there is no dispute about the estate, still, as you made the compromise through fear of a legal action, the debt is understood to have been properly

secured, and therefore if you pay the Treasury, you cannot recover it; and if you do not do so, you can legally be sued.

Given on the third of the *Ides* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Emperor Alexander to Tullia.*

Bring an action against Geminian, on the ground that his father, who was appointed your curator, transacted your business; and, if he should deny in court that he is liable to this action, as a compromise and a stipulation was affected under the Aquilian Law, the judge, in consideration of the decision demanded in good faith, shall ascertain upon what sum of money the compromise was based, and if it appears that this was done for a smaller amount than was proved to be due as a balance under the administration of the curatorship, he shall order him to pay it; for the reason that, according to the Aquilian stipulation, none of the sum of money which was due can legally be deducted.

Given on the day before the *Ides* of August, during the Consulate of Maximus, Consul for the second time, and Elixianus, 324.

4. *The Same to Numidius.*

Where an action under the Aquilian stipulation to compel the rendition of an account of the administration of a curatorship has been brought by a party who has become of lawful age, and the claim has been extinguished by a release, the plaintiff cannot have recourse to any other action, unless there is no doubt that fraud has been committed, unless a compromise having special reference to the fraud was made.

Given on the second of the *Nones* of March, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

5. *The Same to Evocatus.*

As you assert that you have compromised with the heir of your former guardian, if you did so after arriving at your majority, you will in vain demand that the contract be rescinded; for although (as you say), no instrument was drawn up, still, as it is established by your statement that the contract was actually made, the written instrument which usually contains the evidence of the transaction is not necessary.

Given on the *Kalends* of March, during the Consulate of Albinus and Emlilianus.

6. *The Same to Pomponius.*

As you allege that your mother, after having filed a complaint that the will was inofficious, has compromised with some of the heirs, and agreed to accept a portion of the estate and abandon the suit, the law will not permit you, as the heir of your mother, to renew a complaint which she has abandoned; if, however, the agreement was

not carried out, you can properly sue a portion of the heirs to the extent of the interest of each. For where a stipulation is attached to an agreement, an action based on it will lie; or if the verbal obligation was omitted, an equitable action to show that the transaction was concluded *prescriptis verbis* should be granted.

Given on the eighth of the *Ides* of January, during the Consulate of Agricola and Clement, 231.

7. *The Same to the Soldier Licinius.*

An agreement for a compromise made by a person whom you directed to bring the action, but not to enforce judgment, will not, in any way, prejudice your claim.

Given on the fourteenth of the *Kalends* of January, during the Consulate of Gordian and Aviola, 240.

8. *The Emperor Gordian to the Soldier Junius.*

When a question is raised with reference to support which has not been provided, a compromise can be made; but one which involves future maintenance is not considered to be of any legal force unless it has been authorized by either the Pretor or the Governor.

Given on the tenth of the *Kalends* of January, under the Consulate of Pius and Pontianus, 239.

9. *The Same to Agrippinus.*

If suit for the possession of property is brought against you by your wife's brother, and you defend it after having (as you allege), made an agreement and a stipulation with him that if your adversary should, within a specified time, pay you ten *aurei*, you will give him possession; or, if he should not pay you the said sum, he cannot proceed further against you; and he who makes such a promise does not comply with it, the result will be that you, to whom the property belongs, ought not to suffer any violence from him; and the illustrious Governor of the province, having been applied to on this account, shall forbid force to be employed to your injury, and, above all, if an action *in rem* should lie in favor of the adverse party, he can, under an agreement of this kind, be barred by an equitable exception.

Given on the sixth of the *Ides* of April, during the Consulship of Gordian, Consul for the second time, and Pompeianus, 242.

10. *The Emperor Philip to Apollophania.*

You will unjustly bring a complaint against the sons of your brother on account of the estate of their father, and with reference to their condition, as this is contrary to the ties of blood as well as to the faith of contracts, for there would be no end to litigation, if *bona fide* compromises could easily be violated.

Given on the day before the *Kalends* of April, during the Consulate of Peregrinus and Emlilianus, 245.

11. *The Emperors Valerian Gallienus, and the Noble Cęsar Valerian, to the Soldier Caianus.*

The compromise made between your brother and yourself with reference to a trust created by your father providing that if either of you should die without issue, is valid; as it is maintained by the harmony existing between the brothers, rendering it improbable that one of them should desire the death of the other; and it cannot be rescinded on the ground that advantage has been taken of you, as, under this agreement, you have given your promise not to avail yourself of the age when it is customary for a person to be released from his obligations; and, if you institute proceedings, you should not, for the same reason, obtain the benefit of complete restitution.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Valerian and Gallienus, both Consuls for the second time, 256.

12. *The Same to Primus.*

The Governor of the province shall ascertain whether the compromise entered into between you and the rulers of your city was made with reference to an action whose issue was doubtful, or whether you have improperly obtained a release for what should unquestionably be paid; and, in the former instance, he shall order the compromise to stand, and in the latter, he must not allow it to prejudice the rights of the city.

Given on the sixteenth of the *Kalends* of March, during the Consulate of Emilianus and Bassus, 260.

13. *The Emperors Diocletian and Maximian to Proba.*

It is stated in the Perpetual Edict that a compromise effected through fear is not valid; but it is not every kind of apprehension which is sufficient to rescind those which have been made by consent, but the fear must be proved to be such as threatens danger to life, or suffering to the body. The nature of the principal cause is not, however, sufficient to prove violence or fraud; hence if nothing of this kind can be established, it will, by no means, be necessary for controversies which have been terminated to be renewed.

But, as you assert that the person with whom you have compromised is the son of your female slave, and is your slave, if the facts stated in the petition are true, another reason exists for declaring the agreement void; for there is no doubt whatever that, under the law, masters who make agreements with their slaves cannot be held liable under any such contracts.

Given at Byzantium, on the fourth of the *Nones* of April, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 258.

14. *The Same to Sopatra.*

Where the adverse party brings suit to annul the contract, equity suggests that if the money should be

refunded (and you consent to it), the action can be brought again.

Given on the fourth of the *Nones* of July, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

15. *The Same to Pontius.*

In order that you may receive a suitable reply, you should insert a copy of the contract in your application, so that We may understand whether an ordinary agreement has been made, or whether a stipulation under the Aquilian Law and a release have been added; and if this has been done, it is clear that your adversary is not entitled to bring suit to recover the estate, or claim any special property.

Given on the fifteenth of the *Kalends* of August, during the abovementioned Consulate, 290.

16. *The Same to Cæcilius.*

It is prohibited by an Imperial Rescript to revive any case or litigation which has been terminated by lawful compromise.

Given on the fifth of the *Ides* of March, during the administration of the above-mentioned Consuls; the first, Consul for the fifth time, and the second, Consul for the fourth time, 293.

17. *The Same Emperors and Cæsars to Marcellus.*

As you allege with reference to the person against whom you petition, and who had a lawsuit with you, that she, after having received the property which you agreed to give her for the purpose of putting an end to the matter in dispute, now desires to repudiate the agreement and you request that she either abide by it, or restore the property which was given to her; examine whether you made provision that if she violated the agreement, the property should be returned, but the compromise and the stipulation should stand, if at that time she was over twenty-five years of age; because, under these circumstances, you can interpose an exception based on the agreement, and bring suit to recover the property which you have given; but if nothing of this kind was agreed upon, you will be entitled to an exception, but you will not have the right to recover the property which you have given.

Given on the fifth of the *Ides* of June, during the above-mentioned Consulate, 293.

18. *The Same, and the Cæsars, to Valens.*

It is not forbidden to compromise or make an agreement with reference to a capital crime, with the exception of adultery; and in other public crimes which do not involve the penalty of death no compromise can be made, except where an accusation of forgery is made.

Given on the third of the *Kalends* of September, under the abovementioned Consulate, 293.

19. *The Same, and the Cæsars, to Irenæus.*

We do not permit a *bona fide* compromise to be rescinded under the pretext of subsequently discovered documentary evidence. When, however, it can be proved that the decision of the case has been obtained by the concealment of instruments necessary to establish the truth, either by the interested party himself, or by another, if the action still remains, an exception based on contract can be met by a reply alleging bad faith; but where it has already been disposed of, you can only bring suit on the ground of fraud within the time prescribed by law.

Given on the fourth of the *Kalends* of October, under the abovementioned Consulate, 393.

20. *The Same, and the Cæsars, to Antistia.*

It is with good reason held that no less authority attaches to compromises than to matters which have been judicially decided; and, indeed, nothing is so agreeable to the good faith of human nature as for men to abide by the agreements which they have entered into; and in order to rescind an agreement it is not sufficient for you to state that it was made during the second hour of the night, as no time authorizes the repudiation of consent by a person of sound mind who has reached the age of twenty-five years.

Given on the fourth of the *Kalends* of October, under the abovementioned Consulate, 492.

21. *The Same, and the Cæsars, to Geminian.*

It is ordered that those things which, under the terms of a compromise, it has been agreed shall be given or retained, for example where it has been determined to take as a purchaser a person who has been deemed acceptable, any fictitious transaction being considered as not having taken place, the demand for the payment of the imaginary price shall be made in vain.

Given on the fifth of the *Nones* of October, under the above-mentioned Consulate, 293.

22. *The Same, and the Cæsars, to Alexander.*

If you make a compromise during your majority, an action based upon fraud will not be sufficient to rescind it.

Given on the *Kalends* of December during the above-mentioned Consulate, 293.

23. *The Same, and the Cæsars, to Tatian.*

The institution of proceedings by the creditors of Archimedorus, to whom you allege others have succeeded, will not affect you, if you were not liable for him; but it is proper that the matter should be decided after a thorough investigation, since, as you say that the dispute has already been settled by a compromise, and that the sum of money agreed upon has been paid by you, you will very improperly ask that you should be granted an action under the pretext of having paid money which was not due; as, even if only a stipulation has been

entered into, you cannot defend yourself on the ground that you have promised what was not due.

Given on the eighth of the *Ides* of March, under the Consulate of the Cæsars, 294.

24. *The Same, and the Cæsars, to Victorvms.*

If, after having received whatever was mentioned in the instrument drawn up with reference to the compromise, and it having been agreed that nothing more should be demanded, you perceive that your adversary is defending herself by means of an exception, you will by no means be prevented from collecting the remainder of the debt, if she should be forced, without any judicial decision, to pay a certain amount which she confessed that she owes.

Given at Sirmium, on the fifth of the *Nones* of April, under the Consulate of the Cæsars, 294.

25. *The Same Emperors and Cæsars to Marcella and Quirilla.*

If, after having attained the age of twenty-five years, you should make a compromise with either your paternal or maternal uncle, and release to him unconditionally what was due to you, as a donation, for the reason that you did not allege that you made this agreement for the sake of obtaining the estate, that is to say, with the expectation of a future inheritance, and others succeed to him, the compromise having been terminated, you cannot dispute it.

Given on the second of the *Ides* of April, during the Consulate of the Cæsars, 294.

26. *The Same, and the Cæsars, to Dionysiada.* It is a well-known rule of law that children cannot become slaves through any compromise made by their mother.

Given on the *Ides* of April, during the Consulate of the Cæsars, 294.

27. *The Same, and the Cæsars, to Cato.*

It is clear that anyone, who is of sound mind, even though he may be ill in body, can legally make a compromise; and you should not, with unjust intention, demand that the contract be rescinded under the pretext of corporeal in disposition.

Given on the seventh of the *Ides* of May, under the Consulate of the Cæsars, 294.

28. *The Same, and the Cæsars, to Saparita.*

Whether the compromise in question was entered into, and recorded in the registers of the Governor of the province, or whether this was not done, or whether it was committed to writing or not, it is proper for it to be observed; but, as you acknowledge that you agreed to receive something certain, even if this was not committed to writing, and no stipulation with reference to it was added, although a right of action does not arise from such an agreement, still, if while the suit for the recovery of the property is pending an exception on contract is

opposed to you, you can, by making use of a reply based on fraud, or *in factum*, force your adversary to comply with the agreement.

Given on the third of the *Nones* of July, during the Consulate of the Cæsars, 294.

29. *The Same, and the Cæsars, to Martia.*

The laws forbid that after a general compromise has been effected, it should be rescinded on the ground of newly discovered documentary evidence; but a mistake with reference to the ownership of the property at the time that the compromise was made can injure no one except the contracting parties.

Given on the fourth of the *Kalends* of October, during the Consulate of the Cæsars, 294.

30. *The Same, and the Cæsars, to Antoninus.*

As you allege that after the compromise was effected more fraud had been committed by you than by those against whom you filed your petition, it would be injurious, as well as criminal, for you to revive the dispute.

Given on the fifth of the *Ides* of October, during the Consulate of the Cæsars, 294.

31. *The Same, and the Cæsars, to Proculus.*

Where a compromise has been made with reference to certain property, and it was agreed that nothing more should be demanded, even though this may not have been inserted in the instrument, the right of action will nevertheless remain unimpaired, so far as other matters are concerned.

Given at Byzantium, on the fourth of the *Ides* of October, during the Consulate of the Cæsars.

32. *The Same, and the Cæsars, to Cyrillus.*

Where, after proper cause has been shown, a decision is rendered (as prescribed by law), it will not be suspended by taking an appeal, or by the formality of complete restitution; and it is not at all uncertain that you have compromised in vain with reference to the judgment; and hence, if a stipulation and release have not been added under the Aquilian Law, you have extinguished the right of action to which you were entitled, and the Governor of the province, in accordance with legal procedure, shall see that the judgment previously rendered is executed.

Given on the eighth of the *Kalends* of November, during the Consulate of the Cæsars, 294.

33. *The Same, and the Cæsars, to Euchrusius.*

If it was provided by the terms of a compromise that you should be given a certain tract of land defined by metes and bounds, instead of another tract which you claimed, and at that time you were over twenty-five years of age; although it may be proved that the said tract of land had subsequently been encumbered, or partly

belonged to someone else, the law forbids the case to be revived, after it has once been decided. You can, indeed, bring suit under the stipulation, if one was attached to the agreement, or if not, you can bring the civil *Actio de præscriptis verbis* before the Governor of the province. If, however, the Treasury, or anyone else, should demand of you the same property, which is in your possession, and with reference to the ownership of which the decision was rendered in the aforesaid case, you cannot claim anything.

Given on the fifth of the *Ides* of November, during the Consulate of the Cæsars, 294.

34. *The Same, and the Cæsars, to Cyrillus and Ptolemaidus.*

As you state that you have knowingly, by reason of either a donation or a compromise, released your brother from what was due to you on account of the administration of a guardianship, and as fraud cannot be committed against anyone who gives his consent, you will in vain complain of it; for no one is compelled to fulfill an obligation by the promise of his own estate.

Given on the sixth of the *Ides* of November, during the Consulate of the Cæsars, 294.

35. *The Same, and the Cæsars, to Hammon.*

It having been shown that a compromise made by the transfer of the ownership of property or by the dismissal of an action has actually taken place through the intervention of friends, the demand of the plaintiff that it should be rescinded under the pretext of duress discloses his bad faith.

Given at Nicomedia, on the ninth of the *Kalends* of December, during the Consulate of the Cæsars, 294.

36. *The Same, and the Cæsars, to Achilla.*

If you negotiated a compromise when you were more than twenty-five years of age, and those who executed the agreement are not proved to have done so, and do not consent to it, equity demands that nothing more be required of them.

Given on the sixth of the *Ides* of December, under the Consulate of the Cæsars, 294.

37. *The Same, and the Cæsars, to Basyllissa.*

Where promises made on account of a compromise have not been fulfilled, it is established that the penalty included in the stipulation can be exacted, in case the contract is violated.

Given at Nicomedia, on the twelfth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

38. *The Same, and the Cæsars, to Theodotian.*

A compromise is of no effect unless something is given, retained, or promised.

Given at Nicomedia, on the eighth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

39. *The Same, and the Cæsars, to Martian.*

Although the person who made the compromise may immediately repent of having done so, still the agreement cannot be rescinded, and the lawsuit renewed; and he who has convinced you that it is lawful to repudiate a compromise within a certain time states what is false.

Given on the *Kalends* of January, during the Consulate of the Cæsars, 294.

40. *The Emperors Gratian, Valentinian, and Theodosius to Eutropus, Prætorian Prefect.*

When the agreement or compromise has been committed to writing, and it has acquired legal effect through the stipulation and release made under the Aquilian Law, either consent must be given to other matters which have been properly added, or the penalty, together with what is proved to have been conceded before the case was heard, shall be collected (if the adversary wishes this to be done).

Given at Constantinople, on the third of the *Nones* of June, during the Consulship of Eucherius and Syagrius, 381.

41. *The Emperors Arcadius and Honorius to Rufinus, Prætorian Prefect.*

If anyone over twenty-five years of age should think that, either by applying to the judge, or by petitioning the Emperor, or by not fulfilling his promises which he confirmed by invoking the name of Almighty God, he can violate contracts or compromises which have not been made with the employment of force, but have been negotiated with his free will and consent, he shall not only be branded with infamy, but shall also be deprived of his right of action; and after having paid the penalty inserted in the agreement, he shall lose the ownership of the property, and the advantages which he would have obtained through the said agreement or compromise. Therefore, all these things shall be to the advantage of those who preserve their contracts inviolate, and We order that they shall be considered worthy of the praise or benefit of this law who, inserting Our name in their contracts, swear that the invocation of the Emperor is the confirmation of the agreements which they have made.

Given at Constantinople, on the fifth of the *Ides* of October, during the Consulate of Olybrius and Probinus, 395.

42. *The Emperors Leo and Anthemius to Achrochirius, Prætorian Prefect.*

When compromises or agreements based upon forged documents have been made, even though an oath may have been taken with reference to them, We, nevertheless, order that, after their falsity has been disclosed, they shall be annulled, in such a way, however,

that if any compromise involving several cases or matters has been effected, only that case or part shall be annulled which is proved to have been inserted in a forged document, but all the others shall remain unimpaired, unless where a controversy having arisen with reference to something which is said to be false, it has been settled by compromise.

Given at Constantinople, on the *Kalends* of July, during the Consulate of Martian and Zeno, 469.

43. *The Emperor Anastasius to Thomas, Prætorian Prefect of Illyria.*

We order that all compromises made with a view to disposing of litigation already begun and pending, or which may afterwards arise, concerning the servile condition, or serfs attached to the glebe, shall be carried out; or if they should happen to have already been executed, and this has not been done contrary to law, that they shall remain in full force, and shall not be regarded as lacking stability on account of their tenor, for the reason that they have been entered into on account of the servile condition, or serfdom.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Patricius and Hypatius, 541.

TITLE V.

CONCERNING ERRORS IN CALCULATION.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Aurelianus Quartus.*

It has frequently been decided that an error in calculation, whether it is found in one contract or in several, shall not prejudice the truth; and therefore it is an established rule of law that, even where accounts have often been computed, they can again be examined, if the case has not been finally decided, or a compromise has not been effected. Where, however, through a mistake in calculation, you promised a certain sum of money as being due, when it was not, you have a right to be released from the obligation.

Given on the sixth of the *Kalends* of March, under the above-mentioned Consulate.

TITLE VI.

CONCERNING LITIGATION.

1. *The Emperor Antoninus to Artemidorus.*

For the reason that, when you were forbidden by the Prefect of Egypt from bringing an action at any time, you did not appeal, obey his decision.

Given on the third of the *Kalends* of August, during the Consulate of Sabinus, Consul for the second time, and Anulinus, 217.

2. *The Emperor Alexander to Polydorus.*

The freedmen of others, as well as My own, are hereby prohibited from practicing the profession of the law, even where they are learned in letters.

Given on the *Nones* of March, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

3. *The Emperor Gordian to Flavian.*

If, having voluntarily agreed upon the amount to be paid to your advocate as a fee, you furnished security, just as if you had borrowed money from him and had promised to repay it, and you have not confirmed your consent and your obligation, and no legal business has been transacted during the term of two years, you can protect yourself from payment by interposing an exception, and can bring suit to recover the security furnished in the usual way on this account.

Given on the fifth of the *Ides* of June, during the Consulate of Sabinus, Consul for the second time, and Venustus, 241.

4. *The Emperors Diocletian and Maximian, and the Cæsars, to Theodotus.*

Anyone will, in vain, under the pretext of the absence of his advocate, attempt to revive an action which has already been terminated.

Given at Nicomedia, on the fourth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

5. *The Emperor Constantine to Helladius.*

If advocates, without any regard for their reputation, should be found to have collected excessive and unlawful sums under the pretext of fees, for the transaction of business which they have undertaken, and, by demanding such remuneration for themselves, inflict serious injury and loss upon litigants, it is hereby decreed that all those who are guilty of such extortion shall be immediately expelled from the profession.

Given on the third of the *Kalends* of April, during the Consulate of Paulinus and Julian, 326.

6. *The Emperors Valentinian and Valens to Olybrius, Urban Prefect.*

Anyone who desires to be a pleader cannot act as advocate and judge in the same case, since a distinction must exist between those who decide cases and those who argue them.

(1) Advocates shall, above all things, defend the cases of those who retain them in such a way as to do nothing more than the success of the actions demands, and they shall not employ abuse and slander. They must do whatever the case requires, but refrain from vituperation; for if anyone should be so bold as to think his case should be conducted not by argument but by personal invective, he shall suffer the loss of reputation. Nor shall anyone be permitted, after the case is terminated, to heap contumely upon his adversary either openly or clandestinely.

(2) Moreover, an advocate must enter into no contract with the litigant who has confided in him, and he must make no informal agreement with him.

(3) None of those whom it is lawful or proper to employ as advocates shall treat with contempt what his client voluntarily offers him in payment for his services.

(4) No one shall himself delay the trial of a case which has been entrusted to him.

(5) Those who, in the City of Rome, have adopted the legal profession, are permitted to practice it as much as they desire, provided they do not take occasion to obtain dishonorable profits, and unreasonable fees, but may only seek to increase their professional reputation. Where, however, they are influenced by the love of gain and money, they shall be considered abject and degenerate, and be classed as the meanest of mankind.

(6) Therefore, let each of those whom We permit to practice this profession, and who desires to be an advocate, know that while he does so, he can only exercise this calling and no other. And let none of them think that he is deprived of any honor, when he has himself selected the position of advocate, and relinquished that of judge.

Given on the tenth of the *Kalends* of September, during the Consulate of Valentinian and Valens, 368.

7. *The Same and Gratian to Olybrius, Urban Prefect.*

Care must be taken to prevent those who attain to a high rank at the bar, either through their merits or their erudition, from being engaged on one side, when the other is necessarily committed to such as are without skill or experience; and therefore if two or more of superior reputation are not to be found in the same court, it shall be the duty of the judge to make such an assignment of the advocates that an equal division may take place and each party have proper assistance. If, however, an advocate notified by the judge should refuse to appear for one of the parties, and offers an excuse which cannot be accepted, he shall be dismissed from the bar, and he is also notified that he can never again have an opportunity to practice his profession.

When any litigant has been shown to have retained several advocates separately, and by such a fraud prevented his adversary from making an adequate defence, he discloses beyond doubt that the suit which he has brought is unjust, and that he has attempted to deceive the court.

Given on the *Kalends* of March, during the Consulate of Valentinian and Valens, both Consuls for the third time, 370.

8. *The Emperors Leo and Anthemius to Nicostratus, Prætorian Prefect.*

No one shall be admitted to practice in your court, or in any provincial one, nor shall appear with other members of the bar before any judge, unless he has been initiated into the holy mysteries of the Catholic Religion. Moreover, if anything should be done or attempted in any

way, or by any artifice whatsoever, in violation of this law, your office shall be compelled to pay a fine of a hundred pounds of gold.

Again, anyone who dares to surreptitiously usurp the office of advocate, contrary to the Decree which We have promulgated, and practices the legal profession without authority, shall be removed from the position of advocate, shall have his property confiscated, and shall be sentenced to perpetual exile; and Governors of provinces are also hereby notified that he under whose administration anything of this kind is attempted shall be deprived of half of his property, and sentenced to exile for the term of five years.

Given at Constantinople, on the day before the *Kalends* of April, during the Consulate of Anthemius, Consul for the second time, 468.

TITLE VII.

CONCERNING THE ADVOCATES OF DIFFERENT TRIBUNALS.

1. *The Emperor Antoninus to Dolo.*

If you think that the advocate in the case has been guilty of prevarication, and you prove the charge, sentence shall be passed upon him in accordance with the gravity of the offence which he has committed, and the suit shall again be commenced. But if you do not establish the prevarication, you will be branded as guilty of false accusation, and the case shall stand as decided, unless an appeal has been taken.

Given on the third of the *Kalends* of October, during the Consulate of Antoninus, Consul for the fourth time, and Albinus, 214.

2. *The Emperors Valens, Gratian, and Valentinian to Antony, Prætorian Prefect.*

We are unwilling to permit those who are compelled to perform the duties of office in the cities of their residence, and are assembled as decurions, to go from one place to another, or act as advocates, and they must discharge the functions of curule employments in their own towns, in such a way, however, that they shall not be allowed to appear in cases against the municipality in which they have obtained this honor.

Given at Ravenna, on the fifteenth of the *Kalends* of September, during the Consulate of Valens, Consul for the sixth time, and Valentinian, Consul for the second time, 378.

3. *The Emperors Arcadius and Honorius to Africanus, Prætorian Prefect.*

No member of the bar who holds a civil office, unless he is a decurion, shall undertake to discharge his official duties in his province, as those who intrigue to obtain them are excluded; and, on the other hand, they are obliged to accept such offices even against their will.

Given at Constantinople, on the third of the *Nones* of August, during the Consulate of Arcadius, Consul for the fourth time, and Honorius, Consul for the third time, 394.

4. *The Emperors Honorius and Theodosius to Eustachius, Prætorian Prefect.*

The advocates belonging to your bar and jurisdiction are entitled to what they may have gained in the practice of their profession, or on this occasion; and they can claim it as their own property after the death of their father, just as they could do their *peculium castrense*, if they were in the military service.

Given at Constantinople, on the tenth of the *Kalends* of April, during the Consulate of Honorius, Consul for the thirteenth time, and Theodosius, Consul for the tenth time, 422.

5. *The Emperors Theodosius and Valentinian to Cyrus, Urban Prefect.*

The advocates of the Illustrious Urban Prefecture are hereby notified that the same privileges which We, actuated by generosity and Imperial munificence, have granted to members of the bar belonging to the Illustrious Prefecture of the East, through respect for their attainments, are bestowed upon them by the present law.

Given at Constantinople, on the seventh of the *Kalends* of January, during the Consulate of Theodosius, Consul for the twelfth time, and Valentinian, Consul for the second time, 426.

6. *The Same to Florentius, Prætorian Prefect.* We order that no charge be imposed, under any circumstances, by your Illustrious Prefecture, or by any judge, upon advocates who are practicing in your jurisdiction; and let no one think that any charges can be imposed upon the advocates of the provinces, or upon the distinguished judges. Hence no inspection of public works can be required of advocates; nor can they be compelled to superintend any division of property, or the construction of any work; or take part in any argument, or any settlement of accounts; and finally, no civil duties should be exacted from them, with the exception of that of arbitration, and this only in the place where they practice their profession; and if anyone should attempt to violate the provisions of this law, he shall be liable to the penalty of fifty pounds of gold.

Given at Constantinople, on the seventh of the *Kalends* of March, during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

7. *The Same to Thalassius, Prætorian Prefect of Illyria.*

We decree that the Bar of the Illustrious Prefecture of Illyria shall enjoy the same privileges and immunities as are enjoyed by that of the Eminent Prætorian Prefecture of the East.

Given at Constantinople, on the seventh of the *Ides* of September, during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

8. *The Same to Cyrus, Prætorian Prefect and Consul Elect.*

The number of prætorian advocates is limited to a hundred and fifty, and cannot be either diminished or increased. We order that those who are selected from them to represent the Treasury shall, together with their children already born and who may be born at any time hereafter, be exempt from the obligations growing out of attendance upon public functionaries, or those of any other inferior condition; and when they have relinquished their office, after having exercised it for an entire year, they can leave the Order of Advocates, and resign the office of consistorial count; and, by the authority of this law We decree that everything which has been obtained in any case by the advocates of your bar, under any title whatsoever, they can claim as their own, in the same manner as *castrense peculium*, and that such property cannot be acquired by their fathers or their paternal grandfathers.

These provisions apply to all the advocates of the Urban Prefecture.

Given on the third of the *Kalends* of January, during the Consulate of Valentinian and Anatolius, 440.

9. *The Same to Apollonius, Prætorian Prefect.*

If anyone of the members of your bar or of that of the Illyrian, or of the urban Prefecture, or of those who practice their profession in the tribunals of the province, should through your selection undertake the task of governing a province, after having discharged the duty of his office honorably and without reproach, he shall have the power to resume the calling from which he was taken, and by which he obtained the means of subsistence, and he cannot be prevented, by the malice of anyone, from again trying cases.

Given at Constantinople, on the twelfth of the *Kalends* of September, during the Consulate of Eudoxius and Dioscorus, 442.

10. *The Emperors Valentinian and Martian to Palladius, Prætorian Prefect.*

We order that every year the two advocates of the highest reputation in your tribunal shall be selected to represent the Treasury, and shall enjoy the same honors and privileges enjoyed by him who formerly was appointed Advocate of the Treasury.

Given at Constantinople, on the fourteenth of the *Kalends* of July, during the Consulate of Herculanus and Asporatius, 452.

11. *The Emperor Leo to Vivianus, Prætorian Prefect.*

We order that no one shall, under the pretext of assistants, be permitted to increase the prescribed number

of a hundred and fifty advocates, who form the Council of your Illustrious Prefecture.

(1) Moreover, no one can be admitted to the Order of Advocates in your jurisdiction, unless, after having undergone the examination of the eminent Governor of the province where he was born, in the presence of the subordinate officials, it becomes clear that he is in no way liable to the life and fortunes of the latter. We wish this to be done in the presence of the Governor of the province, and if he should be absent, the proofs must be established before the municipal defender. We order that persons distinguished for legal erudition, and doctors of the law, shall certify under oath that he who desires to be admitted is learned in the science of jurisprudence.

We also desire that the sons of advocates of your bar who are now practicing, or shall do so at some future time, shall be preferred to all other supernumeraries.¹

(2) In addition to this We decree that those who exceed the number of one hundred and fifty advocates, belonging to your bar, shall be permitted to appear before the Illustrious Proconsul, the Augustal Prefect, the Count of the East, the eminent vicegerents, and the Governors of provinces, for the purpose of conducting cases.

Given at Constantinople, on the *Kalends* of February, under the Consulate of Magnus and Apollonius, 460.

12. *The Same to Eusebius, Prætorian Prefect of Illyria.*

We order that the Advocate of the Treasury who is attached to your tribunal shall surrender his office at the end of two years here-

¹ The division of the Roman bar into two classes, one the advocates proper, constituting a corporate body, or *collegium*, whose number was established by law in every city; and the supernumeraries, from whom, in the order of their rank, as inscribed upon the public registers, all vacancies in the former class were filled, dated from the reign of Constantine. The supernumeraries did not belong to any legal organization; their residence was not, like that of their superiors, restricted to any particular locality; and they had the right to practice anywhere in courts of inferior jurisdiction, but enjoyed no special privileges. — ED.

after, and not every year as formerly; and that he shall continue to enjoy all the privileges conferred upon him by former Emperors.

Given at Constantinople, on the tenth of the *Kalends* of March, during the Consulate of Basilius and Vivianus, 463.

13. *The Emperors Leo and Anthemius to Alexander, Prætorian Prefect.*

As we consider the petition of the learned men of Alexandria, which they have presented with reference to their bar and the Advocate of the Treasury, to be

reasonable, We decree, by this law, that their number shall consist of fifty; that the name of each of them, according to the date of his membership, shall be entered upon the register; and that they can give their professional services to those requesting them, not only in the tribunal of the Illustrious Augustal Prefect, but also in that of the Illustrious Governor of Egypt. The advocates who are not included in the above-mentioned number can appear before the other judges of the said city of Alexandria, and their sons shall be preferred to other supernumeraries, when places in the Order become vacant.

The Advocate of the Treasury, who leaves his office after the lapse of two years, shall, as a reward for his services, receive the office of consular ruler of the province, and when circumstances demand it, the right and authority to conduct cases not only for himself, but also for his children, his parents, and his wife, as well as for persons related to him in the collateral line as far as the fourth degree, shall not be denied him.

When, however, an Advocate of the Treasury dies, the one who is next in rank shall be given his place, without delay, and the heirs of the deceased cannot expect to derive any benefit for themselves on this account, and all the privileges which are known to have been enjoyed by them up to this time, as well as those which have been conferred by Your Highness, shall be preserved intact and inviolate hereafter; and they can pass the rest of their lives in leisure and peace, through the favor which We have shown them, and no civil employment can be imposed upon them without their consent.

14. *The Same to Callicrates, Prętorian Prefect of Illyria.*

Advocates who explain ambiguous questions which arise in the course of litigation, and who, by the ability of their defence, frequently, in both private and public matters, restore the fortunes of those who have been ruined, are not less useful to the human race than if they had preserved their country and their relatives by taking part in battles, and receiving wounds. For We do not think that those who are equipped as soldiers with swords, shields, and cuirasses should be considered the only ones who protect Our Empire, but that the advocates, also, who have charge of cases contend as soldiers, and, trusting in the glorious power of eloquence, protect the hopes, the lives, and the children of those who are distressed.

Given at Constantinople, on the fifth of the *Kalends* of April, during the Consulate of Zeno and Martian, 469.

15. *The Emperor Leo to Dioscorus, Prętorian Prefect.*

After the two Advocates of the Treasury who, in accordance with Our previous Constitutions, are entitled to the same benefits, We decree that all the present members of the bar, sixty-four in number, from the first to the sixty-fourth, shall enjoy the advantages conferred by the Emperors, with which the advocates of the Treasury and their children have been honored.

(1) We also order that if anyone, after having obtained the rank of Advocate of the Treasury, should die, his salary for the entire year, from the time that he began to discharge the duties of his office, shall be transmitted to his heirs or successors, whether they are his children or strangers, and that he shall have the power to make this disposition by will, or the money shall pass *ab intestato*.

Given at Constantinople, on the seventeenth of the *Kalends* of June, during the Consulate of Festus and Martian, 472.

16. *The Emperors Leo Junior and Zeno, to Justinian, Prętorian Prefect of the City.*

The fifteen advocates of your bar who, at the present time, hold the first rank after the Advocate of the Treasury, shall, like the sixty-four who constitute the bar of the Prętorian Prefecture, be entitled to the same privileges bestowed by Our Indulgence that Advocates of the Treasury and their children enjoy.

Given at Constantinople, on the seventeenth of the *Kalends* of April, during the Consulate of Leo Junior, 474.

17. *The Emperor Zeno to Paulus, Prętorian Prefect of Illyria.*

We order that the number of members of the bar in your jurisdiction shall be limited to a hundred and fifty (as was formerly provided); and that this number, whenever diminished by retirement from the profession, by death, or for any other reason, shall be restored by your selection; so that, within two years from the present time, the number shall be complete. The members shall be admitted without examination as to whether they belong to some official retinue, or are of any other inferior class; and any right of action to which the bailiffs may be entitled against them will undoubtedly be extinguished, so far as those who have filled the office of Advocates of the Treasury are concerned. After the expiration of two years, however, those who desire to be admitted to the bar in your jurisdiction cannot do so, until it has been proved that they do not belong to the inferior class of subordinate officials.

(1) We order by this law, which shall be valid for all time, that all privileges, without exception, which have been granted to Advocates of the Prefecture of the East, whether by the Rescripts of former Emperors, by those of Leo of glorious memory, or by Our own, shall be

conferred upon the advocates of your illustrious jurisdiction.

Given at Constantinople, on the sixth of the *Kalends* of January, during the Consulate of Decius and Longinus, 486.

TITLE VIII.

CONCERNING THE ADVOCATES OF DIFFERENT JUDGES.

1. *The Emperor Anastasius to Eusebius, Master of the Offices.*

We think that the suggestion of the illustrious Count of Private Affairs, and the Proconsul of Asia, should be adopted, by which We have been informed that the advocates of their bar have shown, by a petition presented by them, that they greatly desire to obtain some mark of favor from Us, after having retired from the practice of their profession. Therefore, We order that, after they have ceased to perform their duties (as has already been stated), each of them who is at present, or may afterwards be inscribed upon the registers in his proper order, shall enjoy the dignity of count of the first rank, in order that they may obtain in their retirement the fruit of their former labors; being distinguished from the great body of men of a private condition by their approved fidelity and industry as displayed towards their clients, and with reason deserving to be numbered among those who are designated most illustrious.

Given at Constantinople, on the eleventh of the *Kalends* of January, during the Consulate of Anastasius, Consul for the second time, 497.

2. *The Same to Thomas, Prætorian Prefect of Illyria.*

We decree that the advocates of your bar who have been raised to the rank of Advocates of the Treasury, in accordance with their merits, shall, with their children already born, or who may hereafter be born, and their property, be immune and free from all subordinate public employments, or the disabilities of any inferior condition whatsoever; as it is established that this privilege has already been granted by the Imperial Constitutions to the Advocates of the Prætorian Prefecture of the East, as well as to that of this magnificent City, and there is no doubt that the authority of your office is equal to that of the Urban Prefect and that of the Prefect of the Orient.

Given on the twelfth of the *Kalends* of December, during the Consulate of Patricius and Hypatius.

3. *The Same to Constantine, Prætorian Prefect.*

We order that the chief of the advocates of the bar of the Illustrious Count of the East shall perform the functions of Advocate of the Treasury for the term of two years, and that for the said term he shall receive the salary granted him by common consent; and that when this time has expired, and he retires from the office, the number of the said advocates shall be fixed at only forty; so that, if

there should be any over and above this number belonging to the bar, they shall be excluded from practice as advocates, and no one else shall be added to them, to prevent the number of the said advocates from being more than forty. Those who (as has already been determined), have relinquished the office of Advocate of the Treasury, shall not afterwards be prevented from performing the duties of their profession for themselves, their wives, their fathers and mothers-in-law, their sons-in-law, their daughters-in-law, their children, their tenants, and their slaves; nor shall their houses be subject to the charge of lodging surveyors; but each of them can only claim this privilege for himself with reference to the house in which he resides. So far as the tax called *sportulæ* is concerned, no one can exact more than has been stated in Our notice, not only with reference to the persons above mentioned, but also with reference to their tenants and slaves, and no one shall have permission to exceed this amount.

The sons of advocates, whether their fathers are living or dead, or are still in active practice, or have retired from the office of Advocate of the Treasury, shall be preferred to strangers applying for the same office, and shall be admitted free, and without any expense, if they (as has been decided), have studied the science of jurisprudence for the prescribed time. However, in order that the interests of those who had obtained the office of Advocate of the Treasury, both dead as well as living, may be protected, and they may have their salaries transferred to the heirs of those who have been called to the office of Advocate of the Treasury, and be preserved for such as have already retired from the said office or who afterwards may do so; and that they may not, under any circumstances be compelled, against their will, to be liable to any public charge, or be annoyed by being forced to appear or be brought into court (unless by Our special command), We order that only when application is made in a province to the distinguished Count of the East and he gives his approval, they can be sued, and their case heard before a competent judge.

Given at Constantinople, on the *Kalends* of July, during the Consulate of Sabinian and Theodore, 505.

4. *The Same to Eustatius, Prætorian Prefect.*

The calling of advocate is one which is praiseworthy and necessary to human life, and it should, by all means, be remunerated with princely generosity. Therefore We order that the illustrious Advocates of the Treasury belonging to your bar shall receive their salaries on the solemn day of the Festival of the *Kalends* of January, only for the year during which they have discharged the duties of their office, in the same manner as the illustrious Counts of Our Consistory. After they have retired from office, if they have any freeborn sons, the

latter should be made members of the eminent body of notaries, and receive the ordinary sacred epistles of the tribunes, without the payment of any fee.

Where, however, any one of them is notified of a debt and acknowledges it, or, an action having been brought against him, he is ready to confess judgment, this should not be done before an appointed arbiter, but before the Advocates of the Treasury, or either of them (if only one can be present), in the usual manner.

Whenever anyone desires to render legitimate children who have been born, or are not yet born of a marriage celebrated without dotal instruments, and by common consent, this can be effected before the

Advocates of the Treasury, or either of them (as already has been stated), and a record must be made of the act in such a way that the rights of absent persons, if there are any, shall be preserved unimpaired. In addition to this, when anyone wishes to confer emancipation upon his slaves before the consuls, he can avail himself of his own services as advocate, and liberate said slaves in the same manner before the Advocates of the Treasury.

We also decree that the other privileges mentioned, which already have been bestowed upon the Advocates of the Treasury, or upon those who temporarily have discharged the duties of the office in different ways, shall remain in full force under this Our law.

Given at Constantinople, on the twelfth of the *Kalends* of December, during the Consulate of Ariovinius and Messala, 506.

5. *The Same to Sergius.*

We have decided that the petitions of the learned members of the Bar of the Second Province of Syria should be granted, with some modifications, and We order that their chief shall perform the functions of Advocate of the Treasury for the term of two years, and that he receive the salary for the said term which is authorized by common consent for that purpose; and that when the said term has expired, he shall relinquish the office of advocate.

The number of said advocates shall be limited to only thirty, so that if there are any over and above that number in the bar at present, they shall, by all means, retire from the general practice of their profession, and no one shall be added to them in order that the number of twenty advocates aforesaid may not be exceeded.

Moreover (as has been already decided), those who have retired from the office of advocate are not forbidden to continue to represent themselves, their wives, their fathers and mothers-in-law, their sons and daughters-in-law, their own children, their tenants, and the slaves which belong to them, in court; nor shall they be subject to the inconvenience of having their houses used for the lodging of surveyors, provided they are willing to claim

for themselves this privilege with reference to only a single house.

So far as the tax designated *sportulę* is concerned, they cannot be compelled to pay a greater amount than is specified in the notice which We have published; and this rule applies not only to them, but also to their tenants and slaves; nor shall anyone be admitted to their Order aforesaid, except those who are known to have been engaged in the study of jurisprudence during the prescribed time. The sons of advocates who are still in office, or of those who have retired from the Treasury, whether they be living or dead, shall be preferred to strangers applying for the same employment, and they shall be admitted gratis, and without any expense, provided they (as has been established), have studied law for the usual time.

Again, in order that the interests of those who have held the office of advocate, or shall hold it hereafter, whether living or dead, may be protected, We desire that their salaries shall be transmitted to the heirs of any Advocate of the Treasury who has once been raised to that dignity, and shall be preserved for them; and that those who have retired from the said office, or may do so hereafter, shall, by no means, be compelled to undertake any public charge against their will, or be annoyed by being compelled to be produced, or brought into court (unless by Our special command), and if, in any province in which they may be, they should be declared liable by a decree of the Governor, only under such circumstances can they be sued and compelled to defend themselves before a competent judge.

Given on the *Kalends* of December, under the Consulate of Anatolius and Agapitus, 508.

6. *The Emperor Justin to Marinus, Prętorian Prefect.*

Sixty pounds of gold shall be paid to the illustrious Advocate of the Treasury, which, under the Emperor Zeno of Divine memory, was fixed as the compensation for ordinary judges and those persons appointed to determine the solvency of sureties; the aforesaid Emperor, however, thought that this amount should be reduced by half, and in order that, through Our Liberality, the illustrious Advocates of the Treasury may obtain the above-mentioned sum of gold, without fail, every year, it shall be divided equally between the two advocates of your tribunal; for any privilege which, in accordance with the wish of all, is conferred upon their chief, is also conferred upon the entire bar.

(1) In addition to this, We think that the sacred letters which are presented to an illustrious prętorian tribune or notary for his approval, shall be despatched not only in the name of one, but of both Advocates of the Treasury, whether their own children or those of some other persons are concerned.

(2) We promise, moreover, that they shall be entitled to the same privileges granted to those who are honored with the higher dignity; and that the document bestowing them, even though made out in the name of only one, shall still benefit another, with the consent of him who has obtained it, and therefore can be issued to any person from their own province, or to one of their friends, provided he resides therein.

(3) We also grant them permission to present every year the names of two men, for the purpose of rendering homage to Us, and to be enrolled in Our body-guard, one among the cavalry, and the other among the infantry, to replace those who may have died; and no agreement shall be made for the purpose of disposing of their positions as long as they live. Therefore, when these men offer themselves for enrollment, the commanders of the guard shall pay them two *solidi*, and no more, for every mile which they have come, and they are hereby notified that only the customary sums, that is to say, what is usually allotted to those who served, either in the cavalry or infantry, will be paid by their distinguished commanders by way of compensation to the said inexperienced recruits, without any other expenditure whatsoever.

(4) They shall also enjoy other privileges which have been conferred upon them at different times, whether by Imperial Decrees or in accordance with the regulations and decisions of your tribunal; but all who have been deemed worthy of being selected by Us are entitled to greater favor than those who previously have been appointed.

Given at Constantinople, on the *Kalends* of December, during the Consulate of Constantine and Euthericus, 531.

7. *The Same to Theodore, Prætorian Prefect.*

We decree by this law that, until the number of members of your bar shall have been reduced to eighty, no one can aspire to belong to it on any ground whatever, except the sons of those who hold the rank of the first thirty, after they have been instructed in eloquence; and they shall be admitted gratuitously, and without the payment of any fee, or if they are strangers, only two shall be admitted each year, who must themselves be conspicuous for their eloquence and legal ability. After the number of advocates has been reduced to eight, no one shall presume to exceed this number by the exercise of either intrigue or duplicity.

(1) No one shall be permitted to change the order of precedence which is indicated by the time of service, so that the young may succeed to the old, as is the case where alterations are made with reference to the contracts of merchants belonging to corporate bodies.

(2) We think that it also should be decided that none of them shall leave your jurisdiction for the purpose of

residing elsewhere; for all those who have obtained the rank of advocate are notified that, if they should be absent from this Most Sacred City for more than three years, the title of advocate and the privileges of the order shall be taken from them, to prevent them from absenting themselves from your jurisdiction, or making repeated voyages.

(3) If the most unimportant of these provisions should be violated at any time, the twenty chiefs of this Order, who perform their duties under your jurisdiction, as well as their assistants, shall each be punished by a fine of ten pounds of gold, for the reason that they did not immediately invoke the aid of the present law against the disobedience of Our Imperial commands, and offered no resistance, and in no way prevented anything being done in opposition thereto. And as the officials of your tribunal did not carefully observe these salutary provisions, and did not take measures to prevent their being infringed, they also shall pay a penalty of ten pounds of gold.

(4) Six hundred *aurei* shall be set apart from the Treasury of your tribunal for those who have exercised the office of Advocates of the Treasury, in your jurisdiction, in accordance with the precedent of former times, in order that, after the termination of their administration and of their glorious labors, they may not come to want; and this sum shall not (as frequently happens), be paid at an uncertain time, but it shall, without delay, come into their hands when the half of their term of service as Advocate of the Treasury has expired; that is to say, on the *Kalends* of October of each year.

(5) Any additional privileges that have been granted to this order by former Emperors, or by the authority of any competent tribunal, shall remain inviolate.

(6) When an action is brought against any of these advocates, whether the proceeding is a civil or a criminal one, or instituted here or in the provinces, and it happens that the party is present at the prescribed time, the bailiffs cannot collect anything as fees; and We decree that those who are charged with prosecuting the case shall not think that any expenses can be exacted of him either for interposing an exception, for preparing the case, or on any other reason whatsoever.

Given at Constantinople, on the *Ides* of February, during the Consulate of Justinian and Opilio, 524.

8. *The Same to Archelaus, Prætorian Prefect.*

No one, with the exception of Menander, Advocate of the Treasury, shall hope to enjoy the advantages conferred upon Advocates of the Treasury when they have obtained this office through cunning, or are proved to have done so without having passed through the different degrees required for promotion.

Given on the twelfth of the *Kalends* of September, during the Consulate of Justinian and Opilio, 524.

9. *The Emperor Justinian to John, Prætorian Prefect.*

The Advocates of Illyria have asked Us whether the Constitution of Our Father, Justin, of Divine Memory, promulgated with reference to the members of the bar of your jurisdiction, is applicable to them, and that Our opinion thereon be given, supposing they should be absent from your jurisdiction with or without leave; and therefore We have ordered that this law shall apply to all of them in general, so that if anyone should be absent continuously for more than three years, without permission, or for more than five years with permission, his name shall be struck from the roll of advocates, and he shall not be permitted to claim his rank, or again be included among the most learned members of the bar. Therefore, let the advocates of this jurisdiction comply with this Our general decree.

TITLE IX.

CONCERNING THE ADVOCATES OF THE TREASURY.

1. *The Emperor Antoninus to Claudius.*

As you state that you have undertaken to defend the cause of the Treasury, although you deny that you have received any compensation, you should, nevertheless, comply with the rules, for those who represent the Treasury are forbidden to give their services in any case against it.

Given on the thirteenth of the *Kalends* of January, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperors Valerian and Gallienus to Frequentius.*

You can, by Our authority, give your services to individuals against the Government, provided you decline to conduct a case in which you appeared at the time when you were the Advocate of the Treasury.

Given on the sixth of the *Kalends* of March, during the Consulate of Valerian, Consul for the second time, and Gallienus, 255.

3. *The Emperor Constantine to Elixianus, Proconsul of Africa.*

An Advocate of the Treasury, who does not wish to render himself liable to punishment, must be careful not to neglect the interests of the Government; or, where there are no grounds for it, presume, in the name of the Treasury, to bring annoying actions against individuals.

Given at Constantinople, on the sixth of the *Ides* of November, during the Consulate of Constantine and Licinius, Consuls for the fourth time, 315.

4. *The Emperors Gratian, Valentinian, and Theodosius to Amianus, Count of Private Affairs.*

Officials who preside over cases in which private persons or the Government is interested, must conduct the inquiry in the presence of the Advocate of the Treasury.

Given on the fourteenth of the *Kalends* of January, during the Consulate of Merobaudus and Saturninus, 383.

TITLE X.

CONCERNING THE ERRORS OF ADVOCATES AND THOSE WHO DRAW UP PETITIONS OR APPLICATIONS.

1. *The Emperor Alexander to Aurelia.*

The allegations made by advocates in the presence of the parties to an action shall be considered to be the same as if they had been made by the parties themselves.¹

Given on the *Kalends* of March, under the Consulate of Albinus and Maximus, 228.

2. *The Emperor Gordian to the Soldier Rogatus.*

It is evident that the errors of those who draw up applications, that is to say petitions, cannot prejudice the truth; and therefore, if it can be clearly proved that the condemnation which you have mentioned in your petition did not take place, he who is to take cog-

¹ "*Qui tacet consentire videtur.*" — ED.

nizance of the matter will know that your allegations can cause you no injury.

Given on the tenth of the *Kalends* of July, during the Consulate of Pius and Pontianus, 239.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Ulpia.*

When the case has been terminated by a decision, the latter cannot be set aside by a rescript, for the rule which has been established, namely, that the error of an advocate does not injure a litigant, cannot be of any benefit to you; since, as you were present, and did not openly, and at once, that is to say within the next three days, deny the allegations, and did not, after the decision had been rendered, take advantage of an appeal in case you were displeased with the decision.

Given on the sixth of the *Kalends* of September, during the Consulate of the Cæsars, 294.

TITLE XL

THE JUDGE MUST SUPPLY ANYTHING WHICH THE ADVOCATES OF THE PARTIES HAVE OMITTED.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Honoratus.*

There is no doubt that where anything is omitted by the litigants in a case, or by those who represent them, the judge can supply it, and state what he knows to be in conformity with law and public justice.

Given on the sixteenth of the *Kalends* of March, during the Consulate of Diocletian, Consul for the fifth time, and Maximian, Consul for the fourth time, 293.

TITLE XII.

IN WHAT CASES INFAMY IS INCURRED.

1. *The Emperor Severus and Antoninus to Manilius.*

The disgrace of infamy will not be inflicted upon you by the mere fact that you have been thrown into prison, or have been placed in chains, by order of the judge.

No day or Consul given.

2. *The Same to Venerius.*

He who has been condemned to pay double damages by the Governor for having exacted from his debtors more than was due, can not be considered to have been convicted of theft, robbery with violence, or peculation.

Given on the third of the *Ides* of January, during the Consulate of Lateranus and Rufinus, 298.

3. *The Same to Metrodorus.*

If you are said to have deserved a more severe sentence, and the Proconsul, being induced by certain reasons, imposes a milder one, and orders you to be removed from the rank of decurion for the term of two years, it is clear that after it has elapsed, you will not be included in the number of persons who are infamous, because the judge is considered to have remitted his prohibition excluding you from the Order of Decurions after the expiration of two years.

Given on the tenth of the *Kalends* of January, during the Consulate of Lateranus and Rufinus, 198.

4. *The Same to Venustianus.*

If you prove that Posidonius should have been relegated only for the term of a year, and that the Proconsul has imposed an excessive sentence of temporary exile for five years upon him, he must not be considered infamous, as the severity of the sentence would appear to have reference to other additional offences.

Given on the sixth of the *Kalends* of March, during the Consulate of Saturninus and Gallus, 199.

5. *The Same to Ambrosius.*

It is forbidden for decurions and their sons to be whipped with rods, but if the illustrious Proconsul should decide that you have committed an injury rendering you liable to such punishment, you will be branded with infamy.

Given on the *Kalends* of July, under the Consulate of Saturninus and Gallus, 199.

6. *The Same to Justus.*

Those who are condemned to the public works for a certain time, retain their former condition, but after the time has elapsed they will be subjected to the penalty of infamy.

Given on the seventh of the *Ides* of December, during the Consulate of Geta and Plautian, 204.

7. *The Same to Demetrius.*

No one becomes infamous for the reason that he has rejected his father's estate.

Given on the fifth of the *Ides* of January, under the Consulate of Antoninus and Geta, both Consuls for the second time, 206.

8. *The Same to Ulpia.*

If you have been condemned for theft, you will undergo the penalty for infamy, without having been whipped. If property which someone else has stolen is found in your possession, and you are not aware of the fact, a severe sentence will not injure your reputation.

Given on the tenth of the *Kalends* of March, during the Consulate of Antoninus and Geta, both Consuls for the second time, 206.

9. *The Same to Gētus.*

No one is branded with infamy for not having defended the public affairs of his country.

Given on the twelfth of the *Kalends* of March, during the Consulate of Antoninus and Geta, both Consuls for the third time, 209.

10. *The Same to Severus.*

Any one who is convicted of the offence of injury, even though committed against a slave, is branded with infamy.

Given on the fourth of the *Kalends* of August, during the same Consulate, 209.

11. *The Emperor Alexander to Herennius.*

Where debtors have surrendered their property, although it may be sold, they do not become infamous for this reason.

Given on the tenth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Eilianus, 204.

12. *The Same to Donatus.*

When it is shown, by the decree of the Governor, that you have plundered an estate, even if another penalty should be imposed upon you, you will not escape the infamy attaching to the crime of theft.

Given on the *Kalends* of July, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

13. *The Same to Juventius.*

When a father reviles his sons in his will, this does not render them infamous by law, but causes good and serious men to have a bad opinion of them, as having displeased their father.

Given on the thirteenth of the *Kalends* of November, during the Consulate of Alexander, Consul for the third time, and Dionysius, 230.

14. *The Emperor Gordian to Jovinus.*

Your uncle having been subjected to the penalty of whipping, as a torture for crime committed, need not, on this account, apprehend the loss of reputation, if he had

not previously received a sentence branding him with infamy.

Given on the *Kalends* of September, under the Consulate of Pius and Pontianus, 239.

15. *The Same to Sulpitia.*

The obligation of mourning exacted of women having been diminished by the Decree of the Senate, they are excused from assuming sombre clothing, and manifesting other indications of grief, but they are not permitted to contract marriage within the period during which a wife usually mourns for her husband; for even if a widow should be married within this time, not only she, but also the man who knowingly married her, even though he be a soldier, becomes guilty of want of decency, under the terms of the Perpetual Edict.

Given on the seventeenth of the *Kalends* of July, during the Consulate of Gordian and Aviola, 240.

16. *The Same to Domitian.*

It is clear that he who has been beaten with rods, and proclaimed by the public crier to have been guilty of slander, in order that he may be branded as a calumniator, becomes infamous for this reason.

Given on the third of the *Kalends* of August, during the Consulate of Sabinus and Venustus, 241.

17. *The Same to Magnus.*

An allegation inserted in a petition seems rather to cause reproach than to blemish one's reputation; for when a statement is made out of court claiming that you have committed calumny, and this statement is repeated by the judge during the argument of the advocate, it does not, by any means, inflict infamy.

Given on the eighth of the *Kalends* of October, during the Consulate of Atticus and Prętexatus, 243.

18. *The Emperors Valerian and Gallienus to Antiochus.*

The Perpetual Edict not only renders persons infamous who have been convicted of crime, but also anyone who has made an agreement with reference to it. In cases of this kind, it has been decided that those have made such an agreement who, with evil design and for the purpose of compromise, have paid money to an adversary; he, however, who has done this without paying anything, shall suffer no loss of reputation. If, however, the case should be decided by an oath, no one can doubt that the party will be discharged after having been sworn by the judge.

Given on the fourteenth of the *Kalends* of January, during the Consulate of Secular, Consul for the second time, and Donatus, 261.

19. *The Emperors Carinus and Numerian to Aristocratus.*

The interruption of the Governor, which is the point to be decided, does not seem to have rendered the person

infamous concerning whom you have made inquiry, since he was not specifically condemned for crime or violence, which he committed, but only reprimanded, and warned by the Governor to lead a more regular life hereafter.

Given on the seventeenth of the *Kalends* of February, during the Consulate of Carinus, Consul for the second time, and Numerian, 284.

20. *The Emperors Diocletian and Maximian to Fortunatus.*

Those who exercise the disgraceful occupation of usury, and unlawfully collect interest on interest, should be branded with infamy.

Given on the seventeenth of the *Kalends* of March, during the same Consulate, 284.

21. *The Same, and the Cęsars, to Staius.*

If your brothers were minors when they exhibited themselves to the people in a play, they will suffer no loss of reputation.

Given on the fifth of the *Kalends* of September, during the same Consulate, 284.

22. *The Same, and the Cęsars, to Domitian.*

Where a person who is associated with others is guilty of bad faith, and is sued in his own name as a partner, and compelled to give satisfaction, he incurs the risk of infamy.

Given at Nicomedia, on the sixth of the *Ides* of December, during the Consulate of the Cęsars.

TITLE XIII.

CONCERNING ATTORNEYS.

1. *The Divine Antoninus Pius to Severus.*

A bond for the ratification of the transaction is required of an attorney, when it is uncertain whether or not he has received authority from his principal.

Given on the fourth of the *Ides* of October, during the Consulate of Gallicanus and Venustus, 151.

2. *The Divine Brothers to Sextilia.*

As you allege that the case is a pecuniary one, you can answer the appeal of your adversary by your husband, after the prescribed formalities have been complied with, for, in pecuniary cases, appeals can be made by either of the litigants through attorneys.

Given on the eighth of the *Kalends* of August, during the same Consulate, 163.

3. *The Emperors Severus and Antoninus to Pomponius.*

Summon the person who transacts the business of the heirs from whom you allege a trust is due to you before the illustrious Prętor, and he will be compelled to answer you, or he will be forbidden to administer their affairs according to the legal practice of the jurisdiction; and if the heirs are not defended, the Prętor will ascertain whether he should give you possession, according to the

custom which prevails where parties do not make a defence.

Given on the tenth of the *Kalends* of September, during the Consulate of Chilo and Libo, 205.

4. *The Same to Saturninus.*

For the reason that you allege that judgment was rendered against you during your absence, it is just that you should have an opportunity to defend yourself, and you cannot be opposed on the ground that your wife was present when the judgment was rendered, or even that she acquiesced in it; as the business of others cannot be transacted by women as attorneys, unless the actions in which they are ordered to appear relate to their own property and advantage.

Given on the day before the *Nones* of January, during the Consulate of Aper and Maximus, 208.

5. *The Emperor Antoninus to Pancratia.*

It has been provided by the Perpetual Edict that an action must be refused to anyone who desires to act in the name of an absent person, if he does not defend him in a counter action.

Given on the fourth of the *Kalends* of March, during the Consulate of the two Aspers, 215.

6. *The Emperor Alexander to Martian.*

It is well known that where anyone is accused of crime, he cannot undertake the defence of a case before, establishing his own innocence.

Given on the sixth of the *Kalends* of March, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

7. *The Same to Macrinus.*

A soldier cannot act as attorney either for his father, his mother, or his wife, even under the authority of a rescript; as the public welfare does not permit him to undertake the defence of another, or transact business, or act as advocate.

Given on the eighth of the *Ides* of March, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

8. *The Same to Mansuetus.*

Anyone who authorizes you to collect a debt for him cannot engage another to do so before issue has been joined.

Given on the eighth of the *Kalends* of September, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

9. *The Same to Aufidius.*

Soldiers can attend to their own affairs without committing a breach of discipline, nor can it be said that he transacts the business of another who honorably and faithfully, and for some good reason, conducts suits which have been entrusted to his care; for when a right of action has been transferred to him by another, in good

faith, there is no doubt that he is transacting his own business, and to forbid My soldiers to do this would not only be absurd, but unjust.

10. *The Same to Castia.*

When an attorney especially appointed for one purpose exceeds his directions, anything that he does can, in no way, prejudice his principal. If, however, he has full power to act, a decision in the case cannot be rescinded, for if any fraud has been committed, you will not be prevented from suing him in the ordinary manner.

Given on the third of the *Kalends* of March, under the Consulate of Albinus and Maximus, 228.

11. *The Same to Sebastian.*

Neither guardians nor curators can personally appoint an attorney to transact the business of their wards or minors, but they can appoint an agent. A ward or an adult of either sex can, however, with the authority of his or her guardian or curator, appoint an attorney either to bring a suit, or to defend it. Moreover, guardians and curators themselves, like attorneys, are not forbidden to appoint attorneys after legal proceedings have been instituted.

Given on the day before the *Ides* of May, during the Consulate of Alexander, Consul for the third time, and Dio, 230.

12. *The Same to Frontonus.*

Two reasons exist for not rendering it necessary for a mandate to be required of your son, who offers himself to defend you; because anyone, whether he be a freedman or a stranger, can defend another without a mandate, where security is given for the defence, and another formality elsewhere mentioned is complied with; and for the reason that a son who, of his own accord, conducts a case in the name of his father, is not obliged to prove that he has been ordered to do so. And, indeed, if your son has not yet attained his majority, the judge should not unjustly deprive him of the duty of acting as attorney; for it is much more equitable to hear a defender of this kind than to impose a severe penalty upon you for being contumacious, and not providing for your defence during your absence.

Given on the fifth of the *Kalends* of October, during the Consulate of Agricola and Clementinus, 231.

13. *The Emperor Gordian to the Soldier Lucian.*

You can begin an action which your mother directed you to bring, if, when you institute proceedings in her name, an exception is not interposed on the ground of military service, because it cannot be pleaded against you when an appeal is taken; but if nothing has yet been done, the terms of the Perpetual Edict will not permit you to bring suit in the name of another.

Given on the third of the *Ides* of January, during the Consulate of Gordian and Aviola, 240.

14. *The Same to Sabinian.*

A judgment rendered against you is none the less valid by law for the reason that your adversary is under the age of twenty-five years and cannot, without the consent of a curator, entrust her husband with the conduct of her case; for while age affords a good reason for relief in cases where minors sustain injury, it is not customary to plead it where they have profited by the transaction.

Given on the third of the *Nones* of October, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

15. *The Emperors Diocletian and Maximian, and the Cæsars, to Cornificius.*

You have stated clearly in your petition that you have, contrary to good morals, purchased a lawsuit. Although, for anyone voluntarily to act as attorney (which office should be gratuitous), is not an unlawful transaction, an act of this kind cannot be undertaken without exposing the person to blame.

Given on the third of the *Nones* of April, during the Consulate of the Cæsars, 294.

16. *The Same, and the Cæsars, to Paconia.*

It is perfectly clear and certain that an attorney or agent who has charge of a tract of land, and has not received a special order to sell it, has no right to dispose of the property of his principal; and, therefore, if you purchased this land from persons who alienated it without the consent of the owner, you will perceive that you have no right to have the title to said property transferred to you by means of a purchase of this kind.

Given at Byzantium, on the *Nones* of April, during the Consulate of the Cæsars, 294.

17. *The Same, and the Cæsars, to Mardonius.*

No one can be compelled to act as attorney against his consent, or to do so longer than is stated in the instrument giving him authority; and he is not obliged to undertake the defence of an absent party, as it is sufficient for him to carry out that with which he was entrusted.

Given at Philippopolis, on the sixth of the *Nones* of July, during the Consulate of Diocletian, Consul for the fifth time, and Maximian, 294.

18. *The Same, and the Consuls, to Dionysia.*

To undertake the legal defence of another is a masculine duty, and it is settled that it cannot be discharged by one of the female sex;¹ and therefore you must apply for the appointment of a guardian for your son, if he is a minor.

Given on the fourteenth of the *Kalends* of February, during the Consulate of the Cæsars, 294.

19. *The Same, and the Cæsars, to Firmus.*

Where you have paid the price of a tract of land, or a slave, to an agent who sold it to you without the order of

the owner of the same, and the consent of the latter neither preceded nor followed the contract of sale; and the Governor, after proper investigation,

¹ "*F□minę ab omnibus officiis civilibus, vel publicis remotę sunt; ei ideo nec iudices esse possunt, nec magistratum gerere, nec postulare, nec pro alio intervenire, nec procuratores existere.*" — ED.

should ascertain that the price of said property has been employed for the benefit of the owner, he shall order it to be returned to you.

Given on the day before the *Ides* of March, during the Consulate of the Cæsars, 294.

20. *The Same to Verrinus, Governor of Syria.*

We hold that it makes no difference whether the business was transferred to the care of the attorney before or after legal proceedings were instituted.

Given on the tenth of the *Kalends* of October, during the Consulate of Demessus.

21. *The Emperor Constantine to the Council of the Province of Africa.*

A husband has a perfect right to undertake the management of the affairs of his wife without any mandate, where he furnishes security in a proper manner, and observes the other requisite formalities; in order that women, in the attempt to conduct their cases, may not, by being bold, incur contempt for the modesty of their sex, and be compelled to appear in the assemblies of men, or in court. If, however, anyone should undertake to execute a mandate, even though he be a husband, he cannot exceed what his power of attorney prescribes.

Given on the fourth of the *Ides* of March, during the Consulate of Constantine and Licinius Cęsar, both Consuls for the second time, 312.

22. *The Same to Bassus, Urban Prefect.*

Where attorneys have been appointed, and are charged with the conduct of a case after the joinder of issue, those who authorize them to do so have no power to take an active part in the proceedings, unless deadly enmity should arise between them, or other motives should exist, or some necessary cause arise; for then the case can be transferred to them, even against the consent of the attorneys.

Given on the thirteenth of the *Kalends* of July, during the Consulate of Constantine and Licinius-Cęsar, 312.

23. *The Emperor Julianus to Secundus, Prętorian Prefect.*

There is no doubt that, after the case has been brought into court, and the attorney obtains control of the same, it can be conducted to a conclusion, even after the death of the party who directed the action to be brought or defended; and the ancient jurists have even held that he can, in this instance, appoint an attorney.

Given on the second of the *Nones* of February, during the Consulate of Julianus, Consul for the fourth time, and Sallust, 363.

24. *The Emperors Gratian, Valentinian, and Theodosius to Pancratius, Urban Prefect.*

Even though the authority of the attorney should be established in the beginning of the action, and it should be shown that he has been directed by the principal in the action to take charge of it, still, if the authority of the attorney is ascertained to be fraudulent, the controversy is not usually decided, nor will a judgment, if rendered, stand.

Given at Constantinople, on the second of the *Kalends* of April, during the Consulate of Antoninus and Syagrius, 382.

25. *The Emperors Valentinian, Theodosius, and Arcadius, to Tatian, Prætorian Prefect.*

Where anyone has attained the dignity of Prætor, Prefect of the City, General of the Army, Count of the Consistory, or has dispensed justice as Proconsul, or administered public affairs as Imperial Vicegerent, and an action is to be brought or defended by him, he has the right to appoint an attorney to represent him.

If anyone transgresses the provisions of this law, and suit is brought against him, he shall lose his case if he did not make provision for its defence by an attorney; and any judge who violates them is warned that he will be compelled to pay twenty pounds of gold, and that the same amount shall be exacted from his subordinates.

Given on the eighteenth of the *Kalends* of October, during the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

Extract from Novel 71, Chapter I. Latin Text.

This decree only has reference to illustrious persons, for others are subject to the Common Law.

26. *The Emperors Arcadius, Honorius, and Theodosius to Anthemius, Prætorian Prefect.*

In pecuniary disputes, even though no rule or decree may have been formulated on this point, We grant power to everyone, indiscriminately, to answer by an attorney, if he prefers to do so; unless for some good reason, or where matters are urgent, the judge requires him to appear in person.

Given on the day before the *Ides* of October.

TITLE XIV.

PERSONS IN AUTHORITY ARE NOT PERMITTED TO APPOINT ADVOCATES FOR LITIGANTS, OF TO HAVE THEIR RIGHTS OF ACTION TRANSFERRED TO THEM.

1. *The Emperors Diocletian and Maximian to Aristobolus.*

Our Father, the Divine Claudius, who was thoroughly learned in the law, very properly decided that those who

committed their defence to persons in authority should be punished with the loss of their cases; in order that suits might be determined on their merits, rather than by the influence of powerful persons. It is clear that he intended that, in actions in which people of the provinces were interested, the

Governors should be charged with the punishment of violations of this law, and that they should impose severe sentences upon the agents or attorneys who had been employed in such matters either through favor, or by the payment of money; and therefore as it is to the interest of all, and especially to that of those in moderate circumstances, who are often oppressed by the unfortunate interference of persons in authority, you must hear the applications of the litigants, and not fear that you may involve persons of high rank; as the Divine Claudius specially decided that the Governors of provinces should decide questions of this kind, and if circumstances demanded it, should inflict punishment.

Given on the fourth of the *Ides* of September, during the Consulate of the above-mentioned Emperors, one Consul for the third time, and the other Consul for the second time, 287.

2. *The Emperors Arcadius, Honorius, and Theodosius to John, Prætorian Prefect.*

If rights of action of this kind should be transferred to powerful persons, the creditors shall be punished with the loss of their claims; for the rapacity of creditors becomes apparent when they assign their rights of action to others.

Given on the fifth of the *Ides* of July, during the Consulate of Honorius, Consul for the seventh time, and Theodosius, Consul for the second time, 407.

TITLE XV.

CONCERNING THOSE WHO PLACE UPON THEIR LANDS PAPERS BEARING THE NAMES OF POWERFUL PERSONS, OR WHO MAKE USE OF THE NAMES OF SUCH PERSONS IN LEGAL PROCEEDINGS.

1. *The Emperors Arcadius and Honorius to Messala, Prætorian Prefect.*

We have been informed that there are many individuals who, aware of the desperation of their unjust claims, make use of the names of powerful persons, and the privileges of those invested with the highest rank, in opposition to the parties by whom they are summoned to court; and in order to prevent fraud being committed against the laws, and adversaries from being terrified by the abuse of such names and titles, We decree that those who, knowingly, connive at a deception of this kind, shall be branded with infamy; but if they have not given their consent, and papers or documents containing their names have been affixed to the houses of others, without their knowledge, those who are guilty shall be scourged,

and sentenced to perpetual labor in the mines. Therefore, when any defendant who is the possessor of the property in dispute and of the title to the same, and can plead a properly formulated exception in opposition to the claim brought against him, and who believes that the name of another has been inserted in the petition or complaint of the plaintiff; the latter shall be punished by the loss of the possession, or of the case which he attempted to gain or avoid by means of this fraud, and he shall not have the power to bring his action a second time, even if the merits of the case appear to be on his side; and those who voluntarily permit their names to be used in the actions of others, when they themselves have no right either of possession or ownership, shall be branded with infamy as persons who have thrown away their reputations, and are the purchasers of fraudulent litigation.

Given at Milan, on the fifteenth of the *Kalends* of December, during the Consulate of Stilicho and Aurelian, 400.

TITLE XVI.

NO PRIVATE PERSON SHALL PLACE THE IMPERIAL INSIGNIA UPON HIS OWN PREMISES OR UPON THOSE OF ANOTHER, OR SHALL RAISE THE IMPERIAL STANDARD OVER THEM.

1. *The Emperors Honorius and Theodosius to Flavianus, Prætorian Prefect.*

It is the exclusive privilege of Imperial Majesty that Our houses and possessions should be indicated by the display of Our titles, and therefore let all persons know that everything upon which Our name appears becomes public property.

Given at Ravenna, on the third of the *Kalends* of December, during the Consulate of Bassus and Philip, 408.

2. *The Emperors Theodosius and Valentinian to Florentius, Prætorian Prefect.*

Let no one presume to raise the royal standard or insignia upon the land of another, without the order of a competent judge, no matter who the person may be, or under what title he holds possession; even though it may be established that he is not the owner, or an unjust possessor, or a rash trespasser, who has possession of the property. We decree that if he who does this is a plebeian, he shall be subjected to the extreme penalty; if he is a man of illustrious rank, a decurion, a soldier, or a member of the clergy, his property shall be confiscated, and he shall not only be deported from the City of Rome, but he shall also be deprived of his freedom, and all judges shall see that this law is executed.

We grant authority not only to those to the injury of whom an act of this kind has been committed, in violation of right and of the laws, but to all their children and slaves, without the fear of false accusation or of

prosecution for crime, to remove or deface the insignia, and even to destroy the standards above mentioned; and We also decree that the judges and their subordinates shall be fined thirty pounds of gold, if they permit an accusation of this kind to be made, or anyone to sign it.

Given on the fifteenth day of July, during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

TITLE XVII.

NO ONE SHALL BE PERMITTED TO PLACE A SEAL UPON PROPERTY BELONGING TO ANOTHER, WITHOUT THE AUTHORITY OF A JUDGE.

1. *The Emperor Probus to Octavius.*

It has been frequently stated in Rescripts that, before judgment has been rendered, a seal cannot be attached to property in the possession of another; and therefore you are permitted to break seals which have been unlawfully placed upon property or crops in your possession, so that after they have been removed, the action which has been brought against you may be decided.

Given on the fourth of the *Kalends* of July, during the Consulate of Probus, Consul for the second time, and Lupus, 278.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Crangasius.*

No one can attach his seal to property which is in the possession of another, even if he alleges that the said property is his, or has been encumbered to him.

TITLE XVIII.

NEITHER THE TREASURY NOR THE STATE SHALL PROVIDE AN ATTORNEY TO DEFEND ANYONE IN COURT.

1. *The Emperor Gordian to Legitimus and Others.*

You are making a request contrary to the rule of law, when you ask that the State shall assist you, under the pretext that you owe it a certain sum of money.

Given on the third of the *Ides* of January, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

2. *The Same to Tertullus.*

When you state that you are willing to give to the Treasury half of certain property, or half of the interest in an action which you are entitled to bring, you are notified that the discipline enforced during My reign does not permit a donation of this kind to be accepted; and therefore, your right, if you have one, must be exercised in accordance with the usual legal formalities, without subjecting My Treasury to odium.

Given on the sixth of the *Nones* of August, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Amphio.*

It is repugnant to the laws of Our reign for the Treasury to provide an attorney against private persons, under the pretext of a debt which is due to it.

Given at Philippopolis, on the eighth of the *Kalends* of January, under the Consulate of the Cæsars, 294.

4. *The Same, and the Cæsars, to Achilles.*

It is not proper to ask, contrary to the peace of Our reign, that, for the purpose of defrauding creditors, Our Treasury shall be subjected to obloquy. Therefore pay what you owe to Our Treasury, and if suit is brought against you by your creditor to recover a sum of money which you deny has ever been paid to you, you can, according to the law, avail yourself of an exception on the ground that the money had not been counted out to you.

Given on the sixteenth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

TITLE XIX.

CONCERNING THE ACTION BASED ON VOLUNTARY AGENCY.

1. *The Emperors Severus and Antoninus to Sopatra.*

As you have accused the guardians of your children as being liable to suspicion, and as you request that guardians or curators shall be appointed for them, you have performed the duty dictated by affection, and therefore the action of voluntary agency will not lie in order to enable you to recover the expense which you have incurred in this proceeding; for when anyone has made disbursements for others through family attachment, he cannot, under any circumstances, recover them.

