

THE CODE OF OUR LORD, THE MOST HOLY EMPEROR JUSTINIAN.

SECOND EDITION.

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 Aspens, 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 Ælianus, 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 Ælianus, 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 Æmilianus, 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 Cælius.*

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 Æmilianus 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 Acquilinus, 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 Æmilius.*

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 *Nones* 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, 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 Prefect.

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, 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 Ælianus, 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 Æmilianus.

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 *præscriptis 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 Prætor 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 Æmilianus, 245.

11. *The Emperors Valerian Gallienus, and the Noble Cæsar 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 Æmilianus 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 Victorvnuus.*

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 Saporita.*

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 Basylyssa.*

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 Eutroplus, 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 Herculanius 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.

(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 hereafter, 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, Prætorian 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, Prætorian 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, Prætorian 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 Prætorian 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, Prætorian 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 Arioivinius 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 *sportulæ* 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, Prætorian 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 prætorian 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 Ælianus, 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.

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 cognizance 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 XI.

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 Gætus.*

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 Ælianus, 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 Prætexatus, 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 Cæsars, to Statius.*

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 Cæsars, 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 Cæsars.

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 Prætor, 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 Prætor 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 Ælianus, 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 Ælianus, 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 Ælianus, 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 Fronto.*

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; 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, 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 Cæsar, 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-Cæsar, 312.

23. *The Emperor Julianus to Secundus, Prætorian 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, OR TO HAVE THEIR RIGHTS OR 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 them 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 Præsens 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 Consulate 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 Consulate 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 Consulate 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 Consulate 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 Consulate of Maximus, Consul for the second time, and Urbanus, 225.

15. *The Emperor Gordian to Eutychiamis.*

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 Consulate of Gordian and Aviola, 240.

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

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 Consulate 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 Consulate, 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 Consulate, 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 Ælianus, 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.

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.

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 Consulate 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 Consulate 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 Consulate 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 Consulate of the Cæsars, 294.

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

Fraud must be proved by convincing evidence. Given on the *Kalends* of December, during the Consulate 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 Consulate 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 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 Cæsar 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 Ælianus, 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 Cæsars, 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 Prætor, 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 Cæsars, 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 Cæsars, 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 Cæsars, 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 Cæsars, 294.

7. *The Same, and the Cæsars, 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 Cæsars, 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 Ælianus.*

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 Lætus and Cærealus, 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 Æliana.*

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, 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.

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 pre-

scription 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 Tuscus 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 Anitia.*

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 Æmilianus, 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 Eutychednus.*

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.

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 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 Ælianus, 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 Maximum, 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-Cæsar, Consul for the fifth time, and Maximus, 319.

7. The Emperor Justinian to John, Prætorian 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 Æmilianus.

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 Aspers, 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 Lætus and Cerealis, 216.

3. The Emperors Diocletian and Maximian, and the . Cæsars, 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 Cæsars, 294.

TITLE LV.

CONCERNING AN ALIENATION MADE FOR THE PURPOSE OF CHANGING AN ACTION.

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