THE CODE OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.

SECOND EDITION.

BOOK III.

TITLE I.

CONCERNING JUDGMENTS.

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

A stipulation for the payment of interest does not lose its effect after suit has been brought, hence the result will be that you can sue your debtor for interest incurred during the proceedings which was not included in the judgment.

Given on the *Kalends* of April, during the Consulate of Antoninus and Geta, both Consuls for the second time, 209.

2. *The Same to Valerius.*

Although judgment may have been rendered in a suit which you brought against your guardian, still, the right of action on guardianship is not extinguished, and therefore if you again institute proceedings before the same judge, and an exception on the ground of *res judicata* is interposed against you, you can properly avail yourself of a reply based on malicious fraud if you allege that the claim in the present action is not the same as the one which was disposed of in the former one.

Given on the sixth of the *Kalends* of January, during the Consulate of Faustinus and Rufinus, 211.

3. *The Emperor Alexander to Faustina.*

Whenever the question of a person's condition arises, where the title to property is involved, there is nothing to prevent the magistrate, who, in every other instance, cannot take cognizance of the question of condition, from deciding the controversy.

Given on the sixth of the *Ides* of February, during the Consulate of Julian, Consul for the second time, and Crispinus, 229.

4. *The Same to Popilius.*

If, after the price of land purchased by your curators has been paid, and the instruments evidencing the sale have been delivered, you have not brought forward the question of omission of guarantee in case of eviction, you understand that when the case has once been decided it cannot be renewed.

Given on the *Kalends* of August, during the Consulate of Modestus and Probus, 229.

5. *The Emperor Gordian to Marcellus.*

When one judge is delegated by another, he has no power to designate a third, as he himself performs judicial functions, unless he was appointed by the Emperor himself.

Given on the fourth of the *Nones* of September, during the Consulate of Pius and Pontianus, 239.

6. *The Same to Junia.*

A slave cannot interfere with a judgment, and if no decree of condemnation has been issued against him, what has been decided shall stand.

Given on the fifteenth of the *Kalends* of September, during the Consulate of Gordian and Aviola, 240.

7. *The Emperors Diocletian and Maximian to Hyrina.*

When you allege that a slave of your debtor, who has been pledged to you, holds certain property of his deceased master, you ask, contrary to law, that actions be granted against him; for as no suit can be brought between a slave and a freeman, it is more proper for you to apply to the court to give you possession of the property pledged than to demand what is illegal.

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

8. *The Emperors Constantine and Licinius to Dionysius.*

It has been decided that, in all things, the principles of justice and equity, rather than the strict rules of law, should be observed.

Given on the *Ides* of May, during the Consulate of Volusianus and Annianus, 314.

9. *The Emperor Constantine to Maximus.*

It is necessary for judges, in the first place, thoroughly to examine the character of the matter in dispute, and then to interrogate both parties frequently as to whether they desire to add anything, as this is a benefit to both of them, whether the case is to be decided by the judge, or is to be referred to someone higher in authority.

Given on the second of the *Ides* of January, during the Consulate of Licinius and Crispus, 316.

Extract from Novel 116, Chapter II. Latin Text.

When one party has stated his case, but the other alleges that he still has something to advance, We order that the judge shall compel the latter who asks for postponement, without fail or further delay, to set forth explicitly what he wishes, within thirty days after the other party has filed his complaint; and if he does not do so, the judge shall grant him another month for the purpose of conquering his obstinacy; and if he should still delay, another shall be given him, so that if he does not make his allegations within the three months aforesaid, the magistrate having jurisdiction of the suit shall not wait any longer, but shall render his decision in conformity to all laws and customs; or, if he should be unwilling to do so, he must make a report, so that evil-disposed litigants may not be permitted to defer a decision for a longer time.

10. *The Same to Severus, Urban Prefect.*

A hearing should absolutely be refused to a person who divides a case which should be determined without it, and, as a privilege, desires to try before several judges what can be decided by one and the same magistrate. It is the duty of a judge to punish anyone who presents a petition contrary to this law, and having made a demand for possession before one judge, attempts to have the principal question in the case disposed of by another.