Given on the third of the *Nones* of October, during the Consulate of Dexter and Priscus, 197.

2. *The Same to Rufina.*

It has been established for the benefit of minors that if anyone has transacted their business to their advantage, when the necessity was urgent, an action should be granted against them to the extent to which they may have profited. The expense which you allege you have incurred in behalf of the minor by taking him to Rome for the purpose of having guardians appointed for him, is granted you by law; if his maternal aunt does not prove that she was ready to have this done on her own responsibility.

Given on the tenth of the *Kalends* of February, during the Consulate of Lateranus and Rufinus, 198.

3. *The Same to Hadrian.*

If you have paid a sum of money for your brother, who is your co-heir, you can avail yourself of the action based on voluntary agency, and if you have been

compelled to pay a debt in full, for the purpose of releasing a pledge, you will be entitled to bring this action; or you can collect what is due to you by a suit in partition, if judgment has not already been rendered in an action of this kind brought between you.

Given on the eighth of the *Kalends* of February, during the Consulate of Anulinus and Fronto, 200.

4. *The Same to Claudius.*

Anyone who undertakes to transact the business of a minor, by the direction of her guardian, is not considered to have done so in the place of her guardian, but he will be liable to the ward in an action based on voluntary agency.

Given on the third of the *Nones* of December, during the Consulate of Fabianus and Mutianus, 202.

5. *The Same to Triphonius.*

Where a freedman has transacted the business of a daughter of his patron as a mark of respect, he will not have the right to bring an action against her on the ground of voluntary agency.

Given on the thirteenth of the *Kalends* of July, during the Consulate of Geta and Plautian, 204.

6. *The Same to Gallus.*

You say that a curator was appointed for you by your father's will, which does not appear to have been legally done; and if (as you allege), he has interfered with the administration of the estate, an action on the ground of voluntary agency will lie in your favor against him as well as his heirs.

Given during the Consulate of Aper and Maximus, 208.

7. *The Emperor Antoninus to Euphrata.*

Where you have been appointed heir to two-twelfths of his estate by the person who transacted your business; even if you should enter upon the estate, you will be entitled to a suit against your co-heir to recover the remaining ten-twelfths, provided you had this right of action against the deceased.

Given at Rome, on the sixth of the *Ides* of March, during the Consulate of Sabinus and Anulinus, 217.

8. *The Same to Sallust.*

If Julian collected a sum of money from your debtor and you ratified the payment of the same, you will be entitled to an action against him on the ground of business transacted.

Given on the eighth of the *Kalends* of March, during the Consulate of Pręsens and Extricatus.

9. *The Same, and the Cæsars, to Severus.*

You have a right to bring the civil suit based on voluntary agency against those who have administered your affairs, and your rights will not be prejudiced if you have delayed bringing it because you belong to the army,

as this kind of an action is only extinguished by the prescription of long time.

Given on the sixth of the *Kalends* of August, during the Consulship of Antoninus and Aventus, 219.

10. *The Emperor Alexander to Secundus and Others.*

If you take care of a sick slave belonging to another, who is known to be useful to his master, you have transacted business for the latter to his advantage, and you can recover your expenses by this action.

Given on the twelfth of the *Kalends* of December, during the Consulship of Alexander, Consul for the second time, and Marcellus, 227.

11. *The Same to Herennia.*

You have no good reason to ask that the expense of the maintenance which you have furnished your children shall be repaid to you, as by doing so, you have only discharged the obligation demanded by maternal affection. If, however, you have expended any money for the advantage, or probable benefit of their business, and can prove that your act was not prompted by your generosity as a mother, but with the intention of being reimbursed for what you paid, you can collect it by means of the action based on voluntary agency.

Given on the twelfth of the *Kalends* of February, during the Consulship of Albinus and Maximus, 231.

12. *The Same to Theophilus.*

If a son should discharge a debt for his father, he will not be entitled to an action to recover the amount which he paid, whether he was under paternal control at the time he made the payment, or was independent, provided he paid the money as a donation; and therefore, if your father, being his own master and transacting business for his father, paid his debt without having been directed to do so, you can bring an action on the ground of voluntary agency, against your paternal uncles.

Given on the *Kalends* of August, during the Consulship of Agricola and Clement, 225.

13. *The Same to Aquilia.*

You cannot recover from your father-in-law any expenses which you have incurred on account of your wife's illness, as you should have expended the money because of your affection for her. You have, however, a legal right to bring suit for her funeral expenses against her father, to whom her dowry was given, if you paid them with the intention of recovering them.

Given on the eighth of the *Kalends* of November, during the Consulship of Agricola and Clement, 231.

14. *The Same to Mutianus Rufus.*

If you obeyed the mandate of the husband alone, and transacted his business as well as that of his wife, an action will lie in your favor as well as in that of the wife, on the ground of business transacted; and the husband who directed you to do this will be entitled to the action

on mandate against you, and you also can bring the counter action against him to recover any expenses which you may have incurred.

Given on the tenth of the *Kalends* of March, during the Consulship of Maximus, Consul for the second time, and Urbanus, 225.

15. *The Emperor Gordian to Eutychemis.*

If, influenced by paternal affection, you have furnished means of support to your daughter-in-law, or have paid out money as salaries to teachers, you will have no right to recover such expenses. Where, however, you have expended anything for your daughter-in-law with the intention of recovering it, you will have the right to bring an action on the ground of voluntary agency.

Given on the sixth of the *Ides* of July, during the Consulship of Gordian and Aviola, 240.

16. *The Emperors Gallus and Volusianus to Eutychemianus.*

If, while transacting your sister's business, you paid any taxes for her, either by her direction, or because she requested you to do so, you can recover what you prove that you paid, by an action based on voluntary agency or by the action of mandate.

Given on the eleventh of the *Kalends* of May, during the Consulship of Gallus and Volusianus, 240.

17. *The Emperors Diocletian and Maximian, and the Cæsars, to Claudia.*

The successors of a curator, who have been sued in an equitable action based on voluntary agency, are liable for fraud as well as gross negligence; but they are not obliged to continue the administration, and therefore it is established that they have no authority to alienate any property belonging to the ward.

Given on the thirteenth of the *Kalends* of January, during the above-mentioned Consulship, 293.

18. *The Same, and the Cæsars, to Pomponius.*

Good faith requires the payment of interest on expenses incurred in transacting the business of others, and you have also the right to bring this action against those whose affairs you allege you have been compelled to transact.

Given on the ninth of the *Kalends* of January, during the above-named Consulship, 293.

19. *The Same, and the Cæsars, to Alexander.*

Where property owned in common, which forms part of an estate, is sold by one of the heirs, his co-heir, who has ratified the sale, can bring an action against him on the ground of voluntary agency, to recover his share of the price.

20. *The Same, and the Cæsars, to Octaviana.* Anyone who, without a mandate, attends to the business of another, is not considered to resemble a guardian or curator, as the latter necessarily cease to administer their

trust when their duties are ended, but the former can relinquish his whenever he chooses; and he performs his duty sufficiently and thoroughly if he consults the interest of his friend in one or more transactions.

In accordance with this, where anyone voluntarily manages the property of another, when he is neither his guardian nor his curator, as he is responsible not only for fraud and gross negligence but also for slight negligence, he can be sued by you, and compelled to return with interest what is proved to be due from him to you; but so far as others who are indebted to you are concerned, he will not be liable, because he cannot proceed against them on account of the exception which may be interposed; and therefore you should prosecute your claims against those who you say are indebted to you.

21. *The Same, and the Cæsars, to Michra.*

If your blood-relatives have manumitted their slaves, and you assert that they have managed your property, this is no reason why their freedom should not be granted. Moreover, there is no doubt that you cannot bring suit to recover them, after their manumission, on account of some act which was not connected with the management of the property either before or after their liberation, but was distinct from it.

Given on the sixth of the *Kalends* of October, under the Consulate of the Cæsars, 264.

22. *The Same, and the Cæsars, to Eulogius.*

Those who transact the business of others cannot be held liable for accidents, in the absence of any special agreement providing for it.

Given on the eleventh of the *Kalends* of December, during the Consulate of the Cæsars, 364.

23. *The Same, and the Cæsars, to Theodore.*

The action based on voluntary agency is not a real, but a personal one.

Given at Nicomedia, on the twelfth of the *Kalends* of December, during the Consulate of the Cæsars, 264.

24. *The Emperor Justinian to John.*

Where anyone has interfered with the administration of the affairs of another, against the consent of the owner of the property, who has even forbidden him to do so, a doubt is entertained by certain eminent authorities whether such a person has a right to bring suit against the said owner to recover expenses which he had incurred with reference to it; and some of them declare that a direct or an equitable action can be brought by him, and others (among whom was Salvius Julianus), deny that this can be done, but now We, in deciding the question, and in accordance with the opinion of Julianus, order that if the owner of the property was opposed to the other transacting his business, and forbade him to do so, he can bring neither a direct nor an equitable action against him;

that is to say, after notice had been given him by the owner that he did not authorize him to attend to his affairs, even though he may have done so advantageously. Then, if the owner should find that a considerable amount of money had been properly expended, and fraudulently pretending not to be aware of it, he should forbid the party in question to transact his business, in order to prevent him from being reimbursed his expenses previously incurred, We, by no means, suffer this to be done, but direct that no action will lie in his favor to recover money spent for improvements, after the time when he was notified, whether this was done in writing or not, where other persons were called to witness that the notice was given; and with reference to expenses previously incurred, if they were beneficial, We permit the agent to bring suit against the owner in the ordinary way.

Given on the fourteenth of the *Kalends* of December, during the Consulate of Lampadius and Orestes, 538.

TITLE XX.

CONCERNING ACTS PERFORMED THROUGH THE INFLUENCE OF FORCE OR FEAR.

1. *The Emperor Alexander to Felix.*

The opinion has been given that the right to pursue property which has been taken by violence or theft, even if it has been afterwards destroyed, remains unimpaired under the law.

Given on the tenth of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and Elixianus, 224.

2. *The Same to Alexander.*

As you acknowledge that you not only gave security to pay a sum of money, but that you also have paid it, it is not clear why you ask that it shall be returned to you because you have been subjected to violence, when it is not probable that you would have hastened to make payment without complaining that the note was forcibly extorted, unless you allege that you also suffered violence when you paid the money.

Given on the sixth of the *Kalends* of July, during the Consulate of Alexander, Consul for the eleventh time, and Marcellus, 227.

3. *The Emperor Gordian to Gaius.*

Where your grandfather was compelled, either by force or fear, to sell a certain tract of land, and then the purchaser sold it to another, if you have become the heir of your grandfather, you have a right to appear before the Governor of the province, and petition that the land be restored to you, after the price has been returned; since it has been decided that, in a case of this kind, a real action should be granted in accordance with the terms of the Perpetual Edict, provided the person who purchased the

land in the second place cannot rely upon the prescription of long-continued possession.

Given on the sixth of the *Ides* of August, during the Consulate of Pius and Pontianus, 239.

4. *The Same to Primus and Enthydicus.*

If a sale is extorted from you either by force, or the fear of death or bodily injury, and your consent was not afterwards given to it, and you bring suit within a year in accordance with the terms of the Perpetual Edict (during which time you have a right to proceed), and the property is not restored to you, you can recover a judgment for quadruple damages; of course, after having returned the purchase-money. When a year has elapsed, however, if proper cause is shown, the same action can be brought for simple damages, but it has been decided that this suit will only be available where another will not lie.

Given on the third of the *Nones* of August, during the Consulate of Gordian and Aviola, 240.

5. *The Same to the Soldier Rufus.*

It makes no difference by whom violence has been exerted against your father and your paternal uncle to compel them to sell their property, or whether force or fear has been employed by the purchaser or by someone else with his knowledge, for if they were impelled by violence to sell their property for less than it was worth, they can cause what has been improperly done to be restored to its former condition.

Given on the sixth of the *Kalends* of January, during the Consulate of Gordian and Aviola, 294.

6. *The Emperors Diocletian and Maximian, and the Cæsars, to Pollia.*

It is not necessary for any office which a man may hold to cause him injury; therefore, you are advised that the senatorial dignity of your adversary is not alone sufficient to cause the fear by which you allege the contract has been entered into.

Given at Heraclea, on the third of the *Kalends* of May, under the Consulate of the Cæsars, 294.

7. *The Same, and the Cæsars, to Cotus.*

If you can prove in the presence of the Governor of the province that an instrument calling for a donation, a compromise, a stipulation, or any other kind of an obligation or contract, has been extorted by the fear of death or bodily injury, or through apprehension caused by threats of death, he will not, in accordance with the terms of the Edict, suffer the contract to stand.

Given on the second of the *Nones* of January, during the same Consulate, 299.

8. *The Same, and the Cæsars, to Tryphoninus.*

As you have sold your house and garden with the expectation of recovering an obligation which you have executed with reference to certain grain, and you allege that you only agreed to the said sale for fear of not being

appointed to civil office, and that you now wish to rescind the sale under the pretext that it was made through fear, understand that apprehension of this kind will be of no advantage to you for the purpose of annulling such a contract.

Given on the eleventh of the *Kalends* of September, during the Consulate of the Cæsars, 300.

9. *The Same, and the Cæsars, to Hymnoda.*

It is established that fear must not only be proved by threats and disputes, but by the violence of the act.

Given on the *Kalends* of December, during the Consulate of the Cæsars, 300.

10. *The Same and the Cæsars, to Faustina.*

You ask that an alienation or a promise which has been made through fear of prosecution which has been begun against you, or which may be brought hereafter, shall be rescinded, and this is an improper request.

Given on the sixth of the *Kalends* of February, during the Consulate of the Cæsars, 302.

11. *The Emperor Constantine to Evagrius, Prætorian Prefect.*

If anyone, merely apprehensive of the influence of a person holding an office of trifling importance, should be induced to sell him property belonging to himself, situated in the same province or place where he is discharging the duties of his office, what has been purchased shall be returned, and the purchase-money may even be retained; and those who have acquired anything by extortion through making an improper use of the names of their wives and friends shall be liable to a similar penalty.

Given at Aquileia on the *Kalends* of October, during the Consulate of Constantius, Consul for the seventh time, and the Cæsar Constantine, 353.

12. *The Emperors Honorius and Theodosius to the People.*

We order that all sales, donations and compromises which have been extorted by the improper exercise of authority shall be void.¹

Given on the thirteenth of the *Kalends* of March, during the Consulate of the Same Emperors; the first, Consul for the eighth time, and the second, Consul for the third time, 409.

¹ The ancient Hindus had well-defined ideas of the illegality of whatever was obtained by duress: "What is given by force to a man who cannot accept it legally, what is by force enjoyed, by force caused to be written; and all other things done by force or against free consent, Menu has pronounced void." (Sir Wm. Jones Works, The Laws of Menu III, Page 299.) — ED.

TITLE XXI.

CONCERNING FRAUD.

1. *The Emperors Severus and Antoninus to Clementina.*

When a surety, having paid the amount of the debt and interest, purchases the pledges from the creditor, he ought to restore to you the ownership of the same, together with any profits which he may have honestly collected, in order to avoid exposing himself to an action for fraud arising from breach of faith.

Given on the third of the *Ides* of May, during the Consulship of Plautian and Geta, 294.

2. *The Emperor Antoninus to Agrippa.*

The action for fraud is permitted, after proper cause is shown, when no other will lie.

Given on the *Nones* of November, during the Consulship of Gentian and Bassus, 212.

3. *The Emperor Gordian to Aquilinus.*

The delays which are usually granted in an action for fraud cannot be counted against you while you were engaged in business for the State (which you allege is the case), as the time will only commence to run against you from the day on which, having been released from your official duties, you began to have the power to act within the prescribed time.

Dated on the *Ides* of August, during the Consulship of Sabinus, Consul for the second time, and Venustus, 241.

4. *The Emperors Diocletian and Maximian, and the Cæsars, to Menander.*

As you state that it was agreed between yourself and the person who you say had formed a connection with a female slave that he should give you a male slave in her stead, you understand that if you have manumitted her, or have delivered her to him, and he has manumitted her, you have not the power to revoke her freedom; but if the time has not yet expired, and the other party has violated the contract, you can ask that an action for fraud be granted you.

If, however, you still have the ownership of the said slave, and you should appear before the Governor of the province, you can recover her with her children, if no question should arise as to her status.

Given at Heraclea on the third of the *Kalends* of May, during the Consulship of the Cæsars, 294.

5. *The Same, and the Cæsars, to Amphidrosa.*

If you, through emancipation, have become your own master, during the lifetime of your father, and have succeeded to the estate of your mother, and have compromised with your father in good faith, and he, after having administered your property as your lawful guardian, has manumitted you, you are advised that if a simple agreement has been made between you, your claim will be barred by an exception, but if a novation has been concluded with the proper formalities, and a release has followed, you will not be entitled to any

action. Where, however, you have been greatly injured by the exercise of the deliberation solemnly accorded by you for the novation and release, an action for fraud will not lie in your favor, as this would be contrary to the respect which you owe to your father, but you should be granted an action *in factum*.

Given on the *Ides* of June, during the Consulship of the Cæsars, 294.

6. *The Same, and the Cæsars, to Hymnoda.*

Fraud must be proved by convincing evidence.¹ Given on the *Kalends* of December, during the Consulship of the Cæsars, 294.

7. *The Same, and the Cæsars, to Sebastian.*

If, when you are more than twenty-five years of age, you reject the estate of your brother, you will not, under any circumstances, have the power to enter upon it; but if you have been induced to do so by the fraudulent conduct of his widow, who has been substituted for you, you can bring the action against her.

Given on the sixteenth of the *Kalends* of May, during the Consulship of the Cæsars.

8. *The Emperor Constantine to Symmachus, Vicegerent.*

We have thought it best that the term of a year, during which the action for fraud can be instituted, should not begin to run from the day on which anyone alleges that he has learned that fraud has been committed, nor within the available time of the year, but rather from the date on which the fraud is said to have been committed, within the term of two consecutive years, whether the person who complains that he has been the victim of fraud was absent, or present. Therefore, all persons are hereby notified that permission is not given to

¹ This is in accordance with the English and American rule that fraud must be established by clear and positive proof, for while legal or constructive fraud may exist, it is never presumed (*Dolum non nisi perspicuis indiciiis probari convenit*) except when the nature and circumstances of the case render such a conclusion inevitable.

The Common Law doctrine relating to fraud has undoubtedly been borrowed from the Roman jurists. It was long, however, before the evil effect of fraudulent representations were recognized as actionable in England. "In the thirteenth century our kings' court had in general no remedy for the man who to his damage had trusted to the word of a liar."

"Our law, though willing to admit in vague phrase that no one should be suffered to gain anything by fraud, (*Et fraus et dolum nemini debent patreïnari*), was inclined to hold that a man has himself to thank if he is misled by deceit; 'It is his folly.' " (Pollock and Maitland, *History of English Law*, Vol. I, Pages 535/536.) — ED.

begin the action after the term of two years has elapsed, or before the complete term of two years has begun; but it should be terminated before the expiration of the said two years.

Given on the eighth of the *Kalends* of August, during the Consulate of Constantine, and the Cęsar Licinius, 319.

TITLE XXII.

CONCERNING COMPLETE RESTITUTION GRANTED TO MINORS OF THE AGE OF TWENTY-FIVE YEARS.

1. *The Emperor Alexander to Plotiana.*

It must be ascertained whether the complaint of inofficiousness has been openly or tacitly renounced, and this does not show that you are entitled to this privilege, although it is granted to a minor.

Given on the fifth of the *Ides* of July, during the Consulate of Maximus, Consul for the second time, and ęlianus, 224.

2. *The Emperor Gordian to Alexander.*

If at the time when your sister was entitled to relief as a minor she enjoyed the right to accept possession of the estate of your father, who died intestate, she will, none the less, enjoy this privilege conferred by the Edict, although she may have had five living children, provided she is still of the age permitted her to obtain the benefit of restitution.

Given on the eighth of the *Ides* of August, during the Consulate of Pius and Pontianus, 339.

3. *The Emperors Diocletian and Maximian, and the Cęsars, to . Attianus.*

If you, having a curator, and being under twenty-five years of age, should, after having reached your majority, sell your property, this contract should not be carried out; for a minor who has a curator does not differ from one for whom a curator has been appointed by the Prętor, and has been forbidden to dispose of his estate. Where, however, you made the contract without having a curator, you will not, after proper cause has been shown, be forbidden to petition for complete restitution, if the time prescribed by law has not yet expired.

Given at Heraclea, on the fourteenth of the *Kalends* of May, during the above-mentioned Consulate, 293.

4. *The Same, and the Cęsars, to Isidor.*

If you can prove that you were a minor under the age of twenty-five years when you made the contract, and it is not established by your adversary that the time prescribed for claiming restitution has elapsed, the Governor of the province should grant you the relief of complete restitution.

Given at Heraclea, on the sixth of the *Kalends* of May, during the above-mentioned Consulate, 293.

5. *The Same, and the Cęsars, to Rufus.*

Minors are entitled to complete restitution where they can show that advantage has been taken of them, even if the fraud of their adversary is not proved; and it is a positive rule of law that they can demand complete restitution with reference to matters in which they think advantage has been taken of them, even before they have reached their twenty-fifth year.

Given at Heraclea, on the fifth of the *Kalends* of May, during the same Consulate, 293.

6. *The Same, and the Cęsars, to Sententia.*

If proceedings to obtain the benefit of complete restitution have been begun within the age during which such relief is ordinarily granted, and it has not been renounced by you, the death of the person of whom you made the demand cannot cause you any damage.

Given on the fifth of the *Kalends* of May, during the Consulate of the Cęsars, 294.

7. *The Same, and the Cęsars, to Severa.*

If you obtained your release from the guardianship of your uncle by false representation of your age, his office of guardian, as well as his blood-relationship indicating that he was not ignorant of it, you can, for this reason, bring an action for complete restitution against his heirs, if the time prescribed by law has not yet expired.

Given on the eleventh of the *Kalends* of August, during the Consulate of the Ca3sars, 274.

8. *The Emperors Honorius and Theodosius to Julianus, Proconsul of Africa.*

It has been established by innumerable authorities that the interests of minors must be consulted, whether they have been guilty of negligence, or have failed to act through ignorance.

Given on the *Nones* of May, during the Consulate of Constantius, 420.

9. *The Emperor Zeno to ęlianus.*

A minor is not considered to have been taken advantage of who avails himself of the Common Law.

Given on the *Kalends* of January, during the Consulate of Basilius, 420.

TITLE XXIII.

CONCERNING COMPLETE RESTITUTION IN THE CASE OF A MINOR UNDER PARENTAL CONTROL.

1. *The Emperor Gordian to the Soldier Tripho.*

When a son under paternal control, who is a minor of twenty-five years of age, becomes surety for a stranger, he is not prevented from petitioning for complete restitution; and if he should become surety for his father, he can still demand it, even though he may not succeed to his estate at his death.

Given on the *Kalends* of July, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

2. *The Same to the Soldier Gaudentius.*

If your brother, who is under the control of your father, should borrow a sum of money, and does not make the contract by order of his father or contrary to the Decree of the Senate, he can, on account of the weakness of his age, demand complete restitution, notwithstanding his obligation.

Given on the third of the *Nones* of October, during the Consulate of Pius and Pontianus.

TITLE XXIV.

CONCERNING THE SURETIES OF MINORS.

1. *The Emperors Severus and Antoninus to Miro.*

After you have obtained complete restitution through the privilege due to your age, you will not be compelled to assume the risk of the eviction of the purchaser, to whom you sold the land which formed part of your father's estate, but those who became sureties for you cannot be released for this reason; and therefore, if they paid the money, or have been ordered by the court to do so, you can be sued in an action on mandate, provided you have not obtained the benefit of restitution against the sureties also.

Given on the sixth of the *Kalends* of October, during the Consulate of Severus and Albinus, 195.

2. *The Emperors Diocletian and Maximian to Curio.*

If she who sold you her property obtains relief on the ground of her age, by means of a decree rendered by the Governor, there is no doubt that the person who became security for her will be obliged to carry out the contract; but if the contract should appear to have been obtained through intentional fraud, it is clearly a principle of law that, in granting relief, the interest of the vendor, as well as that of her surety, should be taken into consideration.

Given on the sixth of the *Kalends* of May, during the Consulate of Diocletian, Consul for the second time, and Maximian, 287.

TITLE XXV.

WHERE A GUARDIAN OR A CURATOR INTERPOSES TO OBTAIN COMPLETE RESTITUTION.

1. *Antoninus to Martiana and Others.*

If you had arrived at puberty when you entered upon the estate of both your parents, and you are still at that age, you have a right to obtain the benefit of complete restitution on account of the obligation which you contracted with reference to the estates of your parents, if you can appear before the Governor of the province; but if you have attained your majority, and have allowed the time to elapse during which you could have obtained complete restitution, sue your curators in an action in

accordance to the rules of law, if you have not already proceeded against them.

Given on the second of the *Nones* of April, during the Consulate of Letus and Cerealus, 216.

2. *The Emperor Alexander to Martiana.*

It has been decided that minors of twenty-five years of age can obtain the benefit of complete restitution, if they have been overreached with reference to matters which have been transacted, either judicially or extra judicially, in the presence of their guardians or curators.

Given on the third of the *Nones* of March, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 224.

3. *The Emperors Diocletian and Maximian to Nicomedus.*

It has already been decided that the benefit of complete restitution can be accorded to minors in matters which their guardians or curators can be proved to have improperly administered, although they can recover what they are entitled to from their guardians or curators by means of a personal action.

Given on the fourth of the *Nones* of May, during the Consulate of Maximus and Aquilinus, 286.

4. *The Same, and the Cæsars, to Isidor.*

If a creditor, not relying upon you personally but upon your curators, makes a contract with them, and they stipulate with him, it is clear that no action will lie in his favor against you.

Given at Heraclea on the fifth of the *Kalends* of May, during the above-mentioned Consulate, 291.

5. *The Same, and the Cæsars, to Valentinus.*

It has been decided that even where guardians or curators have sold property, or have made contracts of some other description, the minors can either have their own property restored, or obtain damages from their guardians or curators, and that their rights shall not be prejudiced, no matter which method they may select.

Given on the sixth of the *Ides* of December, during the Consulate of the Cæsars, 164.

TITLE XXVI.

WHERE COMPLETE RESTITUTION OF PROPERTY OWNED IN COMMON IS DEMANDED.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Aphobius and Others.*

Even though your sister may have been more than twenty-five years of age she can, under no circumstances, deprive you of any of your rights, where you did not give her authority to do so, or subsequently ratify the transaction. If, however, you, knowing what she has done, should, after having reached the age of twenty-five years, give your consent to it, although she, if still a minor, can apply for the relief of restitution, so far as her own interest in the property is concerned, but her age will

not be of any advantage to you for the purpose of participation in the benefit of the Perpetual Edict.

Given on the third of the *Ides* of August, during the Consulate of the Cæsars, 264.

TITLE XXVII.

WHERE RESTITUTION IS DEMANDED IN A CASE IN WHICH A DECISION HAS BEEN RENDERED.

1. *The Emperor Alexander to Viliis.*

Where you, in an action on guardianship, have obtained less than you were entitled to, you can bring suit for the remainder, and the privilege due to your age will be allowed, if you were a minor at the time when judgment was rendered; but if this was done after you had attained your majority, you cannot again make use of the same action to recover the same property.

Given on the fifth of the *Kalends* of February, during the Consulate of Pompeianus and Pelignus.

2. *The Emperor Gordian to Serena.*

As your father alleges that you are still under his control, and that the emancipation made by him is not valid, if the Proconsul, who has jurisdiction of the case, should decide that you are still subject to his authority, and you, in opposition to this decision, petition for complete restitution, the Governor of the province, in taking cognizance of the case, shall render judgment in conformity with the laws.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Pius and Pontianus.

3. *The Emperor Philip to Eliana.*

You can, by no means, obtain the benefit of complete restitution from the Prætor or the illustrious Governor of the province, in opposition to the decision of him who, at that time, represented the Emperor; for the Emperor alone can grant restitution against the decision of anyone who acted as his representative.

Given on the eighteenth of the *Kalends* of November, during the Consulate of Philip and Titian, 246.

4. *The Emperors Diocletian and Maximian to Urbinius and Others.*

As you allege that you are minors, and have not been defended, the Governor of the province, according to his authority, shall see that your interests are not prejudiced; but if judgment has been rendered against you on any point, after a suitable defence has been made by your guardians or curators, understand that it will be necessary for you to claim the benefit of complete restitution; and the same rule will apply if the case has been defended by your legally appointed attorney.

Given on the sixteenth of the *Kalends* of May, during the Consulate of Maximus and Aquilinus.

5. *The Same, and the Cæsars, to Martian.*

It is established that minors or adults,¹ can ask for restitution in matters in which they are interested, where judgment has been rendered by the Governor against their guardians and curators, just as if it had been rendered against them personally.

Given on the tenth of the *Kalends* of November, during the abovementioned Consulate, 293.

TITLE XXVIII.

CONCERNING RESTITUTION ON ACCOUNT OF A SALE.

1. *The Emperor Alexander to the Soldier Florentius.*

If you, a minor of twenty-five years of age, have given security to the purchaser of land, which you sold to him, that you will not raise any controversy with reference to the same, you ought not to expect, after having taken an oath for the purpose of confirming the transaction, that I would permit you to be guilty of perfidy or perjury.

Given on the sixth of the *Kalends* of September ...
New Constitution of Frederick.

Oaths voluntarily made by persons who have arrived at puberty, to the effect that they will not repudiate contracts made with reference to their property, must be kept inviolate, but We order that those which have been extorted through well-grounded apprehension, even from persons who are of age, and especially where they swear that they will make no complaint of offences committed against them, shall be of no effect.

2. *The Emperors Constantine, Constantius, and Constans to the People.*

There is no doubt that the law provides for complete restitution in favor of minors where fictitious sales have been made, and fraudulent transactions entered into by their guardians or curators.

Given on the *Ides* of August, during the Consulate of Constantius, Consul for the first time, and Constans, 289.

¹ An adult, at Civil Law, was a male child who had reached the age of fourteen years, or a female who had reached the age of twelve; in other words, minors who had passed the age of puberty. —ED.

TITLE XXIX.

WHERE RESTITUTION IS DEMANDED ON ACCOUNT OF THE SALE OF PLEDGES.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Sabina and Others.*

It has already been decided that relief can also be given to minors against the sale of pledges made by creditors, but only provided they have sustained great injury. Therefore, if you can prove that you have suffered serious loss from the sale of lands which have been hypothecated, and especially if you assert that you are still minors, the benefit of restitution will be accorded you.

Given on the tenth of the *Kalends* of December, during the Consulate of the above-mentioned Emperors, 293.

2. *The Same, and the Cæsars, to Severa and Clementina.*

A creditor of your father having sold certain property of the latter which had been pledged to him, you have no right to ask for the sale to be rescinded, and restitution made on account of your age; and the rule is the same if you had succeeded a stranger. If, however, the creditor did not act in good faith, bring suit against him in the first place, or against your guardians and curators, who permitted this sale to be effected.

Given on the thirteenth of the *Kalends* of May, under the Consulate of the Cæsars, 294.

TITLE XXX.

WHERE RESTITUTION IS DEMANDED ON ACCOUNT OF A DONATION.

1. *The Emperors Diocletian and Maximian to Theodora.*

If any property was given you by your husband, who, at the time of your betrothal, and before the celebration of your marriage, was under the age of twenty-five years, and your curator was present, the donation cannot be revoked under the pretext of want of age.

Given on the third of the *Nones* of November, during the Consulate of Diocletian and Aristobulus, 285.

2. *The Same, and the Cæsars, to Meda.*

If your father, after having emancipated you, made a donation to your brother and yourself, and afterwards transferred your brother's share to another, but did not deprive you of anything, and your brother did not consent to the donation by his father of a portion of the rustic estate, he cannot lose his ownership of it on account of the authority of the Decree of the Senate; nor in this case is the relief of complete restitution necessary.

With reference to any other property, however, which cannot be alienated without a decree, if, after it had been given to him, he consented, while still a minor, to its donation by his father, he can invoke the benefit of restitution; provided the prescribed time for doing so has not expired.

Given on the eighth of the *Kalends* of January, during the Consulate of the above-mentioned Emperors, 293.

TITLE XXXI.

WHERE RESTITUTION IS DEMANDED ON ACCOUNT OF A GRANT OF FREEDOM.

1. *The Emperors Severus and Antoninus to Hamnia.*

Where, after a decree has been rendered by the illustrious Prætor, by which he decided that freedom was due under the terms of the trust, Secundus, whom you allege has not complied with the condition upon which his liberation was dependent, is not manumitted, your age

as a minor will authorize a renewal of judicial proceedings. If, however, you have granted him freedom, even though he may not have been entitled to it, understand that you cannot revoke it, but your curators will be required, in an action on voluntary agency, to indemnify you for any damage which you may have sustained on this account.

Given on the second of the *Kalends* of July, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Gordian to Solanoa.*

If (as you allege), you, a minor of twenty years of age, have manumitted your slave, although you may have been fraudulently persuaded to do so, still, the imposition of the rod by which freedom is lawfully bestowed cannot be rescinded under the pretext of defect of age; the manumitted slave, however, must indemnify you, and this should be provided for by the magistrate having jurisdiction of the case to the extent that the law permits.

Given on the sixth of the *Ides* of March, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

3. *The Emperors Valerian and Gallienus to Marona and Sabillina.*

You ask that the slaves whom you have manumitted again be reduced to servitude, alleging that you were at the time minors under the age of twenty, and that the matter was not considered in council. You cannot obtain complete restitution, but you can recover the property in accordance with law. If liberty was granted on good grounds, complete restitution cannot be allowed to annul the grant; if, however, you have been injured by the transaction through the negligence of fraud of your freedman, or his curator, the Governor of the province shall see that you are indemnified by whoever is responsible for it; and he must not hesitate to inflict a more serious penalty upon the freedman if he should be convicted of having openly and fraudulently committed a crime deserving of punishment.

Given on the eighth of the *Kalends* of October, during the Consulate of Secularis, Consul for the second time, and Donatus, 261.

4. *The Emperors Diocletian and Maximian, and the Cæsars, to Tatian.*

It cannot be doubted that where a decision has been rendered in favor of freedom, in an action in which it is in question, it cannot be rescinded on the ground of the privilege of minority without an appeal being taken.

Given on the sixth of the *Ides* of January, during the Consulate of the same Emperors; the first, Consul for the fifth time, and the second, Consul for the fourth time, 290.

TITLE XXXII.

WHERE A MINOR APPLIES FOR COMPLETE RESTITUTION AGAINST A COMPROMISE OR A DIVISION OF PROPERTY.

1. *The Emperors Severus and Antoninus to Antony.*

Where a female minor has obtained complete restitution, and a compromise or a division of property has been rescinded, it has been decided that you can bring the same action against her to which you were entitled in the first place.

Given on the fifteenth of the *Kalends* of April, during the Consulate of the above-mentioned Emperors, 203.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Hymnoda.*

If the relief of complete restitution on the ground of want of age is demanded in the name of minors against a compromise, relief will also be granted to anyone instituting judicial proceedings either by a reply to an exception based on an agreement; or, if it should be established that the former obligation was extinguished, your interests will be consulted by the revival of the action in your favor.

Given on the *Kalends* of December, during the Consulate of the above-mentioned Emperors, 293.

TITLE XXXIII.

WHERE RESTITUTION IS DEMANDED ON ACCOUNT OF PAYMENT MADE BY THE GUARDIAN OF A MINOR OR BY HIMSELF.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Setorica.*

Guardians who are indebted on account of their administration, and who pay what they owe to curators, are released, just as other debtors are; but the benefit of complete restitution against this payment is permitted by the Perpetual Edict, before the prescribed time has elapsed; and it can be determined by investigation of the case whether or not it should be granted.

Given on the sixth of the *Ides* of February, during the Consulate of the Cæsars, 294.

2. *The Same, and the Cæsars, to Laurina.*

It is reasonable that the right of recovery of a legacy which was not due should be granted to a minor, even though it may have been paid by him through an error of law; provided the time during which the relief of restitution can be granted has not expired.

Given on the fifteenth of the *Kalends* of April, during the Consulate of the above-named Emperors, 294.

TITLE XXXIV.

WHERE RESTITUTION IS DEMANDED AGAINST A DOWRY.

1. *The Emperor Alexander to Valens.*

As you say that your sister was swindled when she gave all her property as her dowry, the Governor of the province, in the presence of the adverse party, shall

ascertain whether your allegation is true, and whether the estate of your sister or prætorian possession of her property belongs to you, if the time has not yet elapsed within which you, as the representative of the deceased, are permitted by the law to demand complete restitution.

Given on the sixth of the *Ides* of July, during the Consulate of Maximus and Paternus, 234.

TITLE XXXV.

WHERE A MINOR APPLIES FOR RESTITUTION ON ACCOUNT OF A CRIME COMMITTED BY HIM.

1. *The Emperors Severus and Antoninus to Longinus.*

In criminal cases, minors are not entitled to relief under the pretext of want of age, for weakness of mind does not excuse the acts of evilly disposed persons. If, however, the crime does not proceed from the mind, but from some other source, the offender will not be liable to punishment, even where the penalty involves the payment of a sum of money; hence, in cases of this kind, minors are entitled to the benefit of complete restitution.

Given on the *Ides* of October, during the Consulate of Severus, Consul for the second time, and Victorinus, 201.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Procula.*

Although it is established that, in the case of crimes, no one is excusable on account of his age, it is, however, proper that a mother should not be refused succession to the estate of her children, when she was responsible for not having had a guardian appointed for them, through an error pardonable on account of her age, as this rule only applies to mothers who have attained their majority.

Given on the fifth of the *Nones* of March, during the Consulate of the Cæsars, 294.

TITLE XXXVI.

WHERE A MINOR DEMANDS RESTITUTION BY WAY OF RELIEF AGAINST USUCAPTION.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Isidor.*

The benefit of restitution should be granted in favor of minors against those who hold their property, when they acquire ownership of the same by usucaption.

Given on the *Kalends* of May, during the Consulate of the Cæsars, 294.

TITLE XXXVII.

WHERE A MINOR DEMANDS RESTITUTION BY WAY OF RELIEF AGAINST THE TREASURY.

1. *The Emperor Severus and Antoninus to Longinus.*

If Probus, while a minor, was overreached by Rufinus, Our steward, and contracted for the sale of property hastily and without proper consideration for a price which was far too low, Our Treasury must obey the authority of public law, and make complete restitution.

Given during the Consulate of Severus, Consul for the second time, and Victorinus, 227.

2. *The Emperor Alexander to Antiochus and Others.*

If you and your brothers desire to obtain complete restitution against private individuals, cognizance of the case should be taken by the Governor of the province, who, after proper examination, must decide whether the relief which you request shall be granted you. If, however, you have demanded restitution against the Treasury, understand that you must appear before My representative, sitting with the Governor in the presence of the Advocate of the Treasury.

Given on the *Kalends* of August, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Laurentius.*

The exemption of the property of minors granted by the Edict of Our Father the Divine Marcus does not apply to what you demand, as the sale of the property of your minor father, or the alienation of your own property on account of a debt, does not admit of the prescription of five years; but, as you assert that your land was sold with your slaves at a very low price, through the collusion or fraud of Our Fiscal Agent, who was in office at that time, if Our present Fiscal Agent finds that your allegations should be believed, and that the formalities requisite in a public sale were complied with, and you pay the Treasury what is due to it, he must rescind the sale, and order the land to be restored to you.

Given on the *Ides* of February, during the Consulate of the Cæsars, 294.

TITLE XXXVIII.

WHERE A MINOR DEMANDS RESTITUTION BY WAY OF RELIEF AGAINST A CREDITOR.

1. *The Emperor Antoninus to Prunicus.*

As you acknowledge that you made a contract with Zenodora, a minor under the age of twenty-five years, and have not been able to prove before the illustrious Prætor that she was pecuniarily benefited by the said contract, you understand that it is but reasonable that she would obtain complete restitution.

Given on the sixth of the *Nones* of August, during the Consulate of Largus and Messalinus, 148.

2. *The Emperor Gordian to Caianus.*

If (as you allege) you were a minor when you borrowed money at interest, and that it has not been employed for your benefit, you can formally assert the right of complete restitution against the note by means of which you incurred the obligation.

Given on the third of the *Nones* of February, during the second Consulate of Gordian, 242.

TITLE XXXIX.

WHERE A MINOR REJECTS AN ESTATE.

1. *The Emperors Sevens and Antoninus to Florentius and Others.*

If you have not interfered in the affairs of the estate of your father, it will not be necessary for you to produce witnesses to prove that you have not accepted it, as, in this instance, the truth of the matter does not require the support of verbal testimony. If, however, you have acted as heir, or if you have taken possession of the property, you should receive the benefit of complete restitution, on account of your age, for which reason relief is ordinarily granted.

Given on the sixth of the *Nones* of May, during the Consulate of Saturninus and Gallus, 199.

Extract from Novel 119, Chapter VI. Latin Text.

If all the creditors are present when restitution is demanded, they shall be summoned by the judge to appear when the minor rejects the estate, or if all or only some of them are absent, they shall be formally summoned by the judge. If they should not appear within three months, the minor can reject the estate without any risk, and the judge shall determine where and how the property belonging to it shall be cared for, and an inventory shall be made of the same.

2. *The Emperor Gordian to Herodota.*

If your grandparents made you their testamentary heir, and you have not entered upon their estates, after having rejected your paternal succession, you have the right to obtain the aid of complete restitution of the estates of your grandparents (as you say that you are still of the proper age to do so), in spite of the fact that you did not previously accept them.

Given on the third of the *Nones* of February, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

TITLE XL.

WHERE A MINOR DEMANDS RESTITUTION FOR THE PURPOSE OF OBTAINING AN ESTATE WHICH HE HAS REJECTED, OR THE POSSESSION OF PROPERTY OR ANYTHING ELSE.

1. *The Emperor Gordian to Prota.*

It has already been decided that minors of twenty-five years of age can demand the benefit of complete restitution, not only with reference to their own property which they have lost, but also where they did not accept an estate which was left to them.

Given on the *Ides* of October, during the Consulate of Pius and Pontianus, 239.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Sarapiadus.*

It has already been decided that minors should be admitted to demand the benefit of complete restitution where prætorian possession of the estates of their parents has been refused by them; but those who have been

restored by a decree must deliver to their brothers the property which they had at the time of their father's death.

Given on the sixteenth of the *Kalends* of November, during the Consulate of the Cæsars, 294.

TITLE XLI.

IN WHAT INSTANCES COMPLETE RESTITUTION IS NOT NECESSARY.

1. *The Emperor Alexander to Mutatus.*

It is stated in innumerable Rescripts of My ancestors, as well as in My own, that, where minors of twenty-five years of age have not avenged the death of their father, this cannot be pleaded against them, especially where they are not defended by guardians and curators.

Given on the *Ides* of May, during the Consulate of Alexander, Consul for the third time, and Dio, 230.

2. *The Emperors Valerian and Gallienus to Theodore.*

We have previously plainly shown that the period of youth is not included in the term of five years, on account of the expiration of which prescription is ordinarily pleaded by children, who institute proceedings with reference to an inofficious will too late. Therefore, complete restitution is not necessary after a person has reached his majority, because the revival of an action which has been extinguished is not granted to him, but the case itself remains unimpaired.

Given on the second of the *Ides* of August, during the Consulate of Tuscius and Bassus, 260.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Decimus.*

It is an accepted rule of law that, in the case of minors, a person is considered to be in default from the very moment when he delays payment of the price of property, and this rule applies to all transactions which admit of default, that is to say, to *bona fide* contracts, trusts, and legacies.

4. *The Same, and the Cæsars, to Stratonica.*

If your guardian, who has not given security for his administration, should be sued, a decision rendered against him cannot injure your right, nor will any business which he has transacted be valid; and therefore you will in vain petition for complete restitution, since whatever he has done is absolutely void in law, because, under the circumstances, he can not maintain the character of a legal guardian.

Given at Nicomedia, on the eighteenth of the *Kalends* of November, during the Consulate of the Cæsars, 294.

5. *The Emperor Justinian to John, Prætorian Prefect.*

In order to show indulgence to the non-age of minors, We decree that an exception on the ground that money was not paid shall not run against them from the

beginning, lest, while We are expecting complete restitution, some obstacle may arise on account of which a minor cannot avail himself of a privilege of this kind, or his property may be threatened with loss; but it is more humane to extend the interpretation of this law to all those cases in which the ancient laws are applicable, and which permit temporary prescriptions to run against minors, and come to their relief by means of complete restitution, so that they may not run against them by operation of law; for it is better for their rights to remain intact than for them to seek a remedy after these have been endangered; but of course prescriptions of thirty or forty years standing will remain in their present condition.

Given at Constantinople, on the *Kalends* of November, after the Consulate of Lampadius and Orestes, 531.

TITLE XLII.

WHO CANNOT OBTAIN COMPLETE RESTITUTION, AND AGAINST WHOM IT CANNOT BE OBTAINED.

1. *The Emperor Alexander to Cononidus.*

Where complete restitution is demanded, it is necessary for the judge having jurisdiction to ascertain whether he who alleges that he is a minor and has been injured has shown himself to be the diligent head of a household, and acted so wisely in his public conduct that it is not probable that advantage would have been taken of his age. If, however, after proper investigation, he is shown to have been deceived, he should not, on this account alone, and by the mere fact of the prescription, be excluded from the relief usually granted; for instance, where he has been created a decurion while still a minor, on account of the urgent necessities of his country; or where he has married and had children for the purpose of educating them.

Given on the tenth of the *Kalends* of October, during the Consulate of Lupus and Maximus, 253.

2. *The Emperor Justinian to John, Prætorian Prefect.*

It was doubted by the ancient authorities whether children could sue their parents, or freedmen their patrons, as, by doing so, they would not conduct themselves properly towards them, and some jurists held that complete restitution could not be obtained against persons of this kind, as the force of natural affection, or the respect due to a patron is opposed to such insolence, unless there was some extraordinary cause for it, or the action was brought against a person who was infamous.

Others held that any distinction of persons or causes should be rejected under such circumstances, but they thought that restitution should only be granted where the minor stated that he had been deceived on account of his inexperience, and not been overreached by the fraudulent

act of his father or his patron; but, in order that the honor due to all parents as well as to patrons and patronesses may remain unimpaired, We order that restitution shall by no means be granted against parents of either sex, or against a patron or a patroness; for the respect due to such persons excludes all restitution, as there is no doubt that care should be taken that nothing injurious to their reputations may take place.

Given at Constantinople, on the *Kalends* of September, after the Consulate of Lampadius and Orestes, 531.

TITLE XLIII.

WHERE A MINOR ALLEGES THAT HE IS OF AGE.

1. *The Emperor Alexander to Maximiana.*

If you are under twenty-five years of age, and can prove that you have been deceived by the records of your birth, from which it appears that you were over that age, you can, after having attained your majority and within the time prescribed by law, demand complete restitution of everything which has been done contrary to your rights while you were a minor, of the magistrate having jurisdiction of the case.

Given on the twelfth of the *Kalends* of April, during the Consulate of Maximus and Paternus, 234.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Vitalianus.*

If a person who alleges that he is at present a minor should deceive you by falsely stating that he has attained his majority, he should not obtain complete restitution, as the laws only afford relief to those who are mistaken with reference to what has been legally established, and not to minors who are guilty of fraud.

Given on the third of the *Kalends* of December, during the Consulate of Diocletian and Maximian, 293.

3. *The Same, and the Cæsars, to Theodora.*

If, while a minor, you attempted to prove that you had attained your majority for the purpose of deceiving another, as malice supplies the defect of age, it has been decided not only by the Imperial Constitutions, but also by the authority of the Rescripts, that the benefit of restitution should be denied you. When, however, this has been accomplished by the injustice or fraud of your adversary, the privilege of restitution, which is usually granted to minors after proper investigation, will continue to exist. Therefore, when applied to, the Governor of the province, having examined the evidence of age, shall provide for your complete restitution, if he finds that you have not been guilty of fraud, and you prove that you were a minor at the time. But if you have stated in some document, under oath, that you were of age, you must be aware that you will be excluded from the benefit of complete restitution, unless you can openly and clearly

show that you were a minor by the production of documents, and not by the statements of witnesses; but if you have actually taken an oath of this kind, it is evident that, according to law, you will not be entitled to any relief.

Given on the thirteenth of the *Kalends* of October, during the Consulate of the Cæsars, 294.

4. *The Same, and the Cæsars, to Labius.*

As you allege that a mistake in proving the number of years was made before the Governor, and as it is admitted that relief can be granted to minors under paternal control, in cases of this kind, the Governor of the province must examine the matters set forth in your petition, and if he finds, by the evidence which you offer, that in computing your age, your opinion was incorrect, when you thought that you had reached your majority, he shall decide in your case whatever is in accordance with truth.

Given on the sixth of the *Ides* of December, during the Consulate of the Cæsars, 294.

TITLE XLIV.

WHEN COMPLETE RESTITUTION IS DEMANDED MORE THAN ONCE.

1. *The Emperors Severus and Antoninus to Romanus and Others.*

If you should desire complete restitution after a decision of the Proconsul has been rendered against you, and you do not obtain it, you will, in vain, ask that the proceedings having reference to complete restitution be revived, for you ought to have appealed if the decision displeased you, but if you are still of an age to be entitled to relief, We restore to you the right of appeal.

Given on the fifth of the *Kalends* of August, during the Consulate of Chilo and Libo, 205.

2. *The Emperor Alexander to the Soldier Justus.*

Although the curators of a female minor may have been defeated when they made a demand in her behalf for complete restitution, still, as you allege that new means of defence are now available in the case, the curators of your wife should appear before the judge, and request to be permitted to present again the reasons for complete restitution.

Given on the fifth of the *Kalends* of August, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Emperor Philip to Anita.*

It has frequently been stated in Rescripts that the benefit of complete restitution cannot legally be demanded more than once in one and the same case (unless new defences are offered).

Given on the second of the *Kalends* of June, during the Consulate of Peregrinus and Emilianus, 247.

TITLE XLV.

CONCERNING THOSE WHO OBTAIN A
RELEASE FROM THE DISABILITY OF NON-AGE.

1. *The Emperor Aurelian to Agathocles.*

It is perfectly clear that those who, through the indulgence of the Emperor, have obtained a release from the incapacity of age, even if they do not seem to have administered their property in a proper manner, cannot obtain the benefit of complete restitution, lest those who contract with them may appear to have been deceived by the Imperial authority.

Given on the *Kalends* of July, during the Consulate of Aurelian and Capitolinus, 275.

2. *The Emperor Constantine to Verinus, Prætorian Prefect.*

All young persons who are of good morals and desire to administer the estates of their fathers or grandfathers, which have been left to them, and who on this account, have need of the aid of the Emperor, are only entitled to a release from the incapacity of age when they have completed their twentieth year, but they cannot obtain this favor for themselves from the Emperor, unless they establish their age by written instruments, and prove the integrity and rectitude of their lives by the evidence of witnesses called to show what their morals are.

(1) We order that women, also, whom the correctness of their morals and the activity of their minds recommend, can obtain a release from the incapacity of age after they have passed their eighteenth year; but, on account of the modesty and reserve of the female sex, We do not compel them to be present in public assemblies; still, having obtained this release from legal incapacity, We permit them to prove their age by five witnesses, or by documents presented by an attorney, in order that they may have the same rights in the transaction of all business, as We have directed that men shall have; but they cannot alienate their lands without a decree.

(2) The illustrious senators, however, who reside in this Imperial City, must produce testimony with reference to their morals and honesty before your tribunal; other persons shall appear before the Prætor, and all those in the provinces are required to present their evidence to the Governors.

(3) Those who, through the indulgence of the Emperor, have obtained a release from incapacity of age, without having conformed to the above-mentioned formalities, are notified that such a release is of no force or effect.

Given at Rome, on the third of the *Kalends* of July, during the Consulate of Crispus and the Cæsar Constantine, both Consuls for the second time, 321.

3. *The Emperor Justinian to Menna, Prætorian Prefect.*

We order that those who already have obtained, or may hereafter obtain a release from the incapacity of age through the indulgence of the Emperor, shall not make any alienation or hypothecation of their real property without a decree, in all cases where the alienation or hypothecation of such property by those who have not obtained a release from the disability of age is necessary; as the condition of all minors under such circumstances is similar, whether they have obtained such indulgence or not.

Given on the eighth of the *Ides* of April, under the Consulate of Decius, 529.

4. *The Same to the Senate.*

When anyone desires something to be given or done, and mentions lawful age, or states absolutely that he has attained his majority, We decree that such age be understood to be that of twenty-five years, and not what is granted by the favor of the Emperor. We desire this rule to be applicable in cases of substitution or restitution, as well as to all other matters, unless it should expressly be stated that reference to a release from the disability of age is intended.

Given on the ninth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

TITLE XLVI.

WHERE A MINOR RATIFIES HIS ACT AFTER
HAVING ATTAINED HIS MAJORITY.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Eutychidnus.*

Where partition has taken place, without any fraud, between minors under twenty-five years of age, either in writing or without it, and the parties, after arriving at lawful age, confirm the transaction, it is held to be valid.¹

Given on the eighth of the *Kalends* of May, under the Consulate of the above-mentioned Emperors, 293.

2. *The Same Emperors and Cæsars to Sortirus.*

Those who, after they have reached their twenty-fifth year, ratify transactions made during their minority, will, in vain, demand that they be rescinded.

Given on the *Ides* of February, during the Consulate of the Cæsars, 294.

TITLE XLVII.

WHERE, AND BEFORE WHAT JUDGE
APPLICATION FOR COMPLETE RESTITUTION
SHOULD BE MADE.

1. *The Emperor Antoninus to Severus.*

The decision of the Governor cannot be rescinded where a case involving complete restitution has been decided by My deputy, for the Emperor, alone, can grant complete restitution against the decision of his representative.

Given on the sixth of the *Kalends* of December, during the Consulate of Lætus and Cerealis, 216.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Acquilina.*

As you state that you have delivered the property which you were compelled to give by the terms of a compromise, the result will be

¹ The American rule with reference to the avoidance or ratification of contracts by minors, after attaining their majority, is based upon this principle. — ED.

that if you desire to institute proceedings to recover said property, either by means of complete restitution, or in any other way, you must appear before the Governor of the province in which the parties against whom you bring the action have their domicile.

Given on the third of the *Kalends* of September, after the third Consulate of Lampadius and Orestes, 531.

3. *The Emperor Justinian to John, Prætorian Prefect.*

As we know that doubts have arisen, with reference to cases where complete restitution is demanded, as to whether they should be heard by a magistrate of general jurisdiction, or by judges specially appointed, when minors under the age of twenty-five years or persons who have attained their majority make the demand in accordance with the rules laid down by the ancient laws, or by Our own Constitutions, We order that suits of this kind should not only be brought before judges who have general jurisdiction, but also before those whom Our August Majesty has appointed, or the administrators of Our government, both in this Imperial City, and in the provinces, so that he who appointed the judge may be considered as having jurisdiction of the matter, and grant complete restitution, as well as examine the reasons for it, and, in this way, the proceedings will not give rise to any difficulty.

In order, however, that no one may venture to give too broad a construction to Our Constitution, and think that it extends to judges appointed for the purpose of compromise, or to arbiters selected by common consent, or to persons designated by judges who themselves have no jurisdiction but merely the power to decide, We desire that, generally speaking, only those judges shall dispose of such cases who have been appointed for a certain administration to which jurisdiction has been added, or where others have been appointed by them; and this rule is especially applicable when they have been delegated by Our Majesty to determine such controversies. But, that no doubt whatever may remain, We think that it should be provided that those judges whom we have enumerated above shall be permitted to decide with reference to complete restitution, where this right was specially conferred upon them (a course of procedure not unknown to the ancients); or where they have been appointed without limitations; or where, in other matters, some question relating to restitution arises.

Given on the third of the *Kalends* of September, after the Consulate of Lampadius and Orestes, 531.

TITLE XLVIII.

CONCERNING REFLECTIONS MADE IN A JUDGMENT FOR COMPLETE RESTITUTION.

1. *The Emperor Antoninus to Tatian.*

If the party who obtains complete restitution should not suffer any loss from the proceeding, so also he should obtain no profit, and hence he must deliver up anything which may come into his hands either from a purchase, a sale, or any other contract. If, however, a minor under the age of twenty-five years should be delegated, the right of action should be restored in favor of the creditor against the original debtor. Where a minor enters upon an estate, and obtains restitution, he must immediately surrender whatever he obtained from the estate, and if he has been guilty of fraud, he should be held responsible.

TITLE XLIX.

PROCEEDINGS TO OBTAIN COMPLETE RESTITUTION CAN ALSO BE INSTITUTED BY AN ATTORNEY.

1. *The Emperor Alexander to Licinius.*

It is established that, if the right exists, an action for complete restitution can also be brought by an attorney.

Given on the thirteenth of the *Kalends* of October, during the Consulate of Pompeianus and Pelignus, 232.

TITLE L.

NO NEW PROCEEDING TAKES PLACE WHEN A DEMAND FOR COMPLETE RESTITUTION IS MADE.

1. *The Emperor Gordian to the Soldier Secundinus.*

It is a plain rule of law that where complete restitution is demanded, everything remains in the same condition until the case is terminated, and he who has charge of such matters must see that this is done.

Given on the twelfth of the *Kalends* of July, during the Consulate of Gordian and Aviola, 240.

TITLE LI.

CONCERNING THE RESTITUTION OF SOLDIERS AND OF PERSONS WHO ARE ABSENT ON BUSINESS FOR THE STATE.

1. *The Emperor Severus and Antoninus to Chilo.*

If Valerian, Centurion of the Twelfth Cohort of the Alps, died before obtaining possession of the property in question, his heir, as the representative of the deceased, can legally demand the benefit of complete restitution within the available year (if Valerian died while in the army), after the time has elapsed during which the possession of the estate was left to him.

Given on the *Kalends* of November, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Alexander to the Centurion Petronius.* If persons who are absent on public business

have suffered any loss or if anyone should be released from an action which could have been brought against him by the said absent parties, complete restitution can be granted them, within the available year, without their being barred by prescription.

Given on the thirteenth of the *Kalends* of November, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Same to the Soldier Flavius Aristodemus.*

A soldier, during a year after he has ceased to be absent on business for the State, is permitted to claim any of his property which has been taken possession of by someone during his absence, without the intermediate time being included in the prescription; but after the said term has elapsed, he cannot interfere with the rights of the possessor.

Given on the *Nones* of January, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

4. *The Emperor Gordian to Mastrianus.*

You should not be ignorant of the fact that the property of persons who are absent in the service of the State, without fraudulent intent, can only be taken possession of where they are not defended in accordance with the judgment of a good citizen, and that the sale should be postponed until they have ceased to be absent on public business.

Given on the twelfth of the *Kalends* of January, during the Consulate of Gordian and Aviola, 240.

5. *The Same to the Soldier Secundinus.*

It is clear that the prescription of five years after a sale has been made by the Treasury cannot prejudice the rights of persons who are absent on business for the State, nor of others who have attained their majority and are entitled to complete restitution.

Given on the sixth of the *Ides* of May, during the Consulate of Sabinus and Venustus, 241.

6. *The Emperors Valerian and Gallienus to the Centurion Germanus.*

If, while you were engaged in the performance of your military duties, the heirs of your creditor sold the property which had been encumbered to their ancestors, you can, after having appeared before the Governor of the province, obtain complete restitution; and, the sale having been rescinded, you can recover your property if you offer to pay the amount of the indebtedness or the purchase-money, if it was less than the claim.

Given on the fourth of the *Nones* of April, during the Consulate of Valerian and Gallienus, 225.

7. *The Emperors Diocletian and Maximian, and the Cæsars, to Marina.*

It is not proper for sons, under the pretext of military service, to demand that affairs transacted by their father

should be rescinded as void, especially as you do not allege that your father, during his lifetime, made any complaint with reference to the contract in question.

Given on the *Nones* of February, during the Consulate of the Cæsars, 294.

8. *The Emperor Justinian to Menna, Prætorian Prefect.*

We order that those alone who are engaged in military expeditions shall be entitled to take advantage of the time which elapsed during such expeditions, not only in not being subject to the operation of exceptions, but also in order to demand complete restitution. Those who are absent elsewhere, or are at home, can, by no means, enjoy the benefit of claiming the above-mentioned privileges during the time occupied by said expeditions.

Given at Constantinople, on the sixth of the *Ides* of April, during the Consulate of Decius, 529.

TITLE LII.

CONCERNING THE WIVES OF SOLDIERS AND OF THOSE WHO ARE ABSENT ON BUSINESS FOR THE STATE.

1. *The Emperor Alexander to Secundina.*

It is well known that it is customary, as in the case of soldiers, to grant relief to women who are absent with their husbands on business for the State, so far as temporary actions, which are extinguished by reason of absence, are concerned.

Given on the third of the *Nones* of December, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Quintilian.*

Prescription based upon a long lapse of time does not run against a woman who has been for a considerable period with her husband, who was serving in the army, but, for the reason that schemes fraudulently and shrewdly devised, on account of prolonged absence of this kind, may not prejudice anyone, if such a woman can show that a house which belonged to her was sold during her absence, We order that the price which was actually paid for the same be refunded, and that the woman receive the house.

Given on the eighth of the *Kalends* of December, during the Consulate of the same Emperors, 293.

TITLE LIII.

CONCERNING THE TIME DURING WHICH MINORS AND OTHER PERSONS, AS WELL AS THEIR HEIRS, WHO HAVE A RIGHT TO COMPLETE RESTITUTION, CAN OBTAIN IT.

1. *The Emperor Gordian to the Soldier Pudens.* As you are a minor under the age of twenty-five years, you can demand the benefit of complete restitution with reference to those matters in which you have sustained

injury, for the entire time occupied by the military expedition; for the period during which restitution can be demanded after a minor has become of age, in this case should, in accordance with law, be computed from the day of his discharge.

Given on the third of the *Nones* of October, during the Consulate of Pius and Pontianus, 239.

2. *The Same to the Soldier Secundinus.*

If your father died before he was of legal age, or even afterwards but before the time prescribed by law had elapsed, and you became his heir, and before having reached the age of twenty-five years, or even afterwards, but before the time had expired during which your deceased father could have demanded restitution, you enlisted in the army, the Governor of the province, after proper investigation, shall come to your relief by granting you complete restitution as the representative of the deceased.

Given on the eleventh of the *Kalends* of November, during the Consulate of Pius and Pontianus, 239.

3. *The Same to the Soldier Mutianus.*

If, during the years in which complete restitution could have been granted, you were appointed to a command in the army, or enlisted and served your term as a soldier, the benefit of restitution will continue by usucaption, even though it may have been perfected before you entered the service, for it is not permitted that you should be oppressed by the loss of your property.

Given on the ninth of the *Kalends* of November, during the Consulate of Pius and Pontianus, 239.

4. *The Emperors Diocletian and Maximian, and the Cæsars, to Dionysius.*

If you demand the estates of your brothers, you can proceed against the person of whom you complain, being aware that if your brothers, who were minors under the age of twenty-five years, died while in the army, time would not run against them to prevent them from obtaining complete restitution, but they would transmit all their rights to their successor.

Given at Philippopolis, on the eighth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

5. *The Emperor Constantine to Bassus, Prætorian Prefect.*

Whatever has been provided by the laws with reference to the time during which complete restitution can be demanded must be complied with. If anyone should obtain from Us the benefit of release from the incapacity of age, it is proper that the time should run from the day when Our Indulgence notified a competent judge of the fact, and the administration of his own property was granted to the party in question, so that he

can proceed to obtain complete restitution, and have his case terminated within the time prescribed by law.

The aid of complete restitution should, however, never be refused to minors under the age of twenty-five years, so far as any business which they transacted before they were released from the disability of age is concerned.

(1) When one minor succeeds to the rights of another, he is not prevented from demanding complete restitution during the time prescribed by law, after he has reached his twenty-fifth year.

(2) When a minor succeeds to the rights of one who has attained his majority, he is only entitled to as much time for the purpose of demanding complete restitution as the deceased whose heir, or the possessor of whose estate he is proved to be, could have claimed.

(3) When a person, who is of age, obtains the estate of a minor, whether he succeeds to it *ab intestato*, or under a will, the time when he can demand restitution is reckoned from the day when he entered upon the estate. If, however, he should acquire possession of the property under the prætorian law, the time for examining and deciding with reference to complete restitution will run from the date when he obtained possession of the property, without any deduction whatever.

Given at Rome, on the *Nones* of October, during the Consulate of Constantine and Licinius-Cæsar, both Consuls for the second time, 312.

Extract from Novel 100, Chapter II. Latin Text.

Where a minor, under the age of twenty-five years, does not make complaint as soon as the dowry provided for is not paid, he can, nevertheless, be restored, provided the twelfth year from the time of the marriage has not elapsed. If, however, he should die within the prescribed time, a year shall be granted to his heir. But if the heir of the deceased, whether he was of age or a minor, is himself a minor, he shall enjoy the privilege of a term of five years, without any reference to how old he may be.

6. *The Same to Julian, Urban Prefect.*

Where application for complete restitution has been made within the prescribed time, and further delay is asked by the plaintiff which comes within the term required for restitution, it shall be granted, whenever demanded, after proper cause has been shown. If, however, the delay requested exceeds the specified time, it must be refused the plaintiff, just as if it had been demanded within the legal time and had gone beyond its limits, for he had the right to institute proceedings when the delay requested would not have exceeded the remaining time.

(1) When the defence of the action requires delay, We order that, after proper investigation, it shall be granted, without consideration of the time, because the

party himself was not responsible for not having the suit begun sooner. Hence the delay should be granted, even though when this is done it may exceed the term prescribed for bringing suit, by which delay, if obtained by the defendant, the plaintiff himself will not be prevented from obtaining evidence in his own behalf.

Given at Rome, on the fourteenth of the *Kalends* of August, during the Consulate of Constantine-Cęsar, Consul for the fifth time, and Maximus, 319.

7. *The Emperor Justinian to John, Prętorian Prefect.*

We, with the intention of abolishing the unnecessary distinction of the available year, in proceedings for complete restitution, do hereby order that, in ancient Rome, as well as in this Fair City, and in Italy, and all other provinces, the term of four continuous years shall be employed; and that they shall be computed from the day on which the available year began to run, and that this rule shall be adopted everywhere; as it seems to Us perfectly absurd that any distinction should be made with reference to different places.

We order that this delay shall not only be granted in the case of the restitution of minors (when the available year began to run from the first day of their twenty-sixth year), but also with reference to persons of full age, so that the above-mentioned continuous time shall, instead of the available years, be observed both for the purpose of instituting proceedings and ending litigation.

(1) And as the fact that they are under age is excepted in the case of the restitution of minors, so in the case of those who have attained their majority, the time during which they were absent on business for the State, or where they were engaged in any other lawful undertaking enumerated in the ancient laws, is also excepted; and, in this respect, the restitution of minors and persons who have attained their majority is not dissimilar.

Given at Constantinople, on the *Kalends* of September, after the Consulate of Lampadius and Orestes, Consuls for the fifth time, 531.

TITLE LIV.

FOR WHAT REASONS PERSONS WHO HAVE ATTAINED THEIR MAJORITY OBTAIN COMPLETE RESTITUTION.

1. *The Emperor Antoninus to Ęmilianus.*

If you have had judgment rendered against you while absent and undefended, on account of having performed the duties of My envoy in good faith, you very justly desire the revival of the case, and permission to make use of all your defences from the beginning; for it has been decided that those also, who perform the duties of envoys, enjoy the same privileges to which those do who are absent on business for the State are entitled.

Given on the fifth of the *Nones* of March, during the Consulate of the two Ąspers, 213.

2. *The Same to Dionysius.*

If you prove before the Governor of the province that it is true that you were unable to appear before the arbiter, for the reason that you were detained in military custody by order of the Governor, you can begin the action anew.

Given on the thirteenth of the *Kalends* of October, during the Consulate of Lętus and Cerealis, 216.

3. *The Emperors Diocletian and Maximian, and the Ąsars, to Proculus, Decurion.*

In *bona fide* contracts, the laws come to the relief of persons of lawful age also, through the official act of the judge who has cognizance of the case.

Given on the *Nones* of August, during the Consulate of Diocletian and Aristobolus, 285.

4. *The Same to Priscianus.*

The government usually enjoys the privilege of minors, and therefore it can demand the relief of restitution.

Given on the eleventh of the *Ides* of November, during the Consulate of Diocletian and Aristobolus, 285.

5. *The Same to Licinianus.*

If, having been taken prisoner by the enemy along with your father and mother, the latter should die while in captivity, and you, having returned to your country, should demand their estates by virtue of the Cornelian Law, you will not be prevented from recovering the property by an action like that which is granted for complete restitution opposing the exception of the time prescribed by law (which it is customary to do).

Given on the sixteenth of the *Kalends* of May, during the Consulate of the Ąsars, 294.

TITLE LV.

CONCERNING AN ALIENATION MADE FOR THE PURPOSE OF CHANGING AN ACTION.

1. *The Emperors Diocletian and Maximian, and the Ąsars, to Attalus.*

As possession provides a real action for an adversary, and complete restitution is permitted by the Perpetual Edict, even when alienation of property has been made for the purpose of changing the action, understand that if the person who is in the possession of the same should sell and deliver it to a purchaser, to avoid being sued, you have the legal right to choose against which of the parties you will proceed.

Given on the sixth of the *Kalends* of December, during the Consulate of the Ąsars, 294.

TITLE LVI.

CONCERNING THE APPOINTMENT OF ARBITERS.

1. *The Emperor Antoninus to Nepotiana.*

It has frequently been stated in rescripts that an appeal cannot be taken from the decision of an arbiter appointed after a compromise which has been made in

perfect compliance with law, because an action to enforce judgment cannot be granted under these circumstances; and for this reason the promise of a penalty is reciprocally made in order that, through fear of it, the parties may not refuse to abide by the decision.

Where, however, judgment is rendered after the expiration of the time mentioned in the compromise, it will be void, and the party who refuses to comply with it will not be liable to any penalty.

Given at Rome, on the ninth of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, 223.

2. *The Emperors Carus, Carinus, and Numerian to Clement.*

If your adversary, in violation of the terms of the compromise, refuses to appear before the arbiter who has been chosen, he will be considered to have incurred the penalty agreed upon.

Given on the eighth of the *Kalends* of January, during the Consulate of Carus and Carinus, 283.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Petronia.*

If you do not comply with the award of the arbiters appointed under a compromise, when the avarice or favor of those who rendered it is apparent, you can avail yourself of the exception of malicious fraud against your daughter bringing an action on the stipulation; but you will not be prevented from proceeding against her under the clause providing against malicious fraud, which is usually added to stipulations connected with compromise.

Given on the third of the *Ides* of January, during the Consulate of the same Emperors, 293.

4. *The Emperor Justinian to Demosthenes, Prætorian Prefect.*

In order that perjury may not be committed in the case of arbiters, their selection should be confirmed by the solemnity of an oath, and that opportunity may not indiscriminately be afforded perfidious men to evade the decisions of judges, We order that questions of this kind shall be decided by the arbiter as follows:

(1) Where the same judge has been selected by both plaintiff and defendant, who have agreed that the case shall proceed under the sanction of an oath, and the litigants themselves have consented to this either in writing or in the presence of public officials, or have stated it before the arbiter selected who reduced it to writing, and it shall also be added that the arbiter himself administered the oath for the purpose of disposing of the case in accordance with the truth, We order that the award shall, under all circumstances, remain unaltered, and that neither the defendant nor the plaintiff can disobey it, but that they shall be absolutely compelled to respect and comply with it.

(2) If, however, nothing of this kind was either done or written by the arbiter, but the parties themselves produced a statement in their own handwriting, setting forth that they had bound themselves by oath to abide by the decision of the arbiter, in this instance, his award shall be maintained inviolate, for the reason that the statement of the parties themselves has the same force, whether it was made in the beginning, or drawn up in the above-mentioned manner at the time when the arbiter was chosen, or whether this written instrument was found after final judgment was rendered, either for the reason that the said parties confirmed the authority of the arbiter with the solemn formality of an oath, or because they swore to execute what had already been decided.

(3) If it is evident by the instruments or the statements already mentioned that the arbiter himself alone took the oath, on the demand of the litigants, that he would decide the case in accordance with the truth, the award in the present instance, as in the former one, shall, in every respect, be valid according to law.

(4) In all these cases, it shall be lawful for either an action *in factum*, a personal action for recovery under the law, or an equitable real action to be brought, according as circumstances may demand.

(5) If, however, nothing of this kind should appear, either in writing or in the statements made, and only one party alleges that he has been sworn, no faith shall be given to the award of the arbiter alone or to the statements of one of the parties; for even if it should be admitted that an oath had been taken, but not in the presence of the court, and no written evidence of either of the parties was produced to show this, the conduct of an uncertain contest, which frequently takes place among ignorant men, does not in the least deprive the judgment of its force; but, in a case of this kind, all the rules should be observed which the ancient authorities laid down with reference to the selection of arbiters.

Extract from Novel 82, Chapter XI. Latin Text.

The new law provides that an arbiter shall not be appointed in such a way as to decide under the sanction of an oath, but that he must fix a penalty which, if paid, will permit a party to avoid the execution of the judgment. Where, however, anything is done contrary to this, and the judge who decides improperly does so through fraud, he may expect punishment from God; but if he errs through ignorance, the oath will not be binding, nor will the litigants be liable to punishment a second time.

THE TEXT OF THE CODE FOLLOWS.

(6) He who has stated in writing at the end of the award of the arbiter that he approved of it, or that he would comply with it (by using certain Greek terms for this purpose, which by custom are considered preferable),

although he may not have added "I promise," should be compelled by the action *in factum* to perform what he agreed to; for what difference is there when "I promise" is added to these words, or when the expression is absolutely omitted? For if We have corrected many defects in stipulations, as well as disposed of the innumerable circumlocutions and ambiguities with which they were overwhelmed, after having abolished the ordinary formulas and the subtle and superfluous statements which they contained, by means of laws recently enacted by Us, why should We not remove all the perplexities of the ancient law from instruments of this description, so that, where such an instrument is drawn up, one of the parties will be obliged to acquiesce in it, and be absolutely compelled to carry it into effect? For it is not probable that a document of this kind has been written only for the purpose of having it disputed; but rather in order that a decision, against which no opposition can be manifested, may be executed.

Given on the third of the *Kalends* of November, during the Consulate of Decius, 529.

5. *The Same to Julian, Prætorian Prefect.*

As has previously been decided in the choice of arbiters, where no penalty for the violation of a compromise was prescribed, and they were not appointed by a judge, and no common selection was made in compliance with the preceding decision, but this was done by common consent of the parties, the result will be that if the award was in favor of the defendant, an exception on the ground of contract will lie in his favor, but if it was in favor of the plaintiff, he will obtain no advantage from it; and We order with reference to those arbiters whom We have mentioned above, and who have been selected by common consent, under an agreement either written or verbal, that their award must be maintained; and if, after it has been rendered, the parties stated in writing that they were not displeased with it, not only an exception based on the agreement can be pleaded in behalf of the defendant, but also, by Our law, an action *in factum*, will lie in favor of the plaintiff, so that he can direct the award to be executed in this Imperial City by the Most Eminent Prefecture, or by the court having jurisdiction of the defendant, and in the provinces this can be done not only by the Governors, but by their subordinates, as well as by the judges having jurisdiction over the person who was sued.

If, however, after the decision was rendered, the parties interested did not sign the decree of the arbiter, but confirmed it by their silence, and within the next ten days no protest was sent to the judge or by either party to his adversary, by which it became evident that the award was not accepted, then it is confirmed by the silence of the parties, and an exception will lie in favor of the

defendant, and the above-mentioned action in favor of the plaintiff. Where, however, one of the parties, after having complied with the formalities above mentioned, and not being willing to have the award executed rejects it, no prejudice to the rights of the parties will result, nor will the defendant have a right to an exception, nor the plaintiff to an action. Those arbiters, however, who have been chosen under the solemnity of an oath, are excepted under a new constitution which We have promulgated, for in this case all the provisions on this subject set forth in Our law must be complied with.

(1) Although We are not ignorant of the opinion of Julius Paulus, and of certain other persons learned in the law, who have touched upon this question which we are at present discussing, they have not treated it in the most skilful manner, but have held that the decision should stand, so far as certain temporary actions are concerned. We, however, decide in a more complete and general way that an agreement entered into in writing in the presence of the arbiter appointed as the result of a compromise, interrupts the prescription, just as if the proceedings had been instituted before an ordinary judge.

(2) With reference to this point, We order that, generally speaking, in controversies brought before arbiters, where a question of fact is involved, the statements of the litigants or the witnesses can also be made in the presence of ordinary judges.

Given on the sixth of the *Kalends* of ..., during the Consulate of Lampadius and Orestes, 530.

6. *The Same to John, Prætorian Prefect.*

We order that women shall be mindful of their modesty, and confine themselves to the performance of those functions for which Nature has designated them, and avoid those from which she has ordered them to abstain; and although where those of the highest reputation may have accepted the office of arbiter, or where, being patronesses, they have acted in this capacity for their freedmen, they shall be separated from all judicial duties, so that no penalty can be imposed for their selection, and no exception on the ground of an agreement can be pleaded against such persons as justly despise their decisions.

Given at Constantinople, on the *Kalends* of September, during the Consulate of Lampadius and Orestes, 530.

TITLE LVII.

CONCERNING THE FURNISHING OF SECURITY.

1. *The Emperors Diocletian and Maximian and the Cæsars.*

It is a certain rule of law that anyone who becomes the attorney of the plaintiff shall not be compelled to furnish security that his principal will ratify his act; for,

in this case, the attorney should be understood to appear, as it were, in the presence of him who employed him. Therefore, if the constituent, having afterwards changed his mind, should be unwilling for his attorney to represent him, the judge must consider everything which the attorney has done in the case as valid. Where, however, in the beginning of the action, he is opposed by an allegation of the defence, and he himself is, in this instance, considered as the attorney of the absent party, he ought to be compelled to give security to offer a defence against the exception; and if he does not do so, the judge should not permit the case which was brought against him to proceed further. The attorney, or the defender of the party sued, however, even though he was appointed in the presence of witnesses, shall, in all cases, at the commencement of the proceedings, be compelled to furnish security to pay any judgment which may be rendered against him.

Given on the ninth of the *Kalends* of November, during the Consulate of the Cæsars, 294.

TITLE LVIII.

CONCERNING THE SUPPRESSION OF FORMULAS AND CLAIMS, OR RIGHTS OF ACTION.

1. *The Emperor Constantine to Marcellinus, Governor of Phœnicia.*

The legal formulas which, by the subtlety of their phraseology, menaced all pleadings, shall be absolutely suppressed.

Given on the tenth of the *Kalends* of February, during the Consulate of Constantius, Consul for the third time, and Constans, Consul for the second time, 342.

2. *The Emperors Theodosius and Valentinian to Hierius, Urban Prefect.*

No exception in a case of more or less importance shall be pleaded against anyone on account of an action not having been granted, if it should be established that the said action is applicable to the matter in question, and has reference to the cause for which suit was brought.

Given on the tenth of the *Kalends* of May, during the Consulate of Felix and Taurus, 428.

TITLE LIX.

CONCERNING THE TENDER OF THE OATH WITH REFERENCE TO CALUMNY.

1. *The Emperor Justinian to Demosthenes, Prætorian Prefect.*

In all cases, whether you base your action upon private papers, public documents, or upon anything else which requires the production of evidence, We order that it shall not be produced unless the party who demands it first takes the oath relating to calumny, and swears that he does not make these allegations for the purpose of

postponing judgment; for the contentious activity of litigants is restrained by fear of the oath.

(1) In order that certain persons may not indulge the cruelty of their dispositions by unnecessarily subjecting their slaves to torture, those who ask that slaves should be put to the question shall not have their request complied with, nor shall they be heard by the judges, unless, placing their hands upon the Holy Scriptures, they swear that they do not make this application on account of hatred of the slaves, or because they are offended against their co-heirs, but for the reason that they cannot otherwise ascertain or establish the truth of matters relating to the estate.

Given at Constantinople, on the twelfth of the *Kalends* of October, during the fifth Consulate of Decius, 529.

Extract from Novel 49, Chapter III. Latin Text.

This oath is not exacted at present, as in the beginning of the action the party swears not to demand anything from malicious motives during the entire proceedings.

2. *The Same to John, Prætorian Prefect.*

As We have already decided that judges shall not dispose of cases unless in the presence of the Holy Gospels, and decreed that advocates throughout the entire dominions of the Roman Empire must first be sworn before undertaking the conduct of cases, We consider it necessary to promulgate the present law, by which We order that in all litigation begun after it has been published, neither the plaintiff nor the defendant can, in the beginning of an action, state their claims, unless, after they have filed their petitions and answered, and before the advocates on both sides have taken the oath prescribed by law, the principals themselves have been sworn. The plaintiff shall swear that he has not brought suit through enmity, but that he thinks that he has a good reason for doing so, and the defendant shall not be permitted to prove his allegations, unless he himself first makes oath that he has entered the contest with confidence in the justness of his cause; and, after this, the learned advocates on both sides (as has already been decreed by Us), shall be sworn upon the Holy Gospels placed before the judge.

Extract from Novel 49, Chapter III. Latin Text.

There should be added to this oath, in order to prevent it from being frequently taken during the proceedings, that no evidence will be required during the entire case, except such as the parties may think necessary to be produced in order to ascertain the truth.

Extract from Novel 124, Chapter I. Latin Text.

The principal parties, or those to whom in the meantime the case has been transferred, shall swear in the presence of the judges that they have not promised, or

given anything whatever, either to the latter or to anyone else, for the purpose of obtaining their favor; and that they will not afterwards give anything either directly, or through the medium of others, excepting to those who have been employed as their own advocates, and to the other persons to whom Our laws permit payment to be made.

(1) When lawsuits, or requests for advice, are brought before Our Sacred Consistory, the oath above mentioned shall be taken in the presence of the Senate.

(2) If any of the litigants should be unable to appear in court, they, along with the adverse party, shall take the aforesaid oath in the presence of officers appointed for this purpose by the judge.

(3) A woman of noble rank, during the absence of her adversary, shall also be sworn in the presence of the officers.

(4) If the parties happen to be elsewhere, or if one of them should be absent, they shall be sworn before the judge of the province, or the defenders of the district, and the fact shall be recorded.

(5) When one of the litigants refuses to take the aforesaid oath, if he is the plaintiff, he shall lose his action by the decision of the magistrate; if he is the defendant, he shall have judgment rendered against him.

(6) Guardians and curators must take the above-mentioned oath in actions which they bring.

THE TEXT OF THE CODE FOLLOWS.

(1) If, however, the rank or sex of the party does not permit him or her to appear in court, the oath shall be taken in the house of the litigant, of course, in the presence of the other party, or his attorney.

(2) It must be noted that where guardians or curators, or any other persons who transact the business of others, by lawful authority, are concerned, it is proper that they, also, should be subjected to the requirement of the oath, because they understand the case which they are conducting. For neither a ward, a minor, nor any other persons of this kind can be familiar with it; and hence none are obliged to appear in court except such as have charge of the guardianship or curatorship, or some other legal administration. For this reason they must swear according to the knowledge which they possess, and although the true nature of the case may perhaps be different, still, what each one believes and thinks must be sworn to, and all other oaths which have come down to us from former laws, or which have been established by Ourselves, shall remain in full force.

(3) Where, however, either of the parties is absent, and his case is conducted by an attorney, if it is the plaintiff, he cannot be permitted to direct his attorney to proceed before he himself takes the oath of calumny, with

the proper formalities, in the province in which he resides.

In like manner, if the defendant should be absent, and has appointed an attorney, and agreed by a stipulation to pay any judgment which might be rendered against him, or if a defender should voluntarily appear for him, he himself shall be sworn as hereinbefore prescribed, in the presence of the plaintiff, or in that of his duly appointed attorney, or even in his absence (if the judge should permit it), which act must be made a matter of record.

(4) But for the reason that We fear that the parties, being in collusion, may perhaps dispense with this oath to be taken by them, and by such dissimulation evade Our law, We order all judges, even though they only have jurisdiction by virtue of a compromise, to use every effort to prevent the oath from being avoided, and under all circumstances to require it to be taken by both plaintiff and defendant; as We have promulgated the present law for the common welfare, and not for the convenience of individuals, in order that this proceeding may not, little by little, fall into disuse, and the oath of the principal parties or advocates in some way or other be curtailed.

(5) We have also decided that the following addition should be made to this law; namely, if anyone should desire to bring an action for another, without any mandate having been given, but after having furnished security that his principal will ratify whatever he has done in the matter, the law shall not be considered to have been evaded by means of this artifice; and We order that if anything of this kind should take place hereafter (whether someone desires to bring suit in behalf of an individual, or for a corporate body, a village, or any other association), he must furnish the usual security; but he cannot proceed further with the action unless, within the time fixed by the judge, the latter causes the principal parties to be sworn, either in the presence of their adversary, or (if the latter prefers it), in the presence of the attorney; and, if the other party is not present, the oath of calumny shall be taken and duly recorded in the presence of the defender of the district, either by the party for whose benefit the action was brought, or by the majority, or the most prominent of the members of the association.

(6) Where, however, the plaintiff is unwilling to take the oath of calumny, and this fact is legally established, he shall not be permitted to proceed with the case, but he shall lose it as a dishonest litigant, the displeasure of the judges toward him shall be manifested by a severe reprimand, and he shall be deprived of all hope of obtaining a judgment.

(7) If the defendant should refuse to take this oath, he shall be considered as having confessed the truth of everything set forth in the petition of the plaintiff, and the

judge can render a decision according as the nature of the case may suggest.

(8) In this manner, not only the number of lawsuits, but also that of calumniators will be diminished, and men will think that they are rather in sanctuaries than in courts of justice. For if the principal parties- among the litigants conduct their actions after taking this oath, and their advocates also take it, and the magistrates themselves hear the cases, and pronounce judgment in the presence of the Holy Scriptures, what else can be believed than that God himself is the judge of men in all their cases? Hence the ancient oath of calumny, together with all its subterfuges, having been abolished, Our clear and comprehensive Constitution shall shine throughout all countries, and be the best remedy for the disposal of litigation.

(9) We desire that the above-mentioned oath shall be taken at the very origin of a case, when litigation has not yet been begun. Where, however, causes are already pending, or where issue has been joined and the ordinary judicial security has been furnished, both parties shall be compelled to take the oath in the same city or province in which they dwell, immediately after the promulgation of this law. If one of them should be absent, the trial of the case ought not to be deferred on this account, and any other course will be contrary to what We have prescribed, and what has been introduced to shorten litigation will at once be changed to the opposite; hence We order that the party who is present must, without fail, take the oath, and that the absent party shall be excused from doing so, provided, however, that the case is pending (as has been previously stated). When both of the principal parties are absent, to prevent litigation from being protracted for too long a time, cases that are pending can proceed without the oath.

Given on the fourth of the *Kalends* of August, during the Consulate of Justinian, Consul for the fourth time, and Paulinus, 534.

THE CODE OF JUSTINIAN.
BOOK III.

TITLE I.
CONCERNING JUDGMENTS.

1. *The Emperors Severus and Antoninus to Clement.*

A stipulation for the payment of interest does not lose its effect after suit has been brought, hence the result will be that you can sue your debtor for interest incurred during the proceedings which was not included in the judgment.

Given on the *Kalends* of April, during the Consulate of Antoninus and Geta, both Consuls for the second time, 209.

2. *The Same to Valerius.*

Although judgment may have been rendered in a suit which you brought against your guardian, still, the right of action on guardianship is not extinguished, and therefore if you again institute proceedings before the same judge, and an exception on the ground of *res judicata* is interposed against you, you can properly avail yourself of a reply based on malicious fraud if you allege that the claim in the present action is not the same as the one which was disposed of in the former one.

Given on the sixth of the *Kalends* of January, during the Consulate of Faustinus and Rufinus, 211.

3. *The Emperor Alexander to Faustina.*

Whenever the question of a person's condition arises, where the title to property is involved, there is nothing to prevent the magistrate, who, in every other instance, cannot take cognizance of the question of condition, from deciding the controversy.

Given on the sixth of the *Ides* of February, during the Consulate of Julian, Consul for the second time, and Crispinus, 229.

4. *The Same to Popilius.*

If, after the price of land purchased by your curators has been paid, and the instruments evidencing the sale have been delivered, you have not brought forward the question of omission of guarantee in case of eviction, you understand that when the case has once been decided it cannot be renewed.

Given on the *Kalends* of August, during the Consulate of Modestus and Probus, 229.

5. *The Emperor Gordian to Marcellus.*

When one judge is delegated by another, he has no power to designate a third, as he himself performs judicial functions, unless he was appointed by the Emperor himself.

Given on the fourth of the *Nones* of September, during the Consulate of Pius and Pontianus, 239.

6. *The Same to Junia.*

A slave cannot interfere with a judgment, and if no decree of condemnation has been issued against him, what has been decided shall stand.

Given on the fifteenth of the *Kalends* of September, during the Consulate of Gordian and Aviola, 240.

7. *The Emperors Diocletian and Maximian to Hyrina.*

When you allege that a slave of your debtor, who has been pledged to you, holds certain property of his deceased master, you ask, contrary to law, that actions be granted against him; for as no suit can be brought between a slave and a freeman, it is more proper for you to apply to the court to give you possession of the property pledged than to demand what is illegal.

Given on the fourteenth of the *Kalends* of May, during the Consulate of the Cæsars, 294.

8. *The Emperors Constantine and Licinius to Dionysius.*

It has been decided that, in all things, the principles of justice and equity, rather than the strict rules of law, should be observed.

Given on the *Ides* of May, during the Consulate of Volusianus and Annianus, 314.

9. *The Emperor Constantine to Maximus.*

It is necessary for judges, in the first place, thoroughly to examine the character of the matter in dispute, and then to interrogate both parties frequently as to whether they desire to add anything, as this is a benefit to both of them, whether the case is to be decided by the judge, or is to be referred to someone higher in authority.

Given on the second of the *Ides* of January, during the Consulate of Licinius and Crispus, 316.

Extract from Novel 116, Chapter II. Latin Text.

When one party has stated his case, but the other alleges that he still has something to advance, We order that the judge shall compel the latter who asks for postponement, without fail or further delay, to set forth explicitly what he wishes, within thirty days after the other party has filed his complaint; and if he does not do so, the judge shall grant him another month for the purpose of conquering his obstinacy; and if he should still delay, another shall be given him, so that if he does not make his allegations within the three months aforesaid, the magistrate having jurisdiction of the suit shall not wait any longer, but shall render his decision in conformity to all laws and customs; or, if he should be unwilling to do so, he must make a report, so that evil-disposed litigants may not be permitted to defer a decision for a longer time.

10. *The Same to Severus, Urban Prefect.*

A hearing should absolutely be refused to a person who divides a case which should be determined without it, and, as a privilege, desires to try before several judges what can be decided by one and the same magistrate. It is the duty of a judge to punish anyone who presents a petition contrary to this law, and having made a demand for possession before one judge, attempts to have the principal question in the case disposed of by another.

11. *The Emperor Justinian to Julian, Prætorian Prefect.*

In order to prevent litigation from becoming almost perpetual and exceeding the term of human life (as Our law has already limited criminal cases to two years, and pecuniary actions more frequently occur, and are known sometimes to give rise to criminal proceedings), it seems to Us to be advisable to promulgate the present law, for the purpose of regulating such matters throughout the entire earth, so that it may not be subject to limitation by either space or time.

(1) Therefore, We decree that all suits which are brought for the recovery of any sum of money whatsoever, or with reference to civil conditions, the rights of cities or of private individuals; the possession, ownership, or hypothecation of property, servitudes; or any other questions on account of which litigation occurs between men; with the sole exception of such cases as involve the rights of the Treasury, or the discharge of official duties, shall not, after issue has been joined, be deferred longer than the term of three years.

All judges, either in this Fair City or in the provinces, whether they are invested with inferior or superior jurisdiction, or discharge the functions of magistrates, or have been appointed by Us, or by Our nobles, shall not be permitted to protract cases for a longer time than the term of three years, for no one is not aware that this provision is superior to any judicial authority, and if the parties themselves should not acquiesce, no one can be found who will be bold enough to postpone a case against the consent of the judge.

(2) If, however, the plaintiff should cease to prosecute his case, and the defendant should be wearied with the long delay, and the term of three years after the joinder of issue should be approaching its end, so that only six months remain, the judge, after the defendant has complained of the plaintiff's absence and the matter has been duly considered, is authorized to seek him out by means of his bailiffs, and when this has been done three times (the term of ten days being allowed for each application), and the plaintiff is not found, and does not appear either in his own proper person or by an attorney, We decree that the judge shall then examine the papers which have been filed with him, and if there should be no sufficient grounds upon which to act, and upon which a positive decision can be rendered, We desire that not only the defendant shall be released from all liability so far as the action is concerned, but that the plaintiff shall be condemned to pay all the expenses which are ordinarily incurred in lawsuits, and the amount of which shall be established by the oath of the defendant; and any security which the latter may have deposited with reference to the case, which, if it had remained would have been released by operation of law, shall be returned to him.

If, however, from the evidence in the possession of the judge, it appears that the plaintiff was not found, the judge can find a way by which it may become clear to him what decision he should render; and if the plaintiff should seem to have the better case, the judge shall not, even though he is absent, hesitate to render a decision against the defendant who is present in favor of the absent plaintiff, and only the costs which the defendant shall swear he has lawfully incurred in the action shall be deducted from the judgment. Although the plaintiff has

the better case, We impose this penalty upon him solely on account of his obstinacy in being absent, and he shall, by no means, have the power to reopen the action, but his contumacy shall cause the loss of his case altogether, if the defendant is discharged.

Where, however, a judgment is rendered against the defendant, in favor of the absent plaintiff, for an amount which the latter may, perhaps, think is not sufficient, We do not, under any circumstances, permit him to revive the case; and this is the penalty which We inflict upon him.

(3) But if the defendant should be absent, and a similar search is conducted for him, as We have mentioned in the case of the plaintiff, and if he also should remain absent, and be in default; the judge, according to what is prescribed by the ancient laws, shall thoroughly inform himself as to the suit, by interrogating the party who is present, and if he should be found to be liable, the judge shall not fail to render a decision against the absent party, which must be executed and the claim of the successful litigant be satisfied by the pecuniary resources of him who is absent; and the judge himself can either do this on his own authority, or it can be referred by a report to a superior magistrate, so that a lawful way may be opened to reach the property of the contumacious party. Neither he, nor anyone else, shall have permission to interfere when the plaintiff is placed in possession in this way; for if the defendant himself should return, and desire to give sureties, and recover possession, he shall not be heard, as in cases of this kind We exclude all opposition.

(4) When either the plaintiff or the defendant is in default, the examination of the case should proceed without any impediment, for as soon as the Holy Scriptures are brought forward, the absence of the litigant is supplied by the presence of God; and the judge should not apprehend any appeal from his decision, since one who is known to be absent through obstinacy has no right to appeal; which is the undoubted rule established by the ancient laws.

(5) A decision of this kind, however, must be rendered near the end of the said term of three years, for which purpose We have introduced the present law. If, however, either party already has been absent for some time, and a considerable portion of the time remains, and he is expected to return, the decision shall only release him from the payment of costs; and, in this instance, the termination of the suit and the judgment rendered against the absent party only take place where a short time remains for the expiration of the three years.

(6) If, however, the case should have been decided in the absence of one of the parties, or in the presence of both, all the judges appointed in Our Empire are notified that the party who is defeated shall be condemned to pay

the costs of the action to the one who gains it, but only so much as the latter may swear that the ordinary expenses amount to; for they are aware that if they should omit this, they themselves will be liable to this penalty, and will be compelled to pay it to the injured party.

(7) It has seemed proper to Us to establish these rules with reference to parties litigant, when they are absent through contumacy, for the purpose of complying with the principles of equity.

(8) When either of the parties, desiring to proceed with the case, applies to the judge, and the latter is unwilling to hear him, either because of his friendship for the adverse party, or his hostility to himself, or on account of dishonorable gain, or because of some other vice which may arise in the soul of despicable magistrates of this kind, he himself should wish to prolong the proceedings, and, in consequence, the term of three years should elapse, and the judge should be appointed to the office of magistrate, or to a higher position, or even raised to illustrious rank, he shall be compelled by the Court of the Palace to pay ten pounds of gold into the Treasury of Our Private Largesses.

If, however, he is a judge of inferior jurisdiction, he shall be punished with a fine of three pounds of gold, to be collected by the same court and paid into Our Treasury, and, having been removed from office, another judge should be appointed in his stead, and shall, under the same circumstances, be liable to a similar penalty.

All these things take place when one judge hears the case from the beginning; but if, during the course of three years, judgment has been delayed, either by the death of the judge, or by some other unavoidable accident, and one year or more remains during which it can be decided, another judge shall be appointed for that purpose. If, however, less than a year should remain, then all the time lacking shall be added, in order that the newly appointed judge may not only hear, but determine the case within the full period of a year.

(9) It should undoubtedly be observed that, if it is not the fault of the litigant or the judge that the progress of the case has been retarded, but the advocates are responsible for it, permission is given to the judge to fine them two pounds of gold as a penalty, to be collected by the Court of the Palace, and in the same manner applied to public purposes. The judge shall also state in his decision whether the delay has been caused by the attorneys of either the defendant or the plaintiff, and whether this has been done by all or only by some of them; hence, those who undertook to conduct the case should continue to do so until it has been terminated (unless the law, or some good reason prevents them from doing so), so that delay may not result from their refusal to proceed. Their fees should, by all means, be paid to the

learned advocates by their clients, if they can do so; and where they fail to pay them, they can be collected by those who have charge of the affairs of the court, lest by an artifice of this kind, cases may be delayed, unless the litigant should prefer to select another advocate instead of the one whom he first employed.

(10) All these matters have been provided for by Us with reference to parties of full age, whose judgment renders them capable of transacting every kind of business.

(11) Where, however, the cases of wards or minors, or similar persons subject to legal disability and acting under the supervision of others are concerned, whether they are of the male or female sex, and suit has been brought by their guardians, curators, agents, or attorneys, and through their neglect of duty the three years have elapsed, and the right of action has been extinguished, the proceedings, nevertheless, will retain all their force; but the injury resulting from this neglect shall fall upon the guardians and curators, or their sureties, and the heirs and their property, and upon all persons who have any lawful interest in the matter. When, however, their property does not prove sufficient to satisfy the claims of their wards or minors, it has been decided that then they shall be entitled to the benefit of complete restitution for all the loss which they may have sustained.

Given on the sixth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 539.

12. *The Same to Julian, Prætorian Prefect.*

We are not introducing anything that is new or unusual, but only what has already been established by the ancient legislators, for ever since these rules have been treated with contempt, no small injury to litigation has resulted. For who is ignorant of the fact that judges in former times could not accept the judicial office unless they had previously made oath that they would on all occasions decide according to the truth, and in compliance with the law?

Therefore, as We have found that this course has not usually been pursued, and that the laws having reference to oaths which We previously published have convinced litigants of the great benefit which they produced, and hence were deservedly praised by all, We now come to this decree, which shall be valid for all time, and by which We direct that all judges, whether of superior or inferior jurisdiction, who have been appointed to office, either in this Imperial City or elsewhere throughout the world subject to Our empire, as well as those to whom We have accorded the right to hear cases, or who may be appointed by superior judges, or who have authority to decide in their own jurisdiction, or have been selected under an agreement, that is to say, in accordance with a

compromise (which resembles a judgment), who undertake to dispose of lawsuits, whether they act as arbiters by virtue of a decree, or have been chosen by the consent of the parties, and, generally speaking, all judges learned in the Roman Law, shall not undertake to hear a case, unless the Holy Scriptures have previously been placed in front of the judicial tribunal, and remain there, not only during the beginning, but also throughout the entire examination, until the very end, and the promulgation of the final decision.

If, therefore, paying attention to the Holy Scriptures, and being consecrated by the presence of God, they dispose of litigation with the aid of a higher power, let them know that they must not judge others in any other way than they themselves are being judged, as this will be more terrible to them than to the parties themselves; for while the litigants are judged by men, they themselves introduce cases to be weighed and determined with the assistance of God.

This judicial oath shall be made known to all, and shall be added by Us to the Roman Law, and be observed by all magistrates, and if it is neglected, those who treat it with contempt will do so at their peril.

Extract from Novel 15, Last Section but One. Latin Text.

At present they swear that they will do what seems to them to be more just and better, with the exception of municipal defenders, who swear that they will do everything in conformity with the laws and justice.

THE TEXT OF THE CODE FOLLOWS.

After issue has been joined, the case of the plaintiff presented, and the answer filed, in any action of greater or less importance, whether brought before arbiters who have been appointed under the terms of a compromise, or in some other way, or elected, the advocates employed on both sides shall be sworn with their hands upon the Holy Gospels that they will endeavor to do everything for their clients which they think to be honorable and just, by every exertion of their knowledge and power, and that they will, as far as possible, neglect nothing available for this purpose.

Where, however, they believe the case to be disgraceful or absolutely desperate, or based upon false allegations, knowing this to be the fact, they will be guilty of bad faith in taking charge of such a suit. If, however, during the proceedings, they obtain any information to this effect, they must withdraw from the case, and absolutely cease to have any connection with a matter of this kind. This having been done, the abandoned litigant shall not be permitted to seek the aid of another advocate, lest those of a better class having repudiated him, he may have recourse to one who is unprincipled.

Where a party to a suit has employed several advocates, and all of them have been sworn, and some, during the progress of the case, think that it should be tried, and others refuse to proceed, the latter should retire, and those who agree to do so should remain; for a case can be conducted to its termination where some advocates, through timidity, withdraw, and others who are more bold, persist in trying it; nor, under such circumstances, should permission be granted to the litigants to substitute others instead of those who are unwilling to continue.

Given on the fourth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

13. *The Same to Julian, Prætorian Prefect.*

When a party who was absent at the time when he was called afterwards appears, We order all judges, both in this Most Illustrious City and in the provinces, not to inform him of the condition of the case, but, on the other hand, exclude him from all knowledge of it, unless he previously makes reparation for any loss sustained by his adversaries through his fault, as well as pays all the expenses of conducting the case, and the fees of the advocates, or any other costs which may have been incurred in the action. The amount of these shall be determined by the judge after the party who incurred the expense has been sworn, in proportion to the services rendered by the court officials; and all Our judges and their subordinates are hereby notified that, if they neglect anything of this kind, they will be compelled to reimburse, out of their own property, those who have suffered any loss.

We decree that this rule shall be observed by ordinary judges when litigants, who are required to be present (even though they have not been summoned), absent themselves with fraudulent design.

Given on the tenth of the *Kalends* of May, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 530.

Extract from Novel 82, Chapter X. Latin Text.

After an estimate of the costs has been made and sworn to, the judge shall not be allowed to increase it; but, at present, when he has made the estimate and fixed the amount, he is not empowered to allow a smaller sum than has been sworn to. If, however, he should perceive that on account of the nature of the case, neither of the litigants ought to be subjected to any expense, he must state this in his decision.

14. *The Same to Julian, Prætorian Prefect.*

It is a clear rule of law that litigants can reject judges appointed to hear a case before it is begun, and, in accordance with the general regulations of your tribunal, it has been established that where a judge is rejected, the parties will be compelled to choose arbiters, and submit

their claims to them. Even when the judge was appointed by the Emperor, for the reason that We have set our hearts upon all suits being conducted without any suspicion of unfairness, the party who thinks that a judge is liable to suspicion can reject him, and have recourse to another, before proceedings are instituted; as, after issue has once been joined, We have already decided that no appeal can be taken before final judgment, nor any judge be rejected in order to prevent proceedings from being indefinitely prolonged; and therefore the same official should, under the authority vested in ordinary judges and with all the assistance of the laws, compel the parties to choose arbitrators, and appear before them, and submit their cases just as if the arbitrators had been appointed by the Emperor himself

We decree that this rule shall also be observed where the judge has not been appointed by the Emperor, but by some other official.

Given at Constantinople, on the fifth of the *Kalends* of May, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 530.

Extract from Novel 86, Chapter II. Latin Text.

If, however, one of Our subjects should happen to suspect the judge, We order that the holy archbishop, or bishop of the diocese, shall hear the case, along with the illustrious judge, so that they both may, by amicable agreement, remove any suspicion, either by committing the facts to writing, or by deciding the controversy between the litigants as magistrates, and prevent the suits of persons residing in the provinces from being protracted for a long time, while they are absent from home. If the judge should refuse to obey the archbishop, the latter must write to the Emperor, who will take measures to punish him.

15. *The Same to John, Prætorian Prefect.*

It is a positive rule of law that authority to dispose of litigation is conceded to military men, for what is there to prevent men who are skilled in other matters from rendering decisions in this? We know that the competency of military magistrates and all such persons has already been approved, on account of their daily experience, so that they hear and decide cases, and terminate disputes of this kind, according to the dictates of their consciences and their knowledge of the law.

Given on the *Kalends* of November, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 530.

16. *The Same to John, Prætorian Prefect.*

When a special judge has been appointed, either by the emperor or by some other competent official, in the province in which the person who rejected another judge resides, and either of the parties says that he suspects him; in order to prevent the former (when he is absent

and resides in another city of the same province), from being compelled to make a long journey for the purpose of filing his application for rejection, We direct that, if the Governor of the province is in the city where the difficulty arises, he who alleges that he suspects the judge shall appear before him and make the accusation in writing. Where, however, the Governor of the province is not in the place aforesaid, this can be done before the defender of the district, or the municipal duumvirs, after the requisite formalities have been observed, and the judge can be rejected. And, immediately afterwards, that is to say, within the next three days, the parties shall be compelled, without delay, to choose an arbiter or arbiters, and submit their cases to them, in order that the judge who has been appointed may not be removed, and no other be chosen. Whenever a dispute arises between the parties with reference to the selection of an arbiter, it shall, in like manner, be decided by the Governor of the province, if he is present, or by the defender of the district, or the municipal magistrates; and the court official to whose care the case has been committed must carry into effect whatever has been decided by the arbiter, unless an appeal is taken; for then he who appointed the judge who was considered suspicious, having considered the application for an appeal, shall render a decision in accordance with law.

Given on the *Ides* of November, during the Consulate of Lampadius and Orestes, 530.

TITLE II.

CONCERNING THE COSTS AND EXPENSES INCURRED IN DIFFERENT CASES, AND THE EXECUTIVE OFFICERS OF THE COURT.

1. *The Emperors Gratian, Valentinian, and Theodosius to Potitus, Deputy.*

When anyone has been summoned to court, We order that the bailiff to whose charge he is committed shall, in the first place, keep him under observation, until the case has been terminated. If anyone should, under any pretext, disobey this Our decree, after it has been

issued the official responsible for it shall be sentenced to pay a fine of five pounds of gold.

Given at Milan, on the *Kalends* of July, during the Consulate of Ausomius and Olybrius, 379.

2. *The Same to Julian, Prætorian Prefect.*

We grant permission to all judges, with the exception of those specially appointed by Us, who are classed as illustrious, distinguished, or eminent, and to members of the bar of every prefecture, or any others of those who have been delegated to hear cases by Our judges, to remove from office any of their subordinates, if they neglect their duties, and to deprive them of the business of which they have charge, as well as fill their places with

others who are qualified, and even to impose fines upon them.

If the judges are such as are styled illustrious, they can impose fines up to six *solidi*; others, however, can not exceed one of three *aurei*; and the latter should send the culprit to competent magistrates in order that they may inflict corporeal punishment upon them. Our judges of the highest rank shall have permission to impose even more severe penalties and corporeal punishments upon the said subordinates when they have been guilty of embezzlement while in office; in order that they may know that they cannot practice any deception with reference to litigants, and that the course of justice may not be obstructed on account of their greed of gain.

Given on the fifth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

TITLE III.

CONCERNING SPECIAL JUDGES.

1. *The Emperor Gordian to Vicanius.*

It is clear that Our Deputies, when not occupying the place of Governors of provinces, have no authority to appoint judges to decide disputes between private persons; and therefore, if (as you allege), he whom you mention has thought proper to appoint arbitrators to dispose of a controversy between private persons, any award rendered by them cannot stand under the law.

Given on the *Kalends* of February, during the Consulate of Atticus and Prætextatus, 243.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to all Vicegerents.*

We desire that Governors should, themselves, take cognizance of cases, which, for the reason that they were not able to determine them, they formerly appointed special judges to decide; but, if they cannot hear them on account of their public duties, or because of the multiplicity of matters of this kind, they are granted authority to appoint judges to do so. This, however, should not be understood to mean that permission is given them to appoint judges in cases which they are accustomed to hear in the ordinary course of their official duties, for jurisdiction of these must be retained by the Governors in order to prevent their authority from appearing to be diminished. The judges, themselves, must decide cases involving free birth, of which they formerly could take cognizance, as well as such as have reference to manumission.

3. *The Same, and the Cæsars, to Serapion.*

We desire that you intimate to such judges as you may see fit to appoint that, after having rendered their decisions, they put an end to the business entrusted to them, and that in cases in which they should, and can render judgment, they must not assume authority to assign them to her judges; and especially where a

decision seems to one of the parties litigant to be unjust, he shall be granted full power to interpose an appeal from the entire decision.

Given at Antioch, on the eighth of the *Kalends* of April, during the Consulate of the Cæsars, 294.

4. *The Same, and the Cæsars, to Firminus.*

We desire that, whenever special judges have been appointed, after issue has been joined in a case, and they have necessarily been compelled to take charge of some other business, or to go into another province for some reason connected with the public welfare, or have died, and on this account the matters which have been begun cannot be terminated, other judges should be appointed in their stead, who may dispose of the unfinished litigation; lest otherwise some impediment may arise in the administration of justice.

Given on the tenth of the *Kalends* of ..., during the Consulate of Tiberius and Maximus, 295.

5. *The Emperor Julian to Secundus, Prætorian Prefect.*

There are certain matters which it would be superfluous to bring before the Governor of a province, and therefore We grant authority to Governors to appoint special judges, that is to say, such as may decide questions of minor importance.

Given at Antioch, on the fifth of the *Kalends* of August, during the Consulate of Mamertinus, 362.

TITLE IV.

WHAT JUDGES CAN DELEGATE THEIR JURISDICTION, AND WHO CAN BE DELEGATED.

1. *The Emperors Theodosius and Valentinian to Cyrus, Prætorian Prefect.*

In the delegation of cases, We order that it shall, by all means, be remembered that only such appointments are valid which come within the jurisdiction of the judge who makes them, for if anyone should think that he has a right to delegate a case belonging to another jurisdiction, We decree that the person appointed need pay no attention to the order; and if he obeys the official who appointed him contrary to law, We direct that everything which has been done under said appointment shall be considered void, just as if those judges who were delegated had themselves assumed another jurisdiction, so that no necessity exists for the defeated parties to appeal from their decisions.

These rules shall apply unless judges have been especially delegated by Us, and have themselves assigned cases to be heard by others; for, where such persons have been delegated, appeals can only be made from them to Us, without any distinction of persons or cases.

Given on the thirteenth of the *Kalends* of January, during the Consulate of Valentinian and Anatolius, 440.

TITLE V.

NO ONE SHALL DECIDE HIS OWN CASE OR INTERPRET THE LAW FOR HIMSELF.

1. *The Emperors Valens, Gratian, and Valentinian to Gracchus, Urban Prefect.*

We decree by this general law that no one shall act as judge in his own case, or interpret the law for himself, as it would be very unjust to give anyone the right to render a decision in an affair which is his own.

Given on the *Kalends* of December, during the Consulate of Valens, Consul for the sixth time, and Valentinian, Consul for the second time, 378.

TITLE VI.

WHO HAVE THE RIGHT TO APPEAR IN COURT, AND WHO HAVE NOT.

1. *The Emperor Gordian to Candida.*

If, at a time when you were still a minor, you appeared in court with your adversary, without the authority of your guardian, and the Governor of the province rendered a decision against you, it will have no judicial authority.

Given on the *Ides* of December, during the Consulate of Gordian and Aviola, 240.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Gemacha.*

In matters relating to a private right, a ward can sue and be sued by his guardian, and an adult can both bring and defend a suit with the consent of his curator.

Given on the ninth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

3. *The Emperors Honorius and Theodosius to Julian, Proconsul of Africa.*

An action to obtain temporary possession can be brought by anyone, but a petition to recover property under the pretext of obtaining possession should not be productive of injury, especially when the action appears to have been begun by someone not legally qualified to do so; for any business transacted directly with a minor will be of no advantage to him, as this should be attended to by his curator.

Given at Ravenna, on the second of the *Nones* of March, during the Consulate of Constantius and Constantine, 339.

TITLE VII.

NO ONE SHALL BE COMPELLED AGAINST HIS WILL TO BRING AN ACTION, OR TO ACCUSE ANOTHER.

1. *The Emperor Diocletian to Camerius.*

No one shall be forced to bring a suit, or to accuse anyone, against his will.

Given on the *Ides* of October, during the Consulate of Carinus, Consul for the second time, and Numerianus, 282.

TITLE VIII.

CONCERNING THE ORDER OF JUDGMENTS.

1. *The Emperors Severus and Antoninus to Marcellina and Others.*

Go before the Governor of the province, and inform him that the will of Favius is broken by the birth of a posthumous son. Nothing will prevent him from taking cognizance of the case, which involves the question of status, although he cannot usually examine matters of this kind; as this is part of the duty of the judge having jurisdiction of estates, and of every incidental question relating to the same, for he does not determine the condition of the person but that of the estate.

Given on the thirteenth of the *Kalends* of December, during the Consulate of Geta and Plautian, 204.

2. *The Emperor Antoninus to Magnilla.*

If no question is raised with reference to your condition by those whom you allege to be your first cousins, application must be made to the Governor of the province, in order that an action in partition may be brought. If, however, any doubt as to your status exists, the said illustrious official shall, in the first place, and in accordance with the formalities of the law, examine the truth of your birth.

Given on the tenth of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Albinus, 214.

3. *The Emperors Valerian and Gallienus to Demetrius.*

When a criminal question arises in the discussion of a civil one, or where a criminal prosecution having been begun a civil suit is added to it, the judge must dispose of both at the same time.

Given on the *Nones* of ..., during the Consulate of Gallienus, Consul for the fifth time, and Faustinus, 203.

4. *The Emperor Constantine to Calphurnius.*

When, during a civil investigation, as frequently happens, a criminal accusation is first examined, as a matter of greater importance takes precedence of ones of less; therefore, the criminal charge having been disposed of, the civil case should be definitely decided, so that the termination of the criminal prosecution may date from the day on which the civil action was begun, and judgment be rendered between the parties.

Given on the *Ides* of March, during the Consulate of Nepotian and Facundus, 336.

TITLE IX.

CONCERNING JOINDER OF ISSUE.

1. *The Emperors Severus and Antoninus to Valens.*

A case is not considered as actually brought into court where only a simple demand is made, or where the defendant is notified beforehand of the action to be instituted against him; as a great difference exists between the joinder of issue and the origin of a suit, for

issue is considered to be joined only when the judge begins to hear the cause of action discussed.

Given on the *Kalends* of September, during the Consulate of Severus, Consul for the third time, and Antoninus, 201.

Extract from Novel 53, Chapter III. Latin Text.

Notice is served upon the party who is summoned to court, and then, after the plaintiff has deposited the costs and furnished security, the defendant will be entitled to twenty days during which to make up his mind whether he will pay the claim, or contest it, or whether he will reject the judge, or ask that another be associated with him, unless the judge is one whom he himself has already petitioned for, after having rejected the first. Then the party "who is present is asked whether the time to plead has passed, which ought to be shown not only by his answer, but also by the date of the summons. This is the first thing to be done. When issue is joined without the observation of this formality, it must be considered of no effect.

Extract from Novel 96, Chapter I. Latin Text.

The plaintiff shall not serve the notice before furnishing security to the party whom he alleges to be liable, and to the bailiff in charge that, if issue should not be joined within two months, he will pay the defendant double the amount of damages which he has sustained, the sum specified in the bond, however, should not exceed thirty-six *aurei*.

TITLE X.

CONCERNING CLAIMS FOR MORE THAN IS DUE.

1. *The Emperor Justinian to John, Prætorian Prefect.*

With the intention of abolishing the odious subtleties of contracting parties, We order that if anyone, when a certain amount is due to him, should fraudulently and deceitfully exact security for a larger sum, and cite his debtor to court, and then, before the case is heard, repent of his knavery, and acknowledge the true amount of the claim, he shall not be put to increased expense. Where, however, proceedings have been begun, and it is proved during the trial that a false amount has been added, the plaintiff shall not only be deprived of it, but shall also lose the entire debt; still, if a compromise or a subsequent admission was made, whether it has been recorded or not, it shall, in this instance, be confirmed, for such agreements must not be violated.

Given on the fifteenth of the *Kalends* of November, during the Consulate of Lampadius and Orestes, 530.

TITLE XI.

CONCERNING DELAYS.

1. *The Emperors Diocletian and Maximian, and the Cæsars, say:*

As it frequently happens that a judge is through necessity compelled to grant delay in order to insure the production of either documents or persons, it is proper that the time demanded for their production should be granted. If the persons or papers asked for are in the province where suit was brought, not more than three months should be granted; if, however, they are in any of the adjoining provinces, it is in accordance with justice for six months to be allowed. When they are beyond sea, a delay of nine months should be given.

This having been determined, the judges should know that under the rule they are not permitted to grant delays arbitrarily, and they are hereby notified that where the urgency of the case, and the necessity of obtaining the desired information demand such a step, delay should not be granted more than once, nor, under any pretext, be prolonged.

Given on the fifteenth of the *Kalends* of April, during the Consulate of the Cæsars, 294.

2. *The Emperor Constantine to Ursus, Deputy.* When anyone presents a rescript to a specially appointed judge, a delay shall be absolutely refused him, but it must be granted to a

person summoned to court for the purpose of proving its falsity, whether it authorizes the production of certain documents or witnesses, as he who, contrary to his expectations, has been brought before another judge could not have been informed.

Given on the second of the *Nones* of March, during the Consulate of Volusianus and Annianus, 314.

Extract from Novel 53, Chapter I. Latin Text.

Recourse to another judge should not be had unless the plaintiff furnishes security to pay a certain sum if he does not try the case, or if, having done so, he fails to gain it. Therefore, if he should not proceed within ten days after the time prescribed, and the defendant is present, the latter shall be discharged, and the sum promised shall be exacted, if the defendant should swear that he has not expended more in the case than was included in the estimate of the judge.

3. *The Same to Profuturus, Prefect of Pannonia.*

Whether the delay is granted for a portion of the prescribed term, or for all of it, the judge should remain inactive until the time requested has elapsed. Holidays, whether they are unusual or established, are, however, not excepted from the term of the delay, but are included in it.

Given on the seventh of the *Ides* of February, during the Consulate of Licinius, Consul for the fifth time, and Crispus, 318.

4. *The Same to Catullianus, Proconsul of Africa.*

It is not proper to ask a judge for delay during the proceedings, even if it should be granted while both

parties are present, for this cannot be done unless proper cause is shown, which it is preferable to ascertain by judicial consideration of the matter, rather than through general inquiry; and if the demand for delay should be opposed by the adverse party, the question must be decided by the court.

Given on the fifth of the *Ides* of February, during the Consulate of Licinius and Crispus, 318.

5. *The Same to Maximus, Prætorian Prefect.*

When a rescript has been issued by Us on an appeal, or on an application for an opinion, whether delay was asked for at the time of the first judgment and was not accorded, or whether it was not applied for at all, no one is permitted to grant it, as it is not customary for Us to do so, when We take cognizance of a case.

Given at Rome, on the eighth of the *Kalends* of April, during the Consulate of Probian and Julian, 322.

6. *The Emperors Constantine, Constans, and Constantius to Petronius, Vicegerent of Africa.*

When proceedings are instituted between private persons and the Treasury, the right to petition for delay, when exercised by their defenders, is not denied either party, if good reason exists for demanding it.

Given on the fifth of the *Ides* of April, during the Consulate of Acindynus and Proculus, 340.

7. *The Emperors Arcadius and Honorius to Messala, Prætorian Prefect.*

A delay of more than nine months for the purpose of producing documentary evidence, or obtaining the presence of persons beyond sea, should not be granted to the parties in a suit where civil condition, or a patrimonial estate is involved.

Given on the sixth of the *Kalends* of December, during the Consulate of Eutropius and Theodore, 399.

TITLE XII.

CONCERNING FESTIVALS.

1. *The Emperors Constantius and Maximian, and the Cæsars, Severus and Maximian, to Verinus.*

As you ask, my dear Verinus, whether the same rule should be observed, so far as the times of appeal are concerned, that apply to the festivals established by Us to celebrate the occurrence of fortunate events, We are pleased to answer you that you should, where cases are appealed, observe the prescribed terms in their regular order, without the addition of days of this kind, for, under such circumstances, additions cannot be made to the observance of the days aforesaid.

2. *The Emperor Theodosius to Vicenus.*

Although it is lawful to manumit and emancipate on Sunday, other business or litigation cannot be attended to on that day. The harvest festival extends from the eighth day of the *Kalends* of July until the *Kalends* of August; and permission is given to institute proceedings in court

from the *Kalends* of August until the tenth of the *Kalends* of September. The festival of the vintage lasts from the tenth of the *Kalends* of September until the *Ides* of October. We desire the Holy Festival of Easter, that of the Epiphany, and the birthday of Our Lord, as well as the seven days which precede, and the seven which follow, to be quietly observed; and anything which is done in violation of this provision shall be absolutely void.

3. *The Emperor Constantine to Elpidius.*

Let all judges, the people of cities, and those employed in all trades, remain quiet on the Holy Day of Sunday. Persons residing in the country, however, can freely and lawfully proceed with the cultivation of the fields; as it frequently happens that the sowing of grain or the planting of vines cannot be deferred to a more suitable day, and by making concessions to Heaven the advantage of the time may be lost.

Given on the *Nones* of March, during the Consulate of Crispus and Constantine, Consuls for the second time, 311.

4. *The Same to Severus.*

No judge shall presume to appoint festival-days by his own authority. Such festivals as a ruler establishes shall be called Imperial holidays, and therefore if they are deprived of the name they should also be deprived of the benefit.

Given during the *Ides* of April . . .

5. *The Emperors Valentinian, Valens, and Gratian to Olybrius.*

You must proceed with criminal and fiscal cases during the two months of festivals, that is to say, without any interruption.

(1) Hereafter, also, during these same days, examination shall be made of matters in which bakers are interested.

Given on the fourth of the *Nones* of May, during the Consulate of the Noble Prince Valentinian, 368.

6. *The Emperors Gratian, Valentinian, and Theodosius to Lucianus, Vicegerent of Macedonia.*

Every investigation of criminal matters shall be prohibited during the four days which precede the auspicious season of the ceremonies of Easter.

Given at Thessalonica, on the sixth of the *Kalends* of April, during the Consulate of Gratian, Consul for the sixth time, and Theodosius, Consul for the first time.

7. *The Emperors Valentinian, Theodosius, and Arcadius to Albinus, Urban Prefect.*

We order that all days shall be proper for the administration of justice, and that only those shall be considered holidays, which, during the two festival months, the year seems to set apart for rest from labor; that is, the days of summer, in order to be better able to

endure the heat; and those of autumn, for the purpose of gathering fruit.

We also devote to leisure the days of the *Kalends* of January, which it is customary to observe for this purpose, and to these We add the days of the foundation of the great cities of Rome and Constantinople, during which the administration of justice should be suspended, because it owes its origin to them. We include in the same category the sacred day of Easter, and the seven which precede and follow it; the day of the Nativity, and that of the Epiphanies of Christ; and the time when the commemoration of the Apostolic Passion of all Christianity is properly celebrated by the entire world.

During the above-mentioned most holy days, We do not permit any public exhibitions to be given. The day sacred to the sun, to which the ancients very properly gave the name of Sunday, which returns after a certain period of revolution, must also be respected, so that there shall be no investigation of legal disputes on that day, either before arbitrators or judges, whether they have been appointed or voluntarily chosen.

This rule shall also apply to the days which We first saw the light, or which witnessed the origin of the Empire. During the fifteen days of the celebration of Easter, compulsory distribution of provisions and the collection of all public and private obligations shall be postponed.

Given at Rome, on the second of the *Ides* of August, during the Consulate of Timasius and Promotus, 389.

8. *The Same to Tatian, Prætorian Prefect.*

All employments, whether public or private, shall be suspended during the fifteen days of the Festival of Easter; still, every person shall have the right of emancipation and manumission during that time, and any proceedings relating to them are not prohibited.

Given on the *Kalends* of January, under the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

9. *The Emperors Honorius and Theodosius to Anthemius, Prætorian Prefect.*

The Governors of provinces are notified that, so far as the torture of robbers, and especially of Isaurians is concerned, they must not think that any of the forty days of Lent, or the venerated Festival of Easter should be excepted, lest the betrayal of the designs of the criminals, which might be obtained by torture, may be deferred. This should the more readily be accomplished, as, during this time, there is greater hope of pardon by the Almighty, and the health and safety of many persons are secured.

Given at Constantinople, on the fifth of the *Kalends* of March, during the Consulate of Bassus and Philip, 408.

10. *The Emperors Leo and Anthemius to Armasius, Prætorian Prefect.*

We do not wish holidays dedicated to the majesty of God to be employed in public exhibitions, or be profaned by any annoyances resulting from collections.

(1) Hence We decree that Sunday shall always be honored and respected, and exempt from all executions. No notice shall be served upon anyone; no security shall be exacted; bailiffs shall remain quiet; advocates shall cease to conduct cases, and this day shall be free from the administration of justice; the harsh voice of the public crier shall be silenced; litigants shall have a respite from their disputes, and enjoy the interval of a truce; adversaries may approach one another without fear; repentance will have an opportunity to occupy their minds, they can enter into agreements and discuss compromises.

We do not permit persons who are at leisure during this sacred day to devote themselves to obscene pleasures; and no one shall then demand theatrical exhibitions, the contests of the circus, or the melancholy spectacle of wild beasts; and when Our birthday happens to fall on Sunday, its celebration shall be postponed. If anyone should think that upon this holiday he can venture to interest himself in exhibitions; or the subordinate of any judge, should, under the protest of any public or private business, violate the provisions of this law, he shall suffer the loss of his employment and the confiscation of his property.

Given at Constantinople, on the *Ides* of September, during the Consulate of Zeno and Martian, 469.

TITLE XIII.

CONCERNING THE JURISDICTION OF ALL JUDGES AND THE COMPETENCY OF TRIBUNALS.

1. *The Emperor Antoninus to Severus and Others.*

Our Procurator was not a competent judge in this matter where only the litigation of private individuals was concerned, but as you yourselves chose him, and he rendered a decision with the consent of your adversary, understand that you should not oppose what has been done with your acquiescence, since he has authority to decide between certain persons, and you, being well aware that he was not a competent judge in your case, nevertheless selected him.

What you suggest with reference to other similar judges will also apply to actions brought by a plaintiff, as well as to exceptions interposed by a defendant.

Given on the second of the *Ides* of January, during the Consulate of Messala and Sabinus, 215.

2. *The Emperors Diocletian and Maximian to Alexander.*

You ask that the order prescribed by law shall be transposed, and that the plaintiff shall not follow the

residence of the defendant, but the defendant that of the plaintiff; for wherever the defendant has his domicile, or had it at the time when the contract was made, there alone he must be sued, even though he afterwards may have changed it.

Given on the sixth of the *Ides* of October

3. *The Same to Judea.*

The consent of private persons does not render him a judge who has no right to preside in court, and anything that he decides will not have any judicial authority.

Given on the sixth of the *Kalends* of January, during the abovementioned Consulate, 293.

4. *The Emperor Constantine to All the People of the Provinces.*

No one, after issue has been joined, can question the jurisdiction of an ordinary judge, and before a decision is rendered, no appeal can be taken to the Prætorian Prefect, the Count of the East, or any other superior magistrate, but where an appeal has been taken in accordance with law, it shall be brought before Our Tribunal.

Given on the *Kalends* of October, during the Consulate of Bassus and Ablabius, 331.

5. *The Emperors Arcadius and Honorius to Vincentius, Prætorian Prefect of the Gauls.*

In criminal matters, the accuser shall follow the residence of the defendant.

(1) Anyone who has submitted his case, whether it be a civil or criminal one, to a tribunal which has no right to hear it, or demands a military execution, if he is the plaintiff, shall be punished with the loss of the action which he has brought, and if he is the defendant, he shall be considered as condemned. Tribunes and deputies are hereby notified that they will be liable to capital punishment, if they permit their own, or any other prohibited military execution, to take place.

Given at Milan, on the fifth of the *Kalends* of January, during the Consulate of Lucius, 413.

6. *The Emperors Honorius and Theodosius to Anthemius, Prætorian Prefect.*

We grant authority to commanders of the army to hear and determine even civil questions arising between military men, or a civilian plaintiff and a military defendant, especially when this is done with the consent of the litigants, and it appears that the military defendant cannot either be produced in court, or punished by his own judge, if he should be guilty.

Given on the fifth of the *Kalends* of May, during the Consulate of Lucius, 413.

7. *The Emperor Anastasius to Constantine, Prætorian Prefect.*

We consider that those act unjustly and rashly who, while known to exercise certain professions and occupations, attempt to evade the jurisdiction and

authority of officials having supervision of the said professions or occupations. Wherefore, We order men of this kind not to reject the authority of such persons, on account of their military rank or the prerogatives of their office or dignity; but those who, under the law, belong to some military organization, or have formerly done so, or who claim any privilege, shall be compelled to obey such judges in public as well as in private cases, without interposing any exception, where their jurisdiction extends to the profession or occupation which the parties practice; with the exception of that of soldiers (as has already been stated); provided, of course, they obey the judges within whose jurisdiction the military or civil service in which they are engaged is situated.

Those who try to violate the provisions of this law shall be deprived of their military rank, or their civil honors, for being guilty of such an attempt.

TITLE XIV.

WHEN THE EMPEROR TAKES COGNIZANCE OF THE CASES OF MINORS, WIDOWS, OR OTHER PERSONS WORTHY OF PITY, THEY SHALL NOT BE COMPELLED TO APPEAR.

1. *The Emperor Constantine to Andronicus.*

Where anyone has obtained a Rescript from Us against minors, widows, or those who are worn out and debilitated by chronic disease, the above-mentioned persons shall not be compelled by any of Our judges to appear before Our tribunal; but, on the contrary, the case shall be tried in the province in which the litigant and the witnesses or documents are to be found, and every precaution shall be taken to prevent the adverse parties from being forced to leave the province. If, however, the said minors, widows, or other unfortunate persons should request Our tribunal to decide their cases, especially when they are in dread of the influence of some powerful individual, their adversaries shall be obliged to appear before Us.

Given at Constantinople, on the *Kalends* of July, during the Consulate of Optatus and Paulinus, 334.

TITLE XV.

WHERE IT IS NECESSARY TO PROCEED IN CRIMINAL CASES.

1. *The Emperors Severus and Antoninus to Laurina.*

It is well known that proceedings in the case of crimes punishable by the laws, or in an arbitrary manner, should be instituted in the places where the offences were committed, or begun, or where the guilty parties may be found.

Given on the fourth of the *Nones* of October, during the Consulate of Dexter and Priscus, 194.

2. *The Emperors Diocletian and Maximian, and the Cæsars, to Nicea.*

He who knowingly sells a freeman is guilty of the crime of kidnapping, and therefore when the judge having jurisdiction has been applied to by the person entitled to make complaint, he must take cognizance of the suit in the place where the man lives who you say sold a boy who was freeborn.

Given on the second of the *Nones* of February, during the Consulate of the Cæsars, 294.

Extract from Novel 69, Chapter I. Latin Text.

Where anyone has committed an offence in a province, or is a defendant in a case involving money or connected with crime, whether it has reference to boundaries, possession, ownership, hypothecation or anything else, or is implicated in some other matter, it is a well-established principle of law that he shall be tried where the act was committed, and the right is not barred by lapse of time. Therefore if both plaintiff and defendant are in the province, the case shall be heard there without the allowance of any privilege.

If he from whom I have suffered any injury is absent, I will be obliged to sue the person responsible for it or his curator, to whom time should be given to permit him to inform the principal in the case. If the latter himself should not appear, or send anyone to represent him, and he who was first sued is in court, he shall be condemned, as well as the party who refused to send a representative, and himself is guilty; for he will be liable out of his own property if the one who is present should not prove to be solvent.

When, however, he whose duty it is to represent the owner does not appear after having been summoned by the crier, he shall have judgment rendered against him, for the reason that his contumacy is considered to take the place of his presence. But when the plaintiff fails to appear, and the defendant comes, or sends someone to represent him, the latter should be discharged and be reimbursed his expenses.

An exception will lie where the case is conducted as a public one, and the defendant has been notified by an Imperial Rescript to appear before the Council of the Emperor; or where this is done under the law having reference to appeals. The time of delay has been fixed by a new constitution at four months, according to the difference in places, when the province in which the action is brought is a neighboring one, or either or both of the parties have their domicile in the middle of it, the time will be four months. If the distance is greater, it will be six months. If either of the parties resides in Palestine, or Egypt, or in some other distant country, eight months will be sufficient. The term of nine months will be granted if either of them lives in the western or northern regions of the Empire, or in Lybia.

TITLE XVI.

WHERE AN ACTION TO OBTAIN POSSESSION
MUST BE BROUGHT.

1. *The Emperors Valentinian and Valens to Festus, Proconsul of Africa.*

Where violence is alleged to have been employed, or temporary possession is demanded, the judge must decide the case against the party who interrupted the possession, in the place where the property is situated.

Given on the eighth of the *Kalends* of June, during the Consulate of Gratian and Dagalaiphus, 366.

TITLE XVII.

WHERE THE EXECUTION OF A TRUST
SHOULD BE DEMANDED.

1. *The Emperors Severus and Antoninus to Demetrius.* There can be no doubt that the execution of a trust should be demanded in the place where the estate was left.

Given on the eighth of the *Kalends* of September, during the Consulate of Chilo and Libo, 205.

TITLE XVIII.

WHERE HE WHO PROMISED TO MAKE
PAYMENT IN A CERTAIN PLACE SHOULD BE
SUED.

1. *The Emperor Alexander to Heraclida.*

When anyone binds himself to make payment in a certain place, and he does not do so in full, if the judge was selected by the parties he can be sued in an action in another place, and the amount of extra expense incurred by the plaintiff as estimated by the judge shall be included in this action, on account of payment having been made in another place than where it was demanded.

Given on the sixth of the *Ides* of March, during the Consulate of Fuscus and Dexter.

TITLE XIX.

WHERE AN ACTION IN REM SHOULD BE
BROUGHT.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Pancratius.*

An action *in rem*, should not be brought against the vendor, but against the possessor of the property in dispute. Therefore, it is useless for you to allege that he who claims the ownership should not bring suit against you, but against him from whom you obtained it, and this is because you assert that you are in possession, for if you should have notified the person who sold you the property, understand that he runs the risk of eviction, for the former jurisdiction should not be changed when both the plaintiff and possessor reside in the same province, because you allege that he from whom you obtained the property resides in another.

Given on the *Ides* of April, during the Consulate of the abovementioned Emperors, 293.

2. *The Emperor Constantine to All the Inhabitants of the Provinces.*

When anyone who possesses immovable property, under any title whatsoever, has an action *in rem* brought against him, he must immediately state in court who the owner of the property is, so that, whether he lives in the same town, in the country, or in another province, a certain number of days may be fixed by the judge during which he can be notified, and he himself either come or send an attorney to the place where the land is situated, in order to defend the title of the plaintiff. If, however, after the time granted has elapsed, he should prefer to confess judgment, the case will be considered as having been begun on the day on which the possessor was summoned to court, which will have the effect of interrupting the prescription of long time. As the owner of the property did not appear after he had been given time to do so, the judge shall take care that he shall be summoned in accordance with the provisions of the law, and if he still remains of the same mind, after having examined the matter summarily, the judge shall not delay to place the plaintiff in possession of the property, the right of the absent party with reference to the principal question always being reserved.

Given on the tenth of the *Kalends* of August, during the Consulate of Bassus and Ablabius, 331.

3. *The Emperors Valentinian, Theodosius, and Arcadius.*

The plaintiff follows the residence of the defendant, whether the action be a real or a personal one, but We order that the real action shall be brought against the possessor in the place in which the property in dispute is situated.

Given on the tenth of the *Kalends* of July, under the Consulate of Arcadius and Bauto, 385.

TITLE XX.

WHERE AN ACTION RELATING TO AN
ESTATE SHOULD BE BROUGHT, AND WHERE
TESTAMENTARY HEIRS SHOULD DEMAND TO
BE PLACED IN POSSESSION OF THE SAME.

1. *The Emperors Valerian and Gallienus to Messala.*

The heirs should demand to be placed in possession of the estate in the place where you allege that it is situated. The contest should be decided where the party sued has his domicile, or wherever the property belonging to the estate may be.

Given on the seventh of the *Kalends* of May, during the Consulate of Secularus and Donatus, 261.

TITLE XXI.

WHERE AN ACTION TO COMPEL THE
PRODUCTION OF EITHER PUBLIC OR PRIVATE
ACCOUNTS SHOULD BE BROUGHT.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Gerontius.*

Anyone who has administered the affairs of another, either as a guardian or in any other fiduciary capacity, must render an account of the same where he transacted the business.

Given on the seventh of the *Kalends* of August, during the Consulate of Annibalio and Asclepiodotus, 292.

2. *The Emperors Honorius and Theodosius to Macedonius, Military Commander.*

No one who has been discharged from the army, and, after having returned to private life, is notified to render an account by a member of the corps in which he served or which he himself commanded, because of some business which he attended to while in the service, can avail himself of an exception; for everyone must defend himself before a military tribunal in all public matters of this kind, which he had charge of while he was a soldier, or where he is called upon to render a military account because he is alleged to have taken advantage of his comrades; and, in an investigation of this kind, the proceedings must be regular, and the witnesses heard, and the proper documents produced.

TITLE XXII.

WHERE SUITS WITH REFERENCE TO THE CONDITION OF PERSONS SHOULD BE BROUGHT.

1. *The Emperor Alexander to Aurelius Aristocrates.*

Your female slave, while in your service, fled and betook herself to another province, and as she asserts that she is free, it will not be unjust to compel her to try her case in the place from whence she fled; and therefore the Governor of the province who administers justice in that locality must take care to send her back to the province in which she served as a slave, but she should not be heard in the place where she was seized.

Given on the thirteenth of the *Kalends* of September, during the Consulate of Pompeianus and Pelignus, 232.

2. *The Emperor Decius to Felix.*

It is known to all persons that Our Procurators cannot take cognizance of cases in which the civil condition of persons is involved.

Given on the *Kalends* of December, during the Consulate of Decius, Consul for the second time, and Gratus, 251.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Zenonia.*

If you are in the possession of freedom, as the plaintiff must always follow the residence of the defendant where questions of status are involved, this action, which relates to liberty, must be brought in the place where the alleged female slave resides, even though the plaintiff may be invested with senatorial dignity.

Given on the second of the *Ides* of March, during the Consulate of the above-mentioned Emperors, 297.

4. *The Same, and the Cæsars, to Sizinia.*

If anyone who is in slavery asserts that he is free, it is an undoubted rule of law that the action to establish his status must be brought where the party who alleges that he is his master has his domicile.

Given at Byzantium, on the second of the *Nones* of March, during the Consulate of the Cæsars, 294.

5. *The Same, and the Cæsars, to Diogenes, Governor of the Islands.*

It has already been established by Us that where any case involving freedom and slavery arises, in the provinces, between the Treasury and private persons, it must be sent to the Steward or Superintendent of Our Private Affairs, that is to say, to the place where the controversy originated. If, however, free birth is involved, it should be investigated by the Governor of the province.

Given on the fourth of the *Nones* of August, during the Consulate of the Cæsars, 294.

6. *The Emperor Justinian to Menna, Prætorian Prefect.*

We order that in actions in which the question to be decided is whether someone is freeborn or a freedman, the prescription of five years (after which term the ancient laws declare that an Imperial Rescript is necessary), shall hereafter cease to have effect; and proceedings of this kind, after the above-mentioned term has elapsed, like others which are heard in the provinces before the Governors, shall, in this Fair City, be decided by competent magistrates of superior jurisdiction.

We decree that this rule shall be observed, whether the party is of illustrious rank or servile condition.

Given on the third of the *Nones* of August.

TITLE XXIII.

WHERE ANYONE BELONGING TO THE CURIÆ, OR THE COURT ATTENDANTS, OR OF ANY OTHER CONDITION, CAN BE SUED.

1. *The Emperors Arcadius and Honorius to Florus, Prætorian Prefect.*

If anyone belonging to the *curiæ* or attached to the office of a judge, or to any other body, should be arrested in a province by those from whom he was fleeing, without any notice having been received from the magistrate from whom he obtained his position by means of corrupt practices, and he is tried before the judge who has jurisdiction in the place where he was arrested, without any attention being paid to the exception based on official privilege to which he is not legally entitled, and he is convicted by satisfactory evidence, he shall again be placed in the class which he abandoned.

Given at Milan, on the twelfth of the *Kalends* of August, during the Consulate of Cæsarius and Atticus.

2. *The Emperors Theodosius and Valentinian to Cyrus, Prætorian Prefect.*

By this permanent law We decree that persons belonging to the *curiæ*, or those who are said to be employed for the service of the courts, or are members of other bodies, cannot plead an exception to the provincial tribunal. The same rule applies to those who are convicted of extortion or peculation, excepting such as form part of the armed soldiery, or can defend themselves by a special Rescript of the Emperor.

The name of their *curiæ* or cohort should be required of military men, in order that the Governor of the province may send them to your tribunal, to their commander, or to some other competent authority, and that those who are demanded as liable may be delivered up to the tribunals of the province, and may expect the result of the trial where the laws direct questions of this kind to be determined.

No one shall be permitted to plead the exception where questions of public duties or debts are involved, except those specially empowered to do so.

We also decree that others cannot reject the jurisdiction of your illustrious tribunal, or that of the Governors of the provinces, in any matter whatsoever, so that all who obstinately attempt to violate such a very salutary law as this may know that sentence for contumacy can be passed upon them by the Governors of provinces.

Given on the twelfth of the *Kalends* of October, during the Consulate of Cyrus, 441.

TITLE XXIV.

WHERE SENATORS OR PERSONS OF ILLUSTRIOUS RANK MAY BE PROCEEDED AGAINST EITHER CIVILLY OR CRIMINALLY.

1. *The Emperor Constantine to Octavianus, Count of the Spains.*

Anyone whosoever, that is not of illustrious but of noble rank, who ravishes a virgin, removes landmarks, or is caught in the act of committing any offence, or crime, shall be tried in the province in which he perpetrated it, and cannot avail himself of the jurisdictional exception, for the commission of the offence destroys the effect of all privileges of this kind.

Given on the day before the *Nones* of December, during the Consulate of Gallicanus and Bassus.

2. *The Emperors Valens, Gratian, and Valentinian to the Senate.*

In pecuniary cases, senators, whether they reside in this Fair City or in its suburbs, shall be subject to the jurisdiction of the Prætorian Tribunals and the Urban Prefecture, as well as to that of the Master of the Offices,

whenever We have directed this to be done. If, however, they reside in the provinces, they shall answer wherever their domicile is, or where the greater part of their property is situated and they pass the most of their time.

Given on the *Kalends* of March, during the Consulate of Valentinian and Neptorius, 390.

3. *The Emperor Zeno to Arcadius, Prætorian Prefect.*

If persons who are now, or have formerly been of patrician rank, or who have administered the Prætorian or Urban Prefectures of this great City, men of consular dignity, whether they have obtained it in an ordinary manner or by the special favor of the Emperor, those who have become illustrious through the exertion of military command, those who have performed the duties of Master of the Offices, Quæstor, or Imperial Chamberlain, and, having retired, have been invested with senatorial rank, those whom We have appointed to govern the Imperial Household, and those to whom We have committed the care of Our treasures, or of the private affairs of Our most August Consort, after having relinquished their administration, should be accused of any public or private offence (which cannot be defended by an attorney), either in this Fair City or in the provinces, no matter where they may reside, We order that no judge shall have jurisdiction of such cases, but that cognizance of the same shall belong to Us alone, or to him to whom by an Imperial Rescript We have delegated Our authority to hear actions of this kind; so that they may be tried before such a judge, without the aid of any office or order, according to the custom and practice of the Imperial regulations, and moreover, without observing the time allowed for the institution of proceedings; and Our Masters of Requests, having complied with the ordinary formalities, such cases shall be heard by them. In order that the person accused of crime may not suffer any injustice before conviction, he shall have the right to be seated in a certain part of the court, which is lower than that occupied by the judge, but higher than that where his accusers are stationed.

(1) We have considered that the privileges attaching to such great offices should be increased to the extent that, after the crime has once been proved, We do not grant authority to anyone whom We have appointed as judge to decide with reference to either person or property, but these appointees, although they hear the cases instead of the Emperor, shall only be permitted to send Us a report of the proceedings after the crime which has been brought before their tribunal has been established, as the right to punish persons of such exalted rank is only vested in the Emperor.

It is, however, certain that in case the defendant should be acquitted, the false accusation can be punished in conformity with the laws, without consulting Us,

unless the accuser is of a lower rank than the defendant; for, in this instance, it is not unreasonable that the Imperial authority should be consulted as to the punishment of a false charge made by an accuser of this description.

(2) We also decree that where men of illustrious rank, who reside in this Renowned City, and who, without having conducted any administration, have been decorated with honorable titles (even though they may have deserved such a privilege at Our hands), shall, nevertheless, be considered to have exercised administrative functions, and shall be subject to the jurisdiction of your magnificent tribunal, and to that of the illustrious Urban Prefecture; and also to that of our distinguished Master of the Offices (whenever a special order committing the same to him has been issued by Us), in criminal cases, so that persons of this kind, who have been accused, cannot claim for themselves the right to be seated during their trials. The judges themselves are hereby notified that they cannot decide anything with reference to said parties or their property, after the crimes have been proved, and before they have referred the cases to Us.

(3) Whenever men of illustrious rank residing in the provinces (this, however, does not apply to those who are not appointed by Us, or hear cases in Our stead), are accused of criminal offences, they shall have a right, while the trial is in progress, to sit in the places usually occupied by magistrates, and if their guilt should be established, the judges must abstain from passing sentence involving their persons or property, as they are required to report to Us.

Moreover, where the accusers have been proved to have brought false charges, the provincial judges shall not delay their punishment; unless, as has previously been stated, those who were convicted are equal in rank to him whom they accused.

Given at Constantinople, . . .

TITLE XXV.

IN WHAT CASES SOLDIERS CANNOT AVAIL THEMSELVES OF AN EXCEPTION ON THE GROUND OF JURISDICTION.

1. *The Emperors Theodosius and Valentinian to Florentine, Prætorian Prefect.*

We order that all persons attached to the domestic service of the Emperor, as well as those who transact his affairs, and any who profess to belong to some corps, or to be of a certain rank, shall, so far as public duties are concerned, be responsible to the Governors of the provinces, and shall have no right to avail themselves of the exception on the ground of jurisdiction, if those who are collecting the public debts should attempt to do so. Moreover, We desire that where men occupied in the

transaction of private business, who are either members of the provincial association, or are protected by their occupation as farmers of the revenue, but are not enrolled in the army, have rented land belonging to the Emperor, or to powerful persons, or to anyone else, no matter what his status may be, shall be subjected to the jurisdiction of the same judges, unless they can prove that they have obtained leave of absence for a year for the purpose of attending to their own affairs.

The same rule shall also be observed with reference to those who have obtained the privilege of trading as soldiers; namely, that they shall only be responsible to the Governor of provinces.

Given at Constantinople, on the third of the *Kalends* of ..., during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

TITLE XXVI.

WHERE CASES RELATING TO THE PUBLIC TREASURY OR THE IMPERIAL PALACE, OR TO PERSONS ATTACHED TO THE SAME, SHALL BE BROUGHT.

1. *The Emperors Severns and Antoninus to Dioscorus.*

Who is ignorant of the fact that the question of avenging the death of a deceased person should not be investigated by Our Procurators, nor any property claimed by the Treasury, before proof of the crime has been established in the presence of the judge who has a right to impose punishment upon the parties, when convicted? When persons guilty of the homicide are dead, it is clear that reason will permit the action to be brought before the said Procurators.

Given on the seventh of the *Ides* of May, during the Consulate of Lateranus and Rufinus, 198.

2. *The Same to Arista.*

We do not understand why you desire cases belonging to the jurisdiction of Our Procurators to be sent to be heard by the Proconsul; for if it is suspected that your father killed himself through fear of punishment, and, for this reason, his property should be confiscated to the Treasury, in this instance, there is no question of crime or the punishment of the deceased, but merely one involving his estate.

Given on the twelfth of the *Kalends* of October, during the Consulate of Aper and Maximus, 208.

3. *The Emperor Antoninus to Heliodorus.*

As My Procurator, who does not perform the functions of the Governor of a province, cannot exact the penalty for abandoning an accusation; so, he cannot, by his decision, order it to be paid.

Given on the tenth of the *Kalends* of September, during the Consulate of Letus and Cerealis, 216.

4. *The Emperor Alexander to Maxima.*

As you allege that you have purchased certain lands belonging to an estate from My Procurator, you must necessarily pay the price of the same, but as you say that you have purchased and delivered the said lands to the persons who directed you to do so, and you bring suit against them, My Procurator shall decide the case if you select him for that purpose, so that you can recover the purchase-money due to you, and the interest owing to the Treasury may be paid.

Given on the fourth of the *Ides* of October, during the Consulate of Maximus and Paternus, 224.

5. *The Emperor Constantine to Ursus.*

The Imperial Accountant shall decide all cases having reference to the Treasury, and all extortion is prohibited.

Given at Constantinople, on the *Nones* of February, during the Consulate of Felicianus and Titian, 337.

6. *The Same to Italicus.*

When anyone thinks that an action should be brought against a tenant who has leased Our property, the case should be referred to the illustrious Count of Private Affairs, who must render a decision in accordance with his reputation as a magistrate, and with his duty.

Given during the *Kalends* of February, . . .

7. *The Same to Bulephorus, Imperial Accountant.*

We decree that you shall investigate any controversies arising between the tenants of the Emperor and those of private persons, for generals and other commanders of soldiers and camps, as well as Governors of provinces, must abstain from summoning and bringing tenants into court.

Given on the sixteenth of the *Kalends* of March, during the Consulate of Licinius, 318.

8. *The Emperor Constantine to Taurus, Prætorian Prefect.*

When a tenant, or a slave belonging to Our private estate, is said to have perpetrated an act against the public order, he shall be compelled to appear before the tribunal of the Governor of the province, so that the case between him and his accuser may be tried in the presence of Our Accountant or the Steward of the Imperial Household, and if the crime is proved he shall be punished with the severity prescribed by the law.

Given on the fifth of the *Nones* of March, during the Consulate of Arbitio and Lollianus, 355.

9. *The Emperors Valentinian and Valens to Philip.*

Let all persons be assured that, if anyone should be annoyed by some injury caused by the Steward of Our Private Affairs, or by Our Procurator, complaint of their insults or depredations shall be brought before your tribunal, or that of the Governor of the province, and he can, without fear, have recourse to public vengeance.

When the offence is established by positive evidence, We order and decree that he who has had the audacity to attempt anything of this kind against anyone residing in the province shall be publicly burned alive.

Given on the third of the *Nones* of July, during the Consulate of the above-mentioned Emperors, 368.

10. *The Emperors Gratian, Valentinian, and Theodosius to Polemius, Prætorian Prefect.*

No one of those employed in the office of the Imperial Accountant, either for the collection of taxes or the drawing up of documents, shall be brought before any other tribunal, unless an accusation formulated in accordance with law is filed against him.

Given on the third of the *Kalends* of May, during the Consulate of Arcadius and Bauto, 385.

11. *The Emperors Theodosius and Valentinian to Artaxus, Imperial Chamberlain.*

We order by this law that if any tenant, lessee, or slave belonging to Us, either accuses, or is accused in a criminal case, or is a party to a civil suit, the trial of the same shall not take place before any tribunal but yours, and that of the distinguished Count of Our Household, and that no exception on the ground of want of jurisdiction shall be permitted.

Given on the fifth of the *Ides* of April, ...

TITLE XXVII.

WHEN ANYONE MAY BE PERMITTED TO AVENGE HIMSELF OR THE PUBLIC, WITHOUT APPLYING TO THE JUDGE.