11. *The Emperor Justinian to Julian, Prætorian Prefect.*

In order to prevent litigation from becoming almost perpetual and exceeding the term of human life (as Our law has already limited criminal cases to two years, and pecuniary actions more frequently occur, and are known sometimes to give rise to criminal proceedings), it seems to Us to be advisable to promulgate the present law, for the purpose of regulating such matters throughout the entire earth, so that it may not be subject to limitation by either space or time.

(1) Therefore, We decree that all suits which are brought for the recovery of any sum of money whatsoever, or with reference to civil conditions, the rights of cities or of private individuals; the possession, ownership, or hypothecation of property, servitudes; or any other questions on account of which litigation occurs between men; with the sole exception of such cases as involve the rights of the Treasury, or the discharge of official duties, shall not, after issue has been joined, be deferred longer than the term of three years.

All judges, either in this Fair City or in the provinces, whether they are invested with inferior

or superior jurisdiction, or discharge the functions of magistrates, or have been appointed by Us, or by Our nobles, shall not be permitted to protract cases for a longer time than the term of three years, for no one is not aware that this provision is superior to any judicial authority, and if the parties themselves should not acquiesce, no one can be found who will be bold enough to postpone a case against the consent of the judge.

(2) If, however, the plaintiff should cease to prosecute his case, and the defendant should be wearied with the long delay, and the term of three years after the joinder of issue should be approaching its end, so that only six months remain, the judge, after the defendant has complained of the plaintiff's absence and the matter has been duly considered, is authorized to seek him out by means of his bailiffs, and when this has been done three times (the term of ten days being allowed for each application), and the plaintiff is not found, and does not appear either in his own proper person or by an attorney, We decree that the judge shall then examine the papers which have been filed with him, and if there should be no sufficient grounds upon which to act, and upon which a positive decision can be rendered, We desire that not only the defendant shall be released from all liability so far as the action is concerned, but that the plaintiff shall be condemned to pay all the expenses which are ordinarily incurred in lawsuits, and the amount of which shall be established by the oath of the defendant; and any security which the latter may have deposited with reference to the case, which, if it had remained would have been released by operation of law, shall be returned to him.

If, however, from the evidence in the possession of the judge, it appears that the plaintiff was not found, the judge can find a way by which it may become clear to him what decision he should render; and if the plaintiff should seem to have the better case, the judge shall not, even though he is absent, hesitate to render a decision against the defendant who is present in favor of the absent plaintiff, and only the costs which the defendant shall swear he has lawfully incurred in the action shall be deducted from the judgment. Although the plaintiff has the better case, We impose this penalty upon him solely on account of his obstinacy in being absent, and he shall, by no means, have the power to reopen the action, but his contumacy shall cause the loss of his case altogether, if the defendant is discharged.

Where, however, a judgment is rendered against the defendant, in favor of the absent plaintiff, for an amount which the latter may, perhaps, think is not sufficient, We do not, under any circumstances, permit him to revive the case; and this is the penalty which We inflict upon him.

(3) But if the defendant should be absent, and a similar search is conducted for him, as We have mentioned in the case of the plaintiff, and if he also should remain absent, and be in default; the judge, according to what is prescribed by the ancient laws, shall thoroughly inform himself as to the suit, by interrogating the party who is present, and if he should be found to be liable, the judge shall not fail to render a decision against the absent party, which must be executed and the claim of the successful litigant be satisfied by the pecuniary resources of him who is absent; and the judge himself can either do this on his own authority, or it can be referred by a report to a superior magistrate, so that a lawful way may be opened to reach the property of the contumacious party. Neither he, nor anyone else, shall have permission to interfere when the plaintiff is placed in possession in this way; for if the defendant himself should return, and desire to give sureties, and recover possession, he shall not be heard, as in cases of this kind We exclude all opposition.