1. *The Emperors Valentinian, Theodosius, and Arcadius to the People of the Provinces.*

We grant to all persons full authority to defend themselves, so that where any soldier or nocturnal depredator enters upon the land of a private person, or stops him on the public highway, intending to attack him, everyone shall have permission to immediately subject him to proper punishment, and he shall suffer the death which he threatened, and undergo what he expected to inflict, for it is better to take advantage of the opportunity than to obtain retribution after death. Therefore, We authorize you to avenge yourselves, and We bring within the terms of the Edict those whom it would be too late to punish by a judgment; hence let no one spare a soldier, who must be encountered with weapons in the same manner as a thief.

Given on the *Kalends* of July, during the Consulate of Tatian and Symmachus, 391.

2. *The Emperors Arcadius, Honorius, and Theodosius to Hadrian, Prætorian Prefect.*

We hereby grant legal authority to the inhabitants of provinces to arrest deserters, and when they dare to resist, We order them to be punished immediately, wherever they may be. All persons are notified that, for the sake of

the common peace, they have a right to inflict public vengeance upon robbers, and deserters from the army.

Given on the fifth of the *Nones* of October, during the Consulate of Theodosius and Rumoridius, 391.

TITLE XXVIII.

CONCERNING INOFFICIOUS WILLS.

1. *The Emperors Severus and Antoninus to Victorinus.*

When a son desires to attack the will of his mother, on the ground of its being inofficious, it will not be improper for him to bring suit against the person who has received the estate under the terms of a trust, as the beneficiary of the same is fully as liable as if he held it as heir, or possessor.

Given on the fifth of the *Kalends* of July, during the Consulate of Falco and Clarus, 194.

2. *The Same to Lucretius.*

Although you state that, being about to attack the will as inofficious, you have obtained possession of the estate, it is, nevertheless, unjust that the appointed heirs should be deprived of possession.

Given on the fourth of the *Kalends* of December, during the Consulate of Dexter and Priscus, 197.

3. *The Same to Januarius.*

Where a mother, after having appointed her two sons her heirs, had another son after making her will, as she could have changed it, but neglected to do so, the third son, having been passed over without good reason, can institute proceedings to declare the will inofficious. But as you allege that the woman died in child-birth, the injustice of the unexpected event should be rectified by the conjecture of maternal affection. Wherefore We hold that an equal share of the estate should be given to your son, against whose claim nothing can be alleged except the fate of his mother, just as if she had appointed all of her sons her heirs. Where, however, the appointed heirs are strangers, then he will not be prevented from bringing suit to declare the will inofficious.

Given on the eighth of the *Kalends* of July, during the Consulate of Lateranus and Rufinus, 198.

4. *The Same to Soterius and Others.*

As you have obtained your freedom under the terms of a trust, and in accordance with a decree of the Prætor, and as you have afterwards had children; although the will of your master may, upon the application of your son, have been pronounced inofficious, it is not just for any question to be raised with reference to your freedom.

Given on the sixth of the *Ides* of March, under the second Consulate of Antoninus and Geta, 106.

5. *The Emperor Antoninus to Helius.*

If your father, after having brought an action, or after having made up his mind to attack the will of your brother as inofficious, should die, leaving you his heir,

you will not be prevented from proceeding with the case, which he had begun, in any way whatsoever.

Given on the second of the *Nones* of October, during the Consulate of Gentian and Bassus, 212.

6. *The Same to Ingenuus.*

When the question is asked whether sons can attack the will of their father as inofficious, it should be ascertained whether, at the time of his death, the testator left them the fourth part of his estate.

Given at Rome, on the seventh of the *Kalends* of July, during the Consulate of the two Aspers, 213.

Extract from Novel 18, Chapter I. Latin Text.

It is provided by the latest law that, where there are four sons or less, they can take the third part of the estate of the deceased, but if there are more than this, they will have a right to half of what is left no matter under what title, and this share shall be equally divided among them; and that the children cannot in any way be defrauded of the usufruct by their ascendants.

Extract from Novel 92, Chapter I. Latin Text.

Therefore, if a parent has made an unreasonable donation to one or several of his or her children, each one will be entitled under the Falcidian Law to as much of the estate as would have been due to him before the donation was made. It is, moreover, permitted to him who received it to abstain from laying any claim to the estate, provided he makes up the shares of the others out of the donation, if any necessity exists for doing so.

7. *The Same to Secundus.*

You should not be ignorant that the granddaughter of the deceased can institute proceedings to declare his will inofficious, even though her father may have died emancipated.

Given at Rome, on the sixth of the *Kalends* of July, during the Consulate of Lætus and Cerealis, 216.

8. *The Emperor Alexander to Florentinus.*

The distribution of their estates made by parents between their children should not be set aside, provided those who know that they were entitled to succeed to the deceased, if he died intestate, have obtained their fourth by the will of their father.

(1) He who has accepted the will of the deceased, either through having paid the indebtedness of his father in proportion to his hereditary share, or by settling it in any other legal manner, cannot, if he is over twenty-five years of age, attack as inofficious his father's will, which he accepted, even if less was bequeathed to him than he was entitled to.

Given on the seventh of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

9. *The Same to Romana.*

. It is a positive rule of law that children cannot attack as inofficious the will of a soldier, a centurion, or a tribune, whether it was made in accordance with military or civil law.

Given on the *Ides* of May, during the Consulate of Maximus, Consul for the second time, and Eilianus, 224.

10. *The Same to Quintinian.*

If the property of the heirs of Quintinian (who you say was your father, and against whose representatives you are about to bring an action to declare the will inofficious), belonged to the Treasury by the right of succession, or it holds the property of Quintinian, as being without an owner, you can bring your action before Our Procurator.

11. *The Same to Ingenuus.*

Anyone who has not been sentenced to fight in the arena, but has voluntarily selected that profession, can succeed to an estate as heir at law, as his rights as a citizen and a freeman remain intact. If, however, his father made a will, the son cannot call it in question as being inofficious, nor shall he be entitled to possession of the estate, for the father very properly decided that his son was unworthy to succeed him, unless he himself was of the same condition.

Given on the fourth of the *Kalends* of January, during the Consulate of Julian, and Crispinus, 225.

12. *The Same to Licinianus and Diogenes.*

If the father of the girl whose curator you allege that you are, after having appointed heirs, that is to say, his son to half his estate, his daughter to a third, and his wife to the remaining sixth, charged his children that, if either of them should die before reaching the age of twenty-five years, his or her share should go to the survivors, and also charged his wife to give to his children any part of the estate which might come into her hands, you should not, against the just wish of the testator, bring the action of calumny to declare the will inofficious, as by a restitution of this kind under the trust, the share of the mother, as well as that of the brother, will come into the hands of your ward.

Given on the *Nones* of December, during the Consulate of Alexander, Consul for the third time, and Dio, 236.

13. *The Emperor Gordian to Prisciamts.*

Two heirs having been appointed, one to five and the other to seven-twelfths of an estate, you allege that you brought a proper action against the one who was appointed heir to seven-twelfths, but that you were defeated by the other, and consequently the will is broken, so far as that portion of it is concerned, as he who is entitled to the estate *ab intestato* will succeed, and neither the legacies nor the trusts will be due, although

the grants of freedom will take effect directly, and the trusts should be executed.

Given on the third of the *Kalends* of February, during the Consulship of Gordian and Aviola, 240.

14. *The Same to Priscus.*

Where a party litigant has been unable to prove the complaint of inofficiousness brought against a will, it has been decided that he is not barred from declaring it to be forged.

The same rule should be observed where, on the other hand, someone has attacked a will as having been forged, and afterwards desires to bring suit to declare it inofficious.

Given on the sixth of the *Kalends* of December, during the Consulate of Gordian and Aviola, 240.

15. *The Emperor Philip to Aphrodisia.*

It is a settled principle of law that a daughter who has been passed over by her mother cannot aspire to the succession of the latter without having previously instituted proceedings to declare the will inofficious.

Given on the fifth of the *Kalends* of August, during the Consulate of Philip and Titian, 246.

16. *The Emperors Valerian and Gallienus, and the Cęsar Valerian, to Theodora.*

Where persons over the age of twenty-five years bring two actions attacking a will, one for the reason that it was not drawn up according to law, the other that it was inofficious, although it may have legally been executed, the prescription of five years, dating from the time of the first judgment, does not run as long as one of the actions remains to be tried.

Given on the *Ides* of August, under the Consulate of Tuscus and Bassus, 259.

17. *The Emperors Carinus and Numerianus to Flora.*

When you state that your son, having passed you over, appointed his sister his heir, you can bring suit before the Governor of the province to declare the will inofficious.

Given on the second of the *Ides* of February, during the Consulate of Carinus, Consul for the second time, and Numerian, 284.

18. *The Emperors Diocletian and Maximian to Faustina.*

As you say that you have not violated your filial affection, but were unwilling to separate from your husband whom you had married, and because your father was angry and irritated on account of this, he disinherited you, you will not be prevented from filing a complaint against the will as being inofficious.

Given on the *Kalends* of May, under the Consulate of Maximus, Consul for the second time, and Aquilinus, 285.

19. *The Same to Apollonarius.*

If you think that your daughter should be excluded from your estate because she lives a dishonorable and shameful life, and if you have not been influenced by sudden anger to take this course, but your hatred is founded upon reason, you will be free to make your last will in accordance with your wishes.

Given on the fifteenth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 293.

Extract from Novel 115, Chapter III. Latin Text. Where, however, you postponed the marriage of your daughter after she had reached the age of twenty-five years, and she then committed sin with her body; or if, without your consent, she married a husband who is free, you cannot disinherit her.

20. *The Same, and the Cæsars, to Savianus.*

Where a daughter, after her father's death, married with the consent of her mother, and, living on good terms with her husband, did not offer any reason for complaint, after her mother had repented of having consented, she cannot be compelled by law, whether still married, or a widow, to be subject to the momentary caprices of her mother.

Given on the *Nones* of January, during the Consulate of the Cæsars, 294.

21. *The Same, and the Cæsars, to Alexander.*

Nephews or nieces, or paternal and maternal uncles or aunts will, in vain, attack a will as inofficious, as no relative in the collateral line, with the exception of a brother or sister, is permitted to do so; but they are not prevented from bringing a criminal accusation alleging that the will is forged.

Given during the Consulate of the Cæsars, 294.

22. *The Same, and the Cæsars, to Tantilla.*

If your husband, by his will, appointed you heir to his entire estate, and disinherited a daughter who was under his control, such a disinheritance will not be permitted by law, where nothing has been left to her, and she did not give him any just cause for offence; for there is no doubt that if she should attack the will as inofficious, she can obtain the entire estate.

Where, however, she has already obtained it, or afterwards brings suit to recover it, she must surrender to you whatever her husband owed you at the time of his death.

Given on the *Ides* of February, during the Consulate of the Cæsars, 294.

23. *The Same, and the Cæsars, to Philip and Others.*

As you acknowledge that you prevented your mother from making a will in the presence of witnesses, you have evidently given just cause for offence.

Given on the fifth of the *Ides* of September, during the Consulate of the Cæsars, 294.

24. *The Same, and the Cæsars, to Successus.*

The will of a soldier, who is a son under paternal control, disposing of his *castrense peculium*, cannot be set aside, either by his father or his children, on the ground of its being inofficious.

Given at Nicomedia, on the third of the *Nones* of December, during the Consulate of the Cæsars, 294.

25. *The Same, and the Cæsars, to Menedotus.* It has been established by law that a mother, who was suspicious of the morals of her husband, could consult the interests of her children by appointing them heirs, under the condition that they were emancipated by their father; and that if, after this agreement was made, the father did not comply with the condition, he could not obtain possession of the property in accordance with the terms of the will, nor could he bring suit in the name of his children to set aside the will on the ground of inofficiousness, as the mother had not injured them in any way, but had rather intended to provide for them; and therefore he should deliver the estate to them.

26. *The Same, and the Cæsars, to Serapion.*

When a son has been appointed heir to three-twelfths of an estate, it is certain that a direct substitution can legally be made for him by his father, if he should die before the age of puberty.

Given at Nicomedia, on the fifth of the *Kalends* of September, during the Consulate of the Cæsars, 302.

27. *The Emperor Constantine to Verinus.*

Uterine brothers and sisters are absolutely prohibited from bringing an action for the purpose of proving the will of a brother or sister to be inofficious. Blood-relatives, however, whether agnation exists or not, can institute proceedings on the ground of inofficiousness of the will of a brother or sister, where the appointed heirs are, even to a slight extent, branded with infamy or dishonor, or where freedmen have obtained this great favor from their patrons, being at the same time wholly undeserving of it, except where a slave has been appointed a necessary heir.

28. *The Same to Claudius, Governor of the Province of Dacia.*

Children who institute proceedings to declare the wills of their parents inofficious must show that they have constantly manifested toward them all the respect which natural affection demands, unless the appointed heirs are able to prove that the children have been ungrateful to them. Where a mother attacks the will of her son as inofficious, We order diligent inquiry to be made whether the latter had any just cause for complaint against his mother, since he could thus exclude her from the benefit of his last will, as he did not even leave her his funeral expenses, or the amount to which she legally was entitled, so that, the will having been set aside, she may obtain the succession of the estate by law. If, however,

she had annoyed her son by dishonorable acts and indecent machinations, and either openly or secretly had laid snares for him, or been on terms of friendship with his enemies, and had so conducted herself with others that she rather appeared to be his enemy than his mother, and these facts are established, she will be compelled to accept the will of her son, even against her consent.

Given on the third of the *Ides* of February, during the Consulate of Crispus and Constantius-Cęsar, Consuls for the second time, 321.

29. *The Emperor Zeno to Sebastian, Prętorian Prefect.*

As the new constitution of the Divine Leo directs that an antenuptial donation shall be given to a son, just as a dowry is given to a daughter, We order that such donations shall be charged to the fourth part to which the son is legally entitled.

In the same way, when a father or mother gives a dowry for his or her daughter, or an ante-nuptial donation for their son, or a paternal grandfather or grandmother gives one for his or her granddaughter or grandson, or a paternal or maternal great-grandfather or great-grandmother gives one for his or her great-granddaughter or great-grandson, this dowry or donation shall not be bestowed upon the parties, but shall be deducted to the fourth part to which each is legally entitled, if it has been taken from the property belonging to the estate which is in dispute; and We desire this to be charged in this manner for the purpose of preventing the will from being attacked as inofficious.

Given on the *Kalends* of May, during the second Consulate of the same Emperor, 321.

30. *The Emperor Justinian to Menna.*

With the intention of treating the wills of testators with every consideration, We think, nevertheless, that the innumerable pretexts for setting them aside should be disposed of, in certain cases in which it was formerly customary for proceedings to be instituted for the purpose of declaring the wills of deceased persons inofficious, or of annulling them in some other way; but, by this certain and established law, provision is made for the interests of testators and their children, as well as for those of other parties who have a right to bring this same action; so that whether it is or is not stated in the will that the legitimate portion shall be paid, the will shall be valid; and it shall, moreover, be lawful for those persons who have the right to attack it as being inofficious or to set it aside in some other way, to exact what is lacking to them to make up their legitimate shares, without their being subjected to any burden or delay; provided that they have not legally been denounced as ungrateful, that is to say, if the testator did, not declare that they had manifested ingratitude towards him.

If, however, he did not allude to them as being ungrateful, his heirs shall not be permitted to accuse them as such, and to introduce a question of this kind.

We establish these rules with reference to persons whom testators have not mentioned as being ungrateful, and to whom they have left a certain amount of their estates, either as legacies or trusts, even though the amount may be less than what they are entitled to by law.

(1) Where, however, they have passed over any such person who was already born, or who was conceived before the will was made but was still unborn, or to whom absolutely nothing was left on account of his being disinherited, or having been otherwise unfavorably mentioned, then We order that the ancient laws shall apply, and that no innovation or change shall be caused by the present enactment.

(2) It is clear that whatever property has been obtained as profit from the estate of the deceased through an employment in the army should be deducted from the legitimate shares of the children and other persons who formerly had a right to institute proceedings to declare a will inofficious, and We wish this to be the case, and that, where a right of this kind can be sold, or if the soldier should die while in the service, the value of the same shall descend to his heirs. Therefore, in order that the value of the right which a soldier may obtain by the death of the testator may be ascertained, and as much may be charged to his legitimate share as is decided should be given, if he who acquired the property of the testator had died while holding his rank in the army, those officials of our Sacred Palace who are designated *silentarii*¹ being alone excepted, to whom are granted special privileges, not only with reference to other matters, but also concerning money given by their parents for the purpose of obtaining the above-mentioned military employment; among which privileges we direct shall be included that such a donation shall not be deducted from their lawful shares of an estate.

We desire that the preceding regulations shall apply to all other persons.

Given at Constantinople, on the *Kalends* of June, under the Consulate of Justinian, Consul for the second time, 528.

31. *The Same to Menna, Prętorian Prefect.*

We order that the provisions which We have recently made for the purpose of protecting wills shall not be readily abrogated, under the pretext that less than the amount fixed by the Falcidian Law has been left to persons who, in accordance with former laws, had a right to institute proceedings to declare a will inofficious; and that wills shall not be placed in danger, but whatever is lacking to a legitimate share, that is to say, to the fourth part of an intestate succession, shall only be contributed,

those persons being excepted to whom nothing was left by will, with reference to whom the rights conferred by former laws shall remain unimpaired.

We order that these regulations shall also apply to wills which are not in writing.

Given on the second of the *Ides* of December, during the Consulate of Our Lord Justinian, Consul for the second time, 328.

32. *The Same to Menna, Prætorian Prefect.*

As We have established by former enactments that, if less than their legal shares are left to persons who could, under the ancient laws, bring suit to declare a will inofficious, it shall be made up to them, in order that the will may not be set aside on the ground that a smaller sum has been left them than they were entitled to, We think it should be added to the present law that, if the rights of those who formerly

¹ The *silentarii* were a body of attendants attached to the imperial palace, whose duty it was, as their name indicates, to maintain silence in its precincts, and discourage all loud talking or noisy demonstrations. They were under the command of decurions. — ED.

could bring the above-mentioned action appear to have been impaired by any conditions, delays, or dispositions which may cause any delay, diminution, or burden, the said conditions, delays, or dispositions causing such diminution or burden should be abolished, and that the matter should proceed just as if none of these things had been inserted into the will.

Given on the second of the *Kalends* of April, during the fifth Consulate of Decius, 529.

33. *The Same to Demosthenes, Prætorian Prefect.*

Where anyone, by his will, leaves the greater portion of his estate to one of his children, and the small residue to another, or to others, in order that there may be no ground for an action to declare the will inofficious, and that what is left to the heirs either by way of inheritance, or as a legacy or trust, may take the part of the share to which they are entitled by law, if he who obtains the smaller portion is willing to accept it, and the one who has been left the larger one (whether there be one alone, or several), refuses to deliver what the others are entitled to, without contention or delay, but compels them to go into court, and causes many and various disputes to arise with reference to the same, and, after a long lapse of time, reluctantly surrenders the property in compliance with the judgment, We intend that such cruelty shall be punished by a suitable penalty; hence, where a case of this kind occurs, the offender shall not only be condemned to relinquish what the testator wished him to give up, but also the third part of an equal amount which was left by will, which he shall be compelled to surrender under all circumstances, in order that his avarice may be punished

by the power of the law; and all other matters which have been included in the same will, whether it be written or not, shall be carried into effect as therein provided.

(1) We have addressed Ourselves to the promulgation of this law for the purpose of remedying the injustice of former legislation, and that the former objectionable rule, which Julius Paulus mentions in his Book of Questions, may no longer be a source of reproach. For he stated that a child could not be accused by its mother of being ungrateful, and could not, for this reason, be excluded from her estate, unless she did so through dislike to her husband, by whom the said child was begotten; and We considering it to be unjust that anyone should suffer from hatred entertained toward another, order that this rule shall be abolished; and We do not permit any reason of this kind to be advanced either against children of tender age, or against others of any age whatever, as a mother can leave her estate to her son under the condition of his being emancipated, and, in this way, gratify her aversion to his father, and not injure the rights of her child, or show herself lacking in natural affection, for it seems to Us to be cruel for anyone to be considered ungrateful who has not yet the power to form an opinion.

Given on the twelfth of the *Kalends* of October, during the Consulate of Decius, Consul for the fifth time, 529.

34. *The Same to John, Prætorian Prefect.*

Where anyone disinherits his son, and appoints a foreign heir, but leaves a grandson by the son aforesaid, who is either already living or as yet unborn, and while the appointed heir is deliberating whether to accept the estate, the disinherited son should die without having made, or prepared to make a claim for the estate on the ground that the will is inofficious, he deprives the grandson of all opportunity for relief, as the father of the latter, at the time of his death, did not leave him any recourse against the will of his father, because after the estate was entered upon by the foreign heir, his father survived his grandfather, and the grandson could not, under the terms of the Velleian Law, succeed his father and thereby rescind the will; and some jurists, in discussing this point, have sustained this inhuman opinion.

We, however, who think We entertain paternal affection and feeling for all Our subjects, and Our children and grandchildren, and, as far as possible, having a view to the advantage of all, do hereby order that, in cases of this kind, every right shall be conferred upon a grandson to which the son was entitled; and although no preparation may have been made for bringing an action to declare the will inofficious, a grandson can, nevertheless, bring this action, and if the heir does not prove by perfectly conclusive evidence that

the father of the grandson was ungrateful towards the testator, the will having been set aside, the grandson shall be called to the succession as intestate, unless a certain amount was left to his father which was less than the share to which he was entitled; for then, in accordance with the New Constitution which We have promulgated, the grandson can have the deficiency of the fourth part made up to him, if his father had not already received it, so that he may enjoy the benefit that We confer, a privilege which indeed, neglected in ancient times, has been established by Our authority, unless the father, during his lifetime, either rejected his right to bring suit to declare the will inofficious, or remained silent for five years from the day when the estate was entered upon.

Given on the third of the *Kalends* of August, during the Consulate of Lampadius and Orestes, 530.

35. *The Same to Julian, Prætorian Prefect.* Whenever the permission of the Emperor is given to anyone freely to make a will, he is considered to have granted nothing more than that the party in question may enjoy the legal and ordinary testamentary right; for it must not be believed that the Roman Emperor, who maintains the laws, would, by a concession of this kind, intend to overthrow all the regulations relating to wills which have been devised and framed with so much care.

(1) We also decree that, if anyone should receive a certain sum of money, or a certain amount of property from his father, and agrees that he will, under no circumstances, bring suit to declare his will inofficious, and, after the death of his father, the son, having examined his will, should be unwilling to accept it, and should think that it ought to be contested, an opinion was given by Papinianus in which he stated that a son ought, by no means, to be oppressed by an agreement of this kind, but that children should rather be induced to show respect to their parents than be restrained by contracts.

We adopt this opinion, unless the son should have made a compromise with the heirs of his father in which he clearly accepted the will of the latter.

(2) And, generally speaking, We say that when a father leaves his son a smaller share of his estate than that to which he is legally entitled, or gives him something either by a donation *mortis causa* or by one *inter vivos*, under the condition that the donation *inter vivos* shall be deducted from his lawful fourth, and the son, after the death of his father, simply acknowledged what was left or donated to him, or executed a release to the heirs for the same, but did not add that he would not raise any question with reference to what he was entitled to make up his lawful share, he does not prejudice his rights in any way, but can demand the deficiency, unless he expressly stated in writing either in the release or the compromise, or otherwise agreed, that he would be

content with the share which had been left or given to him, and would make no demand for what was lacking; for then, all ground for complaint having been removed, he should be compelled to accept his father's will.

(3) This law shall extend not only to sons and daughters, but also to all other persons who have a right to institute proceedings, to declare the last testaments of deceased persons inofficious.

Given on the *Kalends* of September, during the Consulate of Lampadius and Orestes, 530.

36. *The Same to John, Prætorian Prefect.*

We know that before the promulgation of the constitution by which it was provided that if a father left his son a smaller share of his estate than he legally was entitled to, although it may not have been added that the balance owing to him should be granted in accordance with the judgment of a reliable citizen, the deficiency will be due and payable by operation of law. Hence, when anyone accepted property which had been donated either *inter vivos* or *mortis causa*, or by legacies, or under the terms of a will, and kept it as his share, and the property was afterwards evicted, either wholly or in part, the question arose whether, in accordance with the terms of Our Constitution, the lawful share should be made up after eviction, or whether the legacies, trusts, or donations *mortis causa* should be diminished in accordance with the Falcidian Law, so that, in this instance, a reserve might be established to prevent the heir, if he attempted to obtain all of the Falcidian portion, from losing the entire benefit of the estate.

Therefore, We order that, in all these cases, the defect shall be corrected whether there is total or partial eviction, and that either other property or money shall be given, or the deficit made up, without taking into consideration the Falcidian portion; so that whether there was something lacking in the beginning, or some other outside cause had arisen for imposing the burden on the property, either with reference to the amount, or the time, the deficiency shall by all means be made up, and the privilege which We have granted be enjoyed by the children without modification.

The deficit should be made up from the property forming part of the estate of the father, but not where the son has acquired anything from other sources, either through substitution, or by the right of accrual, as, for instance, through usufruct. For the sake of humanity, We order that he shall enjoy the benefit of all property which he may have acquired from foreign sources, and that the deficiency shall be made up only from that which belonged to his father.

(1) Where anyone, after having appointed a stranger his heir, provided by his will that at the time of his death his estate should be transferred to his son, or postponed

such delivery to a specified date, for the reason that Our previously promulgated Constitution sets forth that all delay and hindrance with reference to the Falcidian portion shall be abolished, and that the said fourth part shall be immediately given to the son, a doubt arose as to what course should be taken in a case of this kind. Hence, We now order that the restitution of the aforesaid fourth shall immediately take place, without waiting for the death of the heir, or for the expiration of any term, and that any balance remaining after the payment of the lawful share shall be delivered at the time fixed by the testator, so that the son may, in this way, receive his share intact, as has been established by Our laws and Constitutions; and the appointed heir may legally enjoy the benefit of what was left to him by the testator.

(2) Moreover, We order that the time for filing a complaint on the ground that the will is inofficious, after the estate has been entered upon, shall be in conformity with the decision of Ulpianus; and that the opinion of Herennius Modestinus, who declared that the time for the bringing of such an action should date from the death of the testator, must be rejected; so that an heir shall not be permitted to enter upon an estate whenever he pleases, in order that a son may not, by a device of this kind, be defrauded of that to which he is naturally entitled.

Therefore, We order that when a testator dies after having appointed a foreign heir, and it is expected that a suit to declare the will inofficious will be filed, the appointed heir — if there is one residing in the same province — shall be required within six months, or if he resides in another province, within a year from the time of the death of the testator, to declare his intention of either accepting or rejecting the estate; and that when the said term has elapsed, the son shall have the right to bring the above-mentioned action. Where the appointed heir does not accept the estate within the specified time, he shall be forced to do so by the judge. If, however, in the meantime, the son should die, that is to say, after the date of the death of the testator, but before the estate has been entered upon, he will transmit a right of action of this kind to his descendants, although he may not have been prepared to assert it; but, in accordance with the ancient authorities, he will not transmit it to foreign heirs, excepting where he had previously made arrangements to proceed.

Given at Constantinople, on the *Kalends* of September, after the fifth Consulate of Lampadius and Orestes, 531.

37. *The Same to John, Prætorian Prefect.*

As it was stated by the ancient laws that military wills were not liable to proceedings to declare them inofficious, many other instances arose in which it was necessary to dispose of doubtful questions which

presented themselves. For in cases involving *castrense peculium*, another division was introduced, for *peculium* was found to be derived from three different sources, as it was either civil, acquired through military service, or occupied a middle place between the two, and was designated *quasi castrense*. When the *peculium* called *quasi castrense* was involved, permission was granted to certain persons to dispose of it by will, but not as soldiers, in any way they chose, but by observing the common, legal, and customary formalities which have been established with reference to Proconsuls, the prefects of legions, the governors of provinces, and, generally speaking, all those who have been appointed by Us to different offices or employments, or who receive certain salaries from public sources; for persons of this kind have testamentary capacity solely for the purpose of disposing of the *peculium* just mentioned, that is to say, the *quasi castrense*. Veterans, however, who have acquired *peculium* during their time of service, after they have left the army, are not prohibited from making wills, but they must do so in the regular manner. Therefore, when with reference to all these *quasi castrense peculiums* a doubt arose whether wills disposing of property of this kind could be attacked on the ground of inofficiousness, the first question to be decided was whether all those who had *quasi castrense peculium* could bequeath it, for the reason that this was granted as a privilege only to certain persons, and not to everyone indiscriminately; as soldiers and veterans had been everywhere permitted to make wills disposing of their *castrense peculium*; but while soldiers in active service could do so by virtue of their own exclusive right, veterans were only entitled to dispose of their *peculium* under the rules of the Common Law.

It was also doubted whether other persons, upon whom this special privilege had not been conferred, could bequeath their *peculium* by will; as, for instance, advocates, clerks of courts, those who have charge of the property of others, as well as professors of liberal arts, physicians, and all persons who receive public salaries or allowances.

(1) Hence We order that such persons can make testamentary disposition of what composes their *quasi castrense peculium*, for the reason that it has been established in imitation of the *peculium castrense*, provided this is done strictly in accordance with law, but only where the property in question forms part of the *quasi castrense peculium*.

This privilege is granted to them in order to avoid suit being brought to declare their wills inofficious; for where a freedman, who was undoubtedly his own master, has acquired any property while in camp, his patron has

not, according to the tenor of the ancient laws, any right to the possession of such property, even if he should be passed over by his ungrateful freedman in his will; and, as this is the case, why should the *peculiums* which have been introduced in imitation of the *castrense* be liable to the complaint of inofficiousness?

(2) This rule, however, shall be observed until those in possession of the *castrense peculium* have returned to the homes of their relatives; for if they should become their own masters, there is no doubt that their wills disposing of property which formerly constituted their *castrense peculium* can be attacked on the ground of inofficiousness, as the distinctive name of *peculium* no longer exists, and what it represents is merged in other property, and is subject to the same fate as that which was collected from all other sources into a single estate.

Given at Constantinople, on the *Kalends* of September, after the fifth Consulate of Lampadius and Orestes, 532.

TITLE XXIX.

CONCERNING INOFFICIOUS DONATIONS.

1. *The Emperor Philip to Nicanor and Papiana.*

If, as you allege, your mother, for the purpose of avoiding an action to declare the disposition of her property inofficious, exhausted almost all of it while she was alive, by making donations either to certain children or to strangers, and after having appointed you heirs to two-twelfths of her estate, still further exhausted the two-twelfths aforesaid, by means of legacies and trusts, you do not unjustly ask that relief be granted you by means of proceedings to declare the will inofficious, inasmuch as you did not receive the fourth part of the estate to which you were entitled.

Given on the fourteenth of the *Kalends* of September, during the Consulate of Philip and Titian.

2. *The Emperors Valerian and Gallienus to Acria.*

If your father, induced by a certain impulse of boundless generosity, bestowed all of his estate upon his son, whether he was under his control or not, and agreed that the arbitrator appointed for the purpose of making partition should give you the fourth part of the share which you would have received in case of intestacy, without deduction; or if the son had been emancipated, and for this reason the donation did not then require any other support, but in accordance with the Imperial Constitutions, relies upon its own force, the Governor of the province will assist you to proceed against the donation in the same way as against an inofficious will.

Given on the sixth of the *Kalends* of August, during the Consulate of Maximus, Consul for the second time, and Glabrio, 257.

3. *The Same to Eilianus.*

The Rescripts attached to your petition show that those parents who, during their lifetime, exhausted their estates by extravagant donations, after having executed wills, left merely an empty name to their heirs, and the same rule of equity should apply in this case as in that where persons die intestate.

Given on the tenth of the *Kalends* of November, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 258.

4. *The Emperors Diocletian and Maximian to Aristina.*

If your son has exhausted his estate through unbounded liberality, invoke the aid of the Governor of the province, who, after having ascertained the truth of the case, will determine whether you are entitled to complete restitution on account of the enormous amount of the donation made by your son, and will grant you relief by annulling everything which has been improperly done; and therefore, it will not be necessary for you to proceed against this unreasonable donation, as you would in case you desired to establish the inofficiousness of a will.

Given on the sixth of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Acquilinus, 286.

5. *The Same to Cotabeus.*

If you have exhausted all your property by donations conferred upon your emancipated son, the amount which will be necessary to leave to children, who have not been ungrateful, for the purpose of avoiding proceedings to declare the will inofficious, must be deducted from the donations already made and restored to your estate; so that any sons or grandsons subsequently born during lawful marriage, may obtain the amount of property to which they will be entitled.

Given on the second of the *Ides* of March, during the Consulate of Maximus, Consul for the second time, and Acquilinus, 286.

6. *The Same to Demetrianus.*

As you state that the property of your father has been exhausted by donations made to your brothers, and that the remainder has been divided between you by codicils executed by him; if you did not know his intention, and could not avail yourself of the benefit of age, so as to institute proceedings, the dowry given by your father, or the trust left by him for your benefit, are not sufficient to prevent you from bringing suit to declare the will inofficious; and the Governor of the province shall exert his authority to enable you to proceed against these excessive donations, in the same way as against an inofficious will.

Given on the *Kalends* of May, during the above-mentioned Consulate, 286.

7. *The Same to Ammiamis.*

If your mother has so exhausted her estate by her profuse liberality to your brothers that half of the fourth share, which would have been sufficient to prevent you from attacking the will as inofficious, was not included in the donations which she gave you, the unreasonable amount which she has bestowed shall be revoked.

Given on the fifth of the *Ides* of May, during the above-mentioned Consulate, 286.

8. *The Same to Auxanonus.*

If it can be proved that your mother, in order to prevent you from bringing an action to declare her will inofficious, exhausted her estate in donations made to one of her sons, as reason demands that the right to bring suit for inofficiousness should be accorded, in order to frustrate the designs of those who attempt to violate the rules established by the supreme authority, and deprive children of their rights, the donations which have been made must be diminished to the extent of the fourth due under the Falcidian Law, as in the case of an inofficious will.

(1) Where a wife received something from her husband by way of donation at the time of her marriage, and afterwards gave it to her emancipated son with the consent of her husband, it is only reasonable to hold that she donated it as part of the property of his father, because it could not be taken from it otherwise, as this is forbidden by the marriage; and if the same intention and result should be ascertained to exist in the disposition of any of his property, the same rule which We have promulgated with reference to the estate of the mother shall be observed.

Given on the third of the *Ides* of September, during the Consulate of the Cæsars, 294.

9. *The Emperor Constantius, and the Cæsar Julian, to Olybrius.*

There should be no doubt that the complaint introduced by law with reference to excessive donations has been derived from the action to declare wills inofficious, so that, in both these instances, there might be an identical or similar cause, and the same intervals and method of procedure.

Given on the fourteenth of the *Kalends* of July, during the Consulate of Taurus and Florentius, 361.

TITLE XXX.

CONCERNING INOFFICIOUS DOWRIES.

1. *The Emperor Constantine to Maximus, Governor of Cilicia.* As all the property of your mother is said to have been exhausted by a dowry, and since it is proper for laws to agree with one another, power to bring suit on the ground of the gift of an excessive dowry shall be

granted, and the benefits claimed by the other children, and to which they are entitled, shall be bestowed upon them.

Given on the fourth of the *Kalends* of June, during the Consulate of Tatian and Cerealus, 358.

TITLE XXXI.

CONCERNING THE DEMAND FOR AN ESTATE.

1. *The Emperor Marcus Elius Antoninus to Augurinus, Proconsul of Africa.*

The Decree of the Senate enacted at the suggestion of My Grandfather, the Divine Hadrian, by which it was provided that whatever had, at any time, been evicted from the government must be returned, not only applies to fiscal cases, but also to those of private persons claiming an estate.

(1) *Bona fide* possessors cannot be compelled to refund interest which they have collected from the day of the sale of the property of an estate made by them before issue has been joined in a case; nor can they be forced to surrender the crops which they have gathered after issue has been joined, unless they have profited pecuniarily thereby. They will, however, be obliged, under all circumstances, to pay over not only the income of property which has not been sold, and which they have collected, but also whatever they could have collected, as well as any interest on the price of property sold which accrued before issue was joined in the case.

Given on the sixth of the *Kalends* of February, during the Consulate of Clarus and Cethegus, 147.

2. *The Emperors Severus and Antoninus to the Soldier Marcellus.*

When, after suit had been brought with reference to the estate of Menecrates, Museus, being aware that this had been done, purchased half of the property of the estate in dispute from the appointed heir, he himself, as a possessor in bad faith, as well as his heir, will be compelled to refund the profits. If, however, it should be clearly proved that the sale took place before the action was brought, the profits must be refunded from the day on which proceedings were begun, for an estate is increased by the profits when it is in possession of a person from whom it can be demanded. A purchaser, who is provided with his own title to possession, can also be sued for separate articles.

Given on the *Kalends* of July, under the Consulate of Severus, Consul for the second time, and Victorinus, 201.

3. *The Same to Epictesis.*

The claim made by you for the estate of your maternal aunt does not prevent you from making a demand for another estate which proceeds from a different succession. But where the first claim was based upon the inofficiousness of the will, the fact that the case

had been decided will offer no impediment to anyone claiming the same estate under another title.

Given on the fifth of the *Ides* of August, during the Consulate of Geta and Plautian, 201.

4. *The Emperor Antoninus to Vitalianus.*

In transferring the estate, compensation will be allowed for any expense which you can prove you have incurred on account of the illness of the deceased, or for his funeral, and which you have paid in good faith out of your own money.

Given on the *Kalends* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

5. *The Same to Posthuvianus.*

If a decree has been issued requiring you to surrender the estate which you possess in good faith, you can, when delivering it, deduct whatever you can show that you have paid in good faith to the creditors of said estate, for whenever creditors have received anything to which they are entitled, it cannot be recovered from them.

Given on the sixth of the *Kalends* of June, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

6. *The Emperor Alexander to Firminus.*

If you think that the guardians of your grandsons were not legally appointed, for the reason that you allege they are under your control, do not delay to demand from them the estate of your emancipated son, the benefit of which you say belongs to you; and the judge will determine whether the act of those who appointed the guardians shall be set aside or not, as it is denied that they are subject to your authority.

Given on the tenth of the *Kalends* of July, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

7. *The Emperors Diocletian and Maximian, and the Cæsars, to Restituta.*

It is known to everyone that a demand for an estate which can be made against possessors in behalf of an heir will not be barred by a prescription of long time, as the law requires this to be answered in a mixed personal action. It is, however, clear that the estate can be recovered only by special actions *in rem*, where the right of the plaintiff to proceed has been extinguished by usucaption or prescription.

Given on the second of the *Kalends* of August, during the Consulate of the Cæsars, 294.

8. *The Same, and the Cæsars, to Asterius.*

When a demand is made for an estate, it must be ascertained, before everything else, whether or not the testator was free.

Given on the third of the *Kalends* of April, during the Consulate of the Cæsars, 300.

9. *The Same, and the Cæsars, to Demophilia.*

If the appointed heirs have rejected the estate of your relative which was left to them, and you have demanded it, either under the prætorian or the Civil Law, you can bring suit to recover any property of the estate which is involved in this case.

Given at Nicomedia, on the third of the *Kalends* of December, during the Consulate of the Cæsars, 300.

10. *The Same, and the Cæsars, to Theodosia.*

When a son under paternal control has, for a long time, retained in his hands an estate which was left to him, for this very reason, as the estate has been accepted, he is considered to have acquired it for the benefit of his father.

Given on the thirteenth of the *Kalends* of January, during the Consulate of the Cæsars, 300.

11. *The Emperors Arcadius and Honorius to Eternal, Proconsul of Asia.*

It is unjust for the possessor of property to be compelled to disclose his title to possession to anyone who demands it, except that he should be obliged to say whether he holds the said property as possessor or as heir.

Given on the twelfth of the *Kalends* of April, during the Consulate of Arcadius, Consul for the seventh time, and Honorius, Consul for the third time, 396.

12. *The Emperor Justinian to Julian, Prætorian Prefect.*

When good ground exists for the claim of an estate, and an exception is filed which protects the claim, this should not be prejudiced, for the greatness and authority of the Centumviral Tribunal will not permit a claim to an estate to be interfered with by the schemes of others.

As many distinctions and controversies on this point arose among the ancients, in order to put an end to them We decree that when any person presents a claim for an estate, or expects to do so, or to institute proceedings to recover it, and someone else appears and thinks that it is necessary to represent the deceased in an action against either the plaintiff or the defendant, on the ground of a deposit, a loan, a legacy, a trust, or for any other reason, and he does this by virtue of the bequest of a legacy or a trust, he must comply with the following conditions, namely, the appointed heir cannot postpone the decision of the claim by furnishing security, but either the legacy or the trust can be demanded, if a bond or security in proportion to the rank of the parties is given.

Where, however, the heir is not successful, the legatee or the beneficiary of the trust must repay him the money which he received, with interest at the rate of three per cent; or he must give up the land with the crops which he has gathered, or the house with the rent which he has collected; of course, in either of these cases, after having deducted all necessary and useful expenses, or if

he himself prefers to contest the action and await the result of the filing of the claim for the estate, he shall be permitted to do this; so that if restitution should be obtained it may be made to the legatee or the beneficiary of the trust, together with all lawful augmentations.

(1) But when an action based on certain contracts of the deceased, or on account of some property which is in dispute, is brought against the possessor of the estate, and the said property was either made the subject of a deposit or a loan, or was given in pledge, or encumbered in any other way, the trial should not be postponed under the pretext that a claim has been made to the estate; just as where money having been loaned at interest, suit is brought against the possessor or the plaintiff, or any other personal action is begun, judgment should not be deferred, but the case ought immediately to be brought to a termination. For, after the action for the estate has been disposed of, and the controversy between the claimant of the estate and the possessor has been decided, if the latter is defeated, he will not be compelled to surrender the estate, unless the claimant reimburses him for all the expenses which he has properly incurred. If, however, the plaintiff should be defeated, the court will compel the possessor, in like manner, to reimburse him, or if he should be remiss in this respect, he can under this law be forced to comply by a personal action based on voluntary agency.

(2) Whenever freedom is demanded by slaves from the possessor of the estate or the claimant of the same, to which it is alleged they are entitled either under the terms of a trust, or directly by operation of law, it will only be necessary to wait for a year after the death of the testator; and if the action to recover the estate has been terminated within that time, the demand for freedom shall either take effect, or be extinguished, according to the event of the trial. But if the said period of a year should elapse without a decision, then on account of the favor with which freedom is regarded, as well as through considerations of humanity, the grants of freedom will become effective directly, or the slaves will obtain it under the terms of the trust; provided, however, that the will should not prove to be forged, and also under the condition that if the slaves in question had not had charge of some business or accounts; for even after they have obtained their freedom, they will be required to surrender any property belonging to the estate which may have remained in their hands, and to render their accounts by the right of patronage, that is to say, where this right is enjoyed by him who, by the laws, can be assigned to this duty.

(3) In order that no doubt may hereafter arise, it must be observed that a suit brought to recover an estate must always be included among *bona fide* actions.

Dated at Constantinople, on the *Kalends* of September, during the Consulate of Lampadius and Orestes, 530.

TITLE XXXII.

CONCERNING THE ACTION FOR THE RECOVERY OF PROPERTY.

1. *The Emperors Severus and Antoninus to Cęcilia.* It has been decided that anyone who possesses the slave of another in good faith is entitled to the ownership of what is acquired by the labor of said slave, or from the use of his property; and therefore, if you possessed a slave of this kind in good faith, and he purchased any property with your money during the time he was under your control, you can avail yourself of your means of defence in accordance with the rules of law.

(1) A slave belonging to another cannot acquire anything for his possessor in bad faith, for he who holds him will not only be compelled to give up the slave himself, but also anything that he has obtained by means of his labor, as well as the offspring of female slaves, and the increase of animals.

Given on the third of the *Nones* of May, during the Consulate of Faustinus and Rufus, 211.

2. *The Emperor Antoninus to Aristenetus.*

If you can prove that the lower part of the building which is attached to the soil belongs to you, anything which your neighbor has built upon it will undoubtedly be your property, for whatever is erected upon your ground will belong to you by law, as long as it remains in the same condition; but if it should be demolished, the materials composing it will be restored to their former ownership, whether the building has been constructed in good or bad faith; provided it was not erected on land belonging to another with the intention of presenting it to him.

Given on the twelfth of the *Kalends* of November, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Emperor Alexander to Dominia.*

Your mother or your husband cannot, without your consent or knowledge, legally sell a tract of land which belongs to you, and you can claim it as yours from the possessor, without even tendering him the price. But if you afterwards consented to the sale, or lost your ownership of the property in some other way, you will have no right of action against the purchaser, but you will not be prevented from bringing suit against the vendor, for the price, on the ground of business transacted.

Given on the third of the *Kalends* of November, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

4. *The Emperor Gordian to Munianus, Soldier of Africa.*

You are entitled to an action against the possessors who purchased your land in good faith from others who held possession of it in bad faith, if you should recover the ownership of the same before the purchasers have obtained it by usucaption or prescription, based upon long time.

Given on the twelfth of the *Kalends* of November, during the Consulate of Pius and Pontianus, 299.

5. *The Same to Herasianus.*

The Governor of the province shall order the house which you allege belongs to you as part of the estate of your mother, and which is now illegally occupied by an adverse party, to be restored to you, together with any rent that the occupant has, or could have collected, as well as the amount of all damage caused by him.

It has been very properly stated in a rescript that any expenses which may have been incurred cannot be recovered, as possessors in bad faith, who have expended money on the property of others, and have not transacted the business of those to whom it actually belongs, have no right to recover them, unless the said expenses were necessary; but they are permitted to deduct any useful outlay, if this can be done without injury to the former condition of the property.

Given on the second of the *Ides* of February, during the Consulship of Gordian and Aviola, 240.

6. *The Same to Ustronius.*

If you deposited money, and the person with whom you left it used it to purchase land for himself, which was delivered to him, it is contrary to law that the said land, or any portion of the same, should be transferred to you by way of compensation for the money expended, when this is done against the consent of him who obtained it.

Given on the fifth of the *Ides* of July, during the Consulship of Gordian and Aviola, 240.

7. *The Emperor Philip, and the Cęsar Philip, to Antony.*

It has been established by law that the offspring of a female slave follows the condition of its mother, and in a case of this kind the condition of the father should not be taken into consideration.

Given on the thirteenth of the *Kalends* of November, during the Consulate of Philip and Titian, 246.

8. *The Same, and the Cęsars, to the Soldier Philip.*

If (as you allege), your adversary has purchased certain property in his own name, with your money, the Governor of the province will not, in the name of justice, refuse you the right to which you are entitled as a soldier. He may, likewise, grant you an action of mandate, or one of voluntary agency, if you desire to bring it.

Given on the second of the *Nones* of March, during the Consulate of Pręsens and Albinus, 247.

9. *The Emperors Carus, Carinus, and Numerian to Antony.*

Notify the Governor that the female slave, with reference to whom you have filed your petition, forms part of the dotal property, and this having been shown, there will be no doubt that she cannot be recovered by your wife.

Given on the third of the *Kalends* of March, during the Consulate of Carus and Carinus, 283.

10. *The Emperors Diocletian and Maximian, and the Cęsars, to Jamiarius.*

As you assert that you have no documents establishing your ownership over slaves born in your house, you should file your claim before the tribunal where proceedings have been instituted to recover what you have stated in your petition, since the judge will know that the ownership of the slaves must be established either by the production of documents, as well as by other evidence, or by the interrogation of the slaves themselves.

Given on the *Ides* of February, during the Consulate of the abovementioned Emperors, the first, Consul for the fourth time, and the second, Consul for the third time, 290.

11. *The Same, and the Cęsars, to Gallanus.*

When anyone knowingly sows or plants land owned by another, it is in accordance with reason that as soon as whatever is sowed or planted takes root, it will belong to the soil. For, by an act of this kind, the crop will rather belong to the owner than the soil to the other party. Where, however, he who did this is a possessor in good faith, it is well established by legal authority that he can, by means of an exception on the ground of bad faith, recover his expenses from him who claims the ownership of the land.

Given on the fourth of the *Kalends* of March, during the abovementioned Consulate, 293.

12. *The Same, and the Consuls, to Alexander.*

It is unjust and unusual that the slave whom you have delivered, and whose ownership you have relinquished by so doing, should be restored to you by Our Rescript, against the consent of the person to whom you delivered him; therefore, understand that where a female servant has become the property of a purchaser, any children subsequently born to her follow the ownership of him to whom their mother belonged at the time of their birth. You can, however, sue your adversary for the price, if it should not be proved that you have already received it.

Given on the *Ides* of April, under the abovementioned Consulate, 293.

13. *The Same, and the Cęsars, to Cytichius.*

It is an ordinary rule of law that, where suit is brought with reference to slaves, the question of possession must first be determined, after the slaves have been produced in court, and that then their ownership shall be established by the same judge.

Given on the *Ides* of April, during the above-mentioned Consulate, 293.

14. *The Same, and the Cæsars, to Septiana.*

As you state that you knowingly purchased from your mother a house which belonged to her son, if the latter should not succeed his mother, but should claim the ownership of the house, you cannot protect yourself by means of an exception; because if the son should obtain the estate of his mother who sold the property, you will not be prevented from availing yourself of an exception on the ground of bad faith with reference to the share of the estate which may come into his hands.

Given on the third of the *Kalends* of July, during the above-mentioned Consulate, 293.

15. *The Same, and the Cæsars, to Aurelius Proculinus.*

Where an entire tract of land has been legally sold to two different persons, it is a plain rule of law that he to whom delivery was first made is entitled to the preference, so far as the ownership of the property is concerned. If, therefore, you can prove before the Governor of the province that you were the first to obtain possession, and paid the price, he will not permit you to be excluded, under the pretext that no instruments had been drawn up.

You will, indeed, have the choice of retaining the land, or of receiving the purchase-money which you have paid, with interest; but, in the latter instance, an account of the crops which have been gathered and of the expense incurred must be rendered. It has been decided that if you both claim the ownership on the ground of a donation, he to whom possession of the land was first transferred will have the preference.

Given on the second of the *Kalends* of October, during the above-mentioned Consulate, 293.

16. *The Same, and the Cæsars, to Januarius.*

When anyone builds a house upon land owned in common with others, the rule of law establishes joint-ownership among all of you, and hence, if you should desire to claim the share of the person who, while in possession, built the house in good faith, you must make a tender of the expenses, in order to avoid being barred by an exception on the ground of bad faith.

Given on the *Ides* of November, during the above-mentioned Consulate, 293.

17. *The Same, and the Cæsars, to Sabinus and Others.*

If you notified the person who intended to purchase your land that it did not belong to him who wished to sell

it, he who bought it against your protest, or, in any other way, made a contract in bad faith, will commit an illegal act; and if you apply to the Governor of the province, he will not only order that the land which you prove belongs to you, but also the crops which the vendor is shown to have gathered in bad faith, shall be restored to you.

Given on the twelfth of the *Kalends* of December, during the above-mentioned Consulate, 293.

18. *The Same, and the Cæsars, to Clarus.*

When your property is in the possession of someone else, any mistake in ownership growing out of this fact cannot prejudice your rights, unless some other question may be interposed against you.

Given on the third of the *Kalends* of January, during the above-mentioned Consulate, 293.

19. *The Same, and the Cæsars, to Callistratus.*

Absolute proofs which are not rejected by law are not less worthy of confidence than documentary evidence; for which reason if you have doubts with reference to the ownership of a house, and the matter has not yet been decided, you will not be prevented from introducing what testimony you have.

Given on the second of the *Kalends* of January, during the above-mentioned Consulate, 293.

20. *The Same, and the Cæsars, to Quartilla.*

You understand that you cannot sue a slave who you say retains your property, but you must proceed against his master in order to recover it.

Given on the *Kalends* of March, during the Consulate of the Cæsars, 294.

21. *The Same, and the Cæsars, to Hierocles.*

After having demanded your slaves from those who have possession of them, and having instituted proceedings to establish your ownership of the same, if afterwards, when your claim has been allowed, your slaves should not be restored to you, the judgment shall be executed after the formal oath has been taken.

Given on the sixth of the *Ides* of October, during the Consulate of the Cæsars, 294.

22. *The Same, and the Cæsars, to Diodota.*

There is no doubt that it is customary for all the crops along with the land to be surrendered by a possessor in bad faith; and that possessors in good faith must only restore the present crops, but, after issue has been joined, everything must be delivered up.

Given on the third of the *Kalends* of November, during the Consulate of the Cæsars, 294.

23. *The Same, and the Cæsars, to Magnifer.*

If other persons, without any good reason, should sell your slave, who had been carried away by force or stolen, you will not be reduced to the necessity of paying the price given for him when you bring suit to recover the ownership of the slave.

Given on the tenth of the *Kalends* of December, during the Consulate of the Cæsars, 294.

24. *The Same, and the Cæsars, to Julian.*

The law forbids possessors to demand ownership, if they did not obtain possession by a good title; and therefore, if usucaption does not take place, the claim of ownership can never be asserted. Hence, in a case of this kind, where the owner returns under the law of *postliminium*, the direct right to prosecute the claim to the property remains unimpaired, without his having recourse to the *Actio rescissaria*.

Given on the tenth of the *Kalends* of December, during the Consulate of the Cæsars, 294.

25. *The Same, and the Cæsars, to Eugnomius.*

Where anyone has paid for another the rent of property which is in possession of the latter, and no sale takes place, he does not, by any means, become the owner of the same by virtue of the payment.

Given at Nicomedia, on the sixth of the *Kalends* of December, during the Consulate of the Cæsars, 294.

26. *The Same, and the Consuls, to Heliodorus.*

The delays incident to litigation are of no advantage to a possessor for the acquisition of the property by prescription based upon long-continued possession, for this is only computed after issue has been joined in the case.

Given on the *Ides* of December, under the Consulate of the Cæsars, 294.

27. *The Same, and the Cæsars, to Philadelphus.*

A purchaser cannot bring suit to recover a slave who has not immediately been delivered to him.

Given at Nicomedia, on the twelfth of the *Kalends* of January, under the Consulate of the Cæsars, 294.

28. *The Same, and the Cæsars, to Sopater.*

He who is in possession of property belonging to another cannot be compelled to restore it to its owner, even though he may have no good cause to retain it, unless the alleged owner proves that it is his.

Dated on the eighth of the *Kalends* of January, during the Consulate of the Cæsars, 294.

TITLE XXXIII.

CONCERNING USUFRUCT, LODGING, AND THE SERVICE OF SLAVES.

1. *The Emperors Severus and Antoninus to Possidonium.*

Where the usufruct of her entire estate was left by the will of a wife to her husband, although she may have forbidden any bond to be required of you, still, you cannot accept money in payment from debtors, unless you furnish security in compliance with the terms of the Decree of the Senate.

Given on the *Kalends* of October, during the Consulate of Anulinus and Pronto, 200.

2. *The Same to Felix.*

We note that the usufruct of certain land has been bequeathed to you by the terms of a will which you have inserted into your petition, but this does not prevent the owner of the property from encumbering it to his creditor, provided the right of the usufruct to which you are entitled remains unimpaired.

Given on the sixth of the *Ides* of May, during the second Consulate of Antoninus and Geta, 206.

3. *The Emperor Antoninus to Antonianus.*

If the usufruct of property was bequeathed to you by your father, you will obtain nothing after his death, as an usufruct which has been left by will, or is acquired in any other manner, ordinarily reverts to the property at the time of the death of the person to whom it was bequeathed.

The right of use and enjoyment is not extinguished during the life of the usufructuary, even though the owner of the property may die.

Given on the third of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

4. *The Emperor Alexander to Verbicius.*

An usufruct having been established, it follows that security which would be approved by a good citizen must be furnished by the person who enjoys the benefit of it, that he will cause no injury to the property by making use of the same; and it does not make any difference whether the usufruct was established by will or by voluntary contract.

Given on the *Ides* of March, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

5. *The Same to Evocatus and Others.*

If your father left the usufruct of certain land to your mother during the time of your puberty, and the usufruct terminated after you grew up, you can recover the crops gathered by her after the abovementioned time, for she knew that she had no reason to take them as they belonged to another.

Given on the *Kalends* of April, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

6. *The Same to Stratonica.*

It makes a difference where your husband received the sole usufruct by way of dowry, and where the ownership was given as dowry, and a contract was entered into that at his death possession would be restored to you, for an usufructuary cannot pledge the property. He, however, who has received land as dowry, after it has been appraised, is not, for that reason, prevented from encumbering it, as, if the marriage should be dissolved, the appraised value must be repaid to you.

Given on the *Kalends* of July, during the Consulate of Agricola and Clementinus, 231.

7. *The Emperor Gordian to the Soldier Ulpian.*

It is an established rule of law that the person to whom an usufruct belongs must, at his own expense, make such repairs as the roofs require. Hence, if anything more than was necessary has been expended by you, you can prove the amount of the outlay, and bring an action to recover it.

Given on the *Kalends* of February, during the Consulate of Arianus and Pappus, 224.

8. *The Emperors Diocletian and Maximian to Etherso.*

No prescription, or lapse of time, will authorize an usufructuary or his successors to acquire the ownership of property to the usufruct of which alone they are entitled.

Given on the sixth of the *Kalends* of July, during the above-mentioned Consulate, 293.

9. *The Same, and the Cæsars, to Auxanusa.*

Where the usufruct of certain lands and slaves was left to your mother, she is forbidden to alienate the land or manumit the slaves; for, as she has not the ownership of the slaves whose services were bequeathed to her by will, it is clear that her act will be void if she should convey the property to anyone, or manumit the slaves, both of which belong to the heir of the testator.

Given on the *Kalends* of December, during the above-mentioned Consulate, 293.

10. *The Same, and the Cæsars, to Pomponius.*

If the owner of the property has leased the usufruct of the same to your wife, subject to the payment of a certain sum every year; your wife should not be denied the privilege of use and enjoyment of the property after the death of the person who leased it to her.

Given on the thirteenth of the *Kalends* of January, during the above-mentioned Consulate, 293.

11. *The Emperor Justinian to Theodore.*

The right to occupy a lodging is terminated by death, and he who enjoys it cannot, by bequeathing the property, exclude the owner from recovering the same.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 531.

12. *The Emperor Justinian to Julian, Prætorian Prefect.*

With the intention of disposing of the ambiguity of the ancient law, We decree that when anyone has left an usufruct to his wife, or to any other person, to be enjoyed for a certain time until his son or someone else shall become of age, the usufruct shall stand for the time prescribed by the testator, whether the person with reference to whose age it was established arrives at that age or not, for the testator did not have the life of the individual, but a certain specified term in view, unless he

to whom the usufruct was bequeathed should die; for then it would be impossible for the usufruct to be transmitted to his successors, as it is an undoubted rule of law that an usufruct is absolutely extinguished by death.

Where, however, the condition was inserted that it would continue to exist while the son, or anyone else remained insane, or under other similar circumstances the result of which was uncertain, and the said son or other party concerning whom the provision was made should recover his senses, or the condition should be complied with, the usufruct will be terminated. But if the person referred to should die while still insane, then the usufruct will continue to exist, as it would be considered to have been bequeathed for the life of the usufructuary, since it was possible that the testator had in mind its continuance during the entire time of the life of the usufructuary, rather than that the insane person should recover his mental faculties, or the condition be complied with; and it is perfectly equitable that the usufruct should be extended during the lifetime of the parties alluded to; for, if the usufructuary should die before the condition had been complied with, or the insanity ended, it would be extinguished; and therefore it is just for it to be prolonged during the life of the usufructuary, even if the insane person should die before him, or the other condition fail to be executed.

Given at Constantinople, on the *Kalends* of August, during the fifth Consulate of Lampadius and Orestes, 530.

13. *The Same to the Same Julian, Prætorian Prefect.*

As a doubt arose in ancient times, when the usufruct of a house was bequeathed, in the first place (as the instances are similar), whether the right of lodging referred to the use and usufruct or to neither of them, that is to say, to a peculiar right and a special privilege, and whether the person to whom the right of lodging had been bequeathed could afterwards lease the same, or claim for himself the ownership of the property, We, for the purpose of disposing of the disputes of litigants, have removed all such doubts by the following concise opinion. Where anyone has bequeathed a lodging, it appears to Us to be the more humane opinion to also grant to the legatee the right to lease it, for what difference does it make whether the legatee himself remains there, or gives it up to another for the purpose of receiving compensation? This is much more apparent if he left the usufruct of the dwelling, as it gives rise to greater difficulty where the name usufruct is added, for We do not desire that the lodging should take precedence of the usufruct. The legatee should not expect to obtain the ownership of the right of residence, unless he can prove by the clearest evidence that the ownership of the

house was also left to him, for then the will of the testator must in every respect be obeyed.

We decree that this decision shall apply to all places in which a right of habitation can be established.

Given on the eighteenth of the *Kalends* of October, during the fifth Consulate of Lampadius and Orestes, 530.

14. *The Same to the Same Julian, Prætorian Prefect.*

Where anyone bequeathed a tract of land, or any other property to another by will, it was formerly doubted to what extent the usufruct would remain with the heir, and whether a legacy of this kind would

be valid. Some authorities thought that it would be void, for the reason that the usufruct could never return to the ownership, but would always remain with the heir, and they probably held this opinion because the second heir and all other successors appeared to be the heirs of one person, and therefore an usufruct of this kind, in accordance with the ancient distinction, could not be extinguished in the ordinary way. Others, however, thought that a legacy of this description should not be rejected.

In order to put an end to all such disputes, We decree that such a legacy shall be valid, and such an usufruct shall be extinguished with the death of the heir, or shall be terminated if he loses it in any other lawful manner, for wherefore should an usufruct of this kind enjoy such a privilege that it alone can be excepted from the general rule which governs the extinction of usufruct? It is perfectly clear that there is no good reason for this opinion, and therefore We, by directing that the usufruct shall be terminated and returned to the ownership, and the legacy be valid, have disposed of all this ambiguity in very few words.

Given on the thirteenth of the *Kalends* of October, during the fifth Consulate of Lampadius and Orestes, 530.

15. *The Same to the Same Julian, Prætorian Prefect.*

A disagreement arose among the jurists of ancient times, when an usufruct was acquired by a slave for his master, and, on account of the occurrence of certain events (for many unforeseen changes take place in the affairs of mortals), part of the said slave comes into the possession of another person, whether the entire usufruct, which was formerly held by a single individual through the said slave, continued to belong to him, or whether it was entirely extinguished, or was divided, and only a portion of it remained under the control of him who formerly enjoyed it all.

Three opinions were given on this point; one was to the effect that the entire usufruct was diminished by the alienation of the slave; another, that the usufruct was only diminished in proportion to the alienation of the slave;

the third, that a share of the slave could be alienated, but that, nevertheless, the entire usufruct would belong to the person who formerly owned the entire slave. We find that the eminent legal authority Salvius Julianus adopted this last opinion.

In order to dispose of this matter, We have decided to accept the opinion of Salvius Julianus, and of the others who agreed with him, who considered it more humane that the retention and not the destruction of the usufruct should be considered, and hold that, even if a part of the slave was alienated, still no portion of the usufruct will be extinguished; but it will, in accordance with its nature, remain intact and unimpaired, and that it will be preserved just as it was in the beginning, without being affected in any way by art occurrence of this kind.

Given on the tenth of the *Kalends* of October, during the fifth Consulate of Lampadius and Orestes, 530.

16. *The Same to the Same Julian, Prætorian Prefect.*

It was decided by the ancients that there were many causes for the extinction of an usufruct; for instance, the death of the usufructuary, loss of civil rights, non-user, and many others equally well known. No question, however, existed with reference to the usufruct itself; but doubts arose concerning the personal action which originated from it, whether the usufruct was conveyed by a stipulation, or had been left by will. All the authorities, however, agreed that it was extinguished by the death of the usufructuary, and by the forfeiture of civil rights, but they differed as to whether the right of personal action was extinguished by non-user, if the usufructuary failed to claim the usufruct for one or two years.

(1) In order to remove these doubts, We hereby decree that not only the action which arises from the usufruct, but even the right itself shall not be lost by non-user, but only by the death of the usufructuary or by the destruction of the property; but that anyone shall continue to hold intact as long as he lives an usufruct which he may have acquired, unless an exception based on prescription is pleaded against him, which can be done even if he claims the ownership, for this will exclude him whether he is present or absent.

Although innumerable accidents occur in the affairs of mortals, on account of which men cannot continue to hold property which they have, it is doubly hard to lose, through difficulties of this kind, what one has once had in his possession.

(2) We, however, do not permit our subjects to suffer injury through every kind of loss of civil rights, for if you are a son under paternal control, and have an usufruct which has been acquired from your *castrense peculium*, and to which your father has no right, why should you lose by emancipation what you have in your possession? But, according to what has been stated, it

will now only be lost when the usufructuary dies, or the property is destroyed; and as long as he has breath, or the substance of the property exists, the usufructuary will continue to exercise his right, unless barred by the above-mentioned exception, or where he has suffered such a loss of civil rights as deprives anyone of freedom or Roman citizenship; for, under such circumstances, the usufruct will be absolutely extinguished, and will return to the ownership of the property.

Given on the *Kalends* of October, at Constantinople, during the fifth Consulate of Lampadius and Orestes, 530.

17. *The Same to John, Prætorian Prefect.*

The following question, taken from the books of the Sabinians, has been referred to Us. A doubt having arisen whether an usufruct acquired by a slave, or a son under paternal control, will continue to exist after the greater or intermediate loss of civil rights by the son, or after his death or emancipation, or after an alienation of the slave or his death or manumission, We decree that, in cases of this kind, even if the said slave, or son under paternal control, should be placed in either of the aforesaid positions, the usufruct which was obtained by the father or the master through the above-mentioned persons shall not be extinguished, but shall remain intact.

Nor, even if the father should suffer either the greater or the intermediate loss of civil rights, or should be removed by death, will the usufruct be lost; but it will belong to the son, even if he was not appointed an heir by his father, for the usufruct acquired through him will remain under his control after his father's death; as it is very probable that the testator, in bequeathing the usufruct, had the son rather than the father in his mind.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 541.

TITLE XXXIV.

CONCERNING SERVITUDES AND WATER.

1. *The Emperor Antoninus to Calpurnia.*

If you think that you have any right of action against the person who rebuilt his house in a different way than it formerly was, and which now interferes with your lights, you will not be prevented from applying to the court in the usual manner. The judge will be aware that custom observed for a long time takes the place of a servitude, provided the party who makes complaint does not hold possession by violence, or clandestinely, or under a precarious title.

Given on the third of the *Ides* of November, during the Consulate of Gentianus and Bassus, 212.

2. *The Same to Martial.*

If you have conducted water through the premises of Martial, with his knowledge, for the time prescribed by

law for the establishment of a servitude, you have acquired it. If, however, the use of the land was forbidden to you for that period of time, you will, in vain, ask that the expenses incurred by you for that purpose be refunded to you; for any work performed on the land of another belongs to the owner of the same, as long as it remains in the same condition.

Given on the *Kalends* of July, under the Consulate of Lætus and Cerealis, 216.

3. *The Emperor Alexander to Ricana.*

The right to conduct water through the field of a neighbor, as well as other servitudes, can be established in a province, if all the formalities required for the creation of servitudes have previously been complied with, as agreements made between contracting parties should be carried out; therefore you will not be ignorant that where former possessors could not legally prevent water from being conducted through their premises, the same land charged with the same servitude will pass to purchasers.

Given on the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Eĭlianus, 224.

4. *The Same to Cornelius.*

The Edict of the Prætor does not permit water, whose source is on the ground of another, to be conducted on the land of someone else, without the consent of him to whom the use of said water belongs.

Given on the *Ides* of August, during the Consulate of Maximus, Consul for the second time, and Eĭlianus, 224.

5. *The Emperor Philip to the Soldier Lucian.*

If your opponent has unlawfully constructed anything which interferes with the servitude owing to your house, the Governor of the province shall take care to restore everything to its former condition, and cause satisfaction to be made for the damage produced, in accordance with its seriousness.

Given on the *Kalends* of February, during the Consulate of Pręsens and Albinus, 247.

6. *The Emperor Claudius to Priscus.*

The Governor of the province will not permit you to be deprived of the use of water which flows from a spring which you allege belongs to you, contrary to the rule established by custom; as it would be hard, and almost cruel, for a water-course which arises on your premises to be unjustly used on those of your neighbors, when your own land has need of it.

Given on the seventh of the *Kalends* of May, during the Consulate of Claudius and Paternus, 270.

7. *The Emperors Diocletian and Maximian, and the Cęsars, to Julian, Prætorian Prefect.*

If it can clearly be shown that the right to make use of water flowing from certain places on certain lands has

been established by ancient custom and constant use, Our deputy shall provide that no innovation be made contrary to this ancient rule and long-observed custom.

Given on the fourth of the *Nones* of May, during the Consulate of Maximus, Consul for the second time, and Acquinus, 286.

8. *The Same, and the Cæsars, to Anicetus.*

If your house does not owe a servitude to the land of your neighbor, the owner of the latter cannot prevent you from raising your building higher. If Julian should be convicted of having, either by violence or clandestinely, opened a window in your wall, he can be compelled to remove the work at his own expense, and restore the wall to its former condition.

Given on the *Kalends* of January, during the above-mentioned Consulate, 293.

9. *The Same, and the Cæsars, to Zofimus.*

If Heraclius has built the wall of his house higher than he should have done because of a servitude due to you, his neighbor, he can be compelled by the Governor of the province to remove the new work at his own expense; but if it is not proved that you are entitled to a servitude, your neighbor cannot be forbidden to raise his house to a greater height.

Given on the fifth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 293.

10. *The Same, and the Cæsars, to Nemphydus.*

If the Governor should ascertain that you are entitled to the servitude of conducting water, and he does not find that you have lost it by nonuser during the time prescribed by law, he must take measures to enable you to again enjoy your right. Where, however, it is not proved that this is the case, the owner of the land cannot be prevented from retaining the water on his own premises, after having done work for that purpose in such a way that your field will not be irrigated.

Given on the eleventh of the *Kalends* of February, during the Consulate of the Cæsars, 294.

11. *The Same, and the Cæsars, to Aurelian.*

A neighbor is not permitted to walk or drive through the land of another who does not owe him a servitude, but no one can be legally prevented from making use of the public highway.

Given on the eleventh of the *Kalends* of November, during the Consulate of the Cæsars, 294.

12. *The Same, and the Cæsars, to Valeria.*

Not the extent of the land, but the nature of the servitude, determined the course of the water.

Given on the third of the *Kalends* of January, during the Consulate of the Cæsars, 294.

13. *The Emperor Justinian to John, Prætorian Prefect.*

As an usufruct is extinguished by non-user during the term of two years in the case of land, and in a year where movable property or that which can move itself is concerned, We do not allow a right of this kind to be lost in so short a time, but We grant the terms of ten and twenty years for its extinction, and We decree that this rule shall apply to other servitudes, so that all servitudes cannot be lost by nonuser in two years (because they are always attached to the soil), but that they can be lost in ten years, when the parties are present, or in twenty when they are absent, in order that the rule may be the same in all cases of this kind, and all differences be abolished.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 531.

14. *The Same to John, Prætorian Prefect.*

The following point was discussed in the Sabinian Books: A certain man made an agreement with his neighbor to permit him to pass through his fields, or to allow his workmen to do so, and agreed that he should have this right of way for only one day in five years, and be permitted to go into his woods and cut down trees, or to do anything else that he might consider to be necessary.

The question was asked when a servitude of this kind would be lost through failure to use it, and some authorities held that if the grantee did not use the right of way during the first or second term of five years, the servitude would be entirely extinguished, as would be the case if it was not used for the term of two years, counting each period of five years as only one; others, however, were of a different opinion. It has seemed proper to Us to dispose of the matter as follows, namely, as We have already decided, in a law previously enacted, that servitudes shall not be extinguished by non-user during the term of two years, but during those of ten or twenty years, and, in this instance, if the grantee himself, or his employees, did not make use of the servitude for one day during the four terms of five years, they would then lose it through having neglected to avail themselves of it for twenty years, for he who does not use his right for so long a period of time will be too late if he desires its restoration.

(1) As that is a perfectly plain rule of law which forbids a neighbor to erect a building opposite the threshing floor of another, where, by trampling the dry grain, its benefit and utility may be secured, but, by the construction of such a building, the wind will be obstructed, and, in consequence, the straw cannot be separated from the grain, the wind being prevented by the building aforesaid from exerting its force everywhere, and, because of its position, the wind will be of no advantage to the threshing floor, We hereby decree that

no one shall be permitted either to build any house, or do anything else to prevent the wind from being made use of in a proper and sufficient manner for the above-mentioned purpose, and thereby render the threshing floor useless to its owner, and unavailable for the separation of grain.

Given at Constantinople, on the eleventh of the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XXXV.

CONCERNING THE AQUILIAN LAW.

1. *The Emperor Alexander to Glytonis.*

If you can prove that you have sustained any damage on account of someone having burned your forest, or cut down its trees, you can make use of the action of the Aquilian Law.

Given on the seventh of the *Ides* of November, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

2. *The Emperor Gordian to Mutianus.*

Having brought suit under the Aquilian Law against the person who demolished your house, or burned it, or damaged it in some other way, you can compel the damage to be made good by applying to a competent judge. Moreover, if you have been unjustly deprived of the use of water to which you are entitled, you can, by application to the same judge, cause your property to be placed in its former condition. Given on the eighth of the *Ides* of November, during the Consulate of Gordian and Aviola, 240.

3. *The Same to Dolentus.*

There is no doubt that you have a right not only to bring suit for damages under the Aquilian Law, but also to bring a criminal accusation against a person who has rendered himself liable by having accused you of being responsible for the death of your female slave.

Given on the fifth of the *Kalends* of April, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

4. *The Emperors Diocletian and Maximian, and the Cæsars, to Zoilus.*

According to the Aquilian Law, when anyone denies that he has committed wrongful damage and he is convicted of having done so, he can be compelled to pay double the amount.

Given on the fifteenth of the *Kalends* of May, at Heraclea, during the Consulate of the above-mentioned Emperors, 293.

5. *The Same, and the Cæsars, to Claudius.*

You can bring suit under the Aquilian Law for double the damage which you have sustained through your cattle having been unjustly shut up and killed, or allowed to perish by hunger.

Given on the fifteenth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors, 293.

6. *The Same, and the Cæsars, to Plenius.*

You are by no means prevented from bringing suit under the Aquilian Law, for damages which you allege you have sustained on account of cattle having been permitted to pasture on your land.

Given on the fifth of the *Kalends* of November, under the Consulate of the Cæsars, 294.

TITLE XXXVI.

CONCERNING THE ACTION IN PARTITION.

1. *The Emperors Severus and Antoninus to Martian.*

If the entire estate of your father has not been divided with the consent of the heirs, and no decision has been rendered or compromise made with reference to it, you can bring an action in partition for the division of the estate.

Given on the eighth of the *Kalends* of October, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Antoninus to Vitianus.*

If your wife, after the death of your father, to whom she had given her dowry, and whose heir you have become, should still be united with you in marriage, you will, in accordance with the provisions of the ancient law, have the right to bring an action in partition against your co-heirs for the purpose of obtaining the dowry, and you can retain it even if she should die afterwards, provided she is still married to you.

Given on the second of the *Ides* of February

3. *The Same to Rufus.*

Bring suit against your co-heirs for partition, in accordance with the prescribed legal formalities. If anything should be proved to have been taken from your share of the estate, the judge appointed to hear the case, having made proper investigation, shall render judgment in your favor, in accordance with the rules of law. An action for the crime of plundering the estate will, in vain, be brought by a co-heir, as he is considered to have been indemnified by the action in partition.

4. *The Emperor Alexander to Amonius.*

If, while you were a son under paternal control, and movable property, or that which can move itself, which might belong to *castrense peculium*, should be donated to you by your father, you will be entitled to it as part of your *peculium castrense*, which is not owned with your brothers; but the lands, although they may all have been conveyed to you by your father while you were in the army, will, nevertheless, not be included in your *peculium castrense*. Those lands which are acquired by a son under paternal control on account of his being in military service come under a different rule, as they constitute part of the *castrense peculium*.

5. *The Same to Statilia.*

It was in your husband's power, in a fit of anger, to change the provisions which he had made in his will with reference to his slaves, namely, that one of them should remain in perpetual servitude, and that the other should be sold in order to be taken away. Hence, if afterwards, his clemency should mitigate his anger (which, although it may not be proved by documentary evidence, still, nothing prevents its being established by other testimony, especially when the subsequent meritorious conduct of the said slave is such that the wrath of the master has been appeased), the arbitrator in the action in partition should comply with the last wishes of the deceased.

6. *The Emperor Gordian to the Soldier Pomponius.*

Property consisting of claims is not capable of division, for, according to the Twelve Tables, it is by operation of law divided into hereditary shares.

7. *The Same to Eilianus.*

Where the demand for the execution of a trust arises among coheirs, the Prætor or the Governor of the province, who has been appointed to decide the case, or the judge who is to hear the action in partition, shall exert himself to cause the will of the testatrix to be observed.

8. *The Same to Telesphorus.*

You can obtain a division of any property whatsoever which is held in common by you and your brother, and is derived from the estate of your father or mother, when the judge decides the action in partition.

9. *The Same to Verinus.*

There is no doubt that proceedings in partition are included among *bona fide* actions, and that your share of the estate (if you are entitled to any), will be increased by the addition of the profits.

10. *The Same to Telesphorus.*

When a testator divides his estate among all his heirs, and orders each of them to be content with certain lands, and the slaves which are attached to the same, it is clear that his will should be obeyed, if the authority of the Falcidian Law has not been violated; and when he thinks that all his slaves should be recommended to his heirs, he does not by the words that follow change the disposition which he had made of all of them, and his first division does not become void, as he is considered to have made this statement with reference to those to whom he had decided to leave the slaves by his will.

11. *The Emperor Philip, and the Cæsar Philip, to Antony.*

It is an established rule of law that the estates of intestate persons should be equally divided between the sons and daughters of the deceased.

12. *The Emperors Gallienus and Valerian to Rufus.*

The division made between you and your brother should not (as you allege), be considered void, because it

was not reduced to writing, as the certainty of the transaction sufficiently establishes the validity of the division.

13. *The Emperors Diocletian and Maximian to Saturninus.*

It is certain that the *peculia* of children should, after the death of their father, be placed with the remainder of the property of the estate in order to be divided. Your brother and co-heir, however, who contracted obligations during the lifetime of your father, who himself was ignorant of the fact, cannot sue you and your other brother and co-heir, except in order to obtain the amount from his *peculium*, for sidered to have made this statement with reference to those to whom he made the contracts.

14. *The Same to Hermianus.*

If, in the suit for partition by which the estate of your father was equally divided between your brother and yourself, nothing was specially agreed in case of the eviction of the property adjudged to each of you, that is to say that each one would assume liability for his share, the Governor of the province shall, by means of the action *præscriptis verbis*, compel your brother and co-heir to pay, in proportion to his share, any damage which you may have sustained through the eviction of the property.

Given on the eighth of the *Kalends* of September, during the Consulate of the above-named Emperors, 293.

15. *The Same to Theophilus.*

It has been decided that, when a division has been made by agreement of the parties, and possession follows by common consent, and the entire ownership of the property which was decided to belong to your father has been assured to him, you will have the right to claim said property, if you succeed to his estate. If, however, the division was based upon an ordinary agreement, the arbitrator appointed to decide your action in partition shall determine how the community of interest shall be apportioned among you.

16. *The Same to Heraclius.*

Children have no power to cause the will of their father to be set aside, if they cannot prove that it is inofficious, but where some legal formality is lacking in either the will or the codicil, and the deceased in certain statements made by him, declared that it was his will, even though succession on the ground of intestacy may have taken place, it is established by the authority of the law that, in an action for partition, the judge must comply with the will of the father, with the exception of the reserve prescribed by the Decree of the Senate.

17. *The Same, and the Cæsars, to Commodianus.*

It is perfectly certain that, where co-heirs make a division with one another, the rights of one of them who is absent and is ignorant of the fact will not be prejudiced,

and he can retain the undivided share which belonged to him in the beginning, to be deducted from all of the shares of the others, wherefore you can recover your share, with the income, by an action in partition, without apprehending any loss from the division previously made by the co-heirs.

Given on the seventh of the *Kalends* of December, during the Consulate of the above-mentioned Emperors, 293.

18. *The Same, and the Cæsars, to Domina.*

It has frequently been stated in rescripts that any property which a father has purchased in the name of the daughter shall be awarded to her by the arbiter in a suit for partition, if no contrary intention of the deceased is proved to have existed. Therefore, if you should become the heir of your father, and the property which you allege was purchased by him in your name still remains intact, you can avail yourself of the above-mentioned rescripts against your sister in proceedings brought before the Governor of the province.

(1) There is no doubt that any expenses incurred by one of the co-heirs in good faith, on account of an estate owned in common, should be adjudged to him in an action in partition, or in one based on voluntary agency.

Given on the seventeenth of the *Kalends* of ..., during the Consulate of the above-mentioned Emperors, 293.

19. *The Same, and the Cæsars, to Lisicratiis.*

It is a positive rule of law that, in a case in partition, where any of the heirs have appropriated any of the common property, or have caused it to deteriorate, they must be responsible for it, and indemnify the other heirs for the said property.

Given on the nineteenth of the *Kalends* of January, during the above-mentioned Consulate, 293.

20. *The Same, and the Cæsars, to Pactuela.*

In the action in partition, the price of property owned in common and sold as such by one of the heirs does not entirely belong to the vendor, but if the price was paid, his co-heir can bring the action on mandate against him; or if he ratified the sale, the action on the ground of voluntary agency will lie in his favor. Where, however, one heir, having sold the property, withholds the purchase-money, the hereditary shares of the others in the same can be recovered.

21. *The Same, and the Cæsars, to Fortunatus.*

Where, with the view to the future succession, a father divided his estate among his heirs, in accordance with his intentions, and, in any way whatsoever manifested his wishes with reference to the division among his heirs, the arbitrator appointed for the partition of the estate shall see that the reserve is made, as is done in the case of the Falcidian Law, and that a division of any property which the father did not leave to anyone

either generally or specially takes place equally among the heirs and, in rendering his decision, he shall always comply with the wishes of the father.

22. *The Same, and the Cæsars, to Dionysius.*

When one of several heirs, without the consent of his co-heirs but through mistake, retains possession of a slave owned in common, the others believing that the slave belongs to him, he does not make the slave his own, as every good title to the latter is lacking; but it is clear that each of his co-heirs has a right to his hereditary share in said slave.

23. *The Same, and the Cæsars, to Hermogenus.*

Although the action to which creditors are entitled against each heir to the extent of his hereditary share of the estate cannot be changed by an agreement for division, still, he who is bound by the agreement can be compelled to carry it out under the terms of the stipulation, and in accordance with law, and where no stipulation was entered into, he can be sued in an action *pręscriptis verbis*, if he is not proved to have violated his contract.

24. *The Same, and the Cæsars, to Socrates.*

A testator, by means of entreaties, implored his son to transfer conditionally to his brothers and certain other persons a tract of land which he had in his possession, and which formed a part of the estate; but, after the condition had been fulfilled, the son retained his hereditary share of the land as his fourth under the Falcidian Law, setting off against it what he had received from his co-heirs as a loan. In case anything should be lacking to make up his fourth, and, after deducting what was paid by the others for the said land any excess over and above the said fourth should remain, he will be compelled to surrender it.

Given on the fifth of the *Nones* of January, during the abovementioned Consulate, 294.

25. *The Same, and the Cæsars, to Diodes.*

If you should reject the estate of your grandfather, you cannot be forced to relinquish to your brothers property which you have acquired by a donation, or in any other way.

Given on the *Ides* of April, during the Consulate of Tuscus and Anolinus.

26. *The Emperor Constantine to Bassus, Prętorian Prefect.*

Where a will that has been begun but not completed, or a codicil, a father's letter, or any other written instrument is found which disposes of property in any way, or in any terms whatsoever, it should be executed only by the heirs themselves, no matter to what degree of relationship they may belong, whether they appear to be of the same degree, or have been emancipated, or are such as the Prętor calls to the succession; and in the

action in partition (although the children may be called to an intestate succession), with the exception of the amount reserved by the Decree of the Senate, the dispositions of the deceased must be observed, even if they were not made in accordance with the formalities prescribed by law.

When, however, in a will of this kind, the name of a person other than the children above designated is found, it is certain that the will should be considered void only with reference to the said person.

Given at Rome, during the second Consulate of Crispus and Constantine-Cesar, 321.

Extract from Novel 18, Chapter VII. Latin Text.

Provided there is attached to an instrument of this kind either the signature of the father himself, or those of all the children among whom the partition took place.

TITLE XXXVII.

CONCERNING THE DIVISION OF PROPERTY OWNED IN COMMON.

1. *The Emperor Antoninus to Lucan.*

If your brother sold only the share of the land which belonged to him, the sale cannot be revoked; but you must bring an action for the division of common property against him who owns the property jointly with you, and by this means you will obtain the entire tract of land, if you make a higher offer to your joint-owner for his share than he offers to you for yours. If, however, he should offer you more, you will take it and transfer your share to him. When the division of the land can conveniently be made without causing damage to anyone, you will acquire the part of it which may be adjudged to you. The following rule, however, should be observed, namely, that, after issue has once been joined, no one can alienate his share without the consent of all the other joint-owners of the property.

Given at Rome, on the *Kalends* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to the Soldier Avitus.*

If it should be proved before the Governor of the province that your brother gave in pledge certain vineyards owned by you in common, as he was unable to encumber to his creditor your share in said vineyards, the Governor shall order it to be restored to you, together with any crops which the creditor may have gathered from the same. The Governor must also provide for the division of the vineyards between you and your brother's creditor, and order him to deliver to you the portion which he received from your brother, after having been paid the price which he decides that your brother's share is worth; or he must order it to be transferred to your brother's creditor after your share has been appraised, and he has paid to you the amount of its valuation.

Given on the second of the *Ides* of September, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Same to Verecundianus.*

The duty of the arbiter appointed for the purpose of dividing property between you and your brother only has reference to such as is held in common by you and him; for any part of said property which he has sold will be owned in common by you and the purchaser, and you should ask for an arbiter for each one of them, if you wish the joint-ownership of said property to be dissolved. When, however, a tract of land is in such a place that it cannot conveniently be divided between the joint-owners, then a certain portion shall be adjudged to each one of them, after a just appraisal has taken place, and a mutual set-off for the price shall be made between them, so that if one receives a share of greater value he will be required to indemnify the other. Sometimes, even a purchaser who is a stranger is allowed to bid on the property, especially where one of the joint-owners acknowledges that his means are not sufficient to pay more than the very small sum offered by one of the others.

Given on the fifth of the *Nones* of May, during the Consulate of Julian and Crispinus, 223.

4. *The Emperors Diocletian and Maximian, and the Consuls to Heroda.*

If your sister, who is over twenty-five years of age, has divided property owned in common by yourself and her, it is settled that the division will stand, even though it is not proved to have been made either by written documents or other evidence. Where, however, she is a minor, and the time during which she is entitled to demand complete restitution has not yet expired, the Governor of the province, after proper investigation, shall determine whether complete restitution should be made on account of the division. He shall also provide that division shall be made of any property held in common by you, and shall require an account of the expenses to be rendered (if either of you has incurred any with reference to the said property), as well as an account of the profits, and of any fraud or negligence which may have taken place (as there is no doubt that all these things should be considered in an action brought for the division of property owned in common), in order that equality may be maintained in everything.

Given on the eighth of the *Ides* of February, during the Consulate of the Cesars, 294.

5. *The Same, and the Cesars, to Secundinus.*

No one can against his will be compelled to retain his interest in the joint-ownership of property, or a partnership, therefore, after application has been made to the Governor of the province, he will provide for the

partition of any property which he may ascertain is held in common by you and your sister.

Given on the eighth of the *Kalends* of September, during the Consulate of the Cæsars, 294.

TITLE XXXVIII.

MATTERS WHICH APPLY TO BOTH THE ACTION IN PARTITION AND THAT FOR THE DIVISION OF PROPERTY OWNED IN COMMON.

1. *The Emperor Antoninus to Marcus.*

It has been decided that a division of land has the effect of a sale. Given on the sixth of the *Kalends* of December, during the Consulate of Gentian and Bassus, 212.

2. *The Emperor Alexander to Euphrata.*

Even if someone who had no right to do so has appointed an arbitrator to make a division of property, still, if the partners gave their consent to such a division, each one of them has obtained the ownership of the property of which he acquired possession in accordance with the agreement.

Given on the sixteenth of the *Kalends* of November, during the Consulate of Alexander, Consul for the third time, and Dio, 230.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Seva.*

It is customary to come to the relief of persons who have attained their majority, where divisions of property have been made through fraud or deceit, or unjustly, and not as the result of a decision in court, because in *bona fide* contracts whatever is established to have been done unjustly shall be corrected.

Given on the sixteenth of the *Kalends* of July, during the Consulate of the same Emperors, 293.

4. *The Same, and the Cæsars, to Maximian.*

If your paternal uncle, while transacting business for himself, purchased a part of certain property owned in common, and did not thereby become a joint-owner of all of it, measures must be taken to indemnify you for the share to which you are entitled; and therefore it is contrary to the rules of law to demand that he shall divide with you the ownership of what he purchased.

Given on the sixteenth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 293.

5. *The Same, and the Cæsars, to Frontinus and Gaferio.*

With reference to the documents which you allege are jointly owned by your brother and yourself, the Governor of the province, having been applied to, shall determine with whom they should be deposited.

Given on the sixth of the *Ides* of February, during the abovementioned Consulate.

6. *The Same, and the Cæsars, to Thesidiana and Others.*

If you made a division of property with your paternal uncle, under the condition that he would swear that he had not been guilty of malicious fraud in the transaction, and he does not comply with what he agreed to, nothing can prevent you from claiming an undivided interest in the property which was the subject of the agreement, and was included in the division.

Given on the fifth of the *Kalends* of April, during the Consulate of the Cæsars, 294.

7. *The Same, and the Cæsars, to Severianus and Flavianus.*

If your brothers have encumbered their undivided interest in a tract of land without your consent, and the land comes into your hands in accordance with the contract for partition, without any mention having been made of the encumbrance, and the shares which belonged to the other joint-owners before the partition was made and to which the lien solely attached, are evicted, you can bring the action *præscriptis verbis* against your brothers, under the stipulation, if one was made; otherwise you can sue for the value of your interest; for if you, being aware of the lien on the land, accepted the ownership of the same, you will not have the power to proceed against your brothers, unless you prove that the guarantee against eviction was made by a formal statement, or promised by an agreement.

Given at Nicomedia, on the second of the *Nones* of December, during the Consulate of the Cæsars, 294.

8. *The Same, and the Cæsars, to Nicomachus and Others.*

If a division of property owned in common, made by you after reaching the age of twenty-five years, was perfected by the relinquishment or transfer of possession, and this was done in good faith and by common consent, it cannot be abrogated.

Given on the *Nones* of December, during the Consulate of the Cæsars, 294.

9. *The Same, and the Cæsars, to Demetrianus.*

The action in partition, or the one for the division of property owned in common, can only be brought while joint-ownership of the property exists.

Given at Nicomedia, on the sixth of the *Ides* of December, during the Consulate of the Cæsars, 294.

10. *The Same, and the Cæsars, to Gallicanus.*

Where all the property to be divided is specifically stated in a written will, nothing will prevent the heirs from demanding that any which the testator did not mention be divided.

11. *The Emperor Constantine to Cærus.*

The division of land should be made in such a way that slaves or serfs attached to the soil may pass to each

heir without being separated, so that the relationship or affinity of those most closely connected may remain unimpaired; for who can suffer children to be separated from their parents, sisters from their brothers, and wives from their husbands? Therefore, if anyone should, contrary to law, separate either slaves or serfs connected in this manner, he shall be compelled to again unite them.

Given on the third of the *Kalends* of May, during the Consulate of Proculus and Paulinus, 334.

12. *The Emperor Justinian to the Senate.*

The following provisions have appeared to Us to be in perfect conformity to justice. If anyone, having either signed or given an antenuptial donation in behalf of his son, or a dowry in behalf of his daughter, provided that what he gave may revert to him, either under the terms of a stipulation, or by the law, or if someone else, having given a dowry or an ante-nuptial donation, in such a way that the tenor of the stipulation or the force of the law will cause it to come into the hands of the father, and he, having made a will, appoints either his children or strangers his heirs, and makes no disposition whatever of the property which has reverted to him, or come into his hands in this manner, and other children of his are found who have obtained a part of their father's property during his lifetime, either as an ante-nuptial donation or as a dowry, or on account of service in the army, which (as long as a will stands), they cannot be compelled to place in the mass of the estate, then the son or daughter aforesaid shall have as his or her separate property whatever reverted to their father or came into his hands, which shall be computed as any other profit; so that, in the present instance, he or she will only be entitled to as much as his or her brothers obtained from their father by the means which We mentioned above, and they will not be compelled on account of the will to place it in the general mass of the estate.

But where nothing was given by their father to any of their brothers, they cannot claim this share for themselves, but it becomes, as it were, a part of the paternal estate to be divided among all the heirs, in accordance with the terms of the will, and this only applies where the distribution of the estate of the father was made among the children. If, however, foreign heirs were appointed, and nothing was stated by the testator in his will with reference to this portion of his estate, then the son or the daughter will undoubtedly be entitled to whatever reverted or came into their father's hands as a preferred legacy. When what was given to the brothers was less than what came into the father's hands in this way, an equal amount shall be reserved, and the balance having become a part of the paternal inheritance, shall be divided in accordance with the usual method of distributing estates.

It should undoubtedly be observed that, if the amount which the father received from this source is less than that which he gave to his children, the whole of it will belong to those on whose account the property reverts to the father. Therefore, We desire that those rules which We have declared apply to the father shall also be applicable to the grandfather, and the paternal or maternal great-grandfather, as well as to the mother, the grandmother, and the paternal or maternal great-grandmother.

Given at Constantinople, on the eleventh of the *Kalends* of August, during the fifth Consulate of Lampadius and Orestes, 550.

TITLE XXXIX.

CONCERNING THE ESTABLISHMENT OF BOUNDARIES.

1. *The Emperors Diocletian and Maximian, and the Cæsars, to Nicephorus.*

The owner of a tract of land cannot be prevented from selling a certain portion of it after having removed the boundaries and retaining the remainder. The purchaser cannot claim a greater amount of land than that which came into his hands in accordance with a contract of sale, under the pretext of certain boundaries existing during the time preceding the sale.

Given at Nicomedia, on the *Ides* of December, during the Consulate of the above-mentioned Emperors, 293.

2. *The Same, and the Cæsars, to Tatian.*

The difference of succession, and the consent of neighbors can, by either adding to or taking from lands, frequently change the position of ancient boundaries.

Given at Nicomedia, on the ninth of the *Kalends* of January, under the Consulate of the above-mentioned Emperors, 293.

3. *The Emperor Constantine to Tertullian.*

Where anyone first raises a question concerning the boundaries of his property, and it has reference to the contest of the ownership of the same, the question of possession must first be disposed of, and then the surveyor will be directed to go to the place, so that the truth having been ascertained, the controversy relating to the boundaries may be terminated. If, however, the other party should absent himself, in order that this question may not be decided, the surveyor shall, nevertheless, proceed to go to the place designated by the Governor of the province, and take his measurements in the presence of the adverse party.

Given at Verona, on the sixteenth of the *Kalends* of March, during the Consulate of Gallicanus and Symmachus, 230.

4. *The Same to Bassus, Urban Prefect.*

If it should be established that someone who raised a question as to a boundary intended to seize the property

of another before a decision had been rendered in the case, he shall lose not only what he wrongfully claimed, but (that everyone should be content with his own property and not desire that of another), if he who is the aggressor, when demanding the land, should be defeated in court, he shall lose as much land as he attempted to take from the other party.

Given on the thirteenth of the *Kalends* of July, during the Consulate of Gallicanus and Symmachus, 330.

5. *The Emperors Valentinian, Theodosius, and Arcadius to Neoterius, Prætorian Prefect.*

The exception of five feet having been abolished, persons shall be free to bring actions for the determination of the boundaries, or the ownership of property of these dimensions.

Given on the eighth of the *Kalends* of August, during the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

6. *The Emperors Theodosius, Arcadius, and Honorius, to Rufinus, Prætorian Prefect.*

For the purpose of finally disposing of all fraudulent schemes and machinations, We decree that so far as the determination of boundaries is concerned, not the prescription of long time, but only that of thirty years shall be applicable.

Given on the second of the *Nones* of November, during the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

TITLE XL.

CONCERNING PERSONS INTERESTED IN THE SAME CASE.

1. *The Emperor Julian to Secundus, Prætorian Prefect.*

All those exceptions having been abolished and rejected to which litigants were accustomed to have recourse, under the pretext that other parties were interested, in order to protract the decision of the case, permission is hereby granted to any of them (whether all are under the same jurisdiction or reside in different provinces), to bring the action or file the answer, without requiring the presence of one or more of the others, who may be interested in the suit.

Given on the third of the *Nones* of September, during the Consulate of Mamertinus and Nevita, 362.

2. *The Emperors Valentinian and Valens to Sallust, Prætorian Prefect.*

After an action has been properly begun, a matter in which several persons are interested can proceed without a mandate, even where several of the parties are absent, if those present are prepared to furnish security that they who are absent will ratify what is done; or (if suit should be brought against them), that they will furnish security that the judgment will be paid.

Given on the sixth of the *Ides* of December, during the Consulate of the Divine Jovinian and Veronian, 364.

TITLE XLI.

CONCERNING NOXAL ACTIONS.

1. *The Emperor Alexander to Marcellus.*

If the sum of money which you allege was stolen from the estate of your father by a person who has proved to have been free, you will not be prevented from bringing suit to recover it, or one to compel its production in court; for while, in other instances, the damage follows the person, and a slave who has been manumitted is liable in an action of theft, which does not lie in favor of an heir, still, when a slave steals anything from his master, although he commits a theft, the action of theft does not arise, nor can it be brought against him, even after he has been manumitted, unless he continues to retain possession of the stolen property after his liberation.

Given on the thirteenth of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and .Ælianus, 224.

2. *The Emperor Gordian to Quintilian and Others.*

If your slaves, without your knowledge, or even against your express prohibition, have secretly cut down trees, penalty for which is prescribed by the law enacted with reference to forests, you need not apprehend that you will be compelled to surrender the slaves, in addition to being liable for the damage sustained, for where masters are ignorant of the crimes of their slaves, or have forbidden them to perform certain acts, if they should be sued in a noxal action, judgment shall be rendered against them to either surrender the slaves by way of compensation, or to retain them under their control, after having satisfied the judgment for damages.

Given on the third of the *Nones* of June, during the Consulate of Gordian and Aviola, 240.

3. *The Emperors Diocletian and Maximian, and the Cæsars, to Eutychius.*

If you are prepared to formally accuse a slave of kidnapping, you will not be prevented from appearing before the Governor of the province; or, if you should prefer to bring the noxal action, or that of theft against the master of the said slave, the Governor of the province will take cognizance of your case; but you are aware that if you should elect to sue the master, and cannot prove that the crime was committed with his consent, which you attempted to do, he will have the choice either of surrendering the slave by way of reparation to indemnify you for the damage, or of paying the penalty.

Given on the fifth of the *Nones* of October, during the Consulate of the above-mentioned Emperors, 295.

4. *The Same, and the Cæsars, to Sosius.*

If a slave, without the knowledge of his master, or even if he is aware of it but is unable to prevent it, takes

away your property with violence, you can bring suit for quadruple damages against his master before the Governor, if the available year has not yet elapsed; and if it has elapsed, you can bring the simple noxal action against him. When he prefers to surrender the slave by way of reparation, you will still not be prevented from suing him for the amount which came into his hands from the robbery; for if the act was committed with his knowledge and he could have prevented it, he should, by all means, be compelled to pay the amount of the judgment, without taking into consideration the surrender of the slave. Where, however, you intend to bring an accusation for public crime, on account of your wife having been carried away by a slave, you should bring it not against the master, but against the slave who you allege perpetrated the offence.

Given on the eighteenth of the *Kalends* of September, during the Consulate of the above-mentioned Emperors, 299.

5. *The Same, and the Cæsars, to Menophilus.*

If a slave, with the aid and advice of his master, has taken from you, by non-manifest theft, a female slave and other property, as a civil action cannot exist between a slave and a freeman, you can proceed against the master in a penal action for double damages on account of this crime; and so far as the other property is concerned, you can bring a real action to recover it or a personal action for its value.

Given on the fifth of the *Kalends* of April, during the above-mentioned Consulate, 294.

TITLE XLII.

CONCERNING THE ACTION TO COMPEL THE PRODUCTION OF PROPERTY IN COURT.

1. *The Emperor Alexander to the Soldier Crescens.*

If the ownership of the female slave, with reference to whom you have brought an action, belongs to your mother, she could not lawfully have been sold by your father; and if you claim her for yourself, the Governor of the province shall order her to be produced in order that the truth of the matter may be judicially ascertained.

Given on the *Kalends* of May, under the Consulate of Alexander, 227.

2. *The Same to Cyrus.*

Where a demand is made for a slave accused of some crime, the master should, by means of the action for that purpose, be compelled to produce him in court.

Given on the eleventh of the *Kalends* of December, during the Consulate of Alexander, 227.

3. *The Same to Felicissima.*

If you have now the right to bring suit for the production of property, or the one for its recovery, this cannot be contested on the ground that it has been extinguished, because, some time previously, judgment

was rendered against you in an action for the production of property, since the present case is different on account of the proceedings having been changed.

Given on the *Kalends* of December, under the Consulate of Maximus, Consul for the second time, and Eilianus, 234.

4. *The Same to Flacilla.*

If you can prove that documents belonging to you are in the hands of the adverse party, and the latter does not produce them, the judge will be aware that you should be granted power to tender him the oath in court.

Given on the third of the *Kalends* of March, during the Consulate of Agricola and Clementinus, 231.

5. *The Emperor Gordian to the Soldier Sabinianus.*

The opinion was very properly given by the jurist Modestinus, whose authority should not be despised by you, that not only the party in possession is liable to the action for the production of property in court, but also he who has been guilty of fraud to avoid producing it.

Given on the second of the *Ides* of February, during the Consulate of Gordian and Aviola, 240.

6. *The Emperor Philip to Palemonides.*

If, after a formal accusation has been made by you to the effect that the adverse party has seized documents necessary to establish your rights, and you bring a criminal action against him, you must prove the truth of your allegations. When, however, you bring suit for the production of the property in court, you will be obliged to proceed in the way which is customary in such cases.

Given on the second of the *Ides* of March, during the Consulate of Peregrinus and Emlilianus, 245.

7. *The Emperors Diocletian and Maximian, and the Cæsars to Vitalianus.*

Where anyone who is required to produce property in court has the power to do so, but commits negligence or fraud in obeying the order, and then produces it in a damaged condition, the equity of the proceeding demands that although an action to compel the production cannot be brought, still, one *in factum* can be granted against him.

Given on the sixteenth of the *Kalends* of June, during the Consulate of Maximus, Consul for the second time, and Acquinus, 287.

8. *The Same, and the Cæsars, to Photinus.*

If the person whom you mentioned in your petition has loaned or deposited your property, you can bring either the action for its production, or the one for its recovery against whomever has possession of the same. But if an agreement was made that the property should be restored to you, and you have succeeded him who deposited it, you cannot, on the ground of hereditary right, be prevented from availing yourself of the action of deposit.

If, however, you have not title to the estate under either the civil or prætorian law, understand that, strictly speaking, you have legally no right of action based on the contract executed by him against whom you ask for relief, but an equitable action of deposit will be granted you, in accordance with justice.

Given at Heraclea, on the fifth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors, 293.

9. *The Same, and the Cæsars, to Faustinus.*

If you prove that you have paid a legal debt to the person to whom it was due under some contract, in the presence of the Governor of the province, he will order your notes, under which nothing more can be claimed, and the instruments evidencing the contract, to be produced and returned to you, as you have naturally been released from liability.

Given on the eighth of the *Kalends* of September, during the Consulate of the above-mentioned Emperors, 294.

TITLE XLIII.

CONCERNING GAMBLERS AND GAMES OF CHANCE.

1. *The Emperor Justinian to John, Prætorian Prefect.*

The practice of games of chance is very ancient, and has been permitted to soldiers when they were not otherwise occupied, but, having been adopted by innumerable foreign nations, it has been the cause of many tears, for persons who were not professional gamblers and did not understand the game, playing day and night, lost all their property by staking their money, their ornaments, their precious stones, and their gold. As the result of this they are ordinarily led to blaspheme the name of God and curse Him, and execute instruments.

Therefore, having in view the welfare of Our subjects, We decree by this general law that no one shall be permitted to gamble either in public or private houses, or other places, or to watch those who do; and if this law should be violated no prosecution shall follow, but any amount which has been paid shall be returned, and can be recovered by proper actions, either by the person who paid it, or by their heirs — even if they have neglected to demand it — or by their attorney or their parents; or, if they should fail to do so, the Treasury can recover it by its representatives, notwithstanding the prescription, unless it has run for fifty years.

The bishops of the different dioceses shall see that this law is executed, and shall have the right to avail themselves of the aid of the Governors of provinces, and they shall regulate the following five games, namely: *comon-belon*, *comon-diaulomolon*, *rhindalca*, *kayron*, and *ecperusan*. We do not, however, permit the stakes in these games to exceed one *solidus*, no matter

how wealthy the persons may be, and if anyone should happen to be beaten, he will not sustain a serious loss, for We not only legally regulate wars, but also matters connected with amusement.

We do not prescribe a penalty for those who violate this law, still, We grant authority to bishops to make an investigation, and demand the aid of Governors to enforce it; and We absolutely forbid the game called "wooden horses" to be played, and if anyone should lose while engaged in it, he can recover what he has lost, and the houses in which persons are found to be gambling in this manner shall be confiscated. When the person who paid the money is unwilling to have it refunded, Our Procurator shall claim it, and employ it for public purposes. Judges shall likewise see that all persons abstain from blasphemy and perjury (which, indeed, should be prevented by their authority).

TITLE XLIV.

CONCERNING RELIGIOUS PLACES, AND THE EXPENSES OF FUNERALS.

1. *The Emperor Antoninus to Dorita.*

If the remains of your son should be threatened by the waters of a river, or any other just and necessary cause should arise, you can transfer them to another place, with the consent of the Governor of the province.

Given on the eighth of the *Kalends* of November, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Same to Hilarianus.*

When a dead body has been brought on land belonging to you, either against your consent or without your knowledge, or a stone is placed there, this does not make the place religious. If, however, anyone should bring a corpse upon your land with your consent, the place will thereby become religious, as there is no doubt that a monument cannot be erected, nor any place be rendered religious, if the owner forbids this to be done.

Given on the *Kalends* of May, under the Consulate of Acquinus, Consul for the second time, and Anulinus, 217.

3. *The Emperor Alexander to Rimus.*

The Governor of the province shall order that the legacy left you by the deceased shall be paid, as well as what you can prove that you have expended for the funeral, or for the deceased while he was ill, in accordance with the judgment of a good citizen.

Given on the fifth of the *Nones* of July, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

4. *The Same to Lucian.*

If by the term "monument" you mean a sepulchre, you are informed that no one can claim it by the right of ownership; but where it belongs to the family the title to

it will be vested in all the heirs, and in a partition it cannot be allotted to any individual one. Profane places, however, which are near it, and have always been connected with buildings intended for the use of men, will belong to the person to whom the structures to which they appear to have been attached are granted by the partition.

Given on the sixth of the *Nones* of November, during the Consulate of Maximus, Consul for the second time, and Ælianus, 224.

5. *The Same to the Soldier Cassius.*

A father and a mother who are the heirs of their son, who was a soldier, should not fail to comply with his will, in which he provided for the erection of a monument to himself, for although all complaints on this ground have been abolished by former constitutions, still, the parents cannot avoid experiencing regret, and being conscious that they have neglected their duty by failing to comply with the last will of the deceased.

Given on the eighth of the *Kalends* of May, during the Consulate of Julian and Crispinus, 225.

6. *The Same to Primitivus and Others.*

The inscriptions on monuments do not transfer to freedmen either the right of sepulture, or the ownership of a place which is not religious; but you can take advantage of prescription for a long time, if there was good ground for it in the beginning.

Given on the eighth of the *Kalends* of July, during the Consulate of Julian and Crispinus, 225.

7. *The Emperor Gordian to Claudius.*

You are not forbidden to place statues upon a tomb, or to decorate with ornaments a sepulchre which you allege that you have built, for everyone is perfectly free to avail himself of his right, provided that he does not do anything prohibited by law.

Given on the third of the *Kalends* of August, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

8. *The Emperor Philip to Julia.*

The right of sepulture in a family tomb does not extend to persons connected by affinity, or to mere blood-relatives who have not been appointed heirs.

Given on the sixteenth of the *Kalends* of July, during the Consulate of Peregrinus and Æmilianus, 245.

9. *The Same, and the Cæsar Philip, to Faustina.*

It is evident that a religious place should not be sold; but it is none the less certain that a field which is not religious, and adjoins a monument, is subject to the law as profane property, and hence can legally be alienated.

Given on the sixth of the *Kalends* of December, during the Consulate of Philip and Titian, 246.

10. *The Emperors Diocletian and Maximian, and the Cæsars, to Aquilina.*

If the body was not permanently committed to the tomb, you will not be prevented from removing it.

Given on the eighth of the *Ides* of February, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

11. *The Same, and the Cæsars, to Gaudentius.*

We do not forbid criminals to be buried who have suffered the punishment that they deserved.

Given on the eighth of the *Ides* of April, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

12. *The Same, and the Cæsars, to Victorinus.*

It was long since forbidden that the remains of deceased persons should be buried inside a city, lest the sacred right of citizens might be defiled.

Given on the third of the *Kalends* of October, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

13. *The Same, and the Cæsars, to Dionysius.*

The family, as well as the hereditary right of sepulture, extends also to foreign heirs. The family right, however, is vested in its members, even if none of them is an heir, but it is enjoyed by no one else who is not an heir.

Given on the third of the *Ides* of November, during the Consulate of the Cæsars, 294.

14. *The Emperors Valentinian, Theodosius, and Arcadius to Cynegius, Prætorian Prefect,*

No one can transfer a human corpse from one place to another without permission of the Emperor.

Given at Constantinople, on the third of the *Kalends* of March, during the Consulate of the Noble Youth Honorius and Evodius, 386.

THE CODE OF JUSTINIAN.
BOOK IV.

TITLE I.

CONCERNING PROPERTY LOANED AND THE OATH.

1. *The Emperor Antoninus to Herculianus.*

A case which has been decided by the tender of an oath by either the adversary or the judge, with the consent of the parties, or if the oath has been remitted, cannot be revived under the pretext of perjury, unless a special exception is made by this law.

2. *The Emperor Alexander to Felix.*

The contempt of the obligation of an oath has a sufficient avenger in God. It has been decided that, where anyone has sworn by the Emperor, and has perjured himself in the moment of excitement, he will not be liable

to any corporeal penalty, or for the crime of treason, according to the Constitutions of My Divine ancestors.

Given on the sixth of the *Kalends* of April, under the Consulate of Maximus, Consul for the second time, and Julianus, 224.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Sever a.*

In *bona fide* contracts, as well as in other cases, the decision must be made by the judge after proper investigation, by means of an oath in default of evidence.

Given on the tenth of the *Kalends* of September, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 226.

4. *The Same, and the Consuls, to Maxima.*

Even if a ward has tendered an oath to his guardian for the purpose of avoiding the action on guardianship, he is not forbidden to subsequently bring the same action.

Given during the *Kalends* of July, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

6. *The Same, and the Csesars, to Bessius.*

As you allege that the parties agreed that the question of descent and free birth should be decided by an oath, the Governor of the province, in accordance with the decree of the arbitrator, with reference to your agreement, shall decide in favor of the children of your maternal aunt.

Given on the fifth of the *Ides* of February, during the Consulate of Tiberian and Dio, 291.

7. *The Same, and the Czesars, to Eutyichianus.*

Neither a son, nor anyone else, can, against the consent of the owner of the property, cause her any prejudice either by bringing suit, entering into an agreement, or tendering an oath. Wherefore, if your son has transacted any business with reference to your property, and you have not ratified what he has done, this will be of no disadvantage to you.

Given on the *Ides* of November, during the Consulate of the abovementioned Emperors, 293.

8. *The Same, and the Ctesars, to Alexander.*

Whether the oath has been tendered to or by the plaintiff, or has been remitted, an action *in factum* will lie in his favor; as is the case with one for the execution of a judgment.

Given on the twelfth of the *Kalends* of May, during the Consulate of the Caasars, 294.

9. *The Same, and the Csesars, to Martian.*

If the plaintiff has tendered the oath, and there is no evidence that he has done this for the purpose of annoyance, the defendant will be required by the court either to make payment, to be sworn, or to have recourse to the oath of the plaintiff.

Given on the fifth of the *Kalends* of May, during the above-mentioned Consulate, 299.

10. *The Same, and the Csesars, to Protogenes.*

In an action of deposit which has been brought with reference to property delivered without any written instrument, the oath can be tendered just as in other *bona fide* proceedings.

Given on the fifth of the *Kalends* of December, during the Consulate of the Csesars, 300.

11. *The Emperor Justinian to Demosthenes, Prsetorian Prefect.*

If anyone should tender the oath, and, before it was taken, should recall it (as, for instance, where he has obtained other evidence), We order that he shall not, under any circumstances, be permitted to have recourse to it a second time; for it is perfectly absurd for him to do so, when he thought that he could reject it, and then again have recourse to it when he found that his other evidence was worthless; and the judges shall not hear persons who attempt to commit such injustice.

If, however, anyone should tender the oath, and then wish to revoke it, he should be permitted to do so, and to produce other evidence if he so desires; provided, however, that this permission shall only be granted him until the case is decided. After final judgment has been rendered, from which no appeal has been taken, or where it has been confirmed after an appeal, We do not permit the oath to be recalled, and evidence to be introduced by anyone, lest the case having been begun again, after its termination another action may arise.

Given at Chalcedon, on the fifteenth of the *Kalends* of October, during the Consulate of Decius, 529.

12. *The Same to Demosthenes, Prsetorian Prefect.*

Generally speaking, everything relating to oaths tendered in litigation either by the judge or by the parties must be definitely settled; for it has already frequently happened that judges impose the oath by rendering a decision, and, as an appeal was not taken, because those who were ordered to be sworn died before this could be done, the evidence in the case was lost; for there is a great deal of difference between the oath of an heir and that of the person from whom he derived his right. Hence, compelled by necessity, and desiring to bring all possible aid to the production of evidence, We issue the following decree. Every oath tendered by either the judges or the parties, in the beginning of the suit, while it is being tried, or at the time when judgment is rendered, shall be taken in the presence of the same judge, without waiting for his final decision, or without apprehension of an appeal.

(1) Where the oath has been tendered by the parties, and approved by the judge, or has been tendered to either party by the judge himself, and he to whom it was

tendered for some reason or other hesitates, or whether the party who tenders it does so, he to whom it is tendered shall be compelled to take it. If, however, he should refuse, the oath shall be considered as having been taken, and the case shall be decided without leaving any ground for appeal. For who will tolerate that anyone should have the benefit of an appeal from a decision which he himself was instrumental in having rendered?

(2) If, however, he to whom the oath was tendered either by his adversary, or by the judge, absolutely declines to take it, he shall have the right to refuse. But the judge, if he thinks that the oath ought, by all means, to be taken, can decide the case just as if the party who refused to be sworn had desired that he should do so; and he can examine the other points of the case or all of it, and it shall take its course without being interrupted by any obstacle. He, however, who was not willing to take the oath which was tendered him, -whether he states his reasons for this, or whether he is not heard, shall be entitled to the benefit of an appeal; and if the judge who presides when the appeal was argued should decide that the oath was properly tendered, and was not lawfully refused, the case shall remain unaltered. If, however, he should hold that the oath was not legally tendered, but was properly refused, he will then be permitted

to correct the opinion of the judge which was based, as it were, upon the oath being declined; and the party will in no way be prejudiced, or incur any unjust expense, and the course of the case from beginning to end shall not be interfered with, and shall be impartially weighed in the scales of justice.

(3) Whether the oath has been tendered or refused, the party who tendered it shall not be allowed the benefit of an appeal; as it would be too unjust that he who tendered the oath should be entitled to appeal merely for the reason that the judge granted his request.

(4) We prescribe these rules in this law for persons who are present, but those who are absent should not be neglected; hence, if the party to whom the oath was tendered is not present, the case should be conducted by an attorney, and it is necessary that the principal party should be granted a certain time to appear in court, in order that he may carry out what has been decided with reference to the oath; or if the judge should think it best, this can be done in the province where the aforesaid party lives, under the evidence of the plaintiff that the oath has either been tendered by him, or to him, or has been refused, so that the case may be definitely decided, no matter what course has been pursued.

Permission should also be given to the adverse party, either in his own proper person, or by his attorney, to be present when the formalities to be observed by the litigant to be sworn are complied with; or if he should

prefer to do neither, and, on the other hand, it is established by documentary evidence that the oath was taken, tendered, or refused, it is the duty of the judge to determine by whom the expenses of a proceeding of this kind should be paid, whether by both parties or only by one of them. No obstacle should arise for the decision of cases in a proceeding of this kind, but the other points or questions of the case must be examined by the judge, and after the documents concerning the oath have been placed in his hands, he must return to this subject, and, having disposed of it, pass to other matters. All other regulations, which have herein been established with regard to parties who are present, must also be observed in the case of those who are absent.

(5) We decree that in every instance in which the oath is taken, the judicial rules having reference to the rank of a person must be obeyed, and the oath shall be taken either before the judge himself, or in the house of the party who is sworn, or upon the Holy Scriptures, or in the Churches.

(6) In like manner, We direct that the rules relating to the oath of calumny, or of the re-tender of the oath which have been provided by the laws introduced either by Ourselves or Our predecessors, shall remain in full force; for these have been promulgated, not with view to abrogating the ancient laws in any way, but that whatever may seem to be lacking to them may be supplied.

Given on the third of the *Kalends* of November, during the Consulate of Decius.

13. *The Same to John, Prsetorian Prefect.*

Where anyone demands a legacy or a trust as having been left to him, and this does not appear by the will, the oath should be tendered to him by the heir, and he should swear that the legacy or trust has been bequeathed to him; and if he should obtain what he demanded under the will, and it should afterwards become clear that nothing was left him, the question was raised by the ancient authorities whether what was established by the oath should stand, or whether the party should restore what he had received; or whether if, in fact, the legacy or the trust had been left to him, We should give the heir permission to deduct the Falcidian portion, where there was ground for doing so.

The better opinion seems to Us to be that, in the first place, the legacy or the trust ought to be recovered from him, and that he should obtain no benefit from this act of perjury. If, however, what he swore to was found to be true, the Falcidian fourth could be reserved if there was good reason for it, in order that no one might by Our laws be afforded an opportunity to obtain an infamous profit as the result of his own crime.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the Consulate of Lampadius and Orestes, 532.

TITLE II.

WHERE A CERTAIN THING IS DEMANDED.

1. *The Emperors Severus and Antoninus to Modestinus.*

You do not ask what is just or customary when you request that you and your brother, who is your co-heir, shall be permitted to pay the debts of your father, not in proportion to your shares of the estate, but in accordance with the appraisal of the property left as preferred legacies; for it is a well-settled rule of law that the charges of an estate must be borne by the testamentary heirs in proportion to their hereditary shares, and not with reference to the benefit received. You, yourself, do not appear to be ignorant of this, as you have paid the creditors in proportion to your share of the estate in accordance with the rule of ancient law.

Given on the *Kalends* of July, during the Consulate of Chilo and Libo, 205.

2. *The Emperor Antoninus to Hermogenes.*

Although Asclepiades lent your money in his own name, having stipulated, however, that it should be paid to himself, you can by an action of mandate compel him to assign to you the right of action to enable you to recover it.

Given on the seventh of the *Kalends* of May, during the Consulate of Messala and Sabinus, 215.

3. *The Emperor Gordian to Sempronius.*

It has frequently been stated in rescripts that those who hold office in provinces cannot either themselves, or through persons substituted by them, lend money at interest during their terms of office.

Given on the eighth of the *Kalends* of September, during the Consulate of Gordian and Aviola, 240.

4. *The Emperor Philip and the Caesar Philip, to Maximus.*

If you have lent the money of anyone who is absent at interest, in his own name, and he disapproves of the transaction, you can bring the action of mandate, and the Governor of the province, upon your application, will give you his assistance. Likewise, if he should perceive that the mandate has ceased to have effect, he will not, on this account, refuse you an equitable action against the debtor.

Given on the fifteenth of the *Kalends* of March, during the Consulate of Prassens and Albinus, 247.

5. *The Emperors Diocletian and Maximian, and the Csesars, to Aristodemus and Proculus.*

If you did not accept the entire amount of the loan, or did not voluntarily bind yourself to your creditor by a stipulation, or you assumed the obligation by appearing

as surety for the principal debtor, although the money may have been paid only to one person, you will have no reason to fear that the creditor can sue you for money which he lent to another, if you prove that it has not been counted out to you within the time prescribed by law. And you will have still less cause for apprehension, if, instead of money, the transaction had reference to the delivery of oil, where there was no stipulation that it should be returned; and when a controversy arises on this point, he who has actually received the money will be liable; but it is clear that, in accordance with the terms of the instrument which refers to the delivery of the oil, nothing is due.

Given on the fifth of the *Nones* of May, during the above-mentioned Consulate, 293.

6. *The Same, and the Csesars, to Nicander.*

If a novation should be made with reference to a sum of money due for a certain amount of merchandise, and you stipulate that interest shall be paid by the person against whom you file your petition, even though the statement of the amount of the merchandise due may be false, still, as the substance of the obligation is not wanting, there is no reason why interest should not be claimed in compliance with the terms of the contract. If, however, it had been agreed without a stipulation that only the money which was borrowed should be paid with interest, the false instruments would be considered as not having been drawn up; for an agreement of this kind cannot alter the preceding obligation.

Given on the fifteenth of the *Kalends* of December, under the abovementioned Consulate, 293.

7. *The Same, and the Csesars, to Pactumeia.*

The origin of money which is loaned should not be considered, but only whether the person who made the contract counted it out to the one to whom it belonged, is required in obligations of this kind.

Given on the fifth of the *Nones* of October, under the above-mentioned Consulate, 293.

8. *The Same, and the Csesars, to Proculus.*

If, instead of the loan of money which you requested from your creditor, you received silver, beasts of burden, or any other kind of property appraised by mutual consent, and you gave him gold in pledge, although you may have promised by a stipulation to pay him interest above one per cent a month, still, only the principal which is mentioned in the agreement of the parties, and the legal rate of interest can be claimed. You cannot, however, obtain any benefit on the ground that the pledge which you gave is of inferior value, as you allege, in order to avoid payment of the full amount which you received.

9. *The Same, and the Caesars, to Alexander.*

As you state in your petition that, while in Gaul, you, together with Syntrophus, lent a certain weight of gold and a certain sum of money to someone to be paid at Rome, if you apply to a competent judge and he decides that there are two principal debtors under a stipulation, or that you are entitled to the action for the full amount, or that you can collect from the heirs of Syntrophus, he shall order the entire debt, or, on the other hand, what you alone have paid, to be refunded to you.

Given on the fifteenth of the *Kalends* of January, during the abovementioned Consulate, 293.

10. *The Same, and the Csesars, to Crispinus.*

Payment should not be opposed because the evidence of the indebtedness of several persons is contained in one and the same instrument; for if you have stipulated, and the other parties have agreed that, instead of the money which you have loaned, wine shall be given you, the change of mind of the others cannot annul the contract which has been legally made.

Given on the second of the *Nones* of February, during the abovementioned Consulate, 293.

11. *The Same, and the Csesars, to Maximian.*

A fire does not release a debtor from the payment of his obligation. Given on the second of the *Ides* of February, under the abovementioned Consulate, 293.

12. *The Same, and the Csesars, to Theophanius.*

If, together with lo, you have borrowed money in connection with your common business, you will not be liable for the entire amount of the debt, either on account of the property, or by reason of the formula used in the contract; and even though afterwards you may have paid the entire amount, you will have a right of action against lo for the recovery of your share of the debt before a competent judge. Given on the fifteenth of the *Kalends* of September, during the Consulate of the Caesars, 300.

13. *The Same, and the Cassars, to Pronto.*

He who has borrowed a sum of money will be liable to his creditor, even though it is to be used for the business of another, if the creditor, at the time when he lent it, did not have in view the person for the benefit of whose affairs it was obtained.

Given at Nicomedia, on the seventeenth of the *Kalends* of November, during the Consulate of the Caesars, 300.

14. *The Same, and the Cassars, to Hadrian.*

A creditor who lent money to others did not render you liable, unless you signed a written contract evidencing the loan.

Given during the Consulate of the above-mentioned Emperors, without any date.

15. *The Same, and the Cassars, to Charidemus.*

You ask for something which is plainly contrary to law, when you demand that creditors shall not proceed

against you who borrowed the money, but against the heirs of the person to whom you lent it.

Given on the fifth of the *Kalends* of December, under the Consulate of the Caesars.

16. *The Emperors Honorius and Theodosius to Theodore, Praetorian Prefect.*

Anyone who lends money at interest to a judge shall, if he resides in his jurisdiction, be considered as the purchaser of the laws of the province; or, if anyone should corruptly pay someone who is his fellow-candidate for an office, he shall, along with the judge, be condemned to the penalty of exile.

Given on the seventeenth of the *Kalends* of November, during the Consulate of Bassus and Philip, 408.

17. *The Emperor Justinian to Menna, Praetorian Prefect.*

We have considered that the following provisions with reference to written instruments should be enacted for the common welfare; namely, that when anyone desires to borrow more than fifty pounds of gold, or to receive security for a debt, and the sum exceeds that above-mentioned, he is hereby notified that the instrument evidencing the debt shall not be recognized either by the debtor or the creditor, unless the said instrument contains the signature of three witnesses of established reputation. For if any written instrument executed in violation of this rule and calling for the payment of a sum in gold exceeding that above-mentioned is introduced, it shall, under no circumstances, be admitted by the judge.

This rule shall be applicable to future loans and payments of debts. Given at Constantinople, on the tenth of the *Kalends* of June, during the second Consulate of Our Lord Justinian, 528.

Extract from Novel 73, Chapter I. Latin Text.

By a new law, however, five witnesses are necessary, if the contract is in writing, and was made by a person who was illiterate, and who resided in the city, if the debt was for more than a pound of gold. When anyone desires to make a verbal contract, it is evident that he can do so either by making use of witnesses, or by taking the oath; and in case an action should be brought, the plaintiff must produce the witnesses, and can either be compelled to take the oath himself or to tender it, as the judge may determine.

The laws relating to contracts made in the country, which have been, up to this time, valid, are hereby confirmed.

TITLE III.

CONCERNING SUFFRAGE.

1. *The Emperors Theodosius, Arcadius, and Honorius to Rufinus, Prastorian Prefect.*

If persons desiring to obtain what they seek have requested anyone to vote for them, and have bound themselves to give him something in return, they must keep their promises, and carry out what they voluntarily agreed to do. If they should, under any pretext, delay to do so, they shall be compelled to pay what is due.

(1) If any gold, silver, or other movable property should be given on this account, delivery alone will be sufficient, and the contract shall remain forever valid; for when the delivery of movable property is made, it is done with good faith, and for a consideration.

(2) If the contract includes the delivery of a rustic or urban estate, an instrument in writing should be drawn up showing that the property has been transferred to another, actual delivery should follow, and the instrument show that the transaction was complete; for otherwise the property cannot pass to the new owner, or the old one be divested of his title.

(3) If the person who has been asked to give his vote should seize the property agreed upon as compensation, his rashness and violence shall be restrained, and possession of the property shall be restored to its former owner, and he who did not hesitate to seize what he ought to have demanded shall be excluded from obtaining it by law.

Given at Constantinople, on the third of the *Nones* of March, during the Consulate of Arcadius, Consul for the third time, and Honorius, Consul for the second time, 394.

TITLE IV.

CONCERNING THE PROHIBITED SEQUESTRATION OF MONEY.

1. *The Emperors Honorius and Theodosius to John, Praetorian Prefect.*

Whenever money is demanded by virtue of some contract, necessity for its sequestration does not exist; for it is necessary for the existence of the debt to be first proved, and then the debtor be compelled to make payment. It is required, not so much by the rule of law as by equity itself, that the creditor should produce the evidence of the debt, and, bringing suit for the money, establish the liability of the debtor.

Given at Ravenna, on the sixth of the *Ides* of July, during the Consulate of Honorius, Consul for the thirteenth time, and Theodosius, Consul for the tenth time, 422.

TITLE V.

CONCERNING THE RECOVERY OF A DEBT WHICH WAS PAID WITHOUT BEING DUE.

1. *The Emperor Antoninus to Mutianus.*

There is no doubt that money which has been paid through mistake, and not by virtue of a judgment, can legally be recovered by a personal action. Therefore if

you can prove that your father, whose heir you became, paid his creditor more than he owed him, you can recover the amount of the excess. You will, however, in vain demand the interest on this sum, as by the personal action only that amount can be recovered which was paid when it was not due.

Given on the third of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 223.

2. *The Same to Secundina.*

Where, without any arrangement having been made with reference to it, you have been delegated to promise the creditor of another money which you do not owe, you will have the right to bring a personal action against the person who delegated you.

Given on the fourteenth of the *Kalends* of January, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 293.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Pamphilus.*

As a sum of money which was not due, and which has been paid through ignorance can be recovered, an action on a written contract will be much more available for the recovery of money not owing, or an exception on the ground of bad faith can be pleaded against the plaintiff.

Given on the third of the *Nones* of April, at Byzantium, during the above-mentioned Consulate, 293.

4. *The Same, and the Cassars, to Heraclius.*

It is a positive rule of law that sums of money which are liable to increase through denial in litigation cannot be recovered, even if, when not due, they have been paid by someone ignorant of the fact. It is, however, established that there will not be ground for a personal action for recovery, if a bond for the payment of money not due has been given.

Given at Byzantium, on the fifth of the *Ides* of April, during the above-mentioned Consulate, 293.

5. *The Same, and the Csesars, to Attains.*

If, having been emancipated by your father, you did not succeed him within the time prescribed by praetorian law, it is certain that you, as the heir of your father, will have a right to recover by a personal action anything which you may have subsequently paid by mistake.

Given on the fourth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors, 293.

6. *The Same, and the Csesars, to Mnasea.*

When, through ignorance of fact, you have paid for another a sum of money which was not due, and this has been proved before the Governor of the province, he shall, on the demand of him who paid it, provide for its return to the person on account of whom it was advanced.

Given on the sixth of the *Ides* of August, during the above-mentioned Consulate, 293.

7. *The Same, and the Csesars, to Dionysia.*

It is an established rule of law that a trust or a legacy which, through an error of fact, was delivered when it was not due, can be recovered.

Given on the fifth of the *Ides* of September, during the abovementioned Consulate, 293.

8. *The Same, and the C&sars, to Zyparus.*

Where anyone has paid a false agent of his creditor, he has a right of recovery against the latter, but not to a release from his obligation.

Given on the fifteenth of the *Kalends* of November, during the above-mentioned Consulate, 293.

9. *The Same, and the Csesars, to Gratiana.*

Anyone who knows that payment has been made of a sum which was not due cannot legally recover it. Where, however, property belonging to another has been sold without a mandate, and after it has been evicted either for this reason or for some other defect in the title, the owner indemnifies the purchaser, he cannot allege that the money was not due; as having proved by an act of this kind that he ratified the contract, he shows that what he paid was due.

Given at Nicomedia, on the fourth of the *Nones* of December, during the Consulate of the Csesars, 294.

10. *The Emperor Justinian to Julian, Prtetorian Prefect.*

Where anyone promises a slave, who is designated, or a certain sum of *solidi*, or any other property, and, by delivering either of these, he has the right to be released from his obligation, if he, through ignorance, should deliver both, a doubt arose which could be recovered by the laws, that is to say, whether he could recover the slave or the money, and whether the stipulator or the promisor had the power to make the selection of the property.

Ulpian grants the choice to the person who received both, to return whichever he wishes, and states that both Marcellus and Celsus agree with him. Papinianus, however, gives the right of selection to him who delivered both pieces of property, because, before delivering them, he had the right to deliver whichever he chose; and he quotes the great authority of Salvius Julianus, the interpreter of the Praetorian Edict, in support of his opinion. In deciding the question, We have adopted the view of Julianus and Papinianus that he who had the right to give either of the pieces of property was also entitled to choose which he should receive.

Given at Constantinople, on the *Kalends* of August, under the fifth Consulate of Lampadius and Orestes, 530.

11. *The Same to Julian, Prtetorian Prefect.*

A dispute arose among jurists with reference to the hesitation of those who have paid money while uncertain whether or not it was due, and whether they could recover that which they had paid while in doubt. In deciding this question, We decree that all those who have paid while uncertain whether or not they owed the money, or anything else which they gave, should not be denied the right of recovery, and that the presumption of a compromise should not be alleged against them, unless this was specifically established by the adverse party.

Given at Constantinople, on the *Kalends* of October, under the fifth Consulate of Lampadius and Orestes, 530.

TITLE VI.

CONCERNING THE ACTION FOR RECOVERY OF PROPERTY GIVEN FOR SOME CONSIDERATION.

1. *The Emperor Antoninus to Callisthenides.*

You state that a sum of money was received by you by way of dowry, under an agreement (as is customary when a marriage contract is entered into) ; and if some obstacle has arisen to prevent the marriage from being celebrated according to law, you can recover the said sum by a personal action, and the agreement which was made should be considered as if it had never been entered into.

Given on the sixth of the *Kalends* of August, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

2. *The Emperor Alexander to Asclepiades.*

If, as you state, your father gave your sister certain lands and other property which you have mentioned, under the condition that she should satisfy the creditors, and that, if the condition was not fulfilled, the donation should be void, and as she did not comply with the condition, it is not unjust that the action for recovery of the property donated should be granted you as the heir of your father.

Given on the fourteenth of the *Kalends* of December, during the Consulate of Albinus and Maximus, 228.

3. *The Emperors Valerian and Gallienus to Aurelius and Alexandra.*

A donation was made to you under the condition that neither of you should have the power to dispose of his or her share of the estate, and the result of this is, that neither of you can alienate the ownership of your share; and if the condition should not be observed, the donor, or his heir, will be entitled to an action to recover the property.

Given on the *Kalends* of April, during the Consulate of Valerian, Consul for the fourth time, and Gallienus, Consul for the third time, 258.

4. *The So/me, and the Caesar Valerian, to ^Emilia.*

If, having actually received a very small sum of money, you acknowledge the receipt of a much larger

one, for the reason that your adversary promised you his influence, and as you allege that he did not keep his word, you can, by means of a personal action, be released from the obligation which you contracted, on the ground that you did not receive the expected influence in consideration of which you entered into the agreement.

Given on the *Kalends* of May, under the Consulate of ^milianus and Bassus, 260.

5. *The Emperors Diocletian and Maximian, and the Ciesars, to Martial.*

If you appointed a soldier your attorney for the transaction of your business, when this was forbidden by law, and on account of his appointment you paid him a sum of money, a competent judge will see that whatever you have disbursed on this account shall be refunded to you, without the case having been heard.

Given on the tenth of the *Kalends* of October, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

6. *The Same, and the Csesars, to Cyrio and Plotio.*

You say that your father presented a female slave to the person against whom you have instituted proceedings, and it makes a great deal of difference whether he made the donation with the intention of giving or of manumitting the girl whom he believed to be a female slave; for when a gift has been perfected it cannot be revoked, and where the intention to do so did not exist, an action for recovery will lie.

Given on the second of the *Ides* of May, during the above-mentioned Consulate, 293.

7. *The Same, and the Csesars, to Gerontius.*

If you have given anything to the wife of a person whom you intended by this act of liberality to induce to travel with you, and you did not add any condition of recovery, the gift will remain unimpaired; as it is contrary to law for a perfect donation to be revoked by the indecision of the donor.

Given on the seventh of the *Kalends* of September, during the Consulate of the above-mentioned Emperors, 293.

8. *The Same, and the Csesars, to Flavian.*

A rule of law provides that there is ground for a personal action for recovery, when the condition attached to a donation not being impossible, it was not complied with by him who agreed to it; therefore when you gave your property to your betrothed as a token of your liberality, and imposed a certain condition, and she did not comply with it, although she could have done so, you will not be prevented from suing her heirs to recover what you gave her, if you should so desire.

Given on the third of the *Ides* of February, during the abovementioned Consulate, 293.

9. *The Same, and the Csesars, to Eibulus.*

If you, being free, have given something in order that your daughters may be manumitted, and proceedings are not instituted for this purpose, you will be entitled to an action for the recovery of what you gave.

If, however, a slave should donate something out of his *peculium*, to his master, he can have no right of action against him; but if he should appear before the Governor of the province, the latter will, taking into consideration the respect due to the master, exhort him who permitted himself to receive the money in consideration of granting freedom to the slave to abide by his agreement in favor of liberty.

Given on the third of the *Ides* of February, during the Consulate of the above-mentioned Emperors, 299.

10. *The Same, and the Csesars, to Canoniana.*

It is certain that you can, by no means, recover money which has been paid by you, if the condition on which it was dependent failed to take place, not through the fault of the person who received it, but because of some accident.

Given at Nicomedia, on the third of the *Nones* of December, during the Consulate of the Csesars, 300.

11. *The Same, and the Caesars, to Stratonica.*

It has been established that money paid to an advocate for his services should be refunded, if it is proved that he was to blame for not complying with his contract.

Given on the seventeenth of the *Kalends* of January, during the Consulate of the Csesars, 300.

TITLE VII.

CONCERNING THE ACTION FOR RECOVERY ON ACCOUNT OF A DISHONORABLE CONSIDERATION.

1. *The Emperors Antoninus to Ingemms.*

If suit is brought against you on your bond, and you have received no money, and your bond was furnished for an infamous consideration, and one which is prohibited, and this is proved in the presence of the judge having jurisdiction of the case, when this has been accomplished, you will be released from liability.

2. *The Same to Longinus.*

As you allege that you have transferred your house to your adversary for a dishonorable consideration, and one contrary to the principles of My reign, you will in vain ask that it be restored to you, for in a case of this kind the condition of the possessor is considered to be the better.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

3. *The Emperors Diocletian and Maximian to the Soldier Dizon.*

If it is established by indisputable evidence before a competent judge that you have paid a sum of money to the person of whom you complain, in order to avoid military service, you can recover it with his assistance; and he, being mindful of public censure, after the money has been refunded, will not suffer the crime of extortion to remain unpunished.

Given on the third of the *Kalends* of August, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

4. *The Same, and the Ceesars, to Rufinus.*

Where a dishonorable consideration is found to have been offered by both parties, although the contract may have been complied with, an action for recovery will be granted only for what was paid, and not for the interest on the same.

Given on the seventh of the *Ides* of January, during the above mentioned Consulate, 293.

5. *The Same, and the Csesars, to Bichoporus.*

Since you acknowledge that your wife led the life of a prostitute, you understand that your petition contains the confession that you have acted as a pander, and therefore no ground will exist for the recovery of a sum of money paid for such an infamous consideration. For although baseness may have existed on both sides, and the money paid cannot be recovered, still, it is established by the authority of the law that actions based upon a stipulation entered into contrary to good morals should be refused.

Given on the *Ides* of May, during the Consulate of the Caesars, 294.

6. *The Same, and the Csesars, to Eutychia.*

It is settled that where money has been received by anyone to induce him to restore property which he had stolen, as he only is guilty of dishonorable conduct, he can be compelled to refund it by a personal action.

Given on the fifteenth of the *Kalends* of June, during the Consulate of the Caesars, 294.

7. *The Same, and the Csesars, to Zeno.*

It has been decided that he who receives money to induce him to restore cattle which he had driven away must not only refund the money which he acquired by his act, but also the cattle, even though they are said to have died, or to have perished by some accident, as in this case he will be found to be in default.

Given at Nicomedia, on the fifth of the *Kalends* of December, during the above-mentioned Consulate, 299.

TITLE VIII.

CONCERNING THE ACTION FOR THE RECOVERY OF STOLEN PROPERTY.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Hermogenes.*

The Governor of the province, being aware of the facts, shall be careful to declare in his decision that each party is liable for the entire amount in an action of theft; but where the action for the recovery of stolen money has been brought, and the judgment has been satisfied by one of the parties, the others are released.

Given on the *Kalends* of May, under the Consulate of the Caesars, 294.

2. *The Same, and the Csesars, to Aristenetus.*

It is a well-established rule of law that a sheep thief shall bear the loss of stolen property, if this occurs before his offer to make restitution.

Given on the *Kalends* of May, under the Consulate of the Caesars, 294.

TITLE IX.

CONCERNING THE PERSONAL SUIT FOR RECOVERY UNDER THE LAW, WHERE THERE IS NO CONSIDERATION, OR WHERE THE CONSIDERATION IS UNJUST.

1. *The Emperors Diocletian and Maximian, to Ulpiiis.*

Although debts cannot be collected before they are due, still, if you are a debtor to the Treasury on account of your administration as the captain of the first company of the *triarii*, and the Governor of the province finds that your property is exhausted to such an extent that payment of the debt can only be made by the employment of a single sum of money which is due to you, he shall notify your debtor, provided he is solvent, to discharge the debt before the time fixed for doing so, in order that what is due may be paid to the Treasury which, on account of the public requirements, should obtain the preference.

Given on the thirteenth of the *Kalends* of August, during the Consulate of the Caesars, 294.

2. *The Same, and the Csesars, to Sculatius.*

No doubt exists as to the law which provides that where the instrument which established the payment of the debt is retained by the creditor, it will be of no advantage to him while it remains in his hands, and therefore it can be recovered by a personal action.

Given on the third of the *Nones* of April, during the Consulate of the Csesars, 300.

3. *The Same, and the Csesars, to Galatia.*

A possessor in bad faith, who has been defeated in an action where the ownership of property is involved, can be compelled to surrender any existing crops belonging to the property by an action for their recovery, and can be sued in a personal action for those which have been consumed.

Given on the *Ides* of February, during the Consulate of the Caesars, 300.

4. *The Same, and the Caesars, to Alexander.*

If the sum which you stated in writing you received as a loan has never been counted out to you, and the time prescribed by law within which you can bring suit has not yet transpired, you can ask the Governor that notice be served for the return of the obligation.

Given on the seventeenth of the *Kalends* of January, during the Consulate of the Caesars, 300.

TITLE X.

CONCERNING OBLIGATIONS AND ACTIONS.

1. *The Emperor Gordian to Valeria.*

You state that a certain sum of money has been given by you to a person whom you mention, and in return for which he has assigned

you a right of action against the debtor, for whom you paid the money; and, before you brought suit on this account, you allege that the creditor died without leaving an heir. Since this is the case, a praetorian action will lie in your favor.

Given on the fifth of the *Kalends* of May, during the Consulate of Atticus and Prsetextatus, 243.

2. *The Emperors Valerian and Gallienus to Celsus.*

It has been frequently stated in rescripts that where claims have been given by way of dowry, although no delegation was previously made, nor any proceedings were subsequently instituted, a praetorian action should be granted the husband, just as in the case of someone who had purchased a note.

Given on the fourteenth of the *Kalends* of February, during the Consulate of Secularus and Donatus, 255.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Rusticianus.*

It is extremely inequitable for tenants to be sued on account of the private indebtedness of their lessor, where they pay the rent in accordance with their contracts.

Given on the day before the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

4. *The Same, and the Csesars, to Licinia.*

It is no more than just for good faith to be taken into consideration in all contracts.

Given on the third of the *Nones* of October, during the Consulate of the above-mentioned Emperors, 287.

5. *The Same, and the Csesars, to Camerinus and Martian.*

As in the beginning everyone has free power to make or not to make contracts, so where an obligation has once been entered into neither party can, without the consent of his adversary, reject it. Wherefore you should understand that when you have once been bound by a voluntary agreement, you can, under no circumstances, repudiate it, without the consent of the other party whom you mention in your petition.

Given at Byzantium, on the *Nones* of April, under the above-mentioned Consulate, 290.

6. *The Same, and the Csesars, to Mauritius.*

If your debtor has given you in payment a claim which was due to him, and appointed you his attorney in the matter, demand the pledges which were specially or generally deposited to secure the debt. If, however, they are proved to have been sold by those to whom they were previously pledged, because of their having the preference, understand that you cannot demand them of the purchasers.

Given on the ninth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 293.

7. *The Same, and the Csesars, to Dionysius.*

If you have purchased a claim from a creditor, demand the pledges which the vendor could have obtained in the presence of the Governor of the province. For if you hold the property which was pledged for the debt of the said person and it is not paid, you are not forbidden by the Common Law to sell the pledges. When, however, those who possessed the pledges having a preferred lien upon them have purchased them from the creditors, or if they are protected by prescription based upon long time, understand that you will not have the power to sell the pledges.

Given on the third of the *Kalends* of January, during the abovementioned Consulate, 293.

8. *The Same, and the Csesars, to Grescentius.*

Where, for the purpose of making a donation to a person whom you state that you have loved with the affection of a father, you gave him a sum of money, and he, for the purpose of remunerating your liberality, asks you to accept another sum from his attorney, and before you receive it, he dies, you cannot recover what you have given, for the reason that the donation was perfected, nor can you demand from his attorney what his constituent directed to be given to you but was not yet delivered. If, however, you have lent the amount, but did not stipulate that it should be paid by someone who had been delegated on account of a novation, his heirs will be compelled to pay you.

Given on the thirteenth of the *Kalends* of February, during the Consulate of the Csesars, 294.

9. *The Same, and the Caesars, to Glyco.*

Debtors who deny that they owe anything should not be intimidated by armed force, but should be discharged from liability if the plaintiff does not prove his case, or if he should be barred by an exception; but if their indebtedness should be established, and judgment be rendered against them, it is settled that they must be compelled to make payment by the employment of all legal remedies.

Given on the *Ides* of February, during the Consulate of the Caesars, 294.

10. *The Same, and the Csesars, to Fufinus.*

The right of personal action against a debtor is not extinguished by the sale of the pledges, but what can be obtained by it shall be credited on the debt, and suit can be brought for the remainder.

Given on the third of the *Nones* of April, during the Consulate of the Caesars, 294.

11. *The Same, and the Csesars, to Paula.*

You deceived yourself when you thought you could collect from the owner of the land what you lent to his tenants on their own account, for the presence of his agents does not enable you to hold him liable.

Given on the eighth of the *Kalends* of August, during the Consulate of the Caesars, 294.

12. *The Same, and the Csesars, to Jovinus.*

The laws do not suffer children to be given up to the service of creditors because of debts due by their parents.

Given on the thirteenth of the *Kalends* of November, during the Consulate of the Csesars, 294.

Extract from Novel 134, Chapter VII. Latin Text.

Moreover, the creditor will lose his debt, and will be compelled to pay an equal amount to the child whom he has retained, or to his parents, and he will also be liable to corporeal penalties.

13. *The Same, and the Csesars, to Barsumius.*

You should compel the person to whom you have lent money to make payment by means of an adequate legal proceeding, for you have no right of action against traders who you alleged exhausted the funds of your debtor by the sale of merchandise to him.

Given on the eleventh of the *Kalends* of April, during the Consulate of the Caesars, 300.

14. *The Same, and the Csesars, to Hermodorus and Nicomachus.*

You have the choice either to sue the heirs of your debtor by a personal action, or to make use of the Servian Action against him who holds the pledges which were given to you, and which have been sold and delivered to him by the heirs, if he is not protected by prescription based upon long time; or you can bring both actions simultaneously.

Given at Nicomedia, on the fifth of the *Kalends* of December, during the Consulate of the Csesars, 300.

Extract from, Novel 4, Chapter III. Latin Text.

At present, however, under the new law, all trustees, mandators, and sureties must first be sued before having recourse to those in possession of the pledges.

TITLE XI.

ACTIONS SHOULD BE BROUGHT BY HEIRS AND AGAINST HEIRS.

1. *The Emperor Justinian to John, Prsetorian Prefect.*

In former times, stipulations, legacies, and other contracts to be executed after death were rejected, but We have permitted this to be done for the common welfare of mankind, as it appeared to be advisable that this rule, which was adopted in ancient times, should be amended by a more humane custom; for the old jurists did not allow actions to be brought by or against heirs in the case of stipulations or other agreements to be carried out after death. It seems to Us to be necessary to abolish this ancient abuse, and to annul this rule, so that suits and obligations can be brought and enforced by heirs and against heirs, in order that the accomplishment of the wishes of the contracting parties may not be frustrated, through the excessive subtlety of the legal terms employed.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the Consulate of Lampadius and Orestes, 531.

TITLE XII.

A WIFE CANNOT BE SUED ON ACCOUNT OF HER HUSBAND, OR A HUSBAND ON ACCOUNT OF HIS WIFE, OR A MOTHER ON ACCOUNT OF HER SON.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Asclepiodota.*

You will argue in vain with reference to the validity of contracts made by your husband, as it is sufficient for your protection that you made no contract in your own name to prevent your being sued on his account; for, under the terms of the Decree of the Senate, nothing can legally be collected from you, even if you have voluntarily offered yourself as his, surety.

Given on the day before the *Ides* of April, during the Consulate of Diocletian, Consul for the third time, and Maximian, 287.

2. *The Same to Terentia.*

The laws forbid that women should be annoyed on account of the faults of their husbands. Hence the Imperial Accountant, where property has been seized by the Treasury and you can prove that it is yours, must obey the public law.

Given on the third of the *Nones* of September, during the Consulate of Diocletian and Maximian, 287.

3. *The Same, and the Csesars, to Carpophorus.*

As you allege that you have not given the property in question to your daughter, by way of dowry, but for her support exclusive of the dowry, these lands are not subject to civil or municipal charges of a husband, any more than mothers can be rendered liable for debts due from their sons; as it is settled that a husband cannot be sued for an obligation contracted by his wife, unless he

himself became surety for the same, since it is perfectly clear that no one can be liable for the contract of another.

Given on the third of the *Ides* of September, during the Consulate of the above-mentioned Emperors, 293.

4. *The Same, and the Cassars, to Philotera.*

As you state that you have been sued on account of the indebtedness of your son for the reason that you have already appeared to have paid a portion of the same, you have a perfect right to avail yourself of your means before the judge having jurisdiction of the case, so that he may prevent you from being compelled to pay the debts of another.

Given on the tenth of the *Kalends* of September, during the Consulate of Titian and Nepotian, 301.

Extract from Novel 52, Chapter I. Latin Text.

Anyone who attempts to make use of the property of one person to pay the debts of another, just as if it was pledged for that purpose, shall be compelled to repay fourfold its value, whatever that may be, to "the person who suffered the wrong, and shall lose his right of action to recover the debt for the payment of which he took the property.

TITLE XIII.

A SON CANNOT BE SUED ON ACCOUNT OF HIS FATHER, OR A FATHER ON ACCOUNT OF HIS EMANCIPATED SON, OR A FREEDMAN ON ACCOUNT OF HIS PATRON, OR A SLAVE ON ACCOUNT OF HIS MASTER.

1. *The Emperor Gordian to the Soldier Candidus.*

A father cannot be sued on account of the debt of his son who is his own master, where he did not become his surety; nor can he be sued for it when he is under his control, if he made the contract without his consent; nor will he be liable where, contrary to the terms of the Macedonian Decree of the Senate, a larger sum was lent than the value of the *peculium*. Wherefore, if your father has had money extorted from him by the creditor of your brother, for the payment of a debt for which he was not liable, he can recover it with the aid of the Governor of the province.

Given on the third of the *Nones* of October, during the Consulate of Pius and Pontianus, 239.

2. *The Emperors Diocletian and Maximian to Neotherius and Eutolmiis.*

The Governor of the province must provide that you shall not, contrary to law, be annoyed by someone by whom your father, who you allege has emancipated you, has been called to assume a civil office.

Given on the eighth of the *Kalends* of February, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

3. *The Same, and the Csssars, to Theogenes.*

Where a son has been appointed a decurion without the consent of his father, it has been very clearly provided by law that his father cannot be annoyed on his account.

Given on the tenth of the *Kalends* of May, during the Consulate of the Caesars, 294.

4. *The Same, and the Ciesars, to Achiva.*

It is settled that a son cannot be sued in a personal action on account of the indebtedness of his father, or be liable for his municipal charges if his father is still living.