(4) When either the plaintiff or the defendant is in default, the examination of the case should proceed without any impediment, for as soon as the Holy Scriptures are brought forward, the absence of the litigant is supplied by the presence of God; and the judge should not apprehend any appeal from his decision, since one who is known to be absent through obstinacy has no right to appeal; which is the undoubted rule established by the ancient laws.

(5) A decision of this kind, however, must be rendered near the end of the said term of three

years, for which purpose We have introduced the present law. If, however, either party already has been absent for some time, and a considerable portion of the time remains, and he is expected to return, the decision shall only release him from the payment of costs; and, in this instance, the termination of the suit and the judgment rendered against the absent party only take place where a short time remains for the expiration of the three years.

(6) If, however, the case should have been decided in the absence of one of the parties, or in the presence of both, all the judges appointed in Our Empire are notified that the party who is defeated shall be condemned to pay the costs of the action to the one who gains it, but only so much as the latter may swear that the ordinary expenses amount to; for they are aware that if they should omit this, they themselves will be liable to this penalty, and will be compelled to pay it to the injured party.

(7) It has seemed proper to Us to establish these rules with reference to parties litigant, when they are absent through contumacy, for the purpose of complying with the principles of equity.

(8) When either of the parties, desiring to proceed with the case, applies to the judge, and the latter is unwilling to hear him, either because of his friendship for the adverse party, or his hostility to himself, or on account of dishonorable gain, or because of some other vice which may arise in the soul of despicable magistrates of this kind, he himself should wish to prolong the proceedings, and, in consequence, the term of three years should elapse, and the judge should be appointed to the office of magistrate, or to a higher position, or even raised to illustrious rank, he shall be compelled by the Court of the Palace to pay ten pounds of gold into the Treasury of Our Private Largesses.

If, however, he is a judge of inferior jurisdiction, he shall be punished with a fine of three pounds of gold, to be collected by the same court and paid into Our Treasury, and, having been removed from office, another judge should be appointed in his stead, and shall, under the same circumstances, be liable to a similar penalty.

All these things take place when one judge hears the case from the beginning; but if, during the course of three years, judgment has been delayed, either by the death of the judge, or by some other unavoidable accident, and one year or more remains during which it can be decided, another judge shall be appointed for that purpose. If, however, less than a year should remain, then all the time lacking shall be added, in order that the newly appointed judge may not only hear, but determine the case within the full period of a year.

(9) It should undoubtedly be observed that, if it is not the fault of the litigant or the judge that the progress of the case has been retarded, but the advocates are responsible for it, permission is given to the judge to fine them two pounds of gold as a penalty, to be collected by the Court of the Palace, and in the same manner applied to public purposes. The judge shall also state in his decision whether the delay has been caused by the attorneys of either the defendant or the plaintiff, and whether this has been done by all or only by some of them; hence, those who undertook to conduct the case should continue to do so until it has been terminated (unless the law, or some good reason prevents them from doing so), so that delay may not result from their refusal to proceed. Their fees should, by all means, be paid to the learned advocates by their clients, if they can do so; and where they fail to pay them, they can be collected by those who have charge of the affairs of the court, lest by an artifice of this kind, cases may be delayed, unless the litigant should prefer to select another advocate instead of the one whom he first employed.

(10) All these matters have been provided for by Us with reference to parties of full age, whose judgment renders them capable of transacting every kind of business.

(11) Where, however, the cases of wards or minors, or similar persons subject to legal disability and acting under the supervision of others are concerned, whether they are of the male or female sex, and suit has been brought by their guardians, curators, agents, or

attorneys, and through their neglect of duty the three years have elapsed, and the right of action has been extinguished, the proceedings, nevertheless, will retain all their force; but the injury resulting from this neglect shall fall upon the guardians and curators, or their sureties, and the heirs and their property, and upon all persons who have any lawful interest in the matter. When, however, their property does not prove sufficient to satisfy the claims of their wards or minors, it has been decided that then they shall be entitled to the benefit of complete restitution for all the loss which they may have sustained.