Given on the twelfth of the *Kalends* of March, under the Consulate of the Caesars, 300.

5. *The Same, and the Ciesars, to Lampetim.*

Neither freedmen nor slaves can be sued on account of contracts made by their patrons and masters.

Given on the *Ides* of April, during the Consulate of the Caesars, 300.

A New Constitution of Frederick.

After a careful investigation and examination made by the bishops, abbots, dukes, and other officials of Our Sacred Palace, We grant the following privilege to all those who journey for the purpose of study, and especially to the professors of Divine and Imperial laws, namely: that they, as well as their messengers, shall remain secure in the places in which they reside. For as they all do good, We think that they are worthy of Our praise and protection at all times, as the entire world is illuminated by their learning, and Our subjects are instructed by them to be obedient to God and Our ministers; and therefore, by means of this special favor, We desire to guard them against all injury. For who is there who would not pity those who, having become exiles through the love of learning, and from being wealthy have become poor, and exhaust their strength, and expose their lives to many dangers, and frequently suffer bodily injury from the vilest of mankind without a cause, which is hard to bear? Therefore We decree by this general law, which shall be valid for all time, that no one shall dare to presume to inflict injury upon students, or cause them any loss on account of the crime or indebtedness of another, in any province whatsoever (which We have ascertained is sometimes done in accordance with an improper custom).

Those who violate this Sacred Constitution, as well as the Governors of the places in which they live, and who neglect to punish them, are hereby notified that they shall be compelled to pay fourfold damages, be branded by the law with infamy, and be forever dismissed from their employments. If, however, anyone should desire to institute legal proceedings against such persons, because of any transaction, this shall be done at the option of the students, either before their master or professor or the bishop of the city, upon whom We have conferred this jurisdiction. Anyone who attempts to bring them before

another judge, even if his claim should be perfectly just, shall lose his case.

We order that this law shall be inserted among the Imperial Constitutions under this Title: "A son shall not be sued on account of his father, etc."

Given during the month of November, 1158.

TITLE XIV.

WHETHER A SLAVE IS LIABLE FOR HIS OWN ACT AFTER HIS MANUMISSION.

1. *The Emperors Severus and Antoninus to Juventian.*

Although you have made a contract with a slave who is to be free under a condition, you should know that after the condition upon which his liberty depends has been complied with, you will have no right of action against him for what he may have previously done.

Given on the fourth of the *Ides* of December, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

2. *The Emperor Antoninus to Bexicus.*

No action will lie against you in favor of your creditors who lent you money while in slavery, especially as you state that no *peculium* was bequeathed to you.

Given on the third of the *Kalends* of September, during the Consulate of Laetus and Cerealis, 216.

3. *The Emperor Alexander to Herod.*

Where money has been promised to you by your slave, in consideration of your manumitting him, and after you have done so you do not make any stipulation with him, you will be entitled to an action *in factum* against him.

Given on the *Ides* of September, during the Consulate of Alexander, 227.

4. *The Emperor Gordian to Hiero.*

A slave who is said to have stolen a sum of money from your mother cannot be sued for an offence of this kind, although this may have been done at the time that she was in slavery, but having once obtained her freedom, she will be liable to an action of theft; for the injury follows the person.

Given on the *Ides* of September, during the Consulate of Pius and Pontianus, 239.

5. *The Same to Chrestus.*

If, as you allege, you cultivated your master's land before you were manumitted by him, and you were afterwards presented with your freedom, but were deprived of your *peculium*, any property which you may have previously contractd for, or have acquired by your own labor after your manumission, can by no means be taken from you.

Given on the sixteenth of the *Kalends* of December, during the Consulate of Arian and Pappus, 344.

6. *The Emperors Diocletian and Maximian, and the Csesars, to Felicianus.*

If those whom you mention in your petition are slaves, dispose of their cases at home, because no action at law can exist between masters and slaves. If, however, they were manumitted after committing

the offence, there is no legal rule which permits suit to be brought by their former masters for anything which had been done by them before they were enfranchised. But where they have committed any illegal act after their manumission, you must prove this before the Governor of the province, and you will obtain a decision in accordance with law.

Given on the second of the *Ides* of April, at Byzantium, during the Consulate of the above-mentioned Emperors, 287.

TITLE XV.

WHEN THE TREASURY, OR A PRIVATE INDIVIDUAL, CAN OR SHOULD SUE DEBTORS OR THEIR DEBTORS.

1. *The Emperors Severus and Antoninus to Valerian.*

The property of a guardian, who holds nothing belonging to his ward, cannot be seized on account of the debts of the latter.

Given on the eleventh of the *Kalends* of June, under the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Antoninus to Marcus.*

If, in the case of a judgment against Valens, which you state that you have obtained, nothing can be sold without having recourse to execution; his debtors, having been sued, will be compelled to make payment by the authority of the Governor of the province.

3. *The Emperor Gordian to Primianus.*

If those persons whom you allege are indebted to the debtors of the Treasury do not deny their liability, what you ask does not seem to be unjust, that is to say, that they be compelled to make payment by the Attorney of the Treasury. When, however, any question arises with reference to this, you yourself will perceive that it should not be permitted.

Given on the sixth of the *Kalends* of February, during the Consulate of Sabinus and Venustus, 241.

4. *The Emperors Diocletian and Maximian, and the Csesars, to Zosimus.*

It is a positive rule of law that suit cannot be brought by the Treasury against persons who are indebted to the debtors of the Treasury, unless it is clearly established that the latter are not solvent.

Given on the twelfth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors, 293.

5. *The Same, and the Csesars, to Nanida.*

When a claim has been given in satisfaction of a debt, the creditor cannot proceed against the debtors of the person who has made payment in this way, unless he

assigns his rights of action; but he can legally avail himself of an equitable action in his own name.

Given on the *Kalends* of January, under the Consulate of the Caesars, 294.

TITLE XVI.

CONCERNING HEREDITARY ACTIONS.

1. *The Emperor Gordian to Hermerotiis.*

You should demand the money which you say was owing to you from your mother in proportion to the share to which you are entitled from her heirs, who are your co-heirs; but you will not be prevented from attempting to collect what is due to you out of the property encumbered for the debt.

Given on the eleventh of the *Kalends* of March, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

2. *The Emperor Decius to Telemacha.*

It has been decided that heirs are liable for hereditary charges in proportion to their shares of the estate, even where the said charges are those of the Treasury, unless property has been pledged or hypothecated, for then the possessor of the encumbered property should be sued.

Given on the fourteenth of the *Kalends* of November, during the Consulate of ZEmilianus and Aquilinus, 250.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Maxima.*

Sue the heir of your former husband for the restoration of your dowry, as you will in vain ask that a personal action be granted you against the debtors of the estate.

Given on the fourteenth of the *Kalends* of May, during the abovementioned Consulate, 293.

4. *The Same, and the Csesars, to Crispus.*

It is perfectly clear that payment of the debt cannot be deferred under the pretext that the debtor of the estate is under age, and therefore, as you state that you are his guardian, you should endeavor to have him satisfy his creditors.

Given on the tenth of the *Kalends* of December, under the Consulate of the above-mentioned Emperors, 293.

5. *The Same, and the Csesars, to Julius.*

As you ask in your petition that a debt shall be paid before the estate is entered upon, We order inquiry to be made whether it belongs to you, or not; for if it should be established that you have a right to the estate of your father-in-law, there is no doubt that the claim for the debt is extinguished by merger.

Given on the day before the *Nones* of March, during the Consulate of the Csesars, 294.

6. *The Same, and the Csssars, to Domnus.*

If the adult girl (whose guardianship you state that you have administered), and whose curator you now are,

is the heir to a third of her paternal uncle's estate, and has not been forbidden to acquire anything from it, she will be permitted to collect a debt from her coheirs in proportion to two-thirds of the estate, as the claim is not merged except with reference to the share to which she is entitled; for it is against the interest of your ward that you ask that the will be set aside, since the co-heirs bind themselves for payment when they accept the estate. And if, after a division of the property has been made, it should be proved that they are not solvent, the Governor of the province will see that she sustains no loss.

Given on the *Kalends* of December, during the above-mentioned Consulate, 299.

7. *The Same, and the Ctesars, to Apolaustus.*

It is settled that the creditors of the estate are not entitled to a personal action against the legatee, as the Law of the Twelve Tables undoubtedly renders the heirs liable to such an action.

Given at Nicomedia, on the sixth of the *Ides* of December, during the Consulate of the Csesars, 300.

TITLE XVII.

FOR WHAT AN AMOUNT HEIRS CAN BE SUED ON ACCOUNT OF THE CRIMES OF DECEASED PERSONS.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Macedonus.*

It is an absolute rule of law that where anyone has been guilty of violence, extortion, or any other crime, and then dies after issue has been joined in the case, his heirs will be liable in full; otherwise they can only be sued for what has come into their hands, lest they may profit by the illegal act of another.

Given on the fifth of the *Kalends* of May, during the Consulate of the Csesars, 294.

TITLE XVIII.

CONCERNING THE SUM OF MONEY AGREED UPON.

1. *The Emperor Gordian to Felix.*

If you have consented to discharge someone else's debt, the action to recover the money which you have promised to pay can not only be brought against you, but also against your heirs, without limitation of time.

Given on the seventh of the *Kalends* of July, during the Consulate of the Csesars.

Extract from Novel 115, Chapter VI. Latin Text.

Where anyone agrees to pay a sum of money for himself or for some other person, or promises to do so, saying, "I will pay you," he will be liable for the amount which he agreed to pay. If, however, he should say, "You shall be paid by me, and by So-and-So and So-and-So," without the consent of the persons whom he mentioned, he will only be liable *pro rata* for the amount for which he obligated himself. But when making use of the

impersonal verb, he says, "It shall be paid," he will not be responsible. If, however, he should say, "You shall be paid either by me, or by So-and-So," and he whom he mentioned does not consent, he alone will be liable in full.

2. *The Emperor Justinian to John, Pretoria/n Prefect.*

The *Actio receptitia*, which is founded on formal statements, having fallen into disuse, it seems to Us necessary to extend the application of the *Actio pecuniss constitutive*. Therefore, as this action for recovery was formerly only available where the property in question could be weighed, counted, or measured, and was not applicable to all cases, but, in certain instances, could only be brought during the term of a year; and as it was doubtful whether it was possible for it to be brought to collect a debt dependent upon a condition, or whose payment was fixed at a certain time, or whether it could be employed merely with reference to a sum unconditionally agreed upon; We direct, by this perfectly clear law, that all persons shall be permitted to contract, not only for property which can be weighed, counted, or measured, but also for every other kind, whether it is movable or immovable, or can move itself, or is established by documents; and, in short, for everything which men can make the subject of a stipulation.

We also direct that the action, in every instance, shall not be limited to a year, but whether the person contracts for himself or someone else, it can be brought for the same period which is permitted in all personal actions, that is to say, during the term of thirty years; and that it shall be lawful to .agree to pay the debt absolutely; or at a certain time; or under some condition; and that it shall have all the force of a stipulation, and still not be deprived in any respect of its natural privileges, but can be brought both by and against heirs, so that the State, in cases of this kind, may not need the aid of the *Actio receptitia*; but that this action for the recovery of money promised will, by Our Constitution, be sufficient in all respects, and be an inherent part of the same, and that the agreement may take the place of the obligation; while, on the other hand, by means of the ancient *Actio receptitia*, the debt could be collected, even if it was not due.

It is perfectly absurd and contrary to the practice of Our age, as well as opposed to just laws, to permit property which is not due to be recovered by the *Actio receptitia*, and to re-establish many suits which will authorize the collection of money which is not owing, and promises for payment to be alternately abrogated and renewed. In order that such a conflict of laws may not be productive of reproach, agreements can only be made for the payment of what is due, and everything relating to the *Actio receptitia* which has been inserted in the

different books of legislators is hereby abolished; and the *Actio pecuniss constitute* shall include all cases which can become the subject of a stipulation.

(1) Let no one be surprised that every species of property which We have placed under the head of money can be exacted; for although in the books of the ancient jurists this action was only mentioned with reference to coin, still, not only could money be collected by means of it, but also all property which was susceptible of being weighed, counted, or measured, was included. It is possible for every kind of property to be converted into money; since if a certain house, or a certain field, or a certain slave, or anything else was mentioned in the agreement for payment, what difference is there between these possessions and money itself?

In order, however, to satisfy the subtle distinctions of persons who do not desire the sense but the empty sounds of names to be considered, everything shall be embraced in an action of this description, just as if the contract has been made for the payment of money itself; for the old jurisconsults included all kinds of property under the name of money, and this term is not only frequently met with in the treatises of legal authors, but also in other ancient jurisprudence.

(2) So far as the customs which money-brokers and other business men have constantly observed are concerned, they are hereby sanctioned, and shall remain in full force as observed up to this time.

Given on the tenth of the *Kalends* of March, after the fifth Consulate of Lampadius and Orestes, 531.

3. *The Same to John, Prsetorian Prefect.*

It is necessary that the Epistle of the Divine Hadrian, which treats of the division of liability between mandators and trustees, should also apply to those who have conjointly agreed to pay money for others; as the rule of equity ought, by no means, to exclude different forms of the same action.

Given on the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XIX.

CONCERNING PROOFS.

1. *The Emperors Severus and Antoninus to Faustinus.*

As a creditor who demands money, which he says he has loaned, is compelled to prove his claim, so, also, a debtor who alleges that he has discharged his obligations must furnish evidence of the fact.

Given on the day before the *Kalends* of July, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

2. *The Emperor Antoninus to Aulizanus.*

Institute proceedings in accordance with law to recover the land which you say is yours, for the-party in possession is not required to

prove that it belongs to him; and if you do not prove your claim, the ownership of the same will remain with him.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Laetus and Cerealis, 216.

3. *The Emperor Alexander to Lsena and Lupus.*

You should not be sued for a debt of the colleague of your grandfather, if you can prove that the said colleague was solvent at the time when he withdrew from office.

Given on the fifth of the *Kalends* of January, during the Consulate of Pompeianus and Pelignus, 232.

4. *The Same to Vitus.*

The ownership of property must not only be established by the bill of sale, but also by all other lawful evidence.

Given on the *Kalends* of November, during the Consulate of Alexander, Consul for the third time, and Dio, 230.

5. *The Emperor Philip, and the Csesar Philip, to Sertorius.*

Private papers, that is to say, instruments executed in the presence of witnesses, or notes, if they are not supported by other testimony, are not alone sufficient as evidence.

Given on the seventh of the *Ides* of April, during the Consulate of Philip and Titian, 246.

6. *The Same, and the C&sars, to Romulus.*

It has been frequently stated in rescripts that accounts of a deceased person found among his effects will not alone be sufficient to prove that a sum of money was due to him.

The rule of law is the same where the deceased stated in his last will that he was entitled to a sum of money, or certain other property.

Given on the *Ides* of March, during the Consulate of Philip and Titian, 246.

Extract from Novel 48, Chapter I. Latin Text.

This rule is especially applicable where the testator was not sworn; otherwise the heirs will be required to comply with his will, or be prevented from enjoying the legacies bequeathed to them, but no loss shall result to the creditors on this account.

7. *The Emperor Gallienus to Sabinus.*

A pernicious example is offered where faith is given to a private memorandum; for anyone can, by a note of his own, constitute another his debtor. Therefore, neither the Treasury, nor any other person whosoever should introduce private memoranda as evidence of a debt.

Given on the third of the *Nones* of March, during the Consulate of Gallienus, Consul for the seventh time, and Sabinillus, 267.

8. *The Emperors Diocletian and Maximian, and the Caesars, to Publicius and Optatus.*

You apprehend in vain that proof will be required from the defendant in the case.

Given the thirteenth of the *Kalends* of ... during the Consulate of Bassus and Quintian, 289.

9. *The Same, and the Cassars, to Marciana.*

As you allege that you are less than twenty-five years old, you should appear before the Governor of the province and prove your age.

Given on the *Ides* of April, during the Consulate of the abovementioned Emperors, 293.

10. *The Same, and the C&sars, to Isidor.*

Neither the circumstances attending your birth (even though you can prove that you are freeborn), nor the offices which you allege you have held, are sufficient evidence that your daughter was born free; for there is nothing which prevents you from being freeborn, and her from being a slave.

Given on the eighteenth of the *Kalends* of May, during the abovementioned Consulate, 293.

11. *The Same, and the C&sars, to Antonia.*

If you are confident that you can show that the heir appointed by your paternal aunt is not entitled to the estate, on account of some defect in the will, or for any other reason, you can institute proceedings with reference to the estate before the Governor of the province.

Given on the fifth of the *Kalends* of May, at Heraclea, during the Consulate of the Caesars, 294.

12. *The Same, and the Csesars, to Chronia.*

Nothing is accomplished by means of written instruments, as they are merely evidence of what has been done, and you must establish, by such evidence as you can produce, that the purchase was made by your father, and that he was placed in possession of the property, and paid the price of the same.

Given on the fifth of the *Nones* of October, during the Consulate of the Caesars, 299.

13. *The Same, and the Csesars, to Justin.*

Blood relationship is not established by letters, but by the evidence of birth, or the ceremony of adoption; and where for the purpose of dividing an estate an arbiter is demanded by a female slave, against an absent person, whom she alleges is her brother, this does not affect the truth of the matter. Therefore, if you are confident that you can prove that you have sent a letter to the said female slave, as your sister, or if it is shown that an arbiter was demanded for her, as for a co-heir, in a case in partition, the question of brotherhood cannot be disposed of in this way.

Given on the *Kalends* of December, during the above-mentioned Consulate, 299.

14. *The Same, and the Csesars, to Munitiamts.*

It is not by mere assertions, nor by a false statement (even though both parties may agree to it), but by

conception during lawful marriage, or by the formalities of adoption, that persons can legally be shown to be the sons of their alleged father. Hence, if you are confident that you can establish that the party against whom you have filed your petition is the son of someone else, prove either by yourself or by an attorney that his statement is false.

Given on the *Kalends* of December, during the Consulate of the above-mentioned Emperors, 299.

15. *The Same, and the Csesars, to Antony.*

The violence of him who contends that he is the master will in no way avail in placing the burden of proof of his freedom upon the slave. Therefore, when you acknowledge that you have fled from the house of Severus, and assert that you were in the first place detained by him unjustly and by force, inquiry should be made whether you are in possession of your freedom without having been guilty of fraud; for in this way it will be determined which of you should sustain the burden of proof.

Given on the sixth of the *Kalends* of January, during the abovementioned Consulate, 299.

16. *The Same Emperors and Cassars to Philippa and Sebastiana.*

If you are in possession of lands which your emancipated brothers have brought suit to recover, alleging that they were given to them by your common father, the necessity of proving this rests upon them. If they had possession of the said lands on the ground that they had been given to them by your father, and you, having been appointed the co-heirs of your father, demand that they prove that your claim is without foundation, in a controversy of this kind the parties will be compelled to show upon what their title to ownership is based.

Given on the tenth of the *Kalends* of February, during the abovementioned Consulate, 299.

17. *The Same, and the Csesars, to Paulina.*

In order to prove that you are freeborn, it is necessary for you to show that your mother had obtained her freedom, and that you were born afterwards; for the fact that no question was raised as to the condition of your brothers will not, in any way, contribute to your defence.

Given on the fifth of the *Ides* of February, during the Consulate of the above-mentioned Emperors, 299.

18. *The Same Emperors and Csesars to Violantilla.* You asserted in your petition that the person whom you mentioned caused to be inserted, without your knowledge, that you had given

him the land in question; and if what you have stated is true, the said land cannot belong to him by the title of a donation. Wherefore, having gone before a competent judge, you must prove that your adversary, against your

consent, contrived to have inserted in the will that you had transferred this land to him, so that, in accordance with the terms of Our Rescript, you can obtain a decision in your favor.

19. *The Same Emperors and Csesars to Menander.*

A dilatory exception shall be pleaded in the beginning of an action, and the plaintiff must afterwards establish the proof of his allegations.

Given at Nicomedia, on the thirteenth of the *Kalends* of April, during the Consulate of the Csesars, 300.

Extract from Novel 90, Chapter IV. Latin Text.

A litigant who has produced witnesses once, twice, or three times, and has discussed their evidence, or has heard it discussed by his adversary, and, by this means, learned what has been testified to, shall not have permission to call new witnesses, even under Our order. If, however, he has not done this, he should be allowed to produce witnesses a fourth time, after having been sworn that he did not suppress or dictate any of the evidence, and that none of his advocates, or anyone acting in his behalf, has done so; and that he has not, either through fraud, evil intent, or artifice, demanded that a fourth production of witnesses be made.

20. *The Same, and the Csesars, to Phromina.*

If Eutychia, after having suppressed a document evidencing her purchase, demands her freedom from the condition of slavery in which she is, as the burden of proof rests upon the claimant, if her suppression of the document is detected, it will be of no advantage to her; for if she is claimed as a slave, it will not be necessary to furnish evidence of her purchase, but it will be sufficient to prove the theft of the bill of sale.

Given at Nicomedia, on the fourth of the *Nones* of December, during the Consulate of the Caesars, 300.

21. *The Same, and the Csesars, to Crispins.*

Those who steal documents belonging to others, upon which the proof of ownership depends, can under no circumstances make use of them; as they would be of no advantage to one who is not mentioned in them, but only to him who is designated therein. Therefore, as it is not forbidden to offer other evidence, establish by legal means that the ownership of the lands in dispute belongs to you; for he who claims property from a purchaser, alleging that it was bought with his money, is not allowed to prove it. If a fact of this kind should be established, it will, nevertheless, contribute nothing to the validity of his claim.

Given on the sixth of the *Ides* of December, during the Consulate of the Caesars, 303.

22. *The Same, and the Csesars, to Agatkoclea.*

It is not sufficient proof of the servitude of Glyco to show that his mother and his brother have been slaves,

for the connivance of freeborn persons cannot prejudice their relatives; nor is one of several slaves born of the same mother prohibited from obtaining his freedom.

Given on the ninth of the *Kalends* of January, during the Consulate of the Csesars.

23. *The Same, and the Csesars, to Menelaus.*

A plaintiff who alleges that he cannot establish his claim does not compel the defendant to prove the contrary; for, in accordance with the nature of things, the denial of a fact is no evidence.

Given on the eighth of the *Kalends* of January, during the Consulate of the Csesars, 304.

24. *The Emperors Valens, Gratian, and Valentinian to Antony, Praetorian Prefect.*

We order all those who allege that papers produced in court are not genuine shall be detained as forgers, and prosecuted for that crime, unless they prove that their assertions are true.

Given on the day before the *Ides* of January, during the Consulate of Valens, Consul for the fifth time, and Valentinian, 606.

25. *The Emperors Gratian, Valentinian, and Theodosius to Florus, Prsstorian Prefect.*

All accusers are hereby notified that they cannot bring a criminal charge for anything which has been established by reliable witnesses; or clearly proved by documentary evidence; or shown to be true by undoubted testimony clearer than light.

TITLE XX.

CONCERNING WITNESSES.

1. *The Emperor Alexander to Carpus.*

If a controversy arises with reference to your being freeborn, defend your case by documentary evidence and arguments if you can do so; for witnesses alone are not sufficient to establish proof of free birth.

Given on the tenth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and ^lianus, 224.

2. *The Emperors Valerius and Gallienus to Rosa.*

The testimony of members of a household is also rejected by the Civil Law.

Given on the third of the *Kalends* of September, under the Consulate of Valerian, Consul for the third time, and Gallienus, Consul for the second time, 256.

3. *The Emperors Carus, Carinus, and Numerian to Valerius.*

It is certain that a case which is only proved by witnesses, and is not supported by any other lawful evidence, is of no force or effect.

Given on the *Kalends* of December, during the Consulate of Carua and Carinus, 283.

4. *The Emperors Diocletian and Maximian to Candidus.*

In order to ascertain the truth, witnesses must be produced who hold in greater esteem the faith due to justice than the favor and power of those entitled to the same.

Given on the fifth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 280.

5. *The Same, and the Csesars, to Tertullus.*

Fathers and children cannot be permitted to give evidence against one another, even if they are willing to do so.

Given at Nicomedia, on the fourth of the *Nones* of December, during the Consulate of the Caesars, 294.

6. *The Same, and the Csesars, to Diogenes and Ingenua.*

The demand which you make, namely, that the adverse party shall be compelled to produce the persons by whom the business was transacted, is entirely too strong. Therefore, understand that you yourself should introduce your own evidence in the case, and that your adversaries cannot be obliged to furnish testimony against themselves.

Given on the sixth of the *Kalends* of May, during the Consulate of the Csesars, 294.

7. *The Same, and the Csesars, to Derulonus.*

There is no doubt that a slave cannot be subjected to torture for or against his master, but he can be put to the question for some act of his own.

Given at Nicomedia, on the *Kalends* of November, under the Consulate of the Csesars, 294.

8. *The Emperor Constantine to Julian, Governor.*

We have already directed that witnesses should testify after having been sworn, and that the preference should be given to those of honorable reputation.

(1) In like manner, We have ordered that no judge shall in any case readily accept the testimony of only one witness; and now We plainly order that the evidence of only one witness shall not be taken, even though he should be distinguished by senatorial rank.

Given on the eighth of the *Kalends* of September, during the Consulate of Optatus and Paulinus, 334.

9. *The Emperors Valens, Gratian, and Valentinian to Gracchus, Urban Prefect.*

The laws deprive everyone of the power to testify in his own case.

Given on the fifth of the *Kalends* of December, during the Consulate of Valens, Consul for the fifth time, and Valentinian Junior, 376.

10. *The Emperors Honorius and Theodosius to Csecilianus, Urban Prefect.*

Witnesses called to give evidence in the cases of others must be free, if they are not said to be implicated in the crime, and confidence in their knowledge shall be

required of them; and the judge, in the production of the necessary persons, that is to say, of good witnesses, must not fail to direct that their proper expenses be paid by the accuser, or by the others by whom they were summoned, when they come to court.

The same rule applies when witnesses are produced by either side in a pecuniary case.

Given at Ravenna, on the twelfth of the *Kalends* of February, during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the fourth time, 409.

Extract from Novel 90, Chapter VI. Latin Text.

If a witness, when introduced, is said to be a slave, and he desires to testify, but alleges that he is free, the question of his status must first be determined, and if it should appear after investigation that he is a slave, his evidence shall be rejected. Where, however, he says that he is a freedman, he must produce the document of his manumission before he testifies, unless he is willing to make oath that the evidence is elsewhere; and, if this is done, his testimony should be taken down, and if he does not produce the instrument showing his manumission, it shall be rejected. But if the witness is declared to be unacceptable on account of a criminal action pending between the parties, he shall not be heard before the said action has been decided. But when he is considered as prejudiced on account of some pecuniary litigation in which he is involved, or for some other reason, his evidence shall be taken, and the questions of this kind which arise shall be reserved for argument.

11. *The Same to Georgia.*

We forbid freedmen, under a penalty, from giving unlawful and dishonorable testimony against their patrons, and as they must not voluntarily dare to give such testimony, so, if summoned as witnesses, they cannot be compelled to appear in court for that purpose.

Given at Ravenna, on the fourth of the *Ides* of August, during the Consulate of Marinianus and Asclepiodotus, 243.

12. *The Emperor Zeno to Arcadius, Prsstorian Prefect.*

We order that no one who has appeared before any judge (even though he may not be under his jurisdiction) for the purpose of giving testimony, can claim exemption on the ground of being in the army, or plead any other exception for the purpose of evading the action of the judge, which is demanded either by dishonorable evidence, or the nature of the case; but that all those who testify in civil actions shall, as it were, be deprived of their privileges of offering an exception in court, and having been stripped of its protection, shall be brought privately before the judge, in order that they may not apprehend that what they may say may offend his ears.

All magistrates (as has frequently been stated) without being prevented by any exception, are authorized to punish witnesses whose testimony seems to be either tainted with falsehood or fraud, in accordance with the nature of the offence.

Given on the twelfth of the *Kalends* of June, during the Consulate of Decius and Longinus, 486.

13. *The Emperor Justinian to Menna, Prsetorian Prefect.*

If anyone should have made use of witnesses, and the same ones are introduced against him in another action, he shall not be permitted to exclude them, unless he can show that enmity has subsequently arisen between him and them, on account of which the laws direct that witnesses shall be rejected; and under such circumstances he should not be deprived of the power to contradict their testimony by means of their own statements. If, however, he should show by undoubted evidence that they have been corrupted either by the gift or the promise of money, We order that he shall have the right to prosecute them.

Given on the seventh of the *Kalends* of June, during the second Consulate of Our Lord Justinian, 528.

14. *The Same, to Menna, Prsetorian Prefect.*

With a view to curtailing as much as possible the ease with which witnesses are obtained, by means of whom many violations of the truth are perpetrated, We order all those who state that they have contracted debts in writing shall not be heard, if they say that they have paid all, or a portion of the indebtedness, without having obtained a written discharge of the same; and if they attempt to produce witnesses of low character, or who perhaps have been bought, to prove a payment of this kind, no attention shall be paid to them, unless five respectable witnesses, who are citizens of the highest reputation, and were present at the payment of the money, state under oath that the debt was paid in their presence; so that everyone may know that it has been decided that persons cannot make payment of a debt either wholly or in part, unless they have the fact committed to writing, or can prove it by the above-mentioned oral testimony. It is, however, but reasonable to except from the provisions of the present law those who have already paid a debt, or a portion of the same. But when payment has been evidenced by a written instrument, and it has been destroyed by accident, as that of fire, shipwreck, or some other mis- -fortune, then those who have sustained the loss shall be permitted to show the cause, and prove the payment by witnesses, and in this way avoid the consequences of the loss by establishing the destruction of the instrument.

Given on the *Kalends* of June, during the Second Consulate of Our Lord Justinian, 528.

Extract from Novel 90, Chapter II. Latin Text.

Witnesses shall be summoned as in the case of wills, and not appear by accident as mere passersby. The same rule will apply if, being called after payment was made, they heard the acknowledgment of the creditor that the money due to him had been received.

15. *The Same to Julian, Prsetorian Prefect.*

If anyone, in accordance with Our laws, in a pecuniary case desires to call witnesses who are unwilling, and they voluntarily consent to give security that they will be present, this can be done. If, however, they refuse to do so, We order that they shall not be imprisoned, but they shall be bound by oath to appear; for if those who have produced them think that their testimony should be believed, when they are sworn in the case, they should have still more faith that the presence of the witnesses will be secured by their oath.

But, as witnesses should not, under such circumstances, be compelled to leave their homes and submit to inconvenience for the benefit of others, We order that judges shall not compel them to be present for more than fifteen days after they have been summoned, and that they shall provide that the case in which the witnesses appear to be necessary shall be heard within that time, and when one of the parties to the suit is absent, and, after having been notified by the bailiffs, has refused to appear, absolute permission is granted to judges to take the evidence of his witnesses as well as that of those of the other party who is present.

Moreover, the said term of fifteen days having expired, the witnesses shall be permitted by the judge to leave, and he shall have no authority to recall them after they have once departed. We also order that if the judge was to blame for not having the testimony given, he shall be forced to indemnify the injured party out of his own property for any damage which he may have sustained.

Given on the twelfth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

Extract from Novel 90, Chapter II. Latin Text.

When anyone has been wrongfully injured by another, or has sustained damage in some other way, or suffered a loss at his hands, and wishes to produce witnesses in court and publish their testimony, his adversary shall be notified by the judge, and the latter shall hear the evidence in his presence. If, however, he should refuse to appear, the judge can hear the witnesses even in his absence, and their testimony will have as much weight as if it had been taken in his presence; nor can he oppose this on the ground that evidence was introduced by only one of the parties to the suit.

16. *The Same to Julian, Prsstorian Prefect.*

Where witnesses were produced before judges appointed for the purpose of compromise, it was doubted whether the party who called them could make use of

their testimony in court, or whether he should not be heard. In consequence of this, We order that where anything has been decided with reference to a compromise in cases of this kind, it shall stand; but if nothing has been agreed upon, and the witnesses are living, he against whom they have testified, and who refuses to accept their evidence, shall be permitted to have them called a second time, and this shall not be opposed on the ground that they have already given their testimony. If, however, he should refuse to accept it, it shall be received as already given, but he can contradict it by all the legal means which he is entitled to use. But when all the witnesses are dead, he will then be required to accept any of their evidence which has been committed to writing. If, however, some of them should be dead, and some living, the said litigant will, so far as the testimony of those who are living is concerned, have a right to accept their statements, or have the witnesses recalled. With reference to such as are dead, their evidence should not be rejected; but he can, as We have previously stated, avail himself of every legal resource to contradict the witnesses and their testimony.

Given on the sixth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 531.

TITLE XXI.

CONCERNING THE CONFIDENCE TO BE REPOSED IN WRITTEN INSTRUMENTS, AND THEIR LOSS, AND WHEN RECEIPTS AND COUNTER-RECEIPTS SHOULD BE GIVEN, AND CONCERNING WHAT THINGS CAN BE DONE WITHOUT THEIR BEING COMMITTED TO WRITING.

1. *The Emperor Antoninus to Marchia.*

If you prove that your debtors owe you money for some reason or other, after you have applied to the Governor of the province, he will compel them to make payment, nor will a loss of the written evidence of the debt prejudice your rights, if it should clearly appear by competent evidence that the parties in question are indebted to you.

Given on the fifth of the *Ides* of September, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Mabilianus.*

If you should make use of a written document on account of which another person has already been accused and convicted of forgery, and it should appear that he from whom you demand money is ready to accuse you of the same offence, and take the risk of the penalty imposed by the Cornelian Law, even though the person who was convicted has not appealed from the sentence, you, who have not yet been accused of crime, cannot take an appeal.

Given on the third of the *Kalends* of October, during the Consulate of Maximus, Consul for the second time, and [^]Elianus, 224.

3. *The Same to JElianus.*

If your adversary has stated to the Governor of the province that he will not make use of the document which he produced, as he doubts whether it is genuine or not, you should not be apprehensive that the matter will again be brought up on account of the document, which it appears from his own statement was not genuine.

Given on the third of the *Nonas* of December, during the Consulate of Maximus, Consul for the second time, and [^]lianus, 224.

4. *The Emperor Gordian to Martian.*

If, on account of the loss of your papers, you are unable to prove that the money was paid to the public collector, an examination of the accounts of the Treasury will establish the truth of the allegation.

Given on the second of the *Ides* of February, during the Consulate of Gordian and Aviola, 240.

5. *The Same to the Soldiers Priscus and Marcus.*

Where the evidences of a debt have been consumed by fire, while it is unjust for debtors to refuse payment of the sums which they owe, still, too ready belief should not always be accorded to persons who complain of such an accident. Therefore, you should understand that where the instruments are missing, you ought to prove the truth of the statement in your petition by other evidence.

Given on the third of the *Kalends* of June, during the Consulate of Sabinus, Consul for the second time, and Venustus, 241.

6. *The Emperors Diocletian and Maximian, and the Csesars, to Lucidus.*

It is a well-established rule of law that where the certificate of your birth is lost, your civil condition is not affected thereby.

Given at Nicomedia, on the thirteenth of the *Kalends* of February, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

7. *The Same, and the Csesars, to Zinima.*

If you have been honorably discharged from the army, even though, as you allege, the papers showing this fact have been lost, still, if the truth can be established by other clear evidence, there is no doubt that you will be entitled to enjoy the privileges of veterans.

Given on the fifteenth of the *Kalends* of June, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

8. *The Same, and the Csesars, to Alexander.*

If it should be proved that the land in question belongs to you, the judge will provide that no prejudice shall result to your ownership through any act of the

usufructuary growing out of the loss of your muniments of title.

Given on the fifteenth of the *Kalends* of March, during the Consulate of Diocletian, Consul for the second time, and Maximian, 287.

9. *The Same, and the Csesars, to Aristenetus.*

Partition of property, when legally made, shall not be considered void for the reason that no instruments have been drawn up with reference to it.

Given on the seventh of the *Kalends* of July, during the Consulate of the above-mentioned Emperors.

10. *The Same, and the Csesars, to Victorinus.*

As a sale when lawfully concluded remains valid even if no documents evidencing it have been executed, so it has been decided that where any have been executed and subsequently lost, the validity of the sale will not be affected.

Given on the eighth of the *Kalends* of November, during the abovementioned Consulate.

11. *The Same, and the Csesars, to Theagena.*

Emancipation having taken place although the documents are no longer in existence, still, if it can be proved either by reliable witnesses or by unquestionable documentary evidence that the emancipation actually occurred, the truth cannot be affected by the loss of the papers.

Given on the third of the *Ides* of November, during the abovementioned Consulate.

12. *The Same, and the Csesars, to Dionysia.*

Where you have been placed in possession of a tract of land by means of a donation, you are none the less entitled to it because no written instrument is said to have been executed for the purpose of conveying the title.

Given at Nicomedia, on the *Ides* of December, under the abovementioned Consulate.

13. *The Same, and the Csesars, to Leontius.*

The statement that documents have been lost, made in the presence of persons who are ignorant of the fact, is of no benefit for the establishment of the truth.

Given at Nicomedia, on the sixteenth of the *Kalends* of January, during the above-mentioned Consulate.

14. *The Same, and the Csesars, to Severus, Count of the Spains.*

Different documents which conflict with one another, and are produced by one and the same person, can have no effect whatever.

Given on the fourth of the *Kalends* of May, during the Consulate of the Caesars.

15. *The Emperor Constantine to the People.*

In the administration of justice, documentary evidence has the same force as the depositions of witnesses.

Given at Rome, during the *Kalends* of August, during the Consulate of Gallicanus and Bassus, 317.

16. *The Emperor Justinian to Menna, Prsstorian Prefect.*

We order that contracts of sale, exchange, or donation, registry of which is not necessary, gifts of earnest money, or those made for any other reason which are required to be in writing, and also such as relate to compromise, shall not have any force unless evidenced by written documents and confirmed by the signature of those who execute them; and if they have been drawn up by a notary, they must be completed by him, and finally acknowledged by the parties interested, so that, where these formalities have not been complied with, no one will be permitted to claim any right for himself growing out of a contract or compromise based upon a written memorandum (even though it be signed by one or both the parties), whether it has not yet been carried out, or is complete; in order that in transactions of this kind it cannot be said that the vendor was required to sell the property at a certain price; or that the contract of sale was perfected; or that the purchaser should be compelled to make payment.

We decree that this rule shall apply to instruments of this description, not only where they have already been reduced to writing, but also where they have not yet been completed; unless where a compromise has been made, or a judgment rendered, under which circumstances they cannot be revoked.

Only those documents are excepted from this rule which have already been drawn up and published, for We do not include these in the present law, but permit them to be subject to those formerly enacted. We also add that, hereafter, where earnest money has been given for the purpose of making a sale of any kind of property whatsoever, whether the contract is in writing or not, even though it may not have been expressly stated what disposition must be made of the earnest money in case the contract was not carried out, he who promised to sell the property, and then refuses to do so, shall be compelled to pay double the amount of the deposit; and he who agreed to purchase it, and refuses to do so, shall lose the sum which was given, and shall be denied the right to recover it.

17. *The Same to Menna, Praetorian Prefect.*

We order that judges, either in this Renowned City or in the provinces, in accordance with what We have already decreed, where witnesses reside in other places, may (if they think proper to do so) send the litigants or their attorneys there, in order that the depositions of the witnesses may be taken in the presence of one or the other of the parties to the suit, and returned to them.

We also wish these rules to be observed in the case of those who, where documents have been introduced, demand that they be proved; so that if they ask for it, they may be permitted to have testimony taken elsewhere. If the judge should find this request to be just, he can issue a decree to that effect, so that afterwards, whether the document is proved or not, the matter may be sent back to the former judge.

Given on the eighth of the *Ides* of April, during the Consulate of Decius, 529.

Extract from Novel 90, Chapter V. Latin Text.

This proceeding may be demanded either before a judge or the defender of a city, and can take place from one province to another, or from one city to another, or from a city to a province; but the rule is only applicable to civil actions, for in criminal cases witnesses must be produced in court and subjected to torture, if the case requires it.

18. *The Same to Demosthenes, Praetorian Prefect.*

Where several persons have received receipts for rent or interest, and when any doubt arises with reference to them, the rights of their creditors become uncertain when the parties deny that they have these receipts; as where serfs dispute the ownership of their master, and unjustly claim their own freedom, or debtors, desiring to plead temporary prescription against their creditors, make similar denials. With a view to disposing of this difficulty, We order that if, in the above-mentioned cases or in any other private ones resembling them, anyone who gives a receipt should desire to have a copy with the signature of the person who received it, he will be entitled to do so, or to receive a counter-receipt; so that, if permission is granted him, he who obtained the receipt will be obliged to give a counter-receipt in return; and if the creditor neglects to do this, the rights of the person who did not receive the counter-receipt will not be prejudiced; for it is contrary to the rules of equity that what has been introduced for the benefit of anyone should redound to his injury.

Given on the twelfth of the *Kalends* of October, during the fifth Consulate of Decius.

19. *The Same to Julian, Praetorian Prefect.*

It is clear that the comparison of notes and other instruments, which are not publicly executed, very frequently gives occasion to accusations of forgery, both in lawsuits and in contracts. Therefore, We order that no comparison of private papers shall be made, unless they bear the signature of three witnesses, and that, before they are accepted, either all three of them, or at least two, must acknowledge the genuineness of their signatures before a comparison of the instruments takes place, as only under such circumstances is a comparison of handwriting allowed; for, otherwise, We forbid such a

comparison to be made, even though someone may produce a written instrument against himself; except where a comparison is necessary in the case of instruments originating in court, or in public documents, or in papers of the kind which We have mentioned.

We do not allow any comparison to be made, unless it has previously been stated under oath by the persons who are to make it that they do so without being induced by the hope of gain, or by enmity, or by favor.

We order that this rule shall be observed in all the Imperial bureaus as well as in the tribunal of the eminent prefecture; in that of the commander of the army; and in those of all other judges who have been appointed in Our dominions. These provisions shall be complied with hereafter, for to annul any comparisons which have already been made would not be without danger.

Given on the thirteenth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

Extract from Novel 49, Chapter II. Latin Text.

You very properly ask that an examination of the instruments which your adversary produces and makes use of be permitted; and any document which is produced in the Public Archives is also subject to public evidence of this kind.

Extract from Novel 73, Chapters VIII, and IX. Latin Text.

If, however, the contract was made in a city, and was for more than one pound of gold, it must, by all means, be proved by comparison of handwriting, for it alone is not sufficient evidence.

20. *The Same to Julian, Prsetorian Prefect.*

When anyone introduces a written instrument or some other paper, and proves its genuineness, and afterwards the person against whom the said paper or instrument was produced attempts to show that it was forged, in order that doubt may no longer exist as to whether he who introduced the paper can be compelled to again establish its genuineness, or whether the former evidence was sufficient, We order that when such a case occurs, he who asks that the paper be produced a second time must first make oath that he thinks he can prove that it is forged, to enable a petition of this kind to be considered. But what course must be pursued if he should make a demand of this kind, being well aware that the document was lost or burned, or had been destroyed in some other way, and he pretended to require its production, knowing the difficulty of doing this? After the plaintiff or the claimant has been sworn, and the accusation brought before a competent judge, the necessity will then be imposed upon the person who introduced the document in question to introduce it again in court, in order that the accusation of forgery may be investigated. If, however, he should say that it is not

possible for him to produce the paper, because he has been deprived of it by accident, he must then swear that he has not the said paper in his possession; that he has not given it to anyone; that it is not held by another with his consent; and that he has not been guilty of fraud to prevent its appearance, but, as the said document has actually been lost without his fault, its production by him is impossible.

If he takes an oath of this kind he shall be excused from the necessity of producing the paper, but if he refuses to take it, then the instrument shall be considered forged, and of no effect, so far as the party against whom it was produced is concerned, but shall be absolutely void. We do not, however, desire to subject to further punishment persons who, under such circumstances, refuse to be sworn, as there are many who, influenced by too great reverence, are not even willing to swear to something which is true.

We grant the same opportunity to the other party until the action has been decided in court, for if it has already been terminated, and has not been suspended by appeal, it cannot be expected to be revived by means of the usual procedure; as it is sufficiently hard to authorize a complaint of this kind, lest cases may be protracted indefinitely, and matters which have already been settled by this means, may again be opened, and the opposite of what We have intended occur.¹

Given on the tenth of the *Kalends* of March, during the Consulate of Lampadius and Orestes, 530.

¹ No law of evidence, as we understand it, was known to the Roman jurists. The greatest latitude of statement was allowed; hearsay was admissible; proof was only regarded as conclusive where a fact was established by the testimony of two credible witnesses, or where a public document of indisputable authority was introduced. Presumptions were, under certain circumstances, considered to have much more effect than in our practice, especially when not confuted by the adverse party. Of legal presumptions the court took judicial notice.

Presumptions, which were often accepted in lieu of testimony, were of several kinds. The most important were the *priesumptiones juris et de jure*, which, being arbitrary legal rules, were absolute, and could not be disputed. Next came the *prsesumptiones juris*, by which something was held to be established as long as no contradictory evidence was adduced. The last, and those having least weight, were the *priesumptiones facti*, or inferences of fact, which arose from time to time during the proceedings, and whose application or rejection was entirely dependent upon the will of the court.

Competency to testify was, in some respects, governed by the same rule that prevails at the present

time; in addition to this, however, minors under the age of fourteen years, anyone accused of perjury, or who had been adjudged a spendthrift, a convict, a person publicly denounced as infamous, and an adulteress, were declared to be absolutely incompetent. A *particeps criminis*, as being *quasi* infamous, was included in this category. All who had an interest in the matter to be decided were excluded, in accordance with the maxim: "*Nullus idoneus testis in re sua intelligitur*;" hence neither party to an action could give evidence, for fear his prospective benefit might prevail over his sense of integrity, unless the oath was tendered by his opponent, who was then held to have waived his privilege; and the general legal principle was considered no longer applicable to that particular case. This oath, to have any effect, must be demanded either by the adversary or the judge.

Consanguinity was also a bar, as well as the close intimacy of friends ("*Amicos appellare debemus non levi notitia, conjunctos*") ; a client could not testify against his patron, nor a slave against his master, nor an attorney against his constituent or principal, and deadly enemies were reciprocally excluded. The above-mentioned persons were denied the right because of the influence, or, in some cases, the duress, which was presumed to exist. The pecuniary circumstances of a proposed witness were carefully investigated, and if he were found to be very poor, his testimony, if not rejected, was considered to be practically worthless, on account of his supposed liability to corruption. This inequitable rule was subsequently incorporated with all its rigor into the legal compilations of mediaeval Europe. Torture could only be employed against slaves in civil actions having reference to the descent and distribution of estates.

The *onus probandi* rested on the plaintiff, who was obliged to establish his claim by affirmative evidence, as prescribed by the rule, "*Ei incumbit probatio qui dicit, non qui negat*," a doctrine which has been adopted by all modern systems of

TITLE XXII.

WHAT HAS ACTUALLY BEEN DONE HAS MORE FORCE THAN WHAT HAS BEEN SIMULATED AND EXPRESSED IN WORDS.

1. *The Emperors Valerian and Gallienus to Rufinus.*

In contracts, the truth of the matter should rather be considered than what is stated in writing.

jurisprudence. The defendant was likewise required to prove any allegations set out by him in his *exceptio*, or other pleadings.

The number of witnesses testifying to the same fact was held to be entitled to greater consideration than their character as individual members of the community. More attention was paid to the testimony of a man than to that of a woman; and the power of rank and wealth over

comparative obscurity and indigence was, with manifest injustice, recognized by the Roman tribunals.

There was, before the reign of Justinian, no legal process by means of which witnesses could be compelled to appear, except in criminal cases, hence their attendance was purely voluntary.

Greater weight attached to all public records and properly authenticated documents duly executed by, or in the presence of the officials charged with that duty, than to others of any description; and of these which included instruments attested by notaries, courts were required to take judicial notice. A last will was considered a public document by the Roman juriconsults.

A private instrument, to be legal, was required to be sworn to and signed by three witnesses. If they, or any of them, were dead, their signatures could be proved by their comparison with others of whose authenticity there could be no doubt. A personal document of such great age that the witnesses thereto, in the course of nature, must be presumed to be no longer living, might be accepted, if its genuineness could not otherwise be proved. Where a paper was lost or destroyed, no evidence of its contents could be given, unless its absence, or non-existence, was satisfactorily established under oath. If a large number of witnesses testified to the same fact, it was in the discretion of the judge to exclude as many of them as he desired. When the plaintiff swore to the damages to which he alleged he was entitled, the court could either accept his statement, or reduce the amount demanded. If he failed to prove his claim a *non liquet*, equivalent to a non-suit, was entered.

Among the Romans, documentary evidence was, under all circumstances, considered much preferable to oral evidence, on account of the relative uncertainty of the latter, and, as a rule, could not be contradicted by it. "*Testes cum de fide tabularum nihil dicitur, adversus scripturam interrogari non possunt.*"

Hypothecary and pignorative contracts, promissory notes, and papers known to be the handwriting of parties to an action at law, occupied an inferior place, and were not entitled to the credit or importance enjoyed by those confirmed by public authority; and, where they conflicted with the latter, were required to be substantiated by indisputable and conclusive verbal testimony.

Copies of documents were admissible if their accuracy could be satisfactorily established, provided proof was adduced that the originals were not available. Three sworn witnesses were required for the attestation of conveyances of land, agreements, and similar instruments. A person was estopped by his own written deed, no matter what its character, provided its execution had been accompanied with the usual formalities, whether they involved merely an appearance and verbal

acknowledgment before a public official, or the drawing up, sealing, and attestation of some document in the manner prescribed by law; and no testimony could be introduced to question its validity, unless it was shown that the instrument had been procured through fraudulent representations, or extorted by violence. Comparison of handwriting was permitted when well-founded suspicion arose as to the

2. *The Emperors Diocletian and Maximian, and the Csesars, to Soterus.*

Fictitious instruments, as, for instance, those which state that not the husband, but the wife, made the purchase, cannot alter the truth; hence the question of fact should be examined by the judge or the Governor of the province.

Given on the tenth of the *Kalends* of May, during the Consulate of the Csesars.

genuineness of the signature of a person who was dead, and witnesses of good reputation were prepared to establish its authenticity under oath. It was obligatory upon the plaintiff to furnish the defendant with a complete list of all the documentary evidence which he expected to introduce to prove his case.

The introduction of depositions was only allowed under circumstances of urgent necessity, as they were not made under oath and afforded no opportunity for cross-examination; and no list of interrogatories was submitted by the adverse party as at the present day. When the testimony of both sides was unsatisfactory and inconclusive, it was a well-recognized rule that the defendant was entitled to the benefit of the doubt. No one who had not attained his majority was qualified to testify in a criminal case. The unsupported evidence of a single witness was inadmissible to prove any fact.

A marked peculiarity of Roman judicial procedure was that certain oaths might be taken while the case was being tried, some of which were accepted as conclusive, so far as the question at issue was concerned. Either party to an action could tender the *juramentum voluntariv/m* to the other, who had the right to tender it back, and" if he did not do so, he was considered to have accepted it as true. Recourse was had to the *juramentum in litem*, when it was necessary to estimate the amount of damages sustained by the loss or destruction of property which, on this account, could not be produced in court, and the plaintiff was sworn as to its value. The *juramentum necessarium sive suppletorium* was administered by a magistrate to a litigant to supply the want of defective or incomplete evidence, when the request was made to do so, and the court was satisfied of its expediency.

Evidence of character, whether good or bad, was considered of extreme importance by the Roman jurisconsults. Contrary to the English rule, proof of

previous misconduct, or the commission of crime could be introduced by the prosecution, without the question having been brought up by the accused. On the other hand, former good behavior and repute were always dwelt upon by counsel as almost conclusive confutation of the guilt of their clients. In making these statements, great reliance was placed upon the personal knowledge of the life of the defendant possessed by the court and jury, as was the case in early trials under the Common Law when the terms juror and *testis* were synonymous.

The great antiquity of the rules regulating the competency of witnesses which were incorporated into Roman jurisprudence is disclosed by an examination of the old Hindu laws:

"A Minor until Fifteen Years of Age, One single Person, a Woman, a Man of bad Principles, a Father, or an Enemy, may not be Witnesses."

"He who hath killed a Man, or who is guilty of Theft, of Adultery, or of false Abuse, or who, enticing a Man to himself, by Treachery or Deceit, deprives him of Life, and destroys his Effects, or whoever is a Juggler, and is constantly employed in Games of Dice and Chances, or whoever is a perpetual Wrangler, such Persons shall not be Witnesses." (Gentoo Code III, Vill.)

"Those must not be admitted who have a pecuniary interest; nor familiar friends; nor menial servants; nor enemies; nor men formerly perjured; nor persons grievously diseased; nor those, who have committed heinous offences.

"The king cannot be made a witness; nor cooks, and the like mean artificers; nor publick dancers and singers; nor a priest of deep learning in scripture; nor a student in theology; nor an anchorite secluded from all worldly connexions;

3. *The Same, and the Csesars, to Maxima.*

Where the purchase of a pledge has been made, not what was written, but what was done should be considered.

Given on the *Kalends* of May, during the Consulate of the Csesars.

4. *The Same, and the Csesars, to Decius.*

If anyone should cause it to be stated in writing that what he himself did was done by another, the act is of greater force than the document.

Given on the eighth of the *Kalends* of December, during the Consulate of the Caesars.

"Nor one wholly dependent; nor one of bad fame; nor one, who follows a cruel occupation; nor one, who acts openly against the law; nor a decrepit old man; nor a child; nor one man only, unless he be distinguished for virtue; nor a wretch of the lowest mixed class; nor one, who has lost the organs of sense;

"Nor one extremely grieved; nor one intoxicated; nor a madman; nor one tormented with hunger and thirst; nor one oppressed by fatigue; nor one excited by lust; nor one inflamed by wrath; nor one who has been convicted of theft." (Sir Wm. Jones, *The Laws of Menu*, Page 284.)

In Greece, as at Rome, slaves, either in the capacity of parties litigant or witnesses, were excluded from court.

"*Servum hominem causam orare leges non sinunt. Neque testimonii dictio est.*" (Terence, *Phormio* II, I.)

"No slaves shall appear as evidence." (Potter, *Antiquities of Greece* I, XXVI, Page 193.)

Interested parties were not allowed to testify; hearsay based on the statements of deceased or absent persons was admitted; and witnesses, after having been sworn, could not refuse to give their testimony, which was reduced to writing, "No one shall be evidence for himself, either in judicial actions, or in rendering up accounts."

"There shall be no constraint for friends and acquaintances, if contrary to their wills, to bear witness one against another."

"Eye witnesses shall write down what they know, and read it." (*Ibid.*, loc. cit.)

The rule fixing the number of witnesses required to establish a fact at Common Law is as old as Bracton. "*Testium numerus si non adjicitur, duo sufficient.*" (*De Legibus et Consuetudinibus Angliae* V, 359.)

Many of the principles of the Civil Law relating to the nature and introduction of evidence were adopted by the old English jurists. Anyone who had been recreant, and in consequence branded with cowardice, was incompetent. "He that loseth *liberum legem*, becometh infamous, and can be no witness. Or if the witness be an infidell, or of non-sane memory, or not of discretion, or a partie interested or the like." (Coke, *Institutes*, I, I, I, 6. b.) As among the Romans, a defendant accused of a capital crime in England was formerly considered as practically outside the pale of the law, and hence not entitled to the aid of an attorney, or to the testimony of witnesses in his behalf.

Unlike the provision of Roman legislation, a single witness may be called in a legal proceeding in the English or American courts. Infamy is no longer a bar to a person's capacity to testify, but the credibility of his evidence is left to the jury. Many of the other ancient rules have been abrogated, among them those relating to age, sex, parties to the suit, and consanguinity.

The classification of presumptions bears a striking resemblance to that of the Civil Law. "Many times juries, together with other matter, are much induced by presumptions; wherefore there be three sorts, viz.: violent, probable, and light or temerary. *Violenta*

priesumptio is manie times *plena probatio*; as if one be runne thorow the bodie with a sword in a house, whereof he instantly dieth, and a man is seene to come out of that house with a bloody sword, and no other

5. *The Same, and the Csesars, to Victor.*

If you should sign a false contract of sale, under the impression that it was a lease you had directed to be drawn up for you, and which the other party did not sign, but you did in good faith, there is no doubt that neither contract is valid, as in both instances consent was lacking.

Given on the thirteenth of the *Kalends* of January, during the Consulate of the Caesars.

man was at that time in the house, *prsesumptio probabilis* moveth little; but *prie-sumptio lasvis sea temeraria* moveth not at all."

The various judicial oaths of the Civil Law, *juramentum in litem*, *juramentum suppletorium*, and *juramentum voluntarium*, were incorporated into the jurisprudence of Scotland. "The oath *in litem* is admissible where the culpability of the defender is inferred by a presumption of law, without any express delict."

"The oath in supplement is the evidence of one acquainted with the facts, but subject to great bias. Being only admissible as in supplement of the other evidence, it must be corroborative of that evidence, in order to raise the proof from *semiplena* to *plena*."

"Reference to oath is not so much a species of evidence as a mode of supplying the want of evidence, and preventing unjust consequences, *ubi non deficit jus sed probatio*. It is accordingly settled that a party has not an absolute right to call for his opponent's oath; but that the court, in the exercise of its discretion, may refuse the reference, if they consider that it would not aid the justice of the case." (Dickson, *A Treatise on the Law of Evidence in Scotland* II, IV, I: V, III; VII, I; III, I, XV.)

The rules establishing the disability of witnesses on the ground of sex, infamy, dependence, and indigence—under which all were excluded who were not worth sixteen shillings and eight pence—have been abolished.

The *juramentum voluntarium*, *juramentum in litem*, and the *juramentum suppletorium* constitute part of the French legal procedure, in which they are designated respectively, *le serment deesoire*, *le serment in litem*, and *le serment defere d'office*. (*Code Civil de France*, Arts. 1357-1369.)

The first of these can be administered in any kind of controversy, but is only applicable to personal facts concerning him to whom it is tendered, which facts must be of such a conclusive character as to at once dispose of the question at issue, hence the name. The oath cannot be

refused even on the ground that it will have a tendency to incriminate the person directed to take it.

The *serment in litem* is only admissible when the value of the property cannot be otherwise estimated. The *serment defere d'office*, usually administered to one of the litigants, is only intended as a source of information, when other testimony is incomplete.

In the French tribunals, all evidence, whether in the first place documentary or oral, is reduced to writing and then presented to the judge. The prolixity of witnesses is rather encouraged than restrained; opinion and hearsay, so rigorously excluded under the Anglo-Saxon practice, are interposed without objection or remonstrance; examination and cross-examination by attorneys are not permitted. Questions, when necessary, are asked by the magistrate who presides over the original judicial investigation, or *enquete*, and who is especially designated for that purpose. (*Vide* Bodington, An Outline of the French Law of Evidence, Pages 2, 73, 77, 79.)

Minors under fourteen years of age, insane persons, the blind and deaf, when the proof of facts demand eyesight or audition, persons directly interested in the action, ascendants and descendants, husband and wife, and those whose profession bind them to secrecy, are not permitted to testify before the Spanish tribunals. (*Codigo Civil de Espana*, Arts. 1244-1247.)

At present, the English and American rules of evidence probably coincide more nearly than those of any other branch of jurisprudence.—ED.

TITLE XXIII.

CONCERNING LOANS FOR USE.

1. *The Emperors Diocletian and Maximian to Sciola.*

Those things which are destroyed by the exertions of superior force cannot be at the risk of the persons to whom the property was lent for use; but as you state that he to whom you lent an ox proposed to assume the risk of future damage and loss through a threatened incursion of the enemy, the Governor of the province shall compel him to carry out his agreement, if you can prove that he promised to indemnify you.

Given on the sixth of the *Kalends* of June, during the Consulate of the same Emperors.

2. *The Same to Aulizanus.*

As good faith requires the restitution of a female slave by the person who received her for temporary service, the result will be that your father-in-law must show before the Governor of the province why the female slave was delivered to him, in order that the party against whom you have filed your petition may be forced to comply with his contract.

Given on the day before the *Nones* of November, during the Consulate of the same Emperors.

3. *The Same to Soteria.*

With reference to the restoration of the property, which you gave to your husband to be encumbered in his behalf, you can, after the debt has been paid, bring the action of loan even against his heirs.

Given on the third of the *Ides* of April, during the Consulate of the same Emperors.

4. *The Same, and the Ctesars, to Faustina.*

The return of a loan cannot properly be refused under the pretext of a debt.

Given on the twelfth of the *Kalends* of December, during the same Consulate.

TITLE XXIV.

CONCERNING THE ACTION OR PLEDGE.

1. *The Emperor Alexander to Demetrius.*

What has been obtained by the labor of the female slave, or from the rent of the house which you state is held in pledge, will disclose the amount of the indebtedness.

Given on the *Kalends* of October, during the Consulate of Antoninus, Consul for the fourth time, and Alexander, 223.

2. *The Same to Victorinus.*

A creditor who holds land in pledge is required to diminish the amount of the debt by the value of the crops which he has collected, or should have collected; and if he injures the land, he will on this account be liable to the action of pledge.

Given on the sixth of the *Ides* of December, during the Consulate of Antoninus, Consul for the fourth time, and Alexander, 223.

3. *The Same to Hermius and Maximilla.*

The contract to which you refer, under whose terms, if the money due should not be paid within a certain time, permission is granted to sell the land pledged or hypothecated, does not deprive the debtor of the right to bring the action on pledge against his creditor.

Given on the twelfth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Jelianus, 224.

4. *The Same to Dioscorida.*

If the creditor, without his fault, has lost the silver given him in pledge, he is not required to make it good. If, however, he should be found guilty of negligence, even though it may not be clearly proved that he lost the silver, judgment shall be rendered against him for the amount of the interest of the debtor.

Given on the thirteenth of the *Kalends* of May, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

5. *The Same to Trophina.*

Whatever happens accidentally and cannot be provided against, as, for instance, an attack by robbers, does not furnish ground for a guarantee in a *bona*

fide action, and therefore a creditor is not compelled to be responsible for property which has been lost in this way; nor will he be barred from bringing suit to recover the debt, unless it was agreed upon between the contracting parties that loss of the pledges would release the debtor.

Given on the *Ides* of April, during the Consulate of Fuscus and Dexter, 226.

6. *The Emperor Gordian to Julian.*

A creditor, who has received lands and houses in pledge or by way of hypothecation, is required to deduct from the amount of the indebtedness the damage he caused by cutting down trees, or demolishing buildings; and if through fraud or negligence he has rendered the property mentioned less valuable, he will be liable on this ground in the action on pledge, and will be required to restore everything to the condition in which it was at the time when the obligation was contracted.

A creditor, however, is not forbidden to demand any necessary expenses incurred by him with reference to the property pledged. .

Given on the thirteenth of the *Kalends* of August, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

7. *The Emperor Philip, and the Cassar Philip, to Saturninus.* If neither blame nor negligence can be imputed to a creditor, he' will not be responsible for the loss of pledges; but if such a loss is simulated, and, as you allege, the pledges are still in the possession of the adverse party, you can institute proceedings against him.

Given on the eighth of the *Kalends* of March, during the Consulate of Praesens and Albinus, 247.

8. *The Emperors Diocletian and Maximian, and the C&sars, to Georgius.*

There is no doubt that the pledge continues to be part of the property of the debtor, and hence if it is destroyed he must bear the loss. Therefore, as you state that the articles pledged were placed in warehouses, the result will be that, according to the general law that pledges are at the risk of the debtor (if the said warehouses are such as are ordinarily publicly used by others for the deposit of property), you will undoubtedly be entitled to a personal action to recover the entire debt.

Given at Milan, on the sixth of the *Nones* of May, during the Consulate of the above-mentioned Emperors.

9. *The Same, and the Csesars, to Apollodora.*

Neither creditors nor their successors can protect themselves by prescription based upon long time against debtors who demand property which has been pledged, after having paid the debt in full, or after having tendered, sealed up, and deposited the money for the creditors who refused to receive it. Therefore, understand that if you can show that this is the origin of the possession of the property by your adversary, you can recover it.

Moreover, in order that the creditor may be able to protect himself from the demand for the pledge, you will be required to prove the indebtedness; or if you hold the property pledged and claim it, he will be required to do the same thing; and the release of the pledge will not be difficult for you to obtain, either by payment of the money, or by tendering and formally depositing it.

Given on the *Nones* of May, during the Consulate of the Csesars.

10. *The Same Emperors and Caesars to Ammianus.*

The nature of the action on pledge shows that the property which has been encumbered should be returned as soon as the debt has been paid. In accordance with this rule, if you have pledged certain slaves, you can avail yourself of the same action; as the creditor cannot, at his will, appropriate the property of the debtor without an agreement to that effect, or an order of the Governor authorizing it to be done.

Given on the fifth of the *Kalends* of January, during the Consulate of the Caesars.

11. *The Same Emperors and Csssars to Heriscus.*

An account having been taken of the profits obtained by the creditor from property which has been pledged to him, and credited upon the debt, and the balance having been paid, or (if it was the creditor's fault that this was not done), the amount due having been tendered, sealed up, and deposited, the pledges given as security shall be restored to the debtor, against whom prescription based upon long time can not be pleaded.

Given on the twelfth of the *Kalends* of December, during the Consulate of the Csesars.

TITLE XXV.

CONCERNING THE ACTIO INSTITORIA AND THE ACTIO EXERCITORIA.

1. *The Emperor Antoninus to Hermes.*

Your slave, by receiving a sum of money which had been loaned, renders you liable to the *Actio institoria*, when you have appointed him to discharge some duty, or conduct some business, and it is proved that permission was given by you for him to do this. The action, however, will not lie if it should be proved that the money was employed for the benefit of your property; but you will be compelled to make payment by means of the proceeding available for this purpose.

Given on the eighth of the *Kalends* of September, during the Consulate of the two Aspers, 213.

2. *The Emperor Alexander to Callistus.*

Although masters are only liable to the amount of the *peculium* of their slaves, in contracts made by the latter, still, there is no doubt that a master can be sued for the entire amount where the money has been employed for the benefit of his property, or the contract was made

by the slave as agent, in an affair which he was appointed to transact.

Given on the third of the *Kalends* of May, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Same to Martia.*

The *Actio institoria* will lie in your favor against the person by whom, as you allege, a slave has been appointed to take charge of his counting-house, if you can prove that the money was deposited with the said slave, and not returned, in the course of the business with which he was entrusted.

Given on the *Nones* of May, under the Consulate of Agricola and Clementinus, 331.

4. *The Emperors Diocletian and Maximian, and the Csesars, to Antigona.*

If a woman should be appointed to command a ship, she will be liable in an *Actio exercitoria* for the contracts of him who appointed her, just as in the case of an *Actio institoria*.

Given on the thirteenth of the *Kalends* of November, during the Consulate of the Csesars.

5. *The Same Emperors and Csesars to Gaius.*

If you are sure you can prove that Domitian directed Demetri-anus to borrow a certain sum of money from you, you can bring suit against Domitian before a competent judge in the same way as in an *Actio institoria*.

Given on the fourth of the *Kalends* of November, during the Consulate of the Caesars.

6. *The Same Emperors and Csesars to Onesima.*

He who conforms to the will of the master when he makes a contract with his slave can legally hold the former responsible for the entire amount by an action resembling the *Actio institoria*.

Given on the fourteenth of the *Kalends* of December, during the Consulate of the Csesars.

TITLE XXVI.

WHEN BUSINESS is SAID TO HAVE BEEN TRANSACTED WITH ONE WHO is UNDER THE CONTROL OF ANOTHER, OR WITH REFERENCE TO PECULIUM; OR WHERE SOMETHING HAS BEEN DONE BY THE ORDER OF ANOTHER; OR WHERE ANYTHING is EMPLOYED FOR THE BENEFIT OF THE PROPERTY OF THE PERSON IN CONTROL.

1. *The Emperors Severus and Antoninus to Mlius.*

When a son under paternal control is appointed a guardian or curator, the action on guardianship, or of voluntary agency, or *De peculia*, or for money employed for the benefit of the property of another, should be brought against the father. Where a son is created a decurion with the consent of his father, and is afterwards appointed a guardian by magistrates, his father will be

compelled to pay the entire debt, as this liability is understood to be incurred in the same way as that of other municipal charges.

Given on the seventh of the *Ides* of November, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

2. *The Same to Annius.*

It has been declared by the interpretation of the Perpetual Edict that where a contract having reference to property has been made with a son under paternal control, either with the consent of the latter, or with that of him to whose authority he was subject, whether the money was to be employed for the benefit of his own *peculium* or for the benefit of the property of his- father, and he should reject his father's estate, an action can only be brought against him for the amount that he is able to pay.

Given on the eighth of the *Kalends* of December, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

3. *The Emperor Antoninus to Artemon.*

If you lend money to the slave of Prisca, without his mistress directing this to be done, or ordering it, or consenting to it, still, if the amount was legally expended for the benefit of the property of his mistress, suit can be brought against her on that ground, and you can obtain what appears to be due to you in accordance with the forms of law.

Given on the third of the *Kalends* of July, during the Consulate of Lsetus and Cerealis, 216.

4. *The Same to Lucius.*

If you have obtained a loan of money under a contract of your father, and by his order, and you reject his estate, you will have no reason to apprehend that you will be sued by his creditors.

Given on the fifth of the *Kalends* of January, during the Consulate of Messala and Sabinus, 215.

5. *The Emperor Alexander to Asclepiades.*

Nothing prevents sons under paternal control, who are over twenty-five years of age, and have become sureties for others, from being liable in a proper action brought against them. If, however, suit is brought against you only to the amount of your *peculium*, avail yourself of all the defences to which you are entitled.

Given on the sixth of the *Ides* of December, during the Consulate of Maximus, Consul for the second time, and ^lianus, 224.

6. *The Emperors Valerian and Gallienus, and the Cassar Valerian, to Matronus.*

If your slave, having borrowed a sum of money without your permission, grants his creditor a right of habitation, in lieu of interest, your adversary can, on no legal ground, claim this privilege for himself, as the act of the slave did not render you liable; and, having entered

upon your property, you will be protected against his violence by the authority of a competent judge.

Given on the twelfth of the *Kalends* of July, during the Consulate of ^milianus and Bassus, 260.

7. *The Emperors Diocletian and Maximian, and the Cassars, to Crescens.*

There is no doubt that anyone who has lent a sum of money to a slave belonging to another will, during the lifetime of the slave and within a year after his death, be entitled to bring the action *De peculio* against the master of the said slave; or if the sum was employed for the benefit of the property of the said master, to bring a praetorian action against him even a year after the death of the slave. Therefore, if the money has been employed for the benefit of the master's property, you can sue his heirs for the amount expended for that purpose. If, however, you are unable to prove that this is the case, the result will be that, if the slave is still living, you can sue his master in the action *De pecunia*; or if he is dead, or has been sold or manumitted, and the year has not expired, you can bring this action against the person having him in possession.

(1) Where, however, you made a contract with a freeman who transacted the business of the person whom you mentioned in your petition, and chose him as your debtor; understand that you have no right of action against his principal, unless the money was employed for the benefit of the property of the latter, or he ratified the contract.

Given at Byzantium, on the *Nones* of April, under the Consulate of the above-mentioned Emperors.

8. *The Same Emperors and Czesars to Diogenes.*

If you have acted as the mandator of your son, or a contract was made with him by your order while he was under your control, understand that you are liable for both principal and interest, and will be compelled to pay them, in order that the property pledged may be released. If, however, you became surety for the money lent, it is a well-established rule of law that you will be responsible under this obligation.

Given on the third of the *Kalends* of May, during the Consulate of the Casars.

9. *The Same Emperors and Csesars to Isidor.*

If you became a debtor under a contract which had not an unlawful loan for its object, or if you became surety for your father, you will legally be liable for the indebtedness, whether you are under the control of your father, or whether, by his death, you have become independent. If you are the heir of your father, you will be liable in full; otherwise, for as much as you are able to pay in accordance with the terms of the Edict. If, however, you have become your own master by

emancipation, you should understand that you are equally liable.

Given at Byzantium, on the sixth of the *Ides* of April, under the Consulate of the Csesars.

10. *The Same, and the Csesars, to Diogenes and Aphrodisius.*

When slaves, having the free administration of their *peculium*, sell mares with their colts, which form part of said *peculium*, their master will not have the power to rescind the contract. If, however, the said slaves, not having the free administration of their *peculium*, should sell property belonging to their master, without his knowledge, they cannot transfer to another the ownership which they do not possess, nor can they deliver lawful possession to purchasers who are aware of their servile condition. Hence, it is clearly not unreasonable that such purchasers cannot be benefited by prescription based upon long time; and therefore, having purchased movable property from a slave, they will also be liable in an action for theft.

Given on the fifth of the *Nones* of October, during the Consulate of the Csesars.

11. *The Same, and the Csesars, to Attains.*

Where anyone makes a contract with a female slave (whom it is established by law cannot legally be bound) against her master for the amount to which her *peculium* has been increased during the lifetime of the said slave, there is no doubt that an action should be granted within the available year after her death.

Given on the day before the *Kalends* of December, during the Consulate of the Csesars.

12. *The Same Emperors and Csesars to Victor.*

It has been established by the Perpetual Edict that a master cannot be bound by his slave, and that an action should be granted the creditors of the latter only to the extent of his *peculium*, after having deducted the amount which he naturally owes to his master; or, if it should be proved that any of the money was employed for the benefit of the master's property, an action can be granted them on this ground.

Given on the thirteenth of the *Kalends* of February, during the Consulate of the Casars.

13. *The Emperors Honorius and Theodosius to John, Prsetorian Prefect.*

It is clear that masters are liable under the Prsetorian action which is designated *Quod jussu*, if they direct their slaves or agents to count out a certain sum of money. Hence We order, by this law, which shall have the force of an Edict and be perpetual, that where anyone lends money to a slave, a serf, a tenant, an agent, or a steward, the masters or cultivators of the land will not be liable; and it is not proper that friendly letters, by which men frequently recommend a person who is absent, should

cause money which was not asked for to be expended for the benefit of land, as a master cannot legally be liable unless money was especially furnished at his request.

We desire that any creditors who, without the order of the master and without having received sureties for that purpose, advance money to persons of this kind, shall lose what they have lent. Where, however, an agent, a slave, or the superintendent of land should be found not to owe any to his master on account of the property of which he had administered, We grant permission to a creditor to avail himself of a prsetorian action with reference to the *peculium*.

Given at Ravenna, on the fifth of the *Ides* of July, during the Consulate of Honorius, Consul for the tenth time, and Theodosius, Consul for the sixth time, 415.

TITLE XXVII.

BY MEANS OF WHAT PERSONS PROPERTY CAN BE ACQUIRED BY US.

1. *The Emperors Diocletian and Maximian to Marcella.*

It is an undoubted rule of law that, with the exception of possession, nothing can be acquired for us by a free person who is not subject to the authority of another. Therefore, if an agent should make a contract, not in his own name, but in that of the person whose business he is transacting, by which, under certain circumstances, he reserves the right to demand the return of the property sold, and a stipulation is attached to the contract, no obligation is acquired by the master. Where, however, property has been delivered to slaves, it is acquired for their master.

Given on the *Kalends* of July, during the Consulate of the same Emperors.

2. *The Emperor Justinian to Julian, Prsetorian Prefect.*

Whenever a sum of money is counted out by one free person in the name of another, the right to a personal action will be acquired by him in whose name the money is lent by this act of counting it, but the right of hypothecation or pledge of property given to an agent will not be acquired by the principal parties to the contract; and for the purpose of disposing of this difference, We order that the right to the personal action, as well as that to the hypothecary action shall, by operation of law and without any assignment, vest in the principal party to the contract. For if the agent is required by law to assign his right of action to his principal, why should the assignment of this action appear to be superfluous in the beginning, and will not the principal party to the contract in the case of pledge or hypothecation in like manner acquire for himself the hypothecary action, the pledge, or the right to retain the same?

Given on the *Kalends* of November, during the fifth Consulate of Lampadius and Orestes, 530.

3. *The Same to Julian, Prsetorian Prefect.*

When two or more persons own a slave in common, and one of them orders him to make a stipulation for something in his name, for example for ten *aurei*, or for some other property, and the said slave mentions, not the name of the one who gives the order, but that of another of his masters, and stipulates in the name of the latter, the question arose among the ancient authorities, who would be entitled to the action, or the profit growing out of this transaction, he who gave the order, or the one whom the slave mentioned, or both? As all these opinions were, after much discussion, adopted by a large number of authorities, the better opinion seems to Us to be that of those who held that the stipulation should be considered as made by the person who ordered it to be done, and who asserts that he alone was entitled to the acquisition, rather than the views of the others which are stated on this point. For no indulgence should be shown to the wickedness of slaves, so that they, after treating the orders of their masters with contempt, may be permitted to enter into stipulations according to their own wishes, and thereby transfer to another master, who perhaps had corrupted them, the profit to which someone else was entitled. Nor ought it to be tolerated that an impious slave may think no obedience should be paid to his master, who had given him the order, and that he was at liberty to confer an unexpected benefit upon another who, perhaps, had no knowledge of the transaction; for it was repeatedly stated by the ancients that the order of a master did not differ from an appointment, and ought to be obeyed when a slave was ordered by one of his masters to make a stipulation, without stating in whose name it should be done; for in this instance, the one who gave the order would be the only one to obtain the benefit. Where, however, he mentioned the name of another of his masters, the acquisition will be solely to his advantage, for it is much more important than his order.

Given on the fifteenth of the *Kalends* of December, during the fifth Consulate of Lampadius and Orestes, 530.

TITLE XXVIII.

CONCERNING THE MACEDONIAN DECREE OF THE SENATE.

1. *The Emperor Mlius Pertinax to Atilius.*

If you can prove that for good reasons you believed the statements of a son under paternal control, to whom you lent money, and who stated that he was the head of a household, he shall be refused an exception.

Given on the tenth of the *Kalends* of April, during the Consulate of Falco and Clarus, 194.

2. *The Emperors Severus and Antoninus to Sophia.*

Whether Zenodorus, who was generally considered to be his own master, contracted with the consent of his father, or received a sum of money to be employed in matters with which the latter was charged, and afterwards, having become independent by means of a novation, or in some other manner, he assumed liability for the debt, it is reasonable that the Decree of the Senate should not be applicable.

Given on the fifth of the *Kalends* of March, during the Consulate of Saturninus and Gallus, 199.

3. *The Same to Macrinus.*

Where a son, subject to the authority of his father, having purchased something, promised to pay the price of the same with interest to the vendor, there is no doubt that the Decree of the Senate by which a son under paternal control is forbidden to pay any interest will not apply; for the origin of the obligation rather than the title of the action should be taken into consideration.

Given on the *Ides* of March, during the Consulate of Saturninus and Gallus, 199.

4. *The Same to Cyrilla.*

If you lent money to a son under paternal control with the permission of his father, the authority of the Decree of the Senate cannot be invoked. Hence the recovery of the pledge which formed part of the property of the father will not be refused, especially where the son becomes his heir, provided no other creditor appears whose rights are preferable to yours under the terms of a contract, or in point of time.

Given on the twelfth of the *Kalends* of May, during the Consulate of Fabian and Mutian, 202.

5. *The Emperor Alexander to Musa.*

The authority of the Macedonian Decree of the Senate does not prevent a demand being made for money which was lent to a son under paternal control, for the purpose of prosecuting his studies, or in order to meet the necessary expenses of an embassy, which paternal affection would not have refused him. The action *De peculia* growing out of the contract of the son will lie, even after his death, against his father, where the time of the available year does not prevent it from being brought. If, indeed, the money is proved to have been loaned, by order of the father, it will not be necessary to inquire to what use it was put, but the action can be brought against the father without limitation of time, even after the death of the son.

Given on the day before the *Kalends* of May, during the Consulate of Agricola and Clementinus, 231.

6. *The Emperor Philip and the Cassar Philip to Theopompus.*

If your son, while under your control, should borrow money in violation to the Macedonian Decree of the

Senate, the action *De peculio* can, under no circumstances, be legally brought against you on this account. Although the Decree of the Senate only mentions a son under paternal control, its provisions extend to grandsons and great-grandsons.

Given on the sixth of the *Nones* of March, during the Consulate of Philip and Titian, 246.

7. *The Emperor Justinian to Julian, Praetorian Prefect.*

If a son under paternal control should borrow money without the order, mandate, or consent of his father, and the latter should afterwards ratify the contract, We, with a view of disposing of the doubts entertained by the ancient jurists on this subject, do hereby order that, just as if the said son under paternal control had, in the beginning, borrowed the money with the consent or under the direction of his father, he shall be absolutely liable; so that even if his father afterwards ratifies his contract, it will still be valid, as it would be unjust to reject the paternal consent. For the ratification of the father is not unlike his mandate given in the first place, or his consent; as, in accordance with Our new law, every ratification has a retroactive effect, and confirms everything which was done from the beginning.

These rules are applicable to the transactions of private persons.

(1) Where, however, a son under paternal control, who is a soldier, borrows money without either the mandate, consent, approbation, or ratification of his father, the contract must stand; and it makes no difference for what purpose the money was borrowed, or how it was expended, as, according to several principles of law, soldiers are considered to resemble men who are their own masters, and a soldier is always presumed not to have borrowed and expended any money except for some purpose connected with his military service. Given on the twelfth of the *Kalends* of August, during the fifth Consulate of Lampadius and Orestes, 530.

TITLE XXIX.

CONCERNING THE VELLEIAN DECREE OF THE SENATE.

1. *The Emperor Antoninus to Lucilla.*

Relief is granted by the Decree of the Senate to women who become liable, or assume the obligations of others, when the contracting parties are not aware of the fact. If, however, having voluntarily assumed the obligation, they should pay money in behalf of others when they are not liable, they will have no right of recovery.

Given on the *Nones* of December, during the Consulate of Gentian and Bassus, 212.

2. *The Same to Nepotiana.*

You have in vain attempted to avail yourself of the exception authorized by the Decree of the Senate, enacted for the benefit of women who become sureties for others, as you yourself are the principal debtor; for the exception of the Decree of the Senate is only granted to a woman where she herself owes nothing as principal, but has become surety to a creditor for another debtor. If, however, she should obligate herself to the creditor of another person, or permit herself to be delegated for his debtor, she will not be entitled to the benefit of this Decree of the Senate.

Given on the third of the *Ides* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Same to Servatus.*

If you yourself borrowed a sum of money, and your mother, in violation of the Decree of the Senate, became your surety, she can defend herself by means of an exception.

Given on the third of the *Ides* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

4. *The Emperor Alexander to Alexandra.*

The Decree of the Senate applies when a woman has assumed an obligation incurred by another, or when she becomes surety for him; or where someone has borrowed money, and she herself is the principal debtor in the beginning. This occurs whenever her own property is encumbered for the obligations of others. If, however, you, being at the time more than twenty-five years of age, sold your land and paid the purchase-money for the benefit of your husband, the aid of the Decree of the Senate cannot be invoked.

Given on the sixth of the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

5. *The Same to Popilia.*

If your property has been pledged by your husband without your consent, it will not, legally, be encumbered. Where, however, you have agreed to the obligation, and the creditor was aware of the fact, you can avail yourself of the aid of the Decree of the Senate. But if you permitted your husband to encumber your property, as if it was his own, with the intention of deceiving the creditor, relief cannot be granted you under the Decree of the Senate, which was enacted to protect the weakness, and not the duplicity of women.

Given on the fifteenth of the *Kalends* of July, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

6. *The Same to Torquatus.*

When a mother, while transacting the business of her daughters, gives security to their guardians by furnishing

a surety, or delivering pledges, as she is considered, to a certain extent, as having attended to their affairs, neither she nor the surety furnished by her can take advantage of the Decree of the Senate, nor will she derive any benefit from the fact that her own property was pledged.

(1) When the guardian desires to excuse himself, and the mother interposes to prevent it, and promises him indemnity, she will by no means be prevented from availing herself of the aid of the Decree of the Senate.

(2) If, however, she should demand a guardian, and voluntarily assume responsibility for the guardianship, the authority of the law will prevent her from becoming liable.

Given on the sixth of the *Ides* of October, during the Consulate of Modestus and Probus, 229.

7. *The Emperor Gordian to Vivian.*

Where a creditor has knowingly received from a husband, as security for his own debt, land which belonged to his wife, even with her consent, he cannot, by selling the land, deprive the woman of ownership, on account of the protection afforded by the Decree of the Senate; and it would not be necessary for you, when you claim the property, to pay the price to the purchaser, if you have become your mother's heir.

Given on the twelfth of the *Kalends* of October, during the Consulate of Pius and Pontianus, 239.

8. *The Same to Tripho.*

If children of both sexes, who have been emancipated, jointly assume a debt of their father, although the daughters are exempted from the obligations of men by the exception of the Velleian Decree of the Senate, the sons will, nevertheless, be liable to the extent to which they have bound themselves; and there is no doubt that the daughters having thus been exempted, the father can be sued for the same amount for which he would have been responsible if his daughters had not become bound for him. The pledges given by the father will undoubtedly be encumbered if they were received for the last obligation. If, however, they were obtained on account of the first obligation, they will only be liable in proportion to the amount returned to the father by the *Actio restitutoria*.

Given on the *Nones* of October, during the Consulate of Pius and Pontianus, 239.

9. *The Same to Proculus.*

Although a woman can make payment in behalf of another, still, if she should do so by virtue of an obligation which is not valid under the Decree of the Senate, and she is ignorant that she was entitled to the benefit of the Decree, she will have a right to recover the money.

Given on the *Nones* of July, under the Consulate of Gordian and Aviola, 240.

10. *The Emperor Philip and the Csesar Philip to Triphona.*

If your adversary entered into a business transaction with you but not with your husband, you can, under the pretext that an obligation of this kind is void, refuse to pay the balance of the rent which you agreed that you contracted for. If the owner leased the land, not to you but to your husband, and accepted you as surety for him, you can also defend yourself by pleading the benefit of the Decree of the Senate, which was enacted with reference to women becoming sureties.

Given on the eighteenth of the *Kalends* of September, during the Consulate of Peregrinus and Jiiimilianus, 245.

11. *The Same to Ebor.*

It is a well-established rule of law that, while marriage exists, the right of hypothecation or pledge can be granted to the husband.

Given on the eighth of the *Kalends* of October, during the Consulate of Peregrinus and J^milianus, 245.

12. *The Emperors Valerian and Gallienus to Sepiduta.*

If, desiring to endow your daughter, you have encumbered your property to your son-in-law, you are mistaken if you think that you can invoke the aid of the Decree of the Senate, for persons learned in the law have held that a case of this kind is not entitled to that privilege.

Given on the ninth of the *Kalends* of March, during the Consulate of Tuscus and Bassus, 339.

13. *The Emperors Diocletian and Maximian to Condana.*

If money has actually been lent to you at interest by your creditor, whether it is alleged that the entire amount, or only a portion of the same, has been employed for the benefit of your husband, you cannot avail yourself of the Decree of the Senate, even though your creditor may not have been ignorant of the cause of the contract.

Given on the third of the *Kalends* of September, during the Consulate of the same Emperors.

14. *The Same Emperors and Csesars to Basilissa.*

A woman cannot become surety in violation of the terms of the Velleian Decree of the Senate, and the law permits her sureties to avail themselves of the same exception. Therefore if your mother should not become the heir of her husband, she will be sufficiently protected by the remedy of the exception authorized by the Decree of the Senate.

Given at Byzantium, on the eighth of the *Kalends* of April, under the Consulate of the Caesars.

15. *The Same, and the Csesars, to Agripimis.*

If a woman, desiring to become surety for her husband contrary to the provisions of the Decree of the Senate, asks you to bind yourself for her as mandator, and

suit is brought against you, you can defend yourself by means of the exception originating from this contract, and you will be released from liability.

Given on the eighteenth of the *Kalends* of June, during the Consulate of the Cassars.

16. *The Same, and the Csesars, to Rufinus.*

When a woman assumes the obligation of another, and relief is granted her by means of the exception of the Velleian Decree of the Senate, the action to establish him in his rights against his former debtors shall be granted the creditor.

Given on the seventeenth of the *Kalends* of February, during the Consulate of the Caesars.

17. *The Same, and the Cassars, to Alexander and Others.*

If your father borrowed money from Callistratus, and an instrument was drawn up which makes it appear that his wife had borrowed it, it is not necessary to have recourse to the exception granted by the Decree of the Senate, as the actual truth, rather than a fictitious transaction, will protect the woman.

Given on the third of the *Ides* of March, during the Consulate of the Caesars.

18. *The Same, and the Csesars, to Zopicus.*

Relief is granted to women who have assumed the obligations of others, whether they are old or of recent date, unless the creditor has, in some way or other, been deceived by the woman; for it has been established that the exception of the Decree of the Senate will not be applicable when a reply on the ground of fraud is filed.

Given at Antioch, on the fifth of the *Ides* of November, under the Consulate of the Cajsars.

19. *The Same, and the Cassars, to Faustina.*

It is provided by the Perpetual Edict that the Decree of the Senate enacted with reference to the suretyship of women applies to such obligations as women have assumed in the first place, through the fraudulent acts of creditors; and if a creditor who intended to make a contract with another party should afterwards choose a woman, you can be defended by an exception against persons attempting to enforce their claims in accordance to what you allege.

Given at Nicomedia, on the eighteenth of the *Kalends* of January, during the Consulate of the Caesars.

20. *The Same, and the Czesars, to Theodotian.* There is no doubt that the heirs of a woman can also make use of the exception granted by the Decree of the Senate against her creditors.

Given on the ninth of the *Kalends* of January, during the Consulate of the Caesars.

21. *The Emperor Anastasius to Celer, Master of the Offices.*

We order that women shall be permitted to voluntarily renounce the rights of hypothecation to which they are entitled on account of one or several contracts, or one of certain persons or things; and whatever is done in this manner shall, by Our authority, remain firm and irrevocable, so that if a renunciation of this kind is made for only one contract, as has been stated, or for several, or where the woman has given her consent with reference to one or several persons or things, which have been, or are to be made use of, this renunciation shall be confined to such persons or things as have been, or shall be agreed to, and not to any other contracts to which women have not given, or may not give their consent, and that permission shall be granted to oppose anyone making a contrary claim.

We decree by this carefully considered law that its provisions shall be applicable to all future contracts, matters, and controversies which have not been settled by compromise or final judgment, or disposed of in any other lawful manner.

Given on the *Kalends* of April, during the Consulate of Anatolius and Agapitus.

Extract from Novel 61, Chapter I. Latin Text.

Where a marriage-gift has been given by me or by anyone else for my benefit, and the property is immovable, I can neither alienate nor encumber it. Therefore, in a contract of this description, the consent of the woman is of no avail to prevent the action *in rem*, by which, after the marriage has been dissolved, she is entitled to recover property given her at the time of the betrothal, unless she has given consent a second time, when the term of two years has elapsed, and her husband has other property out of which her claim can be satisfied.

Leaving these two cases out of consideration, the rights of the woman cannot be prejudiced, no matter how often she gives her consent; and if the husband makes such an alienation, he will be liable with reference to his other property, since, so far as the woman is concerned, transactions of this kind are considered not to have been either entered into or written.

(1) There is much more reason for these provisions to apply to dowries, in order to prevent any movable property which composes them from being alienated or encumbered; for all the privileges granted in favor of dowries continue to exist in full force, whether the woman herself institutes proceedings, or someone else does so in her name.

22. The Emperor Justinian to Julian, Praetorian Prefect.

If a woman who has arrived at her majority subsequently furnishes security, or a bond, a pledge, or a surety should be given by her, We decree that the ancient

inconsistencies in the law shall be abolished, and that, if within the term of two years to be computed after the first security has been furnished, she has given either a bond, a pledge or a surety in the same matter, her rights shall not be prejudiced, because, as the result of her weakness, she has for a second time exposed herself to loss.

If, however, she should do this after the lapse of two years, she herself shall be to blame, if, having been able to meditate frequently, and avoid what she had done, she did not do so, but voluntarily confirmed it; as, on account of the length of the time, she should be considered as not having bound herself for the obligation of another, but to have acted in her own behalf, and to have rendered herself liable under the second bond for the amount contained therein, as well as legally to have given the pledge or the surety.

Extract from Novel 134, Chapter Vill. Latin Text.

When a woman has given her consent to a written instrument evidencing a debt of her own husband, or has signed the same, and encumbered her individual property for herself, We order that an agreement of this kind shall be absolutely void, whether she did this only once or several times with reference to the same transaction, and whether the debt is a private or a public one; and that it shall be considered to have been neither agreed to, nor written, unless it is clearly proved that the money was expended for the benefit of the woman herself.

23. The Same to Julian, Praetorian Prefect.

For the purpose of removing the subtleties and difficulties of ancient jurisprudence, and desiring to abolish superfluous distinctions, We order that where a woman has offered herself as surety, and has received anything in the beginning or afterwards, in consideration of so doing, she shall, under all circumstances, be liable, and cannot invoke the aid of the Velleian Decree of the Senate, whether she has incurred liability with or without an instrument in writing. If, indeed, she should state in the instrument itself that she had received something, and, on this account, had furnished security, and it should be ascertained that the said instrument had been publicly executed and attested by three witnesses, it must, by all means, be believed that she did receive money or other property, and she cannot have recourse to the privilege of the Velleian Decree of the Senate.

When, however, she became surety without any bond, or if the instrument was not drawn up in this manner, then, if the stipulator can show that she received either money or property, and in consideration of the same rendered herself liable, she shall be excluded from the relief of the Decree of the Senate. But if this should not be proved by him, the woman will then be entitled to relief, and the ancient right of action will be preserved in

favor of the creditor against the person for whom the woman became surety.

(1) If anyone should give money or other property to a woman who was not qualified to become a surety, in order that she might obligate herself for him, she who actually received the said money or property shall not be permitted to have recourse to the authority of the Decree of the Senate, and the creditor is hereby authorized to proceed against her to collect whatever he can, and to sue the old debtor for the remainder, that is, for a part of the debt if he was able to collect something from the woman; or for the entire amount of it if she was in absolute want.

(2) In order that women may not wrongfully become sureties for others, We order that they cannot obligate themselves for any contract of this kind, unless by an instrument publicly executed and signed by three witnesses; for then they will only be bound where they comply with all the formalities provided by the ancient laws, or introduced by Imperial authority, which have reference to security furnished by women.

If, however, women should agree to become sureties in violation of this law, any document designed for this purpose, or any unwritten obligation shall be considered void, and as never drawn up or executed; so that the aid of the Decree of the Senate may not be invoked, but the woman shall be absolutely released from all liability, just as if no transaction of this kind had ever taken place.

24. *The Same to Julian, Prsetorian Prefect.*

With a view to disposing of the doubts of the ancients, We decree that, if anyone should impose as a condition for the manumission of his slave that a woman should render herself liable for a certain sum of money, if the slave obtained his freedom, whether she bound herself as principal, or did so in behalf of the slave, We order that she shall without question legally be bound, and that the Velleian Decree of the Senate shall not apply to such a case; for it is sufficiently hard, and contrary to the principles of benevolence, for the owner of the slave, having placed confidence in the woman who either personally guaranteed the debt, or promised to pay it if the slave did not, to give the slave his freedom and lose him, and not to receive what he was entitled to for his manumission.

25. *The Same to the People of the City of Constantinople and of All the Provinces.*

We decree, in general, that where anyone, either male or female, who is over the age of twenty-five years, has promised a dowry or bound himself or herself to give one for the benefit of any person whomsoever with whom a marriage can be legally contracted, they shall, by all means, be compelled to comply with their contract; for it ought not to be tolerated that, on account of some accidental circumstances, the women should not be

endowed, and for this reason perhaps be rejected by her husband, and the marriage be dissolved; as We are well aware that the ancient lawgivers often softened the rigor of the rule in favor of dowries, and with good reason We promulgate this law. For, if anyone should voluntarily display liberality in the beginning, either he or she should fulfill his or her promises, so that what was by consent committed to writing in the first place, or was merely the subject of a verbal promise, may be afterwards complied with, even against the will of the parties, all the authority of the Velleian Decree of the Senate becoming inoperative in a case of this kind.

TITLE XXX.

CONCERNING MONEY WHICH IS NOT COUNTED OUT.

1. *The Emperors Severus and Antoninus to Hilarius.*

If the sum of money was not counted out to you, and you allege that for this reason you have executed a bond for the payment of something which you did not receive, and you can prove that a pledge was given, you can bring an action *in rem*; for proceedings dependent upon the delivery of a pledge, where the money was not paid over, cannot be instituted, unless the genuineness of the debt is established. For the same reason, the truth must be shown, if your adversary should institute proceedings while you are in possession of the pledge.

Given on the *Kalends* of September, during the Consulate of Later-anus and Rufinus.

2. *The Emperor Antoninus to Maturius.*

If it is proved before the judge having cognizance of the case that you have received a smaller sum of money than you have given security to pay, he shall order you not to pay any more than you have received, together with the interest agreed upon in the stipulation.

3. *The Same to Demetrius.*

When suit is brought against you on your note, although an hypothecation may have been given, and you plead an exception on the ground of fraud, or because the money was not counted out to you, the plaintiff will be compelled to prove that it was paid, and if he does not do so, you will be released from liability.

4. *The Same to Bassanus.*

- As you acknowledge the genuineness of your obligation, and have even paid a part of the debt or the interest, you understand that it is too late for you to make complaint that the money was not counted out to you.

Extract from Novel 18, Chapter Vill. Latin Text.

When anyone denies his own writing on account of which suit was brought against him, as well as that the money was counted out to him, and loses his case, judgment shall be rendered against him for double damages, unless, the oath having been tendered him, he confesses judgment; for then he will not be punished,

except by being compelled to pay the expenses incurred by the amount of proof which should be fixed by the oath of the plaintiff. If, however, after denying that the money was counted, he admits that he received it, the entire sum should, by all means, be collected, and he should not have credit for what he alleges he has already paid. But, on the other hand, if the plaintiff should deny his own handwriting produced by the defendant, the same penalty and oath should be imposed; and the same penalty should be inflicted upon a curator, if he raises any question as to an instrument in his own handwriting connected with the trust of which he has charge.

5. *The Emperor Alexander to Haustianus.*

If you have any legal defence against the claims of your adversary, you can make use of them; but you should not be ignorant of the fact that the exception on the ground of money not having been counted out will apply whenever suit is brought for a loan. When the amount is stated in the note, which is the evidence of the obligation, inquiry is not made whether it was counted out at the time when security was furnished, but whether there was a good consideration for the debt.

6. *The Same to Justin.*

You are wrong if you think that you are protected by an exception on the ground that the money was not counted out, when, as you acknowledge, you substituted yourself as the debtor of the person who was originally liable.

7. *The Same to Julian and Ammianus.*

If, when expecting to receive a loan, you gave security to your adversary for money which was not counted out, you can recover your obligation by means of a personal action, even if the plaintiff should not bring suit, or, if he does, you can avail yourself of an exception on the ground that the money was not counted.

8. *The Same to Maternus.*

When the person who signed the note dies within the time prescribed by law, without having filed any complaint, his heir will be entitled to the remaining time to proceed either against the creditor or his heir. If, however, he instituted proceedings before his death, an exception on the ground that money was not counted out will lie, without limitation of time, either for or against his heir. But when he permitted the prescribed time to elapse without having filed any complaint, the heir of the debtor, even if he is a minor, will be compelled to pay the debt.

9. *The Emperors Diocletian and Maximian to Zoilus.*

As it is settled that no one can be forced to pay a larger sum than that which he received, if, a stipulation having been entered into, the creditor should not pay over the amount agreed upon, it is established that an exception *in factum* should be granted, provided the time

during which a complaint of this kind can be made has not yet expired; or if the creditor, within the prescribed time, should comply with what was legally required of him, the ruler or Governor of the province, having been applied to, will not permit more to be collected from you as principal than you received.

10. *The Same to Mezantius.*

The statement of a person who contends that his debt was paid is not excluded by lapse of time. Nor can it be alleged against him that the right to make use of the exception on the ground that the money was not counted out, not having been taken advantage of within the prescribed time, is extinguished; as a great difference exists between one who states a fact and undertakes to establish it by evidence, and one who denies that the money was paid over, of which no proof is possible according to natural reasons; hence it becomes necessary for the plaintiff to establish the truth of his allegations.

11. *The Same to Eutychianus.*

If you have promised to pay to Palladius a certain sum of money by way of compromise, you cannot defend yourself by an exception on the ground that the money was not counted out.

12. *The Same to Severianus.*

The exception on the ground that the money was not paid will lie in favor of a mandator or a surety, just as in the case of a principal debtor.

13. *The Emperor Justin to Theodore, Prsetorian Prefect.*

Generally speaking, We decree that where security was given in writing for the payment of any sums of money whatsoever, on account of some preceding consideration, and where the promisor has explicitly stated what it was, he shall not be allowed to exact proof of the same from the stipulator, as he must acquiesce in his own admission; unless on the other hand he can, by clear evidence obtained from the instrument itself, show that the transaction was of a different character than that provided for therein; as We think that it is highly improper for anyone, in the same transaction, to dispute and resist with his own testimony what he has already openly acknowledged.

14. *The Emperor Justinian to Menna, Prsetorian Prefect.*

In written contracts by which money or any other property is either counted out or given to a person or his successor, who stated in writing that he has received the said money or other property, he cannot within five years plead the exception on the ground that the money was not counted out to him, as was formerly the rule; but he can only do so within the term of two continuous years, and, if this period has elapsed, no complaint based on the

assertion that the money was not counted out can be interposed.

Those persons, however, who for some reasons especially set forth in the law are entitled to relief even after the said term of five years has elapsed, will hereafter have a right to enjoy the same privilege, even though the term of two years has been established instead of the former one of five.

(1) But as litigants may attempt to plead an exception of this kind against receipts or written instruments relating to the deposit of property or money, We have considered it to be just to abolish the power to do this in certain cases, and in others to limit it to a very short time. Therefore, We decree that an exception on the ground that the money was not counted out cannot, under any circumstances, be pleaded against an instrument showing that certain property or a sum of money was deposited; or against receipts given for public contributions (whether they were made out in acknowledgment of the entire amount or for only a portion of the same), as well as against other receipts drawn up after the completion of dotal instruments, in which it is stated that the dowry has been entirely, or only partly paid.

(2) With respect to other receipts made out by a creditor with reference to private debts, showing that a part on the principal or interest of the same has been paid; and that while settlement of the principal has been made, the contract for the payment of interest still remained in his hands, or promising the future return of the instrument evidencing the loan; or if a receipt relating to any other kind of a contract has been given in which the payment of money or the delivery of certain articles has been stated in writing, and setting forth that the money has been paid, or the other property has been delivered either wholly or in part; the exception on the ground of money not having been counted out can only be pleaded within thirty, days to be computed after the delivery of the receipt, so that, when they have elapsed, the said receipt shall be accepted by the judges as valid under all circumstances, nor shall the person who produced it be permitted (after the lapse of the above-mentioned thirty days), to state that the money has not been paid, or the other property delivered.

(3) The rule should be always observed that an oath cannot be tendered in cases where it is not allowed to plead an exception on the ground that the money was not counted out, either in the first place, or after the prescribed time has elapsed.

(4) He in whose favor an exception of this kind will lie shall be permitted, during the time above-mentioned in which the exception can be interposed, to state in writing his complaint based on the claim that the money was not counted out, or the property delivered by him who was alleged in the written document to have done so.

Or, if the party in question should happen to be absent from the place in which the contract was made, he can state his case in this Fair City before any ordinary judge, and in the provinces before the illustrious Governor of the same, or the defenders of the district; and in this manner obtain for himself the right to plead an exception without limitation of time.

If, however, he who was said in the instrument to have counted out the money, or to have delivered the property, conducts any administration either in this Fair City, or in the provinces, so that it may appear to be difficult to notify him, We grant permission to the person who desires to avail himself of the exception above-mentioned to go before any other judges either in this Fair City or in the provinces, and by means of them notify him against whom he desires to plead an exception of this kind that a complaint has been filed by him on the ground that the money was not paid over.

When there is no other civil or military official in the provinces, or for some reason it is difficult for him who opposes the above-mentioned complaint to appear and perform the acts provided for, We grant him permission to notify his creditor of the exception by means of the most reverend bishop and, in this manner, to interrupt the time prescribed by law. It is certain that these provisions with reference to an exception also apply to cases where the dowry has been counted out.

Given at Constantinople, on the *Kalends* of July, under the second Consulate of Our Lord Justinian.

Extract from Novel 100, Chapter I. Latin Text.

It is necessary for this complaint to be made in writing, and if anyone appears to resist it in court, the woman, or by all means the person who has promised the dowry, must be notified.

15. *The Same to Menna[^] Prietorian Prefect.*

If the party, in whose favor the exception on the ground of money not having been counted out can be pleaded, fails to avail himself of the privilege, if he is present or absent, his creditors (whether they themselves are sued as having possession of his property, for the purpose of collecting the debts of the person entitled to this exception, either on the ground of dowry, or for any other reason; or whether they have brought suit against others in possession of the property) can, during the hearing of the case, interpose the exception against their adversary for the reason that the money was not counted out; nor will they be prevented from doing so because the principal debtor never availed himself of it. Therefore, in order that no prejudice may result to the principal debtor or to his surety, if the party who opposes the exception should be defeated, they can, afterwards, if they should be sued, protect themselves by the same exception within the time prescribed by law.

16. *The Same to John, Praetorian Prefect.*

It is an undoubted rule of law that the exception on the ground of money not having been counted out is applicable to all claims, either for the agreement for the payment of interest, or to other obligations in which mention is made of an oath. For what difference is there in an exception of this kind, whether the oath was or was not taken with reference to agreements for the payment of interest, or other written instruments against which an exception of this kind can be pleaded?

TITLE XXXI.

CONCERNING SET-OFF.

1. *The Emperor Antoninus to Dianensus.*

The Senate decreed, and it has frequently been stated in rescripts, that there is ground for set-off in fiscal cases, where the same administration both owes and asserts the claim. This rule should be implicitly observed, in order to avoid confusion in different offices. Where, however, anything is proved to be due to you from the administration which you have mentioned, you shall immediately receive it.

2. *The Same to Asclepiada.*

As where something remains due on account of a judgment which has been paid, it cannot be recovered, so for the same reason it cannot be admitted to set-off. No one, however, doubts that anyone who is sued to enforce a judgment can demand a set-off of the money due to him from the other party.

3. *The Emperor Alexander to Capita.*

The judge having jurisdiction of the case shall order that what you allege is due to you from the government shall be set-off against the amount that you admit you are indebted to it, provided your indebtedness is not on account, or because of taxes, or money due for grain or oil belonging to the State, or tribute, or provisions; or you are not a debtor of the official having charge of the expenses of the government; or by reason of trusts for the benefit of a municipality.

4. *The Same to Lucian.*

If it is established that when two persons owe one another, set-off will take place by operation of law, instead of payment from the time at which both parties began to be mutually indebted, so far as the amount of the two obligations agree; and interest will only be due for the excess of the indebtedness owing to one of them, where his claim has not been satisfied.

5. *The Same to Honorata.*

If it should be established that you are entitled to a trust out of the property of the person to whom you say you are indebted for a smaller sum, the equity of set-off excludes the computation of interest; provided you prove that the claim which is due to you is larger than that which you owe.

6. *The Same to Pollidens.*

The documents by which it is provided that you have received what you deny has been delivered to you cannot bind you in opposition to the truth, and you may properly demand the justice of a set-off; for it is not equitable that you should be compelled to pay what it is established that you owe, before your demand for money lent has been answered; and you have still more ground to recover the property which you allege has been appropriated by your wife on account of divorce.

Given on the fifth of the *Kalends* of December, during the Consulate of Alexander, Consul for the third time, and Dio.

7. *The Same to Euzosius.*

Where the price of property sold is due to the vendor, the law of set-off will apply, for purchasers are not forbidden to oppose the set-off of the price, even against the Treasury.

8. *The Emperor Gordian to Emeritus.*

If your stepfather has become your debtor on account of crops taken from your land, and he brings suit against you for what has been left to you by your mother, judgment shall be rendered in favor of him who has the largest claim, and you will not unreasonably demand a set-off.

9. *The Same to Eumenides.*

Set-off cannot take place except with reference to what is due from the party against whom the action was brought.

10. *The Emperors Diocletian and Maximian to Nicander.*

As you allege that the land which was sold to you as free was, before the purchase, encumbered by a lien, and you have paid a certain sum to release it, if you should be sued for a debt before the Governor of the province, you can set off the amount which you paid, although it was not due.

11. *The Same to Julian and Paulus.*

If, having been compelled to do so by a magistrate, you appointed guardians for minors, and paid in their behalf a certain sum of money due on account of a charge of the Chief Centurion of the Triarii, you are mistaken if you think that, if you should be sued by them, you cannot claim a set-off; no matter whether the sum which has been collected from you is as much as the guardians were liable for to their wards, or whether it is proved that you paid a larger sum on their account.

12. *The Same to Cornelmnus.*

If you have availed yourself of a set-off with reference to a debt, and pay the remainder, you can bring suit to recover your pledges, if you tender the amount and your creditors refuse to accept it, and, having sealed it up, you deposit it.

13. *The Same, and the Csesars, to Bassus.*

If you agreed with Mutian in writing that he should, by way of set-off, pay what you owed as public taxes, and that afterwards you would not demand what he owed you, and you yourself should pay the taxes referred to, you cannot recover the amount as not having been due, but you will have the right to collect the debt to which you were previously entitled.

14. *The Emperor Justinian to John, Prsetorian Prefect.*

We decree that set-offs shall take place by operation of law in all lawsuits, without making any distinction between real or personal actions.

(1) Hence We order that set-offs can be pleaded where the amount to be set off is clear, and not involved in doubt, but is susceptible of being easily determined; for it would be very unjust if, when the matter had been decided after many and various contests, the other party, who almost lost his case, could plead a set-off against a certain and unquestionable debt, and the hope of a judgment be excluded by subterfuges admitting of delay. Therefore judges must be careful not to admit set-offs too readily, or accept them with too much indulgence, but to adhere strictly to the rule; and if they find that they demand minute and protracted examination, they must reserve them for another decision; so that the present suit, which has almost entirely been disposed of, may be determined by a final judgment, with the exception of the action of deposit, in which, in accordance with the rule which We have already formulated, We have decided that there is no ground for set-off.

(2) The right of set-off is not granted to persons who are wrongfully in the possession of property belonging to others.¹

¹ Set-off did not exist at Common Law, but was borrowed from the jurisprudence of the Romans, to whom it was known as *compensatio*. In England, until the reign of George II, when a statute authorizing the employment of this method of extinguishing one obligation by means of another was enacted, a debt could only be permanently settled by its payment, or by a voluntary release from liability by the creditor. The Judicature Acts establish a distinction between a set-off and a counter-claim. "A counter-claim is different from a set-off for it is

TITLE XXXII.

CONCERNING INTEREST.

1. *The Emperor Antoninus Pius to Evocatus.*

Where, after investigation, the agreement to pay interest is proved to have been legally made, even though it was not reduced to writing, it will still be due under the law.

2. *The Emperors Severus and Antoninus to Lucius.*

When the purchaser, to whom the possession of property has been delivered, does not tender the price to the vendor, even if he has placed the money on deposit, sealed up, he will be required by the rule of equity to pay interest.

3. *The Same to Julian.*

Although interest on money lent cannot be claimed without a stipulation to that effect having been made, still if it has been paid in accordance with the terms of an informal agreement, it cannot be recovered as not due, nor be credited upon the principal.

4. *The Same to Honorius.*

It has been established, and it is reasonable that interest can be demanded where a pledge is retained, even though no stipulation may in the nature of a cross-action." (Wilson's Practice of the Supreme Court of Judicature IV, Page 51.)

Compensation, "*debiti et crediti inter se contributio*," was only available when the mutual obligations could be readily estimated at a pecuniary value; when they were both positively known to be due at the time; and when the objects through which the indebtedness was incurred were of the same nature. When an exception on this ground was pleaded, it had a retroactive effect, and became operative for the time when the right to employ it vested, and not from the date of the joinder of issue.

The privilege of compensation could not be exercised where suit was brought to recover property of which another illegally held possession, and thereby attempted to profit by his own wrong.

Under the English and American law, a party defendant is not permitted to take advantage of a set-off unless it is specially pleaded, and the facts upon which the counter-claim is founded enumerated in detail.

In the United States, set-off can only be employed in agreements for the payment of money, and when the amount of the reciprocal indebtedness is already known, or may be definitely ascertained. It is not applicable where an attempt is made by one party to extinguish an obligation incurred in a fiduciary capacity, by means of one for which another is individually responsible, or *vice versa*. As under the Civil Law, when one claim is larger than the other, judgment may be rendered for the amount in excess. Unliquidated damages are not susceptible of set-off, and it cannot be pleaded in actions for torts. Not only original judgments, but also such as have been assigned for valuable consideration, may be set off. This rule also applies to costs, whether the indebtedness sought to be cancelled arises from money borrowed, or court expenses or both. The failure of a defendant to avail himself of a valid set-off is not considered a waiver of his right, and he will still be entitled to collect his claim by

suit, if he desires to do so; but if no good cause of action exists, advantage cannot be taken of the privilege. (*Vide*, Parsons, *The Law of Contracts* II, III, X.)—ED.

have been entered into, as pledges are liable for interest even under an informal agreement. This rule, however, does not apply to the case in which you are interested, for at the time of the contract it was agreed that a smaller rate of interest should be demanded, but afterwards, where the debtor promised to pay a higher one, the retention of the pledge could not be considered legal, as, at the time when the instruments were drawn up, it was not agreed that the pledge should be subject to this increase.

5. *The Same, and the Csesars, to Sabinus and Others.*

The exception based on an agreement is available against the creditor who demands a higher rate of interest under the terms of a stipulation, if it is proved that for some years he received interest at a lower rate; and, in accordance with this rule, your case can be defended against the municipal officials who bring suit on the note, if you can prove that the maternal aunt of your wards has always paid interest at five per cent, although she may have agreed to a higher rate.

6. *The Emperor Antoninus to Antieneus.*

If you have, in the presence of witnesses, tendered to your creditor the money due to her with the interest on the same, to secure the payment of which you gave her pledges, and, she having declined to accept it, you deposited the money sealed up, you will not be compelled to pay interest from the time when you made the tender. If, however, your creditor should be absent, you must tender the money in the presence of the Governor of the province.

7. *The Same to Aristeus.*

A creditor should prove his claim by the instruments evidencing the debt, and also show that he has stipulated for interest, if he can do so; for even if the interest has been voluntarily paid, this does not establish an obligation.

8. *The Same to Theophorus.*

Although when Bassa borrowed a sum of money she promised to pay interest at a certain rate to Menophanes, and if she failed to pay it within a certain time, she agreed to pay a higher rate (but one that was legal); still, if the creditor, after the time prescribed by the note, receives the same interest as formerly, and does not demand that interest at a higher rate be paid to him, and it can be proved by this that he did not refuse interest at the lower rate, it must be computed at the rate at which the creditor continued to collect it.

9. *The Same to Probus.*

It was not your fault that you did not pay interest at the lower rate within the prescribed time, because the sons of the creditor were unwilling to receive it through their guardians; and if you can prove in court that this was done, interest at a higher rate will not be required of you for the time during which it appears that you were not to blame. If, however, you have deposited the principal, you will not be compelled to pay interest from the time when it appears that this was done.

10. *The Same to Donatus.*

Where the interest paid at different times amounts to double the principal, this will be of no advantage to the debtor; for it is only when the interest at the time of payment amounts to more than the principal that it cannot be collected.

11. *The Same to PopUius.*

When a creditor, who declines to receive money in payment of a debt to which he is legally entitled, collects the crops of lands which have been hypothecated to him, he diminishes the principal to the extent of the value of the said crops.

12. *The Emperor Alexander to Tyrannus.*

The excess value of wheat or barley, above what has been lent, must be surrendered even under an agreement without consideration.

13. *The Same to Eustachia.*

It is certain that an account must be taken of the interest in *bona, fide* actions as well as in those based on voluntary agency. If, however, the case has been terminated by a decision which awarded a smaller sum than that which was due, and interest was not added, and no appeal was taken, what has been decided cannot be revoked; nor can interest for the time which has elapsed after the case was decided be demanded under any law, unless this was provided for by the judgment.

14. *The Same to Aurelius.*

If your wife lent a sum of money with the understanding that she should live in the house of her debtor instead of paying interest, and she did so, as was agreed upon, and having leased the house, she did not collect the rent, the question cannot be raised that she could have collected more rent than the legal rate of interest amounted to. For although the house could have been leased for more than the principal, the contract for interest was not, for that reason, unlawful, but the house seemed to have been rented for less than it was worth.

15. *The Emperor Gordian to Claudius.*

You state that your wife borrowed the sum of a thousand *aurei* under the condition that if she did not pay it within a certain time she would pay fourfold the amount which she had borrowed; but the rule of law does not permit the condition of a contract of this kind to

provide for the payment of a penalty in excess of the amount of legal interest.

16. *The Same to Sulpitius.*

As you say that you have received not grain, but money to be repaid with interest, under the condition that a certain amount of wheat should be delivered, instead of money, and that in case the grain was not delivered on the day agreed upon, you contend that you will be compelled to deliver an additional number of measures of grain, in fraud of the lawful amount of interest, you can avail yourself of any proper defence against this dishonest demand.

Extract from Novel 34, Chapter I. Latin Text.

Moreover, anyone who lends a farmer grain or money under the condition that he will receive for every measure the eighth part of a measure, or for every *solidus* one *siliqua*, as interest, must, by all means, return the land or anything else which he has received by way of pledge. If he should collect anything more than what is above stated he shall absolutely lose his claim.

17. *The Emperor Philip to Euxena.*

If your mother encumbered her land to her creditor under the condition that he could gather the crops instead of receiving interest; this agreement cannot be rescinded under the pretext that the value of the crops obtained amounted to more than the interest, because of the uncertainty what the value of the crops would be.

18. *The Same to Castor.*

In order to dispose of the differences of the ancient law, it has been decided after careful deliberation that interest which was not due can be recovered, even if it was not paid before the principal, and on this account could not be credited upon it, but was paid after the creditor had received the principal.

19. *The Same to Hyrenia.*

After issue has been joined, tender the principal of the debt with the legal interest to your creditors, and if they refuse to accept the money, deposit it sealed up in some public place, in order to avoid the payment of legal interest. In this instance, a public place must be understood to be either a sacred temple, or one in which a competent judge, after having been applied to, may decide that the money shall be deposited. When this has been accomplished, the debtor shall be released from liability, and the right of the creditor to the pledges abolished; as the Servian Action plainly states that pledges cannot be held if the money has been paid, or the creditor is to blame for this • not having been done.

This rule should also be observed in the transportation of money, for a praetorian action will lie in favor of the creditor for its collection, not against the debtor (unless he has received it), but against the depositary.

20. *The Same to JELius.*

Relief is granted to mandators and trustees by the Sacred Constitutions, which forbid interest to be collected on money lent beyond a certain rate, and you can avail yourself of them if you are sued either as mandators or trustees.

21. *The Same to Chresimus.*

If you agreed to pay interest and gave a pledge as security, and the money was counted out to you, and either afterwards, or before making payment, you did not indicate on what part of the debt you wished credit to be given, your creditor will have the right to credit the payment which you made upon the interest.

22. *The Same to Carinus.*

When pledges have been delivered, interest which could not have been collected without stipulations can be retained under the agreement; but as you state that there was no contract of this kind made, but that only a certain sum was agreed to be paid as a penalty, you perceive that, by the rule of law, nothing more can be collected, and that you will be compelled to surrender the pledges.

23. *The Same to Jason.*

Where oil, or any other products of the soil are lent, the uncertainty of their value allows an increase of interest to be added to the quantity.

24. *The Same to Glaucia.*

If your mother is of legal age, and has transacted your business, as she was obliged to use all proper diligence, she can be compelled to pay interest on your money which she is proved to have had charge of.

25. *The Emperor Constantine to the People,*

We order that legal interest can be paid or promised for gold, silver, and clothing, where the loan is evidenced by a note.

26. *The Emperor Justinian to Menna, Prsetorian Prefect.*

We order that those who have been barred in a principal, a personal, or an hypothecary action, by the prescription of thirty or forty years, cannot raise any question with reference to interest, crops, or any time which has expired, under the pretext that they desire interest to be paid to them only for the time not included in the thirty or forty years which have elapsed, on the ground that their rights of action arise each year. For the principal action no longer existing, it is entirely unnecessary for the judge to take cognizance of any question relating either to the interest or the crops.

(1) We considered it necessary to promulgate a new and general law regulating the amount of interest, as We think the ancient law on this subject to be severe and extremely burdensome. Therefore,

We order that illustrious persons, as well as those of higher rank, shall not be permitted to stipulate for interest

exceeding the rate of four per cent, whether the contract be for a large or a small amount. Bankers, and those who conduct any lawful business, shall be limited in their stipulations to eight per cent. With reference to contracts for the transportation of coin, or for loans at interest of other articles than money, We order that it shall not be lawful to stipulate for, or to exceed the rate of twelve per cent, although this was permitted by the ancient laws. Other persons, however, can only stipulate for interest at six per cent, and this rate of interest can, under no circumstances, be exceeded in any of those cases in which interest is ordinarily collected without a stipulation; and no judge shall be permitted to increase the prescribed rate on account of any custom which may be observed in that part of the country.

If anyone should violate the provisions of this constitution, he shall not be entitled to any action to collect interest over and above the legal rate, and if he should receive it, he shall be compelled to credit it on the principal; and creditors are forbidden to deduct or retain any of the money lent at interest under the pretext of *silique* or *sportulse*, or for any other reason whatsoever. If anything -of this kind should be done, the amount of the original debt shall be diminished by the sum that the creditor has received, so that he shall be prohibited from collecting this portion of the debt, as well as the interest. With a view to preventing dishonest schemes of creditors who, being forbidden by this law to stipulate for higher interest, make use of other persons for this purpose, who are not prohibited from doing so, We order that if anything of this kind should be attempted, the interest shall be computed as would have been done if the person who made use of the other himself had concluded the stipulation, and in this instance We decree that the oath shall be tendered.

27. *The Same to Menna, Prsetorian Prefect.*

For the purpose of disposing of the improper interpretation which certain persons have applied to the law by which We have established the rate of interest, We order that those who have stipulated for a higher rate before the promulgation of that law shall reduce their claims in accordance with the one prescribed by it, from the time when the law was published; but that up to that date they shall have the right to collect interest in accordance with the tenor of the stipulation.

(1) We by no means permit more than double interest to be collected, not even where pledges have been given to the creditor to secure the debt, under which circumstances certain ancient laws authorized . more than double the interest to be collected.

We decree that this rule shall be observed in all *bona fide* contracts, and in all other cases in which interest can be collected.

28. *The Same to Demosthenes, Prsetorian Prefect.* It was provided by the ancient laws, but not explicitly enough, that interest on interest could not be collected from debtors; for if it was

permitted to add it to the principal and stipulate for interest on the entire amount, what difference would it make for the debtors from whom interest on interest was actually collected? Certainly, this difference does not exist in the things themselves, but only in the phraseology, and therefore We clearly provide by this law that no one shall be permitted to add interest to the principal, either for past or future time, or to stipulate for interest to be paid upon it. When, however, this law is obeyed, interest will always remain interest, and there will be no augmentation of other interest, and the only accrual will be what is derived from the original principal.

TITLE XXXIII.

CONCERNING MARITIME LOANS.

1. *The Emperors Diocletian and Maximian to Honoratus.*

It is clear that money transported by sea, which is at the risk of the creditor, should be exempt from the law relating to interest only until the ship has arrived at her destination.

2. *The Same to Chosimania.*

As you state that you have lent money under the condition that it shall be repaid in the Imperial City of Rome, and allege that the uncertainty of the risk due to the perils of navigation has not been assumed by you, there is no doubt that you are not entitled to collect interest above the legal rate on the money loaned.

3. *The Same to Junia.*

As you state that you have negotiated a maritime loan under the condition that after the voyage, which your debtor stated that he was about to make to Africa, the ship having anchored in the harbor of the Salonitanians, he agreed to pay you the money, so that you would only bear the risk of the voyage to Africa, and that through the fault of your debtor the course of the vessel was not directed towards the place agreed upon, and, he having purchased unlawful merchandise, the cargo of the ship was confiscated by the Treasury, the rule of public law does not permit that you should bear the loss of the merchandise which is stated was not caused by a tempest, but was due to the inveterate avarice and unlawful boldness of your debtor.

4. *The Same to Eucharistus.*

The loss of money during its transport by sea, when it was not lent at the risk of the creditor, does not render the debtor liable before the ship arrives at her destination, but the debtor will not be released from the responsibility for

loss by shipwreck, where no agreement of this kind was made.

TITLE XXXIV.

CONCERNING THE ACTION ON DEPOSIT, AND THE COUNTER ACTION.

1. *The Emperor Alexander to Mestenus.*

Where, through an attack by robbers or some other accident, certain ornaments deposited with a person who was killed are lost, the heir of him who received the deposit will not be responsible, as he is only liable for fraud or gross negligence; unless it was otherwise agreed upon. If, however, under the pretext of robbery having been committed, or of some other accident, the property held by the heir, or of which he has fraudulently relinquished possession, is not returned, the action of deposit, as well as that for the production of property, and one for the recovery of the same, will lie.

2. *The Emperor Gordian to Celsus.*

In the action of deposit, as in other *bona fide* actions, interest is usually calculated from the day when the party is in default.

3. *The Same to Austerus.*

If you bring the action of deposit against him, you will not unreasonably demand that he pay you interest, for he should congratulate himself that you do not bring the action of theft, as anyone who knowingly and designedly, and without the consent of the owner, converts to his own use property which has been deposited with him, becomes guilty of the crime of theft.

4. *The Same to Timocrates.*

When anyone who has received money on deposit makes use of it, there is no doubt that he should pay interest. Where, however, he is sued in the action of deposit, judgment is only rendered for the amount of the principal, and you cannot bring another suit for the interest, as there are not two actions, one for the principal and the other for the interest, but only one; and where judgment has been rendered in it, a renewal of the action will be barred by the exception on the ground of *res judicata*.

5. *The Emperors Valerian and Gallienus to Claudian.*

As you allege that you have deposited certain documents with your adversary in order that you may receive payment of the remaining money due for rent, if you have complied with what was agreed upon, you can bring suit to recover the property sequestered. Even though the said documents should not be returned to you, if you have paid all that was due under the contract to the person from whom you rented the premises, you will be protected by the said payment.

6. *The Emperors Diocletian and Maximian to Alexander.*

He with whom you allege that the two parties to the compromise have deposited the evidence of the same, or other documents, must observe the condition under which he received them.

7. *The Same to Atticus.*

Your claim does not conform to the rules of law, for if you have charge of a sum of money, and lent it to others, the instrument by which you acknowledge that it is to be repaid to you is evidence against you, and you are guilty of dishonesty in refusing to make restitution to the person entitled to it.

8. *The Same to Alexander.*

If anyone who has received a deposit of money from you lends it either in your own name or that of someone else, it is perfectly clear that he must not only comply with his contract, but that his heirs will be liable to you. No action, however, will lie in your favor against the person who received the money, unless the actual sum is in existence, for then you can avail yourself of the action for recovery against the possessor.

9. *The Same to Menophyllus and Others.*

As an estate represents the person of the former owner, you can sue the heirs of the depositary before the Governor of the province for property which was deposited with him in good faith by a slave belonging to the estate, before you succeeded your father.

10. *The Same, and the Caesars, to Septima.*

Where anyone does not return a deposit, and is sued, and has judgment rendered against him in his own name, he will be compelled to make restitution, and runs the risk of being branded with infamy.

11. *The Emperor Justinian to Demosthenes.*

When anyone receives money or other property as a deposit, and refuses to surrender it to him who deposited it, he can be compelled by all legal means to return it immediately, and cannot plead any set-off, deduction, or exception of fraud, to avoid doing so, on the ground that he himself has certain personal, real or hypothecary causes of action against him who deposited the property, as he did not receive the deposit under the condition that he could retain it for what had not been paid, so that a contract entered into in good faith would end in perfidy.

Where, however, property was deposited by both parties with one another, the impediment of set-off does not arise in this case either, but the property or money deposited by each of them must be returned as soon as possible without the interposition of any obstacle, beginning with the one who first demands it, and afterwards his legal rights of action shall be restored to him unimpaired. This should take place (as has already been stated) when the deposit has been made by one of the parties, and a set-off is claimed by the other; so that all legal rights remaining unimpaired, the property or the

money deposited may be returned in its original condition.

(1) When, however, notice in writing, which was not inspired by deceit or fraud, is sent by a third party to the depositary directing him not to return the deposit, and the latter states this under oath, he who made the deposit, after having furnished good security that he will defend the case, shall be entitled to recover the property deposited without delay.

Extract from Novel 88, Chapter I. Latin Text.

It has, however, already been provided that no outside person can forbid a depositary to return the property, and if this is done, he who made the deposit, though technically in possession, can be sued by him who was responsible for the prohibition. But if the law should be violated, and any loss be sustained by the person who suffered violence, he who prohibited the return of the deposit shall be required to make it good, and shall also be liable for interest at four per cent from the time when issue was joined. He, also, who prevents a tenant from paying rent, or a public official from furnishing bread, shall be liable to the same penalty.

12. The Same to John, Praetorian Prefect.

For the purpose of abolishing a superfluous distinction adopted by the ancients, We decree that if anyone should deposit a certain weight of gold or silver, either manufactured or in bulk, and appoint several heirs, and one of them should receive from the depositary the share to which he was entitled, and another should fail to do so, whether he was prevented by some accidental circumstance and the depositary afterwards met with misfortune, or the latter lost the deposit without being guilty of fraud, the co-heir will not be permitted to proceed against his co-heir and indemnify himself out of his share for what he himself was unable to obtain; just as if what the said co-heir had received was owned in common; for there is no doubt that if a certain sum of money was deposited, and one of the co-heirs should receive his share, he has a right to it, and the other ought not to claim it.

It does not seem to Us that the one who has received his share of the property either in bulk, in ingots, or in money, should be liable, and his diligence pay the penalty for another's negligence; for if the other heir had taken advantage of the opportune time as his co-heir did, and both had received their shares, no ground would be left for subsequent alterations.

TITLE XXXV.

CONCERNING THE ACTION OF MANDATE,
AND THE COUNTER ACTION.

1. The Emperors Severus and Antoninus to Leonidas.

You can avail yourself of the action on mandate for the collection of both principal and interest against the

person whose business you transacted, when you have expended your own money in doing so, or have borrowed money from others for that purpose. You can also apply to the Governor of the province with reference to the salary promised you by your employer.

2. The Same to Marcellus.

As you state that your father paid a certain sum of money as surety, you are entitled to an action on mandate by which you cannot only recover the money, but also the pledges given as security for the obligation.

3. The Same to Germanus.

If your father directed you, being your own master, to sue his debtors, he himself could, if present, bring an action against them, just as if he had not employed you to do so. Therefore, if any proceedings should be instituted by him for this purpose in court, there is no reason to require them to be set aside.

4. The Emperor Alexander to Vulneratus.

Even if those who have appointed you their attorney to conduct their cases on appeal should be defeated, if you were not to blame for this, you can bring a counter action on mandate against them to recover the reasonable expenses which you incurred in the matter.

5. The Same to Gallianus.

If your sister's husband, whom you have appointed your attorney, is unwilling to demand for you the possession of the property, you should proceed against him; and you will probably gain your case if you can prove that you directed him to bring suit for the possession of the property, and he neglected to do so.

6. The Emperor Gordian to Socibius.

When anyone becomes surety for a debtor with his consent, the latter can be sued in an action on mandate after the money has been paid by the surety, or judgment rendered against him.

7. The Same to Aurelian.

Where, in order to carry out the written directions of the money-broker, you lent money to the person who delivered you his letter, you will not only have a right to bring a personal action for recovery against him who received the borrowed money from you, but also the action on mandate against him whose order you obeyed.

8. The Emperors Valerian and Gallienus, and the Csesar Valerian, to Lucius.

If the father of certain minors directed you to lend money to his slaves, to be employed for the benefit of his property, and if, in addition to this, you, under his direction, gave pledges as security, you can sue the minors in the action on mandate after the death of their father, and enforce the right attaching to the pledges, if payment should not be made.

9. The Emperors Diocletian and Maximian to Marcellus.

As you allege that your case has been endangered by the act of your attorney, an action on mandate will lie in your favor against him.

10. *The Same to Papius.*

If you have appeared either as surety or mandator for the party against whom you filed your petition, and judgment has not been rendered against you on this account, you cannot prove that he afterwards began to waste his property to such an extent as to give you just cause for apprehension, and that, in the beginning, you assumed the obligation in order to be able to sue him before payment was made; as it is certain that, by no rule of law, you can compel him to make payment before you yourself have satisfied the creditor.

Moreover, it is evident that where a trustee or a mandator, being entitled to an exception, lost his case through an unjust decision of the judge, and, contrary to good faith, neglected to take an appeal, he cannot bring the action on mandate.

11. *The Same to Gaius.*

An attorney will be liable not only for fraud but for negligence, both in cases where he has transacted business, and where he has undertaken to do so, and to be responsible not only for money which has been collected under the mandate, but also for any that had not been collected; and account should be taken of the expenses which he has incurred in good faith.

12. *The Same to Firmus.*

As you assert that you stated what should be done with reference to certain business which you wished to be transacted, it is proper that your attorney should comply with your directions in good faith. Therefore, if, contrary to the terms of the mandate, he sold the tract of land belonging to you, and you did not subsequently ratify the sale, you cannot be deprived of the ownership of the property.

13. *The Same to Zosimus.*

It is plainly stated by the law that an attorney is liable for fraud and every kind of negligence, but not for unforeseen accidents.

14. *The Same to Hermianus.*

If, in accordance with the mandate of Tripho and Felix, you purchased horses with your own money, or if, they having been delivered to you in payment by your own debtor, you voluntarily transferred them to one of the above-mentioned parties with the consent of both, good faith requires that they, having been sued in an action on mandate, should comply with their contracts.

15. *The Same to Precatius.*

A mandate is absolutely terminated by the death of the mandator.

16. *The Same to Uranius.*

Where money has been given to buy merchandise, and he who received it for that purpose abuses the confidence of his employer, he will be liable for any damage sustained by the latter.

17. *The Same to Gorgonius.*

A salary based upon an uncertain promise cannot be recovered by law.

18. *The Same to Tuscianus.*

Where payment has been made to the agent by someone who directed money to be lent, he can properly demand to be reimbursed what he paid by him in whose behalf he intervened, or his heirs, together with interest, after the party or parties have been in default..

19. *The Same to Eugenius.*

You cannot be compelled to pay interest above the legal rate of the price of property which you received for sale by virtue of a previous mandate; whether the interest was based on a stipulation or on default, even though pledges are proved to have been given.

20. *The Same to Epagathus.*

If you have purchased a right of action contrary to law, you will in vain demand compliance with such a prohibited agreement; but if you have gratuitously accepted a mandate, you can legally ask that the *bona fide* expenses incurred be refunded to you.

21. *The Emperor Constantine to Volusian, Praetorian Prefect.*

In cases of mandate, not only the money which is the especial object of the action on mandate, but also the risk of loss of reputation is at stake; for anyone who is the owner, and has control of his own property, does not transact all his business, but the greater portion of it, according to his own will. The affairs of others must, however, be attended to with the greatest care, and nothing connected with their administration which is neglected or improperly done is free from blame.

22. *The Emperor Anastasius to Eustaehius, Prsetorian Prefect.*

By two different reports which have been made to Us, We have ascertained that certain individuals, being desirous of obtaining the property and fortunes of others, have exerted themselves to have rights of action assigned to them by third parties, and in this way litigants are subjected to many annoyances; and as it is certain that, so far as undoubted obligations are concerned, men are more desirous of claiming their own rights than of transferring them to others, We order by this law that hereafter attempts of this kind shall be prohibited.

There is no doubt that those should be considered the purchasers of the rights of action of others who desire assignments of this kind to be made to them, so that if anyone, after having paid money, should obtain such an assignment, he shall only be permitted to bring the

actions which he has purchased to the extent of the amount of money which he has paid, even though the term "sale" has been inserted in the instrument evidencing the assignment; with the exception, however, of such assignments of rights of action referring to an estate which are usually made between heirs, and those which either a creditor or a party in possession of the property of another has received, either in the discharge of a debt, or on account of the protection and care of property which has been entrusted to him, as well as those made between legatees or beneficiaries of a trust, to whom either debts, rights of action, or other property has been left, for these things are often necessary.

The purchaser of a lawsuit does not come under this rule (as has been previously stated), but is one who acquires the rights of action of another by the payment of money. Where, however, an assignment is made as a donation, all persons are hereby informed that in such a case there is no ground for the application of this rule, but that the ancient laws must be observed; so that not only the assignments for the causes excepted and enumerated above, but also such as have been made, or are to be made, may acquire all the force of rights of action assigned without any restriction.

23. The Emperor Justinian to John, Prsetorian Prefect.

A constitution which abounded in humanity and benevolence was promulgated by the most just Emperor Anastasius, of Divine memory, to the effect that no one should become liable for the debt of another by an assignment made to him, and that nothing more could be recovered from a debtor than what he had paid to the party making the assignment, except in certain cases which are distinctly specified in this same law. As, however, those engaged in acquiring lawsuits are not inclined to observe this beneficent regulation, but devise means to evade it by transferring a certain part of the debt which was sold to another creditor afterwards, and assigning the remaining portion as a donation, We, for the purpose of generally confirming the Constitution of Anastasius, do hereby decree that it shall not be lawful for any person to dispose of any portion of a debt by a sale, and then transfer the remainder as a donation; but if the party in question desires to absolutely donate the entire debt, and to transfer the rights of action as a donation, he shall not receive money secretly and with clandestine artifice, in order to publicly effect the pretended donation, but he shall make it at all times absolutely and without any pretense, for We do not prohibit assignments of this kind.

(1) When, however, anyone attempts to perform some act secretly and receives money, and sells a part of the rights of action, and pretends to donate the remainder

either to the person who has purchased the other part of the same, or to someone else who has been introduced for that purpose (as We have learned is frequently done), We absolutely annul all corrupt schemes of this kind, so that the purchaser, cannot receive more than he himself has actually paid under the contract; but that all over and above this amount which was transferred by a fictitious donation cannot be collected by either party, so that neither he who assigned the rights of action nor he to whom they were transferred shall obtain any profit or reward, or will be entitled to bring any action either against the debtor or his property.

(2) If, however, any person should pretend to have made a donation of the entire debt, and should receive something secretly as a consideration, in this instance he can only collect what he is proved to have lent, and when this has been paid by the debtor, neither the latter nor his property can be molested by virtue of this pretended donation.

(3) This salutary remedy was provided by Anastasius during his reign, for the benefit of debtors, but, notwithstanding this justice, there were men who were shrewd enough to think it could be evaded. But lest We may appear to countenance an enactment too severe for the benevolence of our times, We decree that the present law shall only be applicable to future cases, and that everything which has been devised against the Constitution of Anastasius shall hereafter be annulled by this Our Law.

TITLE XXXVI.

CONCERNING A SLAVE WHO HAS DIRECTED A STRANGER TO PURCHASE HIM.

1. The Emperors Diocletian and Maximian, and the Csesars, to Dionyna.

If a slave should request a stranger to purchase him, even though it may not be believed that a right of action on mandate will arise on account of the act of the slave (because a freeman cannot give such a mandate), nor on account of the master, as the act of anyone who orders another to purchase something from himself is void; still, for the excellent reason that this is not done in order that a right of action on mandate may arise, but that such an action will lie on account of the mandate contained in another contract, it has been decided that an obligation of this kind is acquired by the master. Therefore, if, without the knowledge of your master, you'direct someone to purchase you, and you furnish money out of your *peculium* for this purpose, and it is paid by the purchaser, you can, by no means, acquire freedom by an act of this kind. For if you, being a female slave, have not been either delivered or manumitted, it is settled that your master will have the right to avail himself of the counter actions of mandate and purchase, to recover the price. It

is, in fact, left to his choice either to recover you his slave, or the price for which you were sold, for as the money was paid out of the *peculium*, which belonged to him, it could not release the purchaser from liability for the obligation.

TITLE XXXVII.

CONCERNING THE ACTION OF PARTNERSHIP.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Aurelius.*

It has been decided that a partnership can be contracted where one of the parties furnished money and the other labor.

2. *The Same Emperors and Csesars to Pantonius.*

-As you allege that you and your patron have purchased a field together, if both you and he have been placed in possession, the rule of law requires that the ownership of said land shall belong to you conjointly. However, as you say that the price as well as all the expenses have been paid by you, and that your partner has not contributed his share, you can, by an action of partnership, recover whatever he should have paid on this account.

3. *The Same Emperors and Csesars to Victorinus.*

As good faith should prevail in partnership contracts, it is demanded by the rules of equity that the profits should be equally divided between the partners; and if the Governor of the province should find that your father belonged to a partnership organized for the working of salt-pits, and died before having received his share of the common profits, he will order that portion of them to which you are actually entitled to be paid to you.

4. *The Same Emperors and Csesars to Celer.*

If it was agreed between you and Favia that a division of all the property to which you are entitled under the law of partnership, or under a stipulation for compromise, should be made equally between you, the division will be valid; and it makes no difference whether the person obligated executed a will, or died intestate.

5. *The Same Emperors and Csesars to Theodore.*

We decree that a partnership shall last as long as the consent of the parties to its continuance exists. Hence, if you have acquired a right of action on partnership, you will not be prevented from bringing it before a judge having jurisdiction.

6. *The Emperor Justinian to John, Prsetorian Prefect.*

It was doubted among the ancients whether a partnership could be formed under a condition, for instance, that the partnership should be formed if Such-and-Such a person should become consul. In order that hereafter no doubt may arise on this point, as was the case in former times, We decree that a partnership cannot only be formed absolutely, but also conditionally, for the

wishes of persons who make legal contracts should by all means be considered.

7. *The Same to John, Prsetorian Prefect.*

For the purpose of removing the doubts of the ancient authorities, We decree that the curator of an insane person shall have power to dissolve a partnership of which the insane person is a member, and renounce all connections with his partners, if he should see fit to do so. And We grant him lawful authority, just as in all other contracts, and permit him in a case of this kind to provide in a proper manner for the benefit of the said insane person.

TITLE XXXVIII.

CONCERNING THE CONTRACT OF PURCHASE AND SALE.

1. *The Emperors Valerian and Gallienus to Paulus.* Sales which are made in some other place than that in which the property is situated are not, for this reason, considered void.

2. *The Emperors Diocletian and Maximian to Avitus.*

It is evident that consent is required for purchase and sale, and that an insane person is not capable of consent. There is no doubt, however, that insane persons, who are more than twenty-five years of age, can make sales and any other contracts during their lucid intervals.

3. *The Same to Valeria.*

When a fictitious contract of sale is made in order to effect a donation, it will be of no force or effect. If you have placed anyone in possession of property under the pretext of a sale, but really as a donation, in consideration that he will support you, such a donation, when perfected, cannot readily be rescinded, and it is proper for you to comply with the condition which you stated was imposed when you donated your property.

4. *The Same to Lucian.*

You say that you purchased from the heir of the donor the property which she gave you, but you should be aware that your title to the same cannot be doubled; hence you have made your purchase in vain, as you had already become the owner by gift and delivery, and could obtain no additional advantage, unless it is proved that the title did not vest in you by virtue of the donation. And if, as you allege, all the property of the donor was given and delivered to you, a sale made by the son of his mother's property can be maintained, even if the donation was perfected, as the son could set this aside by filing a complaint that the will was inofficious.

5. *The Same to Gratia.*

As a guardian himself is forbidden to purchase openly and in good faith any of the property of his ward which can be sold, there is much more reason why his wife should not be permitted to do so.

6. *The Same to Lucretius.*

If Gaudentius transferred the ownership of a slave to your mother by a sale, and without fraud, her rights are in no way prejudiced for the reason that marriage and divorce are alleged to have afterwards taken place between them. Therefore you will not be prevented from bringing an action to recover the slave, if you prove that you have succeeded your mother.

7. *The Same to Piso.*

If your mother falsely asserts that she received as a donation a female slave whom she herself had previously bought from her second husband, the pretense of this simulated donation can neither confirm her ownership nor deprive her of it.

8. *The Same to Diogenes.*

If you have actually sold your vineyard, and not given it away, and the purchase-money has not been counted out to you, you will be entitled to an action to recover the price of the same, but not one to recover any articles which you may have donated.

9. *The Same to Severus.*

A purchase or a sale made without a price is void. If, however, the price has not been paid, but possession has been delivered to the purchaser, a contract of this kind is not considered invalid; and therefore the person who made the purchase is none the less entitled to possession because he refuses to pay the price which he had agreed to give. When, however, delivery follows the sale of a tract of land made by way of donation, as no action will lie for the recovery of the price, the donation is perfected.

10. *The Same to Georgius.*

If your mother bought her own land, believing that it was a part of the estate of your father, as the purchase of one's own property will not stand, and you allege that this one is fictitious, an agreement of this kind cannot change the truth, or prejudice your mother's rights.

11. *The Same to Paterius.*

The prayer of the petitioner to be permitted to purchase or sell property against the consent of the party in possession of the same is not founded on just grounds.

12. *The Same to Paternus.*

A purchase is none the less complete for the reason that the purchaser did not receive a surety, or that an instrument showing that the property was unoccupied, was not drawn up; for anyone who takes possession with the consent of the vendor is legally the possessor. Where, however, it is proved that the price has not been paid, it can be demanded; for the desire of one of the parties to withdraw from the contract, although manifested immediately after it has been entered into, will not rescind it if it was executed with the consent of all concerned.

13. *The Same to Julian.*

The obligation of a contract for purchase or sale, which is drawn up under the condition that it will be dependent upon the will of the vendor or purchaser, is void, because it does not necessarily bind the contracting parties. Therefore neither the owner nor anyone else can be compelled to sell his own property under an agreement of this kind.

14. *The Emperors Valentinian, Theodosius, and Arcadius to Fabian, Prefect of Illyria and Italy.*

Near relatives were formerly permitted to exclude strangers from a purchase, so that persons could not voluntarily dispose of property which they desired to sell; but, for the reason that this seemed to cause serious injury (which was veiled by a vain pretext of honesty) by compelling men to alienate their property against their wishes, the former law being abolished, everyone can now, according to his own inclination, either seek or accept a purchaser, unless the law especially prohibits certain persons from doing so.

Given on the sixth of the *Kalends* of June, during the Consulate of Tatian and Symmachus, 391.

15. *The Emperor Justinian to Julian, Prtetorian Prefect.*

A serious doubt arose among the ancient authorities with reference to contracts of sale, where anyone made a purchase under the condition that the property should be sold for the price at which another would say that it was worth. We, intending to dispose of this doubt, do hereby decree that when an agreement of this kind, namely, that the sale shall be for the price that a third party may put upon the property is entered into, the sale shall be void, if made under such a condition; and when he who was mentioned states the price, and it is paid in accordance with his estimate, the sale shall take effect, whether the contract was reduced to writing or not; for where an agreement of this kind is reduced to writing, it will, in accordance with the provisions of Our Laws, be in all respects complete and absolute.

If, however, the person referred to should be unwilling or unable to fix the price, then the sale will be void, no price having been determined upon; and that neither oneiromancy nor divination shall, under any circumstances, hereafter be resorted to, to ascertain whether the contracting parties who made such an agreement selected any certain person, or relied upon the judgment of a reputable citizen; for the reason that it is impossible to place any confidence in such expedients, and We abolish them by the present law.

We decree that this rule shall also apply to leases of the same character.

TITLE XXXIX.

CONCERNING THE INHERITANCE OR SALE OF RIGHTS OF ACTION.

1. *The Emperors Severus and Antoninus to Geminus.*

It is absolutely certain that where an estate is sold in the name of the Treasury, the purchaser is liable for the debts, and the Treasury is not liable to the creditors of the estate.

2. *The Emperor Antoninus to Florian.*

The rule of law requires that you answer the creditors of the estate, as well as the legatees or beneficiaries of trusts who may bring actions against you; and that, on the other hand, you, in your turn, can proceed against the person to whom you sold the estate. It will, however, be too late to ask him to furnish you security, as this was not included in the contract at the time when the estate was sold. For even though someone made the purchase under the condition that he would satisfy the creditors of the estate, still, if he is unwilling, he cannot be compelled to accept actions brought on account of the estate.

3. *The Emperor Alexander to Timotheus.*

The sale of a claim can be made, even without the knowledge or consent of the party against whom suit is brought.

Given on the fifth of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Zelianus.

4. *The Same to Diogenes.*

He who is not yet certain of the value of the estate, but, having been persuaded by the purchaser, sold it for a small sum of money, cannot be sued in a *bona fide* proceeding, and compelled to deliver the property, or assign his rights of action, for he can also legally bring suit to recover the property. , 5. *The Same to Onesimus.*

The purchaser of an estate, after the rights of action have been transferred to him, must make use of the same ones which the person whose place he occupies was entitled to; even though it was agreed that the praetorian rights of action against the debtors of the estate should be assigned to the purchaser.

6. *The Same to Pomponius.*

Anyone who has sold you an estate still remains the owner of the same until he delivers you the property, and hence by selling it to others he can transfer the ownership. But as he has broken the faith of the contract, if he should be sued in an action on purchase, he can be compelled to indemnify you for any loss which you may have sustained.

7. *The Emperors Diocletian and Maximian to Manassa.*

After it was settled that the contracts of debtors could be given in pledge, it seemed to be the rule that equitable actions could be granted to the creditor himself who made the demand (as has already been decided) after the sale of the claim.

8. *The Same Emperors and Csesars to Julian.*

By the sale of the claim the ownership of the property encumbered does not pass to the purchaser, but he either is appointed an attorney in his own behalf, or an equitable action, as in the case of a creditor, is granted in accordance with what has already been established.

9. *The Emperor Justinian to John, Praetorian Prefect.*

It is a certain and unquestionable rule of law that anyone who has purchased a real action can avail himself of his right, just as he who has purchased a personal action can do, and that he will be permitted to proceed legally in his own name. For as the designation is a general one, and is applicable to both real and personal actions, and among the ancient authorities was used to indicate both, there is no reason why any distinction should be made between praetorian actions of this kind.

TITLE XL.

WHAT PROPERTY CANNOT BE SOLD, AND WHAT PERSONS ARE FORBIDDEN TO SELL OR PURCHASE IT.

1. *The Emperors Gratian, Valentinian, and Theodosius to Faustus, Count of the Sacred Largesses.*

No private person shall have the right to dye either silk or wool with the colors called *blatta*, *oxyblatta*, or *hyacinthina*, or sell it after it has been dyed. If anyone should sell wool dyed with the colors aforesaid, he is hereby notified that he will incur the risk of losing his property and his life.

2. *The Same to Toriobandus, Duke of Mesopotamia.*

We order, as has already been decreed, that all barbarians, excepting the Count of Commerce, shall be deprived of the right to purchase silk.

3. *The Emperors Arcadius and Honorius to the Senate and the People.*

For the reason that grain destined for the public is said to be sometimes sold on various coasts, the vendors and purchasers of such merchandise are hereby informed that they are liable to capital punishment, and that commercial contracts of this kind made with a view to defrauding the public are prohibited.

4. *The Emperors Honorius and Theodosius to Faustus, Praetorian Prefect.*

In order to prevent the grain intended for Our most devoted army from being appropriated for the benefit of others, We order by this law that anyone who shall engage in this kind of traffic, if he is of high rank, shall be proscribed, and incur the loss of all his property, and that persons of inferior station shall suffer capital punishment.

TITLE XLI.

WHAT PROPERTY SHOULD NOT BE EXPORTED.

1. *The Emperors Valens and Gratian to Theodore, General of the Army.*

No one shall have authority to transport to the country of the barbarians either wine, oil, or other liquids, either for the purpose of consumption or for commercial purposes.

2. *The Emperor Martian to Aulus, Prsetorian Prefect.*

Let no one presume to sell to barbarians of any race whatsoever, who have come to this City with an embassy, or on any other errand, or in any other city or place, cuirasses, shields, bows, arrows, double-edged swords, or ordinary swords; nor shall any darts or any other weapons made of iron, or the unfinished material for the same be sold to them by any person; for it is injurious to the Roman Empire, and resembles treason for barbarians, who should be deprived of them, to be furnished with weapons in order that they may become more formidable. Therefore, if anyone should in any place sell to foreign barbarians any kind of arms which have been forbidden by Our laws, We decree that his entire property shall immediately be confiscated, and that he shall suffer the penalty of death.

TITLE XLII.