Given on the sixth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 539.

12. *The Same to Julian, Prætorian Prefect.*

We are not introducing anything that is new or unusual, but only what has already been established by the ancient legislators, for ever since these rules have been treated with contempt, no small injury to litigation has resulted. For who is ignorant of the fact that judges in former times could not accept the judicial office unless they had previously made oath that they would on all occasions decide according to the truth, and in compliance with the law?

Therefore, as We have found that this course has not usually been pursued, and that the laws having reference to oaths which We previously published have convinced litigants of the great benefit which they produced, and hence were deservedly praised by all, We now come to this decree, which shall be valid for all time, and by which We direct that all judges, whether of superior or inferior jurisdiction, who have been appointed to office, either in this Imperial City or elsewhere throughout the world subject to Our empire, as well as those to whom We have accorded the right to hear cases, or who may be appointed by superior judges, or who have authority to decide in their own jurisdiction, or have been selected under an agreement, that is to say, in accordance with a compromise (which resembles a judgment), who undertake to dispose of lawsuits, whether they act as arbiters by virtue of a decree, or have been chosen by the consent of the parties, and, generally speaking, all judges learned in the Roman Law, shall not undertake to hear a case, unless the Holy Scriptures have previously been placed in front of the judicial tribunal, and remain there, not only during the beginning, but also throughout the entire examination, until the very end, and the promulgation of the final decision.

If, therefore, paying attention to the Holy Scriptures, and being consecrated by the presence of God, they dispose of litigation with the aid of a higher power, let them know that they must not judge others in any other way than they themselves are being judged, as this will be more terrible to them than to the parties themselves; for while the litigants are judged by men, they themselves introduce cases to be weighed and determined with the assistance of God.

This judicial oath shall be made known to all, and shall be added by Us to the Roman Law, and be observed by all magistrates, and if it is neglected, those who treat it with contempt will do so at their peril.

Extract from Novel 15, Last Section but One. Latin Text.

At present they swear that they will do what seems to them to be more just and better, with the exception of municipal defenders, who swear that they will do everything in conformity with the laws and justice.

THE TEXT OF THE CODE FOLLOWS.

After issue has been joined, the case of the plaintiff presented, and the answer filed, in any action of greater or less importance, whether brought before arbiters who have been appointed under the terms of a compromise, or in some other way, or elected, the advocates employed on both sides shall be sworn with their hands upon the Holy Gospels that they will endeavor to do everything for their clients which they think to be honorable and just, by every exertion of their knowledge and power, and that they will, as far as possible, neglect nothing available for

this purpose.

Where, however, they believe the case to be disgraceful or absolutely desperate, or based upon false allegations, knowing this to be the fact, they will be guilty of bad faith in taking charge of such a suit. If, however, during the proceedings, they obtain any information to this effect, they must withdraw from the case, and absolutely cease to have any connection with a matter of this kind. This having been done, the abandoned litigant shall not be permitted to seek the aid of another advocate, lest those of a better class having repudiated him, he may have recourse to one who is unprincipled.

Where a party to a suit has employed several advocates, and all of them have been sworn, and some, during the progress of the case, think that it should be tried, and others refuse to proceed, the latter should retire, and those who agree to do so should remain; for a case can be conducted to its termination where some advocates, through timidity, withdraw, and others who are more bold, persist in trying it; nor, under such circumstances, should permission be granted to the litigants to substitute others instead of those who are unwilling to continue.

Given on the fourth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

13. *The Same to Julian, Prætorian Prefect.*

When a party who was absent at the time when he was called afterwards appears, We order all judges, both in this Most Illustrious City and in the provinces, not to inform him of the condition of the case, but, on the other hand, exclude him from all knowledge of it, unless he previously makes reparation for any loss sustained by his adversaries through his fault, as well as pays all the expenses of conducting the case, and the fees of the advocates, or any other costs which may have been incurred in the action. The amount of these shall be determined by the judge after the party who incurred the expense has been sworn, in proportion to the services rendered by the court officials; and all Our judges and their subordinates are hereby notified that, if they neglect anything of this kind, they will be compelled to reimburse, out of their own property, those who have suffered any loss.