CONCERNING EUNUCHS.

1. *The Emperor Constantine to Aurelius, Duke of Mesopotamia.*

If anyone, after the promulgation of this law, should make any eunuchs in the Roman Empire, he shall be punished with death; and the slave, as well as the place where the crime was committed with the knowledge of his master, even though the latter may feign ignorance, shall be confiscated.

2. *The Emperor Leo to Vivian, Prsetorian Prefect.*

We order that the ownership of men of the Roman race, who have been made eunuchs either in a barbarous country or on Roman soil, can, under no circumstances, be transferred to anyone; and that the severest penalty shall be inflicted upon those who have dared to commit such an offence, including the notary who drew up the instrument of sale or of any other kind of alienation; and he who received the *octava*, or anything else by way of tax, shall be subjected to the same penalty. We, however, grant authority to all traders to buy or sell, wherever they please, eunuchs of barbarous nations who have been made such outside the boundaries of Our Empire.

TITLE XLIII.

CONCERNING FATHERS WHO HAVE SOLD THEIR CHILDREN.

1. *The Emperors Diocletian and Maximian to Papiniana.*

It is a plain rule of law that children cannot be alienated by their parents, either through sale, donation,

pledge, or in any other way, even under the pretext of the ignorance of the person who receives them.

2. *The Emperor Constantine to the People of the Provinces.* If any heartless person, induced by extreme poverty and want, should sell either his son or daughter for the purpose of obtaining means wherewith to live, in a case of this kind the sale shall only be valid where the purchaser had a right to the service of the person sold, and he who made the sale, or the one to whom the child was alienated, shall have the right to restore it to its freeborn condition, provided he tenders its value to the owner, or furnishes him another slave in its stead.

TITLE XLIV.

CONCERNING THE RESCISSION OF A SALE.

1. *The Emperor Alexander to Maro.*

If your father, having been compelled by force, should sell his house, the sale will not be valid, because it was not made in good faith, and a purchase made in bad faith is void. Therefore, having applied in your own name to the Governor of the province, he will interpose his authority, above all if you state that you are prepared to refund to the purchaser the price which was paid.

2. *The Emperors Diocletian and Maximian to Lupus.*

If either you or your father should sell property for less than it is worth, and you refund the price to the purchasers, it is only just that you should recover the land which was sold by judicial authority; or, if the purchaser should prefer to do so, you should receive what is lacking of a fair price. A lower price is understood to be one which does not amount to half of the true value of the property.

3. *The Same to Martiana.*

Good faith does not permit a person, at any time, to repudiate a contract of sale or purchase made in accordance with law against the consent of either party, even by virtue of an Imperial rescript. It has frequently been decided that Our Treasury can make use of this right.

4. *The Same to Eudoxius.*

For the purpose of rescinding a sale, and proving bad faith, it is not sufficient for you to state that the land in question has been sold for less than half the amount for which it was purchased.

5. *The Same to Rufus.*

If, after application has been made to the Governor of the province, he should decide that you made the sale of your land because you were deceived by the fraudulent representations of your adversary, and being aware that fraud is contrary to the good faith especially required in contracts of this kind, he must order the sale to be rescinded. If, however, it was perfected by a person more than twenty-five years of age, you understand that when

this was done by common consent, the sale cannot be set aside.

6. *The Same to Gratian.*

The reason for which you desire a sale made by common consent to be rescinded is not a proper one; for although you offer double the price to the purchaser, still, if he is unwilling, he cannot be compelled to rescind the sale.

7. *The Same to Mucarolus and Other Soldiers.*

It is to your interest that the sales legally made should always remain valid. For if it is readily permitted to rescind a sale, whenever an offer to refund the purchase-money is made, the result will be that if you should buy anything either from Our Treasury, or from a private person, with the fruit of your labors, you can be sued under the same law which you now ask to have a right to avail yourself of.

8. *The Same to Evodia.*

If your son should, with your consent, sell a tract of land belonging to you, and fraud resulting from cunning and treachery should be proved, or the fear of death, or if some threat of bodily injury should be disclosed, the sale shall not be considered valid. The sole reason which you give for rescinding the sale, namely, that the property was disposed of for a little less than its true value, is not sufficient. If, indeed, you bear in mind the nature of the contract of sale, and that the purchaser desiring to buy for a lower price, and the vendor desiring to sell for a higher one, have come to terms after much contention, the vendor, receding little by little from what he at first demanded, and the purchaser adding little by little to what he at first offered, until they finally agree upon the price, you will at once perceive that neither the good faith which protects contracts of purchase and sale nor any other reason will suffer an agreement concluded with mutual consent to be rescinded, because either immediately, or after the amount paid has been discussed in court, if less than half of the just price was not paid at the time of the sale, the purchaser had reserved the right to return the property on condition that the money was refunded.

Given on the *Kalends* of December, during the Consulate of the Caesars.

9. *The Same to Domitius.*

A contract is not considered to be void where the price of the property was not counted out in money, but payment was made in cattle, with the consent of the vendor.

10. *The Same to Severus.*

The fraud of the purchaser is established by the nature of the act, and not by the amount of the sum which was paid. - If fraud is proved to have taken place, the vendor will not have a right to bring an action to recover

the property against the person to whom the purchaser transferred the ownership, but he will be entitled to one for complete restitution from him with whom he made the contract.

11. *The Same to Magna.*

The vendor can make a complaint for fraud committed by the purchaser, which was concealed from him at the time of the execution of the contract, and which he afterwards ascertained, but not when he was aware of what was being done at the time, and gave his consent to it. Therefore, as you allege that your father agreed to what was mentioned in the bill of sale, namely, that a higher price should be paid than it was originally agreed that the property should be sold for, he will, in vain, complain of having been swindled on this ground. (1) Where, indeed, it is proved that the price agreed upon was not paid, or if it was provided, through an error of fact, that another debt should be set off against it, a demand can legally be made for its payment.

12. *The Same to Antiochus.*

The sale of the land in question is none the less valid because you allege that you disposed of it because you had a pressing need for the money in order to satisfy a public claim, and did not sell it for less than it was worth. Therefore, while abstaining from any unlawful demands, you had better demand the price, if it has not been paid in full.

13. *The Same Emperors and Cs&sars to Nica.*

If you, when you were more than twenty-five years of age, sold a tract of land, good faith does not permit the sale to be rescinded by you for the sole reason that your father-in-law notified the purchaser not to buy it.

14. *The Same Emperors and Caesars to Basilica.*

Estates having been sold upon condition that the person who brought them should pay what the vendor owed to the State, and payment having been made by the latter, he can bring suit for the amount to which he is entitled, but the contract shall not be declared void for the reason that the purchaser did not comply with his agreement.

15. *The Emperors Gratian, Valentinian, and Theodosius to Hypa-tius, Prsetorian Prefect.*

If anyone who has attained his majority should sell some lands situated in a distant country, he • cannot recover the property sold under the pretext that it was disposed of for a little less than its real value, and he will not be permitted to cause delay by objections which are without foundation, as, for instance, to allege that the value of the property was not known to him, as he should have previously made himself familiar with the value, the advantages, and the profits of the same.

Given on the sixth of the *Kalends* of May, during the Consulship of Merobaudus, Consul for the second time, and Saturninus.

16. *The Emperors Valentinian, Theodosius, and Arcadius to Ma-gillus, Vicegerent of Africa.*

If the necessity imposed by public liabilities compels anyone oppressed by the weight of his debts to relinquish his property, the nature of the same and the amount of the income derived from it shall be estimated in order that there may be no ground for fraud under the pretext of a public sale, so that, it having been sold at too low a price, the collector of taxes will obtain more from the favor which he grants than the debtor will from the money which he receives. Those shall afterwards hold the property by a perpetual title, legally obtained by the sale, who paid to the Treasury as much as would have been given by a private person; for it is extremely unjust that where the property of another is sold as a favor, the Treasury should obtain but little, and the debtor lose everything.

17. *The Emperors Arcadius and Honorius to Messala.*

Those who, in order to avoid public charges to which they are liable, take to flight, or secretly make fraudulent contracts, are hereby notified that such schemes will not benefit them to any extent, and that if the purchaser is aware of their flight he shall be fined a sum equal to the price which he paid.

Given on the twelfth of the *Kalends* of September, during the fifth Consulate of Theodore, 399.

18. *The Emperors Arcadius, Honorius, and Theodosius to Nes-torius, Count of Private Affairs.*

The Palatines are hereby informed that authority is refused them to purchase clothing, gold, silver, or slaves, whenever they are sold by Our subjects, under penalty of losing the price which they paid.

TITLE XLV.

WHEN IT IS PERMITTED TO REFUSE TO COMPLY WITH A CONTRACT OF SALE.

1. *The Emperor Gordian to Rufinus.*

When a contract of purchase and sale has not yet begun to be carried into effect, it can be rescinded with the acquiescence of both parties, for what has been agreed to by common consent can be dissolved in the same way. However, after delivery has been made, mere consent will not rescind a sale, unless a contract similar to the first one is drawn up, which retroactively puts an end to the transaction.

2. *The Emperors Diocletian and Maximian to Felix.*

It is established that a purchase and sale which has not begun to be executed can be rescinded by an agreement, and the consent of the parties. Therefore, if gold has been given by way of earnest money, you can

recover it in accordance with the terms of the agreement. Where, however, you have paid part of the price, you will rather be entitled to an action to recover whatever the vendor is required to furnish you under the contract of sale than the amount of the price which he paid.

TITLE XLVI.

WHERE A SALE IS MADE ON ACCOUNT OF PUBLIC CONTRIBUTIONS.

1. *The Emperor Antoninus to Maternus.*

A sale should not be revoked on account of the non-payment of taxes, whether the former owner tenders the purchase-money, or a creditor interposes his right of hypothecation or pledge, as the claim, for the taxes is preferred, and all the property of the party in default is liable to it on the ground of priority.

2. *The Emperors Diocletian and Maximian to Plotius.*

If you have purchased lands taken from their owners on account of the non-payment of any taxes or of some balance due which were sold with the observance of the legal formalities, in good faith, and for a fair price with the permission of the Governor, by persons responsible for the collection of taxes, a sale made on account of public claims of this kind cannot be set aside. Where, however, the sale did not take place by the authority of the Governor previously obtained, the laws do not consider it to be valid, and therefore what was illegally done should be revoked in such a way that the payment of the taxes may, under all circumstances, be secured. All these things should be done in the presence of the person who you allege is the purchaser.

3. *The Emperor Constantine to the Governor Faustus.*

If anyone should buy at public sale a tract of land, a slave, or any other property, on account of default of the payment of taxes, or because of the seizure of clothing, gold, or silver which was due and payable annually and the debtor has been summoned and interrogated in court with reference to his failure to pay, We order that the sale shall be perpetually confirmed. If, however, the party interested is a minor, it is necessary that some person who can make a lawful defence should be present at the sale, and it makes no difference whether what was due was to be collected by Our attorney, or the Governor of the province.

Given on the day before the *Ides* of December, during the Consulate of Felicianus and Titian, 337.

TITLE XLVII.

LAND CANNOT BE PURCHASED WITHOUT THE PAYMENT OF TAXES OR BALANCES WHICH ARE DUE.

1. *The Emperor Alexander to Capito.*

An action will not lie in your favor against your stepmother and your father under an agreement which

you allege was entered into between them by which she gave a tract of land as dowry, and agreed to pay the taxes to which it was liable, and this is the case even if the agreement is proved to have contained a stipulation. If, however, the land has been appraised, in order, as was stated in the instrument, that it might be given by way of dowry, the action on sale will not lie, although the agreement may be enforced.

Given on the *Nones* of December, during the third Consulate of the same Emperor, Consul for the third time, and Dio, 230.

2. *The Emperor Constantine to Marcellus.*

While examining the question of public contributions with reference to provisions, We have ascertained that the principal reason why the tax due is not paid is because certain persons, taking advantage of the temporary necessities of others, purchase lands under the condition of not paying any taxes which might be due on them to the Treasury, and possessed them free from all encumbrance; therefore it has been decided that if it should be proved that anyone had made a contract of this kind, and had obtained possession under this condition, he shall not only be liable for the ordinary taxes on the land which was purchased, but also for all these remaining unpaid, and as the person who bought it is required to pay the taxes thereon, no one shall be permitted to purchase or sell any property free from tax.

Given at Agrippina, on the *Kalends* of July, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 319.

Extract from Novel 17, Chapter VIII, Section 1.

The vendor can, however, assume the payment of any taxes, if, after examination made before delivery, the purchaser should be found to be insolvent, for then the vendor will be compelled to acknowledge that the transfer was made at his risk, so far as the payment of taxes to the Treasury is concerned.

3. *The Emperor Julian to Secundus, Prsetorian Prefect.*

All persons shall be liable for the public taxes imposed upon the land in their possession, and they can obtain no advantage from agreements to the contrary, where either the vendor or the donor himself desires to assume the payment of the taxes under the terms of an unlawful contract, even if the name of the new owner has not yet been placed upon the tax register, but that of the former proprietor of the land still remains, the parties themselves having been guilty of dissimulation in order that those not in possession might be compelled to pay instead of the actual possessors.

Given at Antioch on the fourteenth of the *Kalends* of March, during the Consulate of Julian, Consul for the fourth time, and Sallust, 363.

TITLE XLVIII.

CONCERNING THE RISKS AND ADVANTAGES ATTACHING TO PROPERTY SOLD.

1. *The Emperor Alexander to Apollonius.*

After a sale has been perfected, every advantage and disadvantage which can affect the property disposed of will concern the purchaser, for the vendor, on his part, is only liable for what may cause eviction, and originated during the time preceding the sale; hence if he is notified to appear at a proceeding of this kind, judgment will be rendered against him in the presence of the purchaser.

2. *The Same to Julian.*

As it is proper that wine-jars should be sold at a fixed price, before they have been delivered, and while the sale was as yet imperfect, the risk of having the wine changed will not be assumed by the purchaser, provided he was not in default in causing it to be measured. As, however, you allege that all the wine deposited in the warehouses was sold without having been measured, and the keys delivered to the purchaser, any loss which ensued from its having been changed after the sale was concluded must be assumed by the latter.

These rules not only apply to wine, but also oil, grain, and other articles of this kind which have been sold and have become deteriorated or entirely destroyed.

3. *The Same to Diaphania.*

It is an established rule of law that the fraud of the vendor cannot injure a *bona fide* purchaser.

4. *The Emperor Gordian to Silurus.*

When an agreement as to the price was made in a verbal contract between purchaser and vendor, and the vendor did not delay in delivering the property sold, there is no doubt that it will be at the risk of the purchaser.

5. *The Emperors Diocletian and Maximian to Leontius.*

As you state that the property sold was consumed by fire, and there was no condition which suspended the sale, you were not liable for the articles destroyed.

6. *The Same to Cerulus.*

The loss by death of the female slave who was sold must be borne by the purchaser, and not by the vendor, even if it occurred before the slave was delivered, provided the vendor was not in default; and as the slave did not die on account of some already existing defect the purchaser cannot legally refuse to pay the price.

TITLE XLIX.

CONCERNING THE ACTIONS OF PURCHASE AND SALE.

1. *The Emperor Antoninus to Deliana.*

Bring an action of sale against the person to whom you sold the land, for you are not entitled to one *in rem* against the purchaser, who is personally liable to you.

2. *The Emperors Valerian and Gallienus, and the Cossar Valerian to Domitian.*

You can bring the action of sale against your adversary for the purpose of recovering the balance of the price. You cannot be opposed by having a set-off pleaded against you, as if you were indebted to one another; and if you should prove that, in a *bona fide* contract (on account of which persons over the age of twenty-five obtain relief through a judge on the ground that fraud has been committed), you have been led into a plausible error, or have been defrauded by your adversary, and have acknowledged a debt which, in fact, was not due.

You can also recover by the same action any crops which were gathered before the sale was contracted, and which were not included in it, but which you allege were appropriated by the purchaser.

3. *The Emperors Diocletian and Maximian to Serpodorus.*

A personal action in favor of the contracting parties is the only one which can be brought under an agreement where earnest money has been given.

4. *The Same to Mutian.*

If the delivery of the property sold did not, through the obstinacy of the vendor, take place in accordance with the terms of the contract, the Governor of the province must see that judgment is rendered against him to the extent of the interest which the purchaser had in having the sale concluded.

5. *The Same to Decima.*

The Governor of a province shall compel the purchaser to restore to you a part of the price with the interest if, after having obtained possession of the property, he has gathered the crops, and this rule is established because he has gathered them in favor of minority, even though the purchaser may not have been in default.

6. *The Same to Neractus.*

The action of sale (unless it was otherwise agreed in the beginning) will not readily lie to rescind a sale which has been perfected, but it can be brought for the purpose of collecting the purchase-money.

7. *The Same to Diodorus.*

If you sold certain slaves and received the price out of their *peculium*, which, in fact, belonged to you without knowing from whence it was derived, the result will be that you can bring suit to recover the price, as the payment of money belonging to the vendor does not release the purchaser from liability.

8. *The Same to Eusebius.*

If your father should sell a portion of his land, but does not place the purchaser in possession, it is certain that he will retain all his rights to said land; and even if the purchaser has paid the tax, as where delivery has been

made, he will still do so, for when a simulated act takes place it cannot alter the truth. Wherefore, if after application has been made to the Governor of the province, he should find that neither your father nor his successors had placed either the purchaser or his heirs in possession of any part of the property, he will have no hesitation in deciding that no transfer was made. But if he should learn that you have been sued in an action on purchase to compel you to place the purchaser in possession, he must then ascertain whether the price has been paid, and if this has not been done, he will see that the property is restored to you.

9. *The Same to Antipatra.*

If it should be stated by the vendor (either knowingly or ignorant-ly) that the tax on the land sold was less than it was afterwards found to be, suit can be brought against him for the amount which the purchaser would have been compelled to add to the price, if he had been aware of this in the first place. Where, however, he was aware of the actual amount of the tax which was due, he will have no right of action against the vendor.

10. *The Same to Attains.*

As you state that the vendor did not deliver you the meat at the time agreed upon, contrary to the terms of the contract, you can sue him before the Governor of the province in the action of purchase for the amount of the interest that you had in having the meat furnished you.

11. *The Same to Bucarpia.*

Where a vendor has manumitted a female slave delivered to you under a contract of sale, he cannot bestow freedom upon a slave which belonged to another. If, however, he manumitted the slave after the sale and before delivery, being still her owner in accordance with law, he will not be prevented from making her a Roman citizen, and you will be entitled to a personal action against him for breach of contract.

12. *The Same to Crispinus.*

As any loss caused by having wine changed after it has been actually purchased is at the risk of the purchaser, so he will also be entitled to any advantage derived from an increase in price. For this reason the terms of a contract must be observed when wine of a certain kind and quantity is sold, and if it should not be delivered, an action will lie, not for the price, but for the amount of the interest which the purchaser had in having it delivered.

13. *The Same to Alexander.*

After a contract has been legally concluded, it is settled that the profits of the property will belong to the purchaser, just as he must be responsible for any encumbrance upon it. The vendor can also, by authority of the judge, collect not only the price, but also the

interest on the same, if it shall be established that the purchaser is in default.

14. *The Same to Rufinus.*

The purchaser of slaves can properly demand that a guarantee be furnished for their delivery, and against their flight, as well as for their health and that they are not wanderers, or liable to be surrendered by way of reparation for damages.

15. *The Same to Antonius.*

A purchaser cannot collect any more than the amount of wheat sold to him, as stated in the contract, where the vendor is not in default in the delivery.

16. *The Same to Cyrillus.*

It is well known that after a sale has been perfected, the young of cattle should be delivered by the purchaser, and the vendor should be reimbursed his expenses, if they have been incurred in good faith.

17. *The Same to Hermianus and Lupus.*

When you allege that you have been violently expelled by Nero from lands to which you deny he is entitled, you show that you have no right of action against him, for you have obtained possession of the land by sale; and therefore you must be aware that you should institute proceedings against him by means of an interdict, or by the *Actio permissa*.

TITLE L.

WHERE ANYONE HAS PURCHASED PROPERTY FOR ANOTHER, OR FOR HIMSELF IN THE NAME OF ANOTHER, OR WITH MONEY BELONGING TO ANOTHER.

1. *The Emperor Antoninus to Secundinus.*

If lands or slaves have been bought with your father's "money, and you assert that, nevertheless, the purchases were made in your mother's name, you should not be ignorant that by delivery your mother will become the owner of the property. It is evident that if you think you have a right to collect the price paid for said property, because it has been counted out by your mother, you must sue her in a civil action.

2. *The Emperor Alexander to Septima and Others.*

If, after your emancipation, your father should deliver to you certain lands which he purchased in your name when you were under his control, or if you had been in possession of said lands with his consent, you will acquire the ownership of the same.

3. *The Same to Patrimus.*

If the slaves whom you mention have, as you state, been purchased in your name and in that of your brothers to whom you have succeeded, and have been delivered to you, although in the bill of sale it is stated

that your mother paid the money for them, you will not be prevented from recovering them in the ordinary course of law.

4. *The Emperors Valerian and Gallienus, and the Csesar Valeria/n, to Cyrillus.*

Although you inserted the name of your mother-in-law in the bill of sale, still, if while in possession, you became the owner of the property, you will have no need to apprehend any annoyance from her on this account, even though she may have the written contract.

5. *The Emperors Diocletian and Maximian to Verus.*

You say that, after having purchased a tract of land with your own money, you only inserted the name of your wife in the contract of sale, and she, taking advantage of the said contract which had been entrusted to her, claimed the ownership of the land contrary to good faith. The Governor of the province, in the exercise of his authority, must provide that the donation of said property by your wife, who is not the owner of the same, to her daughter, will not prejudice your right of ownership, and when you prove the truth of the statements in your petition, he will see that possession is restored to you, after having made an estimate of the value of the crops.

6. *The Same to Dionysius.*

It makes a great deal of difference whether you counted out the money when your wife made the purchase, and possession was delivered to her, or whether the contract was made in your name, and you subsequently caused that of your wife to be inserted in the bill of sale. For if your wife purchased the property in her own name, and it was delivered to her, you will have no right to it, and you will only be entitled to an action against her for the amount by which you have become poorer, and she has become richer.

When, however, you yourself purchased the property, and possession was delivered to you, and the name of your wife was only inserted in the instrument of sale, what has actually been done is preferable to what has merely been stated in writing.

But if in the beginning you, while transacting the business of your wife, made the purchase in her name, you did not acquire the right of action on purchase against her, as you did not intend to and could not have done so; and therefore so far as the question involving ownership is concerned, the position of him to whom possession has been delivered by the owner of the property is preferable.

7. *The Same to Gerontius.*

As you state that you have bought oil through persons who are transacting your business, but, after the price was paid, the vendor violated his agreement, you have certainly acquired a right of action growing out of the purchase, through the contract of those legally subject to your authority; and the action can either be brought by you or by anyone whom you may direct.

If, however, persons who were their own masters made this contract in accordance with your mandate, they themselves have acquired the right of action on purchase, and therefore you must appear before a competent judge either by them or by those to whom they gave the mandate, and he will see that your claim is satisfied in accordance with the good faith which is ordinarily observed in contracts of this description.

8. *The Same to Valentina.*

Anyone who has made a purchase with money belonging to another will acquire the right of action on purchase for himself, and not for him to whom the money belongs, together with the ownership of the property, if possession was delivered to him. Therefore, as you state that your cousin bought property with money owned in common by you both, you will do well to sue him to recover your money, but you will not be entitled to an action *in rem* against him for the property purchased.

9. *The Same to Rufina.*

There is nothing to prevent the ownership of property from being transferred to another than the person who has counted out the money, with the consent of both of the contracting parties, or, indeed, with only that of the vendor; and for this reason it is perfectly clear that an agreement of this kind can be made between persons who are absent, through the agency of a third party, as for instance, a messenger, or even by means of a letter.

TITLE LI.

CONCERNING THE PROHIBITED ALIENATION AND HYPOTHECATION OF THE PROPERTY OF OTHERS.

1. *The Emperor Alexander to Cantianus.*

If it should be proved before the Governor of the province that Julian, without any right, sold your slaves to persons who knew that they did not belong to him, he must order the purchasers to restore your slaves to you. If, however, they were ignorant that this was the case, and the slaves were delivered to them, the Governor shall order Julian to pay you the price of said slaves.

2. *The Emperor Gordian to Gratia.*

If you did not give your consent to the sale of your property by your husband, although you sealed with your own signet the instrument of sale which was fraudulent, a swindle of this kind will afford no security to the purchaser, and he can, by no means, avail himself of the rights of usucaption, or prescription based upon long time.

3. *The Emperors Diocletian and Maximian to Valerian.* A vendor who succeeds by hereditary right is not permitted to rescind a sale which was legally made and perfected, and recover the

ownership of the property; but if she makes a claim in her own right, you can protect yourself by means of an

exception on the ground of fraud, if you prefer this method; or, in case of eviction, if you do not wish to make use of the above-mentioned defence, you can bring suit for the value of your interest in the matter.

4. *The Same to Affabilus.*

When your mother gave the slaves of your father, who had leased a tract of land of Philip, to the latter for the payment of debts, and the slaves were obtained by you through inheritance, she could not deprive you of anything. Therefore, if you are more than twenty-five years of age, and did not ratify the transaction, and the lessor did not sell the slaves as being encumbered to himself by the right of pledge, you can bring an action to recover them after tendering the amount of the indebtedness.

5. *The Same to JEgrus.*

If after your emancipation your father sold a tract of land belonging to you without your consent, and you did not become his heir, and were not protected by possession based upon long time, the Governor of the province will cause the land to be returned to you, if you institute proceedings for that purpose.

6. *The Same to Rufus.*

No one has been able to injure you by selling property which did not belong to him, and upon which he had no lien, and which he had no authority to dispose of.

7. *The Emperor Justinian to John, Prietorian Prefect.*

We decree that when the law forbids an alienation to be made, or this is done by a testator, or in compliance with an agreement between contracting parties, not only the alienation of ownership and the emancipation of slaves, but also the transfer of the usufruct, or the hypothecation or encumbrance of the property by way of pledge shall be absolutely prohibited. In like manner, We decree that servitudes cannot be imposed upon the property, or emphyteutical contracts executed except in cases where the authority of the constitutions, the will of the testator, or the tenor of the agreement which forbade the alienation permits something of this kind to be done.

TITLE LII.

CONCERNING THE ALIENATION OF PROPERTY OWNED IN COMMON.

1. *The Emperor Antoninus to Apollodorus.*

If the purchaser of the land which you allege was sold by the coheirs of your paternal uncle cannot avail himself of the privilege of usucaption, or of prescription founded upon long-continued silence, the right of action *in rem* will remain unimpaired, so far as your share is concerned. If, however, the law has given the purchaser security, you have a perfect right to sue those who consented to an unlawful sale of your portion of the property.

2. *The Same to Terentianus.*

It makes a great deal of difference whether your co-heirs have sold property held in common, or whether the Treasury, which owned a part of the same, sold the whole of it on account of the peculiar privilege which it enjoyed; for if the sale was made by the Treasury, the law does not permit the good faith of it to be impugned. Where, however, the co-heirs sold the entire property, although the purchaser, having been delegated by them, may have paid a part of the price to the Treasury, and entered into an agreement to pay the balance, still, the sale cannot prevent you from obtaining your share.

3. *The Emperors Diocletian and Maximian to Eusebius.*

You have been incorrectly informed that the undivided share of an estate which is held in common can only be sold to one of the joint-owners and not to a stranger, before judgment has been rendered in a suit for partition.

4. *The Same to the Soldier Ulpian.*

Your brother had no right to alienate your share of the property, especially while you were in the army, but it is not in conformity with military dignity to demand that your share of it should be restored to you upon tendering the price.

5. *The Same and the Csesars to Olympianus.*

If you, being more than twenty-five years of age at the time, sold an estate as yours, not knowing that it was jointly owned by you and your brothers, although no written instrument was drawn up as evidence of the sale, and no special agreement was made, you will be obliged to pay to the purchaser the amount of his interest, if the shares belonging to the others should be evicted.

TITLE LIII.

THOSE WHO HAVE CHARGE OF THE AFFAIRS OF OTHERS ARE NOT FORBIDDEN TO ALIENATE THEIR OWN PROPERTY.

1. *The Emperors Severus and Antoninus to Publica.*

Guardians or curators are not forbidden to alienate their own property, even though they may have been legally declared indebted on account of their administration. Therefore, your curator was able to encumber his property with the lien upon it to Our Treasury, which he could also have done to a private person.

TITLE LIV.

CONCERNING AGREEMENTS ENTERED INTO BETWEEN VENDOR AND PURCHASER.

1. *The Emperor Antoninus to Diotima.*

If you sold your estate under the condition that if the price should not be paid within a certain time, the purchaser would forfeit the earnest money, and the ownership revert to you, the terms of the contract must be observed.

2. *The Emperor Alexander to Charisius.*

If your parents sold a tract of land under the condition that if they themselves, or their heirs, should indefinitely, or within a designated time, tender to the purchaser the price of the property he would restore it; and if you are ready to comply with the above-mentioned condition, and the heir of the purchaser refuses to fulfill the contract, the *Actio prsescriptis verbis*, or the action on sale, shall be granted you; and an account shall be rendered you of the amount of the crops taken from the land which have come into the hands of your adversary, after the price was tendered in compliance with the terms of the agreement.

3. *The Same to the Soldier Felix.*

If anyone should sell an estate on condition that if the balance of the purchase-money was not paid within a certain time the property would revert to him, as he did not deliver possession under a precarious title, he cannot bring an action to recover the land, but he can bring one on account of the sale.

4. *The Same to Julian.*

He cannot avail himself of the condition under which a sale was made who, after the day fixed for the payment of the purchase-money has arrived, does not choose to bring an action to recover the property, but prefers to bring one to collect the interest on the price.

5. *The Emperor Gordian to Longinus.*

When, at the time of the sale, you agreed that, if the person to whom you sold the property should pay you interest on the price if it was not paid at the time appointed, you will be correct in thinking that, after having made application to the Governor of the province, you can compel its payment by the purchaser; but if you did not make such an agreement in the beginning, having begun suit, you will only legally be entitled to interest from the time when the buyer was in default, and you can proceed not only against the debtor himself, but also against anyone who has given security for the purchase.

6. *The Emperors Cams, Carinus, and Numerian to Rimulus.*

You having stated that in consideration of a certain matter agreed upon between you, you transferred your land to another for a very low price, you cannot be defrauded by this agreement; as, when the promise is not fulfilled, it is proper that the ownership of the property should revert to you. Therefore, having applied to a competent judge, he will take measures to have the land which you mention returned to you with its crops without delay; and especially if the other party has been repaid the money which you received from him, he cannot be considered to have sustained any loss.

7. *The Emperors Diocletian and Maximian to Museus.*

If the person to whom he alludes purchased anything from you, and it was agreed that if a certain sum of money was not paid within a specified time the transaction should be void; you cannot legally demand, under Our Rescript, that this agreement be set aside. If, however, the purchaser withdraws, in order that he may retain the ownership of the property by law, you can protect your rights by the remedy of notice, sealing up of the money, and depositing it, which has been established to prevent fraud.

8. *The Same Emperors and Csesars to Auxanon.*

It is certain that the agreement made between the purchaser and the vendor at the time of the contract must be inviolably observed, provided it was not annulled by a subsequent agreement.

9. *The Emperor Justinian to John, Prsetoricm Prefect.*

If someone in a contract of sale or alienation should agree that the new owner should not, under any circumstances, be permitted to erect a monument in the place which was sold, or transferred to him in any other way, or be deprived of any right to which men are ordinarily entitled, We order that an agreement of this kind shall be observed in accordance with Our law, and remain inviolate; although a doubt arose on this point among the ancients, for it is a matter of grave concern that the purchaser should become the neighbor of a person whom he did not wish to be such, and still more, if the latter had been expressly forbidden to reside near him. For when neither a vendor, nor anyone else who alienates property, permits his right to be transferred, except under such a condition, how can it be tolerated that he should suffer annoyance on account of a different interpretation of the contract?

TITLE LV.

WHERE A SLAVE IS SOLD FOR THE PURPOSE OF BEING SENT OUT OF THE COUNTRY.

1. *The Emperors Severus and Antoninus to Petronia.*

Slaves who have been sold under the condition of their being sent out of the country, or if this is not done, that they should be confiscated, can obtain their freedom from the purchaser, or anyone who succeeds to his place, before the terms of the contract are violated.

They can, however, be claimed by the Treasury after their manumission, and are liable under the same condition to be reduced to perpetual servitude if they should be found in those cities from which they are excluded by the contracting parties. The power of confiscation is, however, not refused before their manumission.

2. *The Same to Nedienus.*

When, however, you have provided that you shall have the right of seizure of a slave, you can avail yourself

of it; but if you omitted to do this, and stipulated for a penalty, and the slave should be confiscated by the Treasury, you will be entitled to the action based on the stipulation. In every instance, however, inquiry should be made whether the slave came into the prohibited place with the consent of his master.

3. *The Emperor Alexander to Nonius.*

In a case where a female slave was sold to be sent out of the country, and this was not done, but while residing in the same city with the purchaser, the latter manumitted her, she could not become free contrary to the condition of the sale; and therefore if you apply to My attorney he will perform his duty.

4. *The Same to Papias.*

I am annoyed because you allege that you have been sold by slaves whose master you were, under the condition that you should not remain in the country, and you state that you have been manumitted by him to whom your first master sold you. For this reason a competent judge will examine the person who you say is present, and if the truth of the accusation is established, he must punish the detestable crime with the penalty of death. Your status, however, will be that of a slave after manumission, if you establish the truth of the accusation which you make.

5. *The Same to Seraphianus.*

A slave who has been sold by his master on condition of his removal from a city cannot reside in the City of Rome. Where, however, the condition applies to a certain province, he will be allowed to reside in Italy. Therefore, if you can prove that the condition agreed upon was violated, you can avail yourself of the right to which, for this reason, you are entitled.

TITLE LVI.

WHERE A SLAVE HAS BEEN SOLD ON CONDITION THAT HE SHOULD NOT BE PROSTITUTED.

1. *The Emperor Alexander to Socrates.*

Our friend, the Prefect of the City, will grant the power of arrest to anyone who is entitled to it, in accordance with the Constitution of the Divine Hadrian, where a slave has been sold under the condition that he or she should not be prostituted, and this has been done. If the Prefect should ascertain that the vendor, in violation of the condition which he himself prescribed, permitted the woman to obtain dishonorable gain in this manner, as she is entitled to freedom by the Constitution of the same Emperor, she should be brought before the Prsetor having jurisdiction of cases involving liberty, and he shall order proceedings to be instituted for that purpose at once; for the force of the condition after it has once been made is not lost because the ownership of the slave may have

passed through several purchasers to the first one who prostituted her, without prescribing a similar condition.

2. *The Same to Severus, Przetorian Prefect.*

It is necessary for the woman, whom you allege was sold under the condition that she should not be prostituted, and in case this took place, she was to become free, to be legally produced before the tribunal; and if any controversy should arise with reference to the agreement (under which, if it is genuine and the condition has been fulfilled, the woman will be entitled to her freedom), the case shall proceed before the magistrate having jurisdiction of the same. This condition, however, although it may not have been inserted in the bill of sale, will be valid, if it is proved to have been made in a letter, or even if it has not been reduced to writing.

3. *The Same to Aurelius.*

A female slave, who has been sold under the condition that she does not make a shameful commerce of her body, must not prostitute herself in a tavern under the pretext of serving therein, in order to avoid a fraudulent evasion of the condition prescribed.

TITLE LVII.

WHERE A SLAVE HAS BEEN ALIENATED UNDER THE CONDITION THAT HE WILL OR WILL NOT BE MANUMITTED.

1. *The Emperor Alexander to Patricenstis.*

If Patroclus, after he donated you to Hermia under the condition that if you served her as a slave for sixteen continuous years, she would grant you your freedom, and you would then become a Roman citizen, provided Patroclus did not afterwards change his mind, or even if he died that you would be free; as it has been established that this condition not only applies to slaves who are sold, but also to such as are donated, you should be manumitted. The title to you having once been transferred to Hermia, Patroclus could not afterwards sell you to another; and therefore you should not contend that freedom which you have already obtained by the constitution ought to be granted you, but you should defend what you already have obtained.

2. *The Same to the Freedman Eutyichianus.*

If Chrestes sold his slave, who is also his natural son, on condition that the purchaser should manumit him, even though this may not have been done, he will become free in accordance with the Constitution of the Divine Marcus and Commodus, addressed to Aufidius.

3. *The Same to Fulginus.*

If Justa sold Saturninus a slave girl named Firma, who was at that time seven years of age, under the condition that she should be free when she reached the age of twenty-five years, although in the agreement relating to her freedom, executed by the purchaser, this was not inserted, but it was merely stated, "that she

should become free;" still, in this instance, there is ground for the application of the Constitution of the Divine Marcus and Commodus, included in the collection of laws entitled Semesters. Therefore, when Firma reaches her twenty-fifth year, she will become free, and it cannot be pleaded in opposition to this that she was manumitted in her twenty-seventh year, because she was already free under the terms of the constitution. Therefore, a child born of you and her, who was conceived after the twenty-fifth year of its mother, is freeborn.

4. *The Emperor Gordian to Jocunda.*

If anyone received a sum of money under the condition that he would grant you your freedom within a specified time, and he delayed in complying with his promise to liberate you, it is clear that you will be free from the moment when freedom should have been conferred upon you, and it was not done; and therefore, it is certain that any children born to you ought to be considered freeborn.

5. *The Same to Martian.*

Slaves, whose sale was made under the condition that they should not obtain their freedom, cannot do so even if they are manumitted; for a condition which attaches to a slave cannot be changed by the act of anyone who purchases him subject to it; nor can a penalty legally be exacted for non-compliance with the condition (if one was prescribed). Hence the person who imposed this condition in making the sale cannot call you before the Attorney of the Treasury, as it should not interfere with a private contract, and the letters which have been sent to you do not prove that you violated the condition, if you yourself did not manumit the slave.

6. *The Emperors Diocletian and Maximian, and the Csesars, to Rufinus.*

If you sold a young girl under the condition that she should be manumitted, and that, if this was not done, the purchaser must pay a hundred *aurei*, and the contract is not complied with, it is established that the slave shall, nevertheless, obtain the freedom which should have been granted her, nor can the money be lawfully collected, as in the case of the violation of a contract, since it has been decided, for excellent reasons, that where the vendor did not subsequently change his mind, compliance with the condition was not necessary for the purpose of manumission.

TITLE LVIII.

CONCERNING ADILIAN ACTIONS.

1. *The Emperor Antoninus to Decensius.*

If someone, not in good faith, but with the intention of committing fraud, should sell you a slave who is in the habit of running away, or one with some other defect, without your being aware of it, and the said slave takes to

flight, a competent judge (as has already been established) shall order that the vendor shall not only be liable for the price of the slave, but shall also make good any damage which you may have sustained on his account.

2. *The Emperor Gordian to Penthilius.*

As you state that a slave whom you purchased some time since ran away a year ago, I cannot permit you on this account to hold the vendor responsible; as it is a plain rule of law that the *Actio redhibitoria* cannot be brought after six months, or the one *Quanta minoris* after a year.¹

3. *The Emperors Diocletian and Maximian to Mutian.*

The purchaser must bear the loss of the slave if he becomes a fugitive after the sale, and it is not proved that he ran away from his former master. If, however, the vendor should rashly guarantee that a slave had no vice, and that he would not have any hereafter, although this appears to be impossible, still there is no doubt that an action can be brought in accordance with the terms of the contract, made either before or at the time of the sale; for subsequent accidents are at the risk of the purchaser, not of the vendor. But as you state that the slave whom you purchased returned to the person who sold him, a competent judge, after having taken all the circumstances into consideration, will render a decision in accordance with the nature of the facts.

4. *The Same to Falsus.*

When anyone purchases a tract of land under the condition that if he should be displeased with it, it should be considered as not sold,

¹ The *Actio quanti minoris* differed from the *Actio redhibitoria* in that the latter was intended to effect an absolute rescission of the contract, involving a return of the property sold with the profit of the same, as well as the collection of damages resulting from any defects known by the vendor to have been in existence, which, when the sale was negotiated, would have been sufficiently serious to have interfered with it; while, under the *Actio quanti minoris* only the amount of the decrease in value caused by such defects could be recovered, by compelling that much of the purchase-money to be refunded. There was nothing to prevent this suit from being repeatedly brought with reference to the same transaction, where the defects were not all discernible at the same time.—ED.

it is clear that it having been returned as sold under a condition, the *Actio redhibitoria* will lie against the vendor.

The same rule shall be observed where the land is pestilential, that is to say, where it contains dangerous or poisonous herbs, and the purchaser was ignorant of this

when it was sold, for it is established that in this case, also, the above-mentioned action can be brought.

5. *The Emperors Gratian, Valentinian, and Theodosius to Nephridius.*

Although a *bona fide* contract may have been made for a slave, and the latter may have been delivered, and the price paid, still, the right of recovery is granted to the person who purchased him if he can produce the slave, whom he alleges has taken to flight.

This rule should not only be observed with reference to barbarian slaves, but also concerning such as are natives of the provinces.

Given at Constantinople, on the third of the *Kalends* of July, during the Consulate of Honorius, Consul for the ninth time, and Evodius, Consul for the fifth time.

TITLE LIX.

CONCERNING MONOPOLIES, UNLAWFUL AGREEMENTS OF MERCHANTS, THE ARTIFICERS OR CONTRACTORS, AND THE ILLEGAL AND PROHIBITED PRACTICES OF BATH PROPRIETORS.

1. *The Emperor Zeno to Constantine, Prætorian Prefect.*

We order that no one shall be so bold as to monopolize the sale of clothing of any kind, or of fish, combs, copper utensils, or anything else having reference to the nourishment or the common use of mankind, no matter of what material it may be composed, whether he does so by his own authority, or under that of a Rescript already promulgated, or which may hereafter be promulgated, or of a pragmatic sanction, or of any Imperial Annotation; and let no one conspire, or agree in any unlawful assembly, that any kind of merchandise which is an object of commerce shall not be sold for less than is agreed upon by the parties in question.

Builders of houses or contractors, and artificers of other different trades, as well as proprietors of baths, are absolutely forbidden from entering into agreements with one another, providing that where one of them is engaged to perform some work it cannot be done by another, or that one shall interfere to prevent another who has been employed to do it. Permission is hereby given to anyone to complete work which is unfinished and abandoned by another, without fearing to be subjected to expense by the latter, and to denounce all crimes of this kind without fear, and without being subjected to expense in court.

Moreover, if anyone should venture to practice monopoly, he shall be deprived of all his property, and sentenced to perpetual exile. Again, We decree that those who are at the head of other professions, and

hereafter venture to fix the prices of their merchandise, or bind themselves by any illegal contracts

of this kind, shall be punished by a fine of forty pounds of gold, and that your tribunal shall be condemned to pay a fine of fifty pounds of gold if it should happen that, either through venality, dissimulation, or some other vice, the provisions of Our most salutary Constitution with reference to prohibited monopolies and forbidden agreements of corporate bodies should not be executed.¹

¹ Moslem law considers the hoarding of provisions for the purpose of raising the price a most heinous offence. Mohammed said, "Whosoever keepeth back grain forty days, in order to increase its price, is at variance with God, and God is at variance with him." "It is abominable to monopolize the necessaries of life, and food for cattle, in a city where such monopoly is likely to prove detrimental." (The Hedaya IV, XLIV, VI.)

In England, all measures tending to produce a scarcity of merchandise or labor by means of a monopoly was held to be in violation of the fundamental laws of the Kingdom. By the Stat. 21, Jac. I, Cap. 3, it was provided that:

"I. All Monopolies, and all Commissions of or for the sole buying, selling, making, working or using of any thing within the King's Dominions, or any other Monopolies, or of Power, Liberty, or Faculty to dispense with any others, or to give Licence or Tolleration to do, use or exercise any thing against the Tenor of any Law or Statute, or to give or make any Warrant for such Dispensation, Licence, or Tolleration, or to agree or compound for any Penalty or Forfeiture limited by any Statute, or for any Grant or Promise of any Benefit or Profit of any such Penalty, Forfeiture or Sum of Money, before Judgment thereupon had; and all Proclamations, Inhibitions, Restraints, Warrants of Assurances, and other matters and things whatsoever any way tending to the erecting, strengthening or countenancing thereof, are contrary to the Laws of the Realm, and shall be void and of none effect.

"II. All the matters and things aforesaid shall be examined, heard, tried and

• determined by the Common Laws of the Realm, and not otherwise; And all Persons are prohibited to use, exercise or put them in use."

The penalty was treble damages and double costs. Coke, in his commentaries on this Statute, discusses the evil in concise and forcible terms. (Institutes III, 85, Page 181.)

Agreements for interference with the distribution of commodities of various kinds, the control of them for speculative purposes, hoarding the necessaries of life, or diminishing their production, is punished by the laws of the United States with a fine not exceeding ten thousand dollars, or imprisonment for not more than two years, or both. (Barnes¹ Federal Code, Sec. 10188.)

The Spanish Penal Code prescribes a penalty of from one month and one day to six months for conspiracy to raise, lower, or regulate the conditions of labor; and, when false rumors are spread to affect the price of articles of commerce, in addition to imprisonment, a fine of from five hundred to five thousand

•pesetas is imposed. "*Los que se coligaren con el fin de encarecer 6 abaratar abusivamente el precio del trabajo 6 regular sus condiciones, serdn castigados, siempre que la coligacion hubiere comenzado a ejecutarse, con la, pena de arresto mayor.*"

"*Esta pena se impondra en su grado 'maxima a los Jefes y promovedores de la coligacion y a los que para asegurar su exito emplearen violencias 6 amenazas, a no ser que por ellas merecieren mayor pena.*" (Codigo Penal de Espana, Arts. 556, 557.)

Monopoly of the necessaries of life is punished in Portugal with a fine, and imprisonment of from one to six months; conspiracy to suspend, hinder, or raise the price of labor accompanied by threats, with imprisonment of from one to two years. "*Os que tiverem promovido a colligacao ou a dirigirem, e bem assim os que usarem de violencia ou ameaga para assegurar a execucao, serdo punidos com a prisao de um a dois annos.*" (Codigo Penal Portuguez II, XI, I.)

TITLE LX.

CONCERNING FAIRS AND MARKETS.

1. *The Emperors Valens and Valentinian to Probus, Prsetorian Prefect.*

Persons who either by Our authority, or through the indulgence of Our predecessors enjoy the privilege of holding markets or fairs, obtain the benefit of rescripts to the extent that suit cannot be brought against them either on account of their business or their slaves, while the fairs or markets are being held; nor can they be compelled by any individual to pay a certain price for the places which they temporarily occupy; nor can they, under the pretext of a private debt, be subjected to any annoyance while they are there.

TITLE LXI.

CONCERNING DUTIES ON MERCHANDISE, AND OFFENCES TO WHICH THEY ARE SUBJECT.

1. *The Emperors Severus and Antoninus to Victorinus.*

If you were legally manumitted before any question of the violation of the customs laws was raised, it is not just that you should be deprived of your status on this account.

2. *The Same to Linuus.*

An offence of this kind cannot be punished if it is alleged to have been committed five years ago, provided suit has not been brought for the property within that time; nor can the price of it be demanded under such

circumstances, if it does not exist, and has not been fraudulently suppressed.

3. *The Same to the Soldier Ingenuus.*

We have consulted the welfare of all Our soldiers in not rendering them liable to the penalty for defrauding the customs by not making

The penalty prescribed by Italian law for the fraudulent diminution of provisions or their increase in price through fraudulent representations is imprisonment for from one to five years, and a fine of from five hundred to five thousand *lire* (\$100 to \$1000).

"Chiunque, con false notizie o altri mezzi fraudolenti, produce la deficienza, o il rincaro di sostanze alimentari, e punito con la reclusione da uno a cinque anni e con la multa da lire cinquecento a cinquemila." (Codice Penale del Regna d'Italia, Art. 326.)

An attempt to either raise or lower wages by means of force, fraud, or threats in France subjects the culprit to a fine of from sixteen to three thousand francs, and imprisonment of from six days to three years. *"Sera puni d'un emprisonnement de six jours a trois ans et d'une amende de 16 francs a 3000 francs, ou de l'une de ces deux peines seulement, quiconque, a l'aide de violences, voies de fait, menaces ou manoeuvres frauduleuses, aura a/mene ou maintenu, tente d'amener ou de maintenir une cessation concertee de travail, dans le but de forcer la hausse ou la baisse des salaires ou de porter atteinte au libre exercice de l'industrie ou du travail." (Code Penal de France, Art. 414.)—ED.*

declarations. Therefore, dismissing any fear of this kind, if it is apparent that you owe any duties, pay them.

4. *The Emperor Constantine to Rufus.*

In farming out the collection of taxes, he shall have the preference who offers the highest bid, and the lease shall be made for not less than a term of three years; nor shall the time prescribed for collection be subject to interruption in any way. The said term having expired, it will be necessary again to farm out the right to the highest bidder, in like manner, at auction.

Given on the tenth of the *Kalends* of July, during the Consulate of the Csesar-Crispus, Consul for the second time, and Constantine, 321.

5. *The Same to Menander.*

No tax shall be collected by officials appointed for that purpose from residents in the provinces, on property employed for their own use, or on that of the Treasury, or on such as is used for cultivating the soil. We, however, subject all other property, exclusive of that above mentioned, or which is employed in trade, to the ordinary dues and charges; and the penalty of death is pronounced against the receivers of taxes, municipal employees, and other persons whose avarice tempts them to disobey this law.

6. *The Emperors Valens and Valentinian to Florentinus, Count of the Sacred Largesses.*

The same rule should be observed with reference to the property of persons in private life, so far as public duties are concerned. We mention this because some individuals produce rescripts by which they assert that they are released from the payment of taxes or duties on merchandise which it is customary to pay to the Treasury. Hence, if any private person should attempt to avail himself of a rescript of this kind, it shall be considered void, for the payment of duties is not unimportant, and should be made equally by all those who have charge of the sale or the transport of merchandise, with the exception of shipmasters, when they are proved to be transporting their own property.

7. *The Same and Gratian to Arckelaus, Count of the East.*

No one shall, under any circumstances, be permitted to pay less than one-eighth in the settlement of duties on merchandise, which is the usual amount fixed for all those who desire to engage in commerce, and no exception should be made in the case of soldiers.

8. *The Emperors Gratian, Valentinian, and Theodosius to Palla-dius, Count of the Sacred Largesses.*

Collectors of customs shall receive from the ambassadors of nations tributary to Our Empire, duties on merchandise, which they bring from their own country into this; but such merchandise as they are permitted by law to remove from Roman soil to their own country, they have a right to take away immune from payment, and free.

9. *The Same to the Same Count of the Sacred Largesses.*

We forbid any privilege to be exercised with reference to duties in Egypt and Augustanica, and We do not permit anyone to rashly claim the right to the transport of animals, which is only authorized when the ordinary duties are paid.

10. *The Emperors Arcadius and Honoring to Rufinus, Praetorian Prefect.*

We order that, whatever duties on merchandise municipalities may have established for their own advantage and that of their *curise* in order to defray expenses, whether this has been done for the benefit of the *curise*, or has been designed for some other use of the said municipalities, shall be confirmed, and remain in force for all time; and that no annoyance need be apprehended from persons petitioning against the collection of said duties.

11. *The Same to Lampadius, Prtetorian Prefect.*

If anyone, without the authority of the public lessees of saltpits, should purchase salt, or attempt to sell it, whether he acts upon his own responsibility, or is

provided with one of Our Rescripts; this salt, together with the price paid for the same, shall be adjudged to the said lessees.

12. *The Emperors Honorius and Theodosius to Cuso, Count of the Sacred Largesses.*

We decree that where anything granted by pragmatic sanctions or Imperial Annotations, against the collection of taxes, has been bestowed as a favor, it shall be of no force or effect.

13. *The Emperors Theodosius and Valentinian to Flavian, Prsetorian Prefect.*

With the exception of those duties on merchandise which have always formed a part of Our Imperial patrimony, all duties shall be reserved for the cities of the Empire, after the expenses required for public necessities have been deducted. As the former rule was that two-thirds of these imposts should be paid into Our Treasury, We now order that the remaining third shall be at the disposal of the different cities and municipalities, that they may learn that these duties have been established more for their advantage than for that of others; therefore, the enjoyment of the portion designated shall be permitted to these cities so that they will have full power to farm them out to the extent of their interest in the same.

TITLE LXII.

NEW DUTIES ON MERCHANDISE CANNOT BE ESTABLISHED.

1. *The Emperor Severus and Antoninus to Vietorinus.*

The collection of new duties should not be rashly permitted, but if your city is so poor that extraordinary means must be taken to relieve it, state to the Governor of the province what you have set forth in your petition. He, after having diligently examined the matter with a view to the common welfare, shall write to Us what he has ascertained, and We will decide your case as We think best.

2. *The Same to Callistianus.*

New duties on merchandise cannot be established by the ordinance of a municipality.

3. *The Emperors Gallienus and Valerian to Tuscits and Others.*

New duties are not usually established by Emperors without reflection, and therefore a competent judge will forbid anything to be collected which is illegally demanded, and if what has been collected has been extorted contrary to law, he must order it to be returned.

4. *The Emperor Constantine to Felix, Prsetorian Prefect.*

If complaint of the greed of farmers of the Revenue should be made by the subjects of Our provinces, and it is proved that they have violated the ancient custom, as well

as Our regulations, those who are guilty of so serious a crime shall be punished with perpetual exile.

The supervision of this employment is hereby conferred upon you and your successors.

TITLE LXIII.

CONCERNING COMMERCE AND MERCHANTS.

1. *The Emperors Valens and Valentinian to Julian, Count of the East.*

Merchants who are attached to Our palace, as well as those forming part of the households of nobles, are admonished to acknowledge any claims which they owe (as honesty demands), in order that their example may be followed by all those who obtain profit from trade.

Given at Constantinople, on the fifteenth of the *Kalends* of May, during the Consulate of the Divine Jovian, and Varronian, 364.

2. *The Emperors Gratian, Valentinian, and Theodosius to Tatian, Count of the Sacred Largesses.*

Not only shall no gold be furnished to barbarians, but even if any should be found in their possession they must be deprived of it by artifice. If, however, gold should hereafter be given to barbarians by traders, in payment for slaves or other merchandise, they shall not be fined, but shall suffer death; and when a judge does not punish such a crime after he has discovered it, or conceals it, he shall be punished as an accomplice.

3. *The Emperors Honorius and Theodosius to Theodore, Prsetorian Prefect.*

We forbid persons of noble birth, or those who are conspicuous through the honors they enjoy, or are wealthy, to carry on any trade which is injurious to cities, in order that the power to purchase and sell may be rendered more easy between plebeians and merchants.

4. *The Same to Anthemim, Prsetorian Prefect.*

Not only merchants who owe allegiance to Our government, but also those who are subject to the King of the Persians, must not hold markets beyond the places agreed upon at the time of the treaty concluded with the above-mentioned nation, in order to prevent the secrets of either kingdom from being disclosed (which is improper). Therefore, no subject of Our Empire shall hereafter presume to travel for the purpose of selling merchandise beyond Nisibis, Callini-cum, and Artaxata, nor think that he can exchange merchandise anywhere beyond the above-mentioned cities. All persons are hereby notified that if one makes a contract under such circumstances, any merchandise which has been either sold or purchased beyond said cities shall be confiscated by Our Treasury, and, in addition to this, the price which was paid, or any articles given in exchange shall be surrendered, and the offender sentenced to the penalty of perpetual exile.

Judges, and their subordinates also, shall be condemned to pay thirty pounds of gold for every contract entered into beyond the abovementioned limits, whenever any Romans or Persians have passed the said frontier to the forbidden ground, for the purpose of trade; with the exception of those envoys of the Persians who have at some time been despatched to Us and have brought merchandise to be exchanged, to whom, for the sake of humanity and on account of their character as ambassadors, We do not refuse the privilege of trading beyond the prescribed limits; unless, under the pretext of belonging to an embassy, and having remained for a long time in some province, they do not return to their own country; for, as they engage in trade, the penalty of this law will not unreasonably be imposed upon them, as well as upon those with whom they have contracted or resided.

5. *The Same to ZEtius, Praetorian Prefect.*

With a view to disposing of any attempt or claim to increase it, the membership of the association of merchants is hereby fixed at five hundred and sixty-three, and none shall be added to it, nor the number be altered; nor shall anyone have authority to substitute another in the place of a member who dies, but those who have died shall be replaced by others selected by your tribunal from the same class to which the deceased belonged, in the presence of the corporate body; and no privilege shall be granted to anyone of the members to exceed the abovementioned number.

6. *The Same to Maximus, Count of the Sacred Lar'gesses.*

If those who have been convicted of having gone beyond the cities named in the ancient laws, or of having entertained foreign merchants for the purpose of trade, without the consent of the Count of Commerce; they cannot escape the confiscation of their property

and the penalty of perpetual exile. Therefore, all persons, whether they are in private life, hold some civil office, or belong to the army, are informed that they must absolutely abstain from any rash behavior of this kind, or be subjected to the punishments above mentioned.

TITLE LXIV.

CONCERNING THE EXCHANGE OF PROPERTY AND THE ACTIO PRASCRIPITIS VERBIS.

1. *The Emperor Gordian to Therasa.*

If your paternal uncle had land for sale, and your father gave him another tract by way of price, although the value was not appraised, and you state that what you purchased was evicted, not on account of the injustice of the judge, but through your father's negligence, it is not unreasonable for you to ask to recover the amount of your interest by the action on purchase, if you have succeeded to the rights of your father. Where, however, the land was not for sale, but an exchange was made, and what you

received from the other party was evicted, you can reasonably demand the tract given in exchange, for it should be returned if you desire this to be done.

2. *The Emperors Diocletian and Maximian to Primitiva.* It is a well-known rule of law that an exchange made of property in good faith such as you mention is equivalent to a sale.

3. *The Same Emperors and Csesars to Leontius.*

It is established that no one will obtain a right of action by virtue of a contract for exchange, where nothing was done, unless the stipulation based upon the obligation created by the words acquires one for the parties.

4. *The Same Emperors and Csesars to the Same Leontius.*

As you state in your petition that a contract for exchange was made between you and another person, and the land which, was given by you has been sold, you are advised that you will not be entitled to any action against the purchaser, as he has received the title to the property from him to whom you do not deny that you transferred it by way of exchange.

If, however, a stipulation has been added to the contract, you will not be prevented from suing the creditors of the person with whom you made it. But where no stipulation was added, you will be entitled to bring the *Actio prascriptis verbis*, so that either the terms of the contract may be observed in your behalf, or that what you gave in exchange for the land of the other party may be restored to you, as the contract was not executed.

5. *The Same Emperors and Caesars to Theodolana.*

As you allege that your father conveyed a certain tract of land to the person against whom you filed your petition, on condition that he

would receive a certain house in exchange, he having appeared before the Governor of the province, the latter will order the other party to comply with his agreement, for if he should find that the consideration for the conveyance of the land was not transferred, he shall order that whatever was given conditionally shall be restored to you.

6. *The Same Emperors and Csesars to Protogencs.*

The authority of the law shows that where property has been delivered under a certain condition, the uncertain civil action *prse-scriptis verbis* should be granted, if the condition is not complied with.

7. *The Same Emperors and Csesars to Timotheus.*

It has long since been decided that a sale cannot take place by giving property instead of money. Therefore, as you assert that you have delivered a certain amount of grain to Callimacus and Acamatus, under the condition that they would furnish you a specified quantity of oil, if no stipulation was made, and they do not fulfill the

contract, you can bring a personal action to recover the amount of grain which you gave, on the ground that the contract was not carried out, if you desire to do so.

8. *The Same Emperors and Cassars to Paulina.*

Property having been given to Candidus in consideration that he would furnish you every month or every year with what was agreed upon, as an agreement of this kind cannot be considered to be one without consideration, because the condition has been fortified by the delivery of the property, you will be entitled to the *Actio ptescriptis verbis* to compel the fulfillment of the contract in accordance with your demand.

TITLE LXV.

CONCERNING LEASING AND HIRING.

1. *The Emperor Antoninus to Agrippina.*

The owner of a warehouse is not liable to the lessee for the exertion of superior force, or the breaking in of robbers. Where, however, neither of these things take place, if any property which has been deposited in the warehouses should be destroyed, the owner must indemnify the lessee for the loss of the same.

2. *The Same to Epictetus.*

If you bring an action on lease against persons by whom you have been employed in the construction of a building, you will recover by this action, which is one of good faith, whatever is due to you, with interest.

3. *The Same to Callimorponia.*

If you have paid to the owner the entire amount of the rent of a house, which you say that you have leased, you cannot be ejected against your consent, unless the owner can prove that the building is required for his own use, or he desires to repair it, or you have not acted as you should have done with reference to the property leased.

4. *The Emperor Alexander to Sabinus.*

Certain rules are founded on the Rescripts of the Emperor Antoninus Pius, namely, that the owners of warehouses which have been broken into shall be compelled to produce before the persons making complaint the guards who were placed over the said warehouses, and if they do so, they shall not incur any further responsibility; and you, having applied to the Governor of the province, can cause this to be done.

Where, however, circumstances demand the infliction of a more severe penalty, the magistrate must send the culprit to Domitius Ulpian, Prastorian Prefect, and My relative. If the owners of the warehouses specifically promised that they themselves would guard them, they themselves should be produced.

5. *The Same to Petroma.*

It is a certain rule of law that property which tenants, with the consent of their masters, have brought upon leased land, will be liable by the right of pledge to the owners of the said land. When, however, a house is

leased, it is not necessary for the owner to know that articles have been brought into it, in order to subject them to the right of pledge.

6. *The Same to Victorinus.*

No one is prevented from leasing to another property which he himself has rented for his own enjoyment, if nothing to the contrary has been agreed upon.

7. *The Same to Terentianus.*

If Henries leased the collection of taxes for the continuous term of five years, and you became his surety; and, after the said term has elapsed, he renews the lease, and is considered solvent, and you have not consented, but have requested the return of your bond, a competent judge will understand that you must not be rendered liable for any time subsequent to the term of five years.

8. *The Same to Higinus.*

If you have leased a tract of land for a certain quantity of something to be furnished every year, although this may not have been stated in the lease (as the custom of the country demanded), so that if, on account of the effect of bad weather or some other accident, loss should result, you will be responsible; and if it is proved that any barren years were not compensated by the abundance of others, you will, in accordance with good faith, be justified in asking to be released from your promise, and the judge who decides the appeal must observe this rule.

9. *The Same to Fuscus.*

It is not necessary for the purchaser of land to permit the tenant to whom the former owner leased it to remain until his lease has expired, unless he bought the property under this condition. If, however, it is proved by any agreement that he did consent that the tenant should remain until the expiration of his lease, even though this may not have been reduced to writing, he will be compelled by an action of good faith to comply with the contract which he made.

10. *The Emperor Gordian to Pomponius.*

You are departing from the truth, if you assume that the heirs of a lessee do not succeed him in a lease; for, whether the lease is perpetual or temporary, it descends to the heirs, and where it is temporary, the heir is bound by the provisions of the contract for the unexpired part of the term.

11. *The Emperor Philip to Theodora.*

It has frequently been stated in Rescripts that lessees or their heirs, after the expiration of their terms, cannot be compelled to remain against their consent.

12. *The Same to Nica.*

With reference to the damage committed by robbers against the property which you have leased, you have no reason to demand indemnification by the owner of said

property, whom you do not accuse of being guilty of any offence.

13. *The Emperors Valerian and Gallienus, and the Csesar Valerian, to Heraclida.*

If a lease has been divided so that each party has a share, some of you cannot be sued by the others. If, however, all the lessees have bound themselves to the lessor, he should not be deprived of the right of proceeding against any one of the lessees whom he may select. You, however, will have the power to tender what is due to the lessor, so that you yourselves can demand that the obligations, for which you have been sued by the others under the terms of the said lease, shall be transferred to you.

14. *The Same Emperors and Csesars, to Julian and Others.*

If those who were employed by you to purchase wheat and barley for public subsistence, after having received the money, failed to carry out their contracts, you can bring the action on hiring against them.

15. *The Same Emperors and Csesars to Euphrosina.*

If you have been ejected from the land by the lessee, as you can bring suit against him under the lease, you can also exact and retain from the lessor the penalty which it was agreed upon should be paid if the terms of the lease were violated.

16. *The Same Emperors and Csesars to Timotheus.*

The provisions of a lease must be observed, and no more than was agreed upon can be demanded as rent. If, however, the term for which the land was leased has expired, and the lessee remains in possession, it is considered that the lease and the obligation of pledge are both renewed by tacit consent.

17. *The Emperors Diocletian and Maximian to Hosalius.*

The Governor of the province shall see that what is due as rent is paid without delay, and he is aware that as an action on leasing and hiring is one of good faith, it admits of the collection of legal interest when there is any delay.

18. *The Same to Amnus.*

The Governor of the province shall order any crops collected during the time following that when the locusts by their ravages caused sterility to be returned to you, if it is established that you are entitled to them in accordance with the custom of former times.

19. *The Same to Valerius.*

The terms of a contract with reference to leasing and hiring shall, by all means, be observed, where nothing contrary to the custom of the country has been expressly provided. If, however, certain persons, in opposition to the provisions of the contract and the custom of the

country, have remitted the payment of rent, this cannot prejudice the rights of the others.

20. *The Same to Carpophorus.*

Anyone who leases his own property, thinking that it belongs to another, does not transfer the ownership of the same, but makes a lease which is void.

21. *The Same Emperors and C&sars to Antonia.*

If, for a certain quantity of oil, you have leased the crops of your land for a year, you cannot withdraw from the contract, if it was made in good faith, for the reason that someone else offered you a larger quantity of oil.

22. *The Same Emperors and Csesars to Papinianus.*

If those against whom you have filed your petition leased their services to you for a certain time, a competent judge, after proper cause is shown, shall order the agreement to be observed, so far as good faith demands.

23. *The Same Emperors and Csesars to Priscus.*

In order to establish the proof of ownership of property, or to defend the title to the same, it will not be sufficient to plead that a lease was made to him who subsequently claimed it, as the ignorance or mistake of the owner does not confer consent; but if the latter should be defeated in the end, the contract of the lease is held never to have existed, for no one can legally transfer his own property to himself.

24. *The Same Emperors and Csesars to Antoninus.*

A contract of leasing and hiring is considered valid, even if no instrument evidencing it has been drawn up; in accordance with which you cannot sue the wife of the lessor, even though the lease may not have been reduced to writing. However, with reference to the subsequent time during which you allege that the woman has been your lessee, after having proved the statements in your petition, notify her to pay you the rent in full.

25. *The Same and the Caesars to Epagathus.*

When anyone has received a field, or any other property whatsoever under a lease, he should first restore possession of it, and then litigate as to the ownership of the same.

26. *The Same Emperors and Cassars to Oplo and Hermogenes.*

If you have complied with the provisions of the lease, any instrument drawn up with reference to the same loses its effect. Where, however, anything of yours remains upon the land, or has been forcibly removed therefrom, the Governor of the province shall order it to be returned to you.

27. *The Same Emperors and Cassars to Nero.*

If the owner of land has promised to pay you, as stipulator, any expenses you may have incurred under the lease in behalf of the tenants, a competent judge will order you to be reimbursed. When, however, the

agreement was made without a stipulation, you are informed that a right of action does not arise from a contract without consideration.

28. *The Same Emperors and Ctesars to the Same Nero.*

In contracts of leasing and hiring it is established that the lessor can bring suit on the ground of fraud or want of care, but not for unavoidable accident.

29. *The Same Emperors and Csesars to Julian.*

As you allege that the lessor destroyed buildings which he received in good condition, the Governor of the province shall order the said buildings to be restored by his heirs in accordance with the contract made between you.

30. *The Emperors Theodosius and Valerian to Florentius, Praetorian Prefect.*

A decurion cannot be the attorney, the lessee, the surety, or the mandator of a lessor, and, moreover, We decree that no obligation arising from a contract of this kind shall bind either the lessee or lessor.

31. *The Emperor Leo to Aspar, Officer of the Army.*

We forbid our soldiers to become either the lessees of the property of others, or the attorneys, sureties, or mandators of lessees, lest, by neglecting the practice of arms, they may devote themselves to rural labors, and, on account of their being in military service, may become a menace to their neighbors. Therefore, let them devote themselves with arms, and not to private matters, so that, always being with their companies and their standards, they may be able to protect the government, by which they are supported, from all the calamities of war.

32. *The Emperor Zeno to Adamantius, Prsetorian Prefect.*

No one who has rented a house, a shop, or a farm shall, after his lease has expired, be permitted to bring suit against a person who has leased the same property on the same terms, with the consent of its owner, on the ground that the lease is unlawful, or attempt to injure him thereby, but every facility shall be afforded the owners of property to lease their houses, their lands, or their shops to anyone they wish, and those who have leased them shall, by all means, be protected from any annoyance of this kind; unless contracts especially entered into in writing with the owners, or with those who afterwards leased the property, and which were drawn up according to law, should justify them in instituting proceedings.

Where, however, anyone in private life thinks that he has a right to raise a controversy of this kind forbidden by Our Sacred Constitutions, after having been severely whipped, he shall suffer the penalty of exile, and if a public official does so, he shall be fined ten pounds of gold.

33. *The Same to Sebastian, Praetorian Prefect.*

If lessees of the property of others, or those who have precarious possession of the same, or their heirs, do not surrender it when the owners desire to recover it, but wait until final judgment has been rendered against them, they shall not only be compelled to return the land which was leased, but also to pay the successful party a sum equal to its value, as in the case of one who seizes the property of another.

34. *The Emperor Justinian to the Senate.*

Although it is well known that former Emperors have promulgated many decrees with regard to soldiers who lease the lands or houses of others; still, because the subject has been so neglected, and soldiers, not being mindful of the limits prescribed by Our Sacred Constitutions, venture to employ themselves in base occupations of this kind, and having abandoned the public welfare and their victorious standards, are only too eager to rent the property of others, and not to manifest the power of their arms against the enemy, but to turn them against their neighbors, and even against the unfortunate tenants whom they have undertaken to protect, We have considered it necessary to publish this most Sacred Constitution for the purpose of thoroughly and completely correcting this abuse.

Hence We order that all who are serving in the army, whether they are of age or minors (and We designate as soldiers not only those who, enrolled in the military service, and serving under distinguished commanders, but also such as are included in the eleven faithful divisions called *scholse*, as well as those who have received the name of "confederates," and are commanded by different subordinate officers), shall hereafter absolutely abstain from leasing the property of others; and they are hereby notified that, under a contract of this kind, from the very beginning, they will forfeit their rank and privileges without the performance of any other act, and without any sentence being passed upon them; and that they cannot be restored to their former positions either through the indulgence of the Emperor, or by the consent or permission of any military magistrate, to whose command they are subject; in order that they may not think that by leasing the property of others they will not lose their reputation, and from soldiers become civilians, and from being honored become infamous; and that they shall be compelled to restore, without delay or procrastination, whatever they may have received from the public, if they have made a contract of this kind which We have absolutely forbidden. Those who, after the promulgation of this law, permit their property to be leased to persons of this kind, are also notified that, having by their efforts, violated Our law, they shall not be permitted to collect anything; so that, as in the case of a person who attempts to seize the property of another,

anyone who selects a soldier as his agent shall be deprived of any profit which may be due to him.

Moreover, all persons shall have a right to bring an accusation under this law before a competent judge, and he who, under such circumstances, appears as an informer shall be understood to be more worthy of praise than blame. The penalty which We have decreed shall be enforced in future cases against soldiers who have violated Our law and those persons who have allowed them to rent their property.

TITLE LXVI.

CONCERNING THE LAW OF EMPHYTEUSIS.

1. *The Emperor Zeno to Sebastian, Praetorian Prefect.*

The right of emphyteusis should not be classed with those conferred by lease or alienation, but We have decreed that it shall constitute a third species of contract, separate from and without resemblance to either of those previously mentioned, and shall have its own nature and definition, and be a just and valid agreement by which everything that was consented to between the contracting parties in all cases, even in those which are accidental, shall, if reduced to writing, remain under all circumstances, firm and inviolable; so that if no provision has been made for the occurrence of accidents, and if, through some unforeseen event which may arise, the property which was the subject of the emphyteusis should be destroyed, the loss will be borne, not by the emphyteuta, who had nothing left, but by the owner of the property who, for the reason that it was the result of a fatality, must be responsible for it, as the contract contained nothing with reference to the liability of the other party. When, however, the damage is trifling, and only affected a portion of the property, or the substance of the latter was uninjured, the emphyteuta should not hesitate to assume the loss himself.

2. *The Emperor Justinian to Demosthenes, Prsetoricm Prefect.*

With reference to emphyteutical contracts, We decree that if any agreements should be inserted in them, they shall be observed with all the other provisions, and even in the case of the ejection for non-compliance of the person who undertook to carry them out, this shall still apply if he does not produce receipts to show that the rent or public taxes on the land have been paid. Where, however, nothing was agreed on this point, and he did not pay to the owner either the rent or the taxes for the entire term of three years, or produce receipts for the same, and the latter should desire to do so, he can eject him from the land, and the former cannot oppose him on the ground of improvements made by him or of such ameliorations as are designated *emponemata*, or by demanding a penalty; but, if the owner prefers, he can be unconditionally

ejected, even though the former may allege that he has never been annoyed by what is assigned as the reason for his expulsion; for no one should wait for an agreement or notice, but should appear in person of his own accord, and spontaneously discharge his indebtedness, in accordance with what has been provided in general terms by one of Our former laws.

However, in order that the owner of the land may not under this pretext make use of his power to expel his tenants, and refuse to receive the rent, and thus, by means of an artifice of this kind, the term of three years having expired, he who received the emphyteusis be deprived of his right, We grant him permission to tender the rent in the presence of witnesses, and having sealed it up, and deposited it, as prescribed by law, to entertain no fear of ejection.

3. *The Same to Julian, Prsetorian Prefect.*

As a doubt arose whether the emphyteuta should obtain the consent of the owner of the land to alienate his improvements which are called by the Greek word *empomenata*, and whether he was required also to obtain his consent to transfer his emphyteutical right to another, We decree that when an emphyteutical instrument contains any provisions on this point they shall be observed. If, however, no contract of this kind was made, or the instrument containing the emphyteutical contract has been lost, the emphyteuta can under no circumstances be permitted to sell his improvements, or transfer his rights under the emphyteusis to others, without the consent of the owner of the land. But lest owners, taking advantage of this opportunity, may not permit their emphyteutas to receive the cost of the improvements which they made, but deceive them, and in this manner the advantage to which the emphyteuta is entitled will be lost, We decree that notice shall be given to the owner in which the statement is made of the price which he could obtain from another, and if the owner should prefer to pay it himself, and give as much as the emphy-teuta could actually obtain from a third party, the owner himself should by all means be preferred in making the sale.

When, however, the term of two months has elapsed after he was notified, and the owner refuses to do this, permission is granted to the emphyteuta to sell his improvements to anyone whom he wishes, without the consent of the owner, provided he disposes of them to such persons as are not usually forbidden by emphyteutical contracts to make such purchases.

Where improvements are sold to others in the manner above stated, the owner shall be required to accept the new emphyteuta, as, where the former one prefers to transfer his right to persons who are not prohibited from receiving it, but to those to whom it is permitted to do so,

and are solvent according to the emphyteutical law, the owners cannot oppose it, but must permit the new emphyteuta to enter into possession, not by someone to whom they have farmed it out, or by an attorney, but by themselves, or by their letters, or (if they cannot, or are unwilling to do so) by their declaration made in this City before the illustrious Superintendent of Taxes, or by an attestation made in the province, in the presence of notaries, and before the Governors or defenders of the same.

And in order to prevent owners tempted by avarice from extorting a large sum of money on this account (which We have ascertained has been done up to the present time), they shall not, in consideration of their signature or their declarations, be permitted to receive more than the fiftieth part of the price, or of the appraisement of the land which is transferred to the other party.

When the owner of the property absolutely refuses to accept the new emphyteuta or purchaser of the improvements, and he neglects to do this within two months after notice has been served upon him, the emphyteuta shall be permitted to transfer to others, either his right or his improvements, even against the consent of the owner. If, however, the emphyteuta should conduct himself otherwise than is prescribed by Our Constitution, he shall forfeit his emphyteutical right.

[...]

END OF THE CODE