We decree that this rule shall be observed by ordinary judges when litigants, who are required to be present (even though they have not been summoned), absent themselves with fraudulent design.

Given on the tenth of the *Kalends* of May, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 530.

Extract from Novel 82, Chapter X. Latin Text.

After an estimate of the costs has been made and sworn to, the judge shall not be allowed to increase it; but, at present, when he has made the estimate and fixed the amount, he is not empowered to allow a smaller sum than has been sworn to. If, however, he should perceive that on account of the nature of the case, neither of the litigants ought to be subjected to any expense, he must state this in his decision.

14. *The Same to Julian, Prætorian Prefect.*

It is a clear rule of law that litigants can reject judges appointed to hear a case before it is begun, and, in accordance with the general regulations of your tribunal, it has been established that where a judge is rejected, the parties will be compelled to choose arbiters, and submit their claims to them. Even when the judge was appointed by the Emperor, for the reason that We have set our hearts upon all suits being conducted without any suspicion of unfairness, the party who thinks that a judge is liable to suspicion can reject him, and have recourse to another, before proceedings are instituted; as, after issue has once been joined, We have already decided that no appeal can be taken before final judgment, nor any judge be rejected in order to prevent proceedings from being indefinitely prolonged; and therefore the same

official should, under the authority vested in ordinary judges and with all the assistance of the laws, compel the parties to choose arbitrators, and appear before them, and submit their cases just as if the arbitrators had been appointed by the Emperor himself.

We decree that this rule shall also be observed where the judge has not been appointed by the Emperor, but by some other official.

Given at Constantinople, on the fifth of the *Kalends* of May, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 530.

Extract from Novel 86, Chapter II. Latin Text.

If, however, one of Our subjects should happen to suspect the judge, We order that the holy archbishop, or bishop of the diocese, shall hear the case, along with the illustrious judge, so that they both may, by amicable agreement, remove any suspicion, either by committing the facts to writing, or by deciding the controversy between the litigants as magistrates, and prevent the suits of persons residing in the provinces from being protracted for a long time, while they are absent from home. If the judge should refuse to obey the archbishop, the latter must write to the Emperor, who will take measures to punish him.

15. *The Same to John, Prætorian Prefect.*

It is a positive rule of law that authority to dispose of litigation is conceded to military men, for what is there to prevent men who are' skilled in other matters from rendering decisions in this? We know that the competency of military magistrates and all such persons has already been approved, on account of their daily experience, so that they hear and decide cases, and terminate disputes of this kind, according to the dictates of their consciences and their knowledge of the law.

Given on the *Kalends* of November, during the Consulate of Lampadius and Orestes, Consuls for the fifth time, 530.

16. *The Same to John, Prætorian Prefect.*

When a special judge has been appointed, either by the emperor or by some other competent official, in the province in which the person who rejected another judge resides, and either of the parties says that he suspects him; in order to prevent the former (when he is absent and resides in another city of the same province), from being compelled to make a long journey for the purpose of filing his application for rejection, We direct that, if the Governor of the province is in the city where the difficulty arises, he who alleges that he suspects the judge shall appear before him and make the accusation in writing. Where, however, the Governor of the province is not in the place aforesaid, this can be done before the defender of the district, or the municipal duumvirs, after the requisite formalities have been observed, and the judge can be rejected. And, immediately afterwards, that is to say, within the next three days, the parties shall be compelled, without delay, to choose an arbiter or arbiters, and submit their cases to them, in order that the judge who has been appointed may not be removed, and no other be chosen. Whenever a dispute arises between the parties with reference to the selection of an arbiter, it shall, in like manner, be decided by the Governor of the province, if he is present, or by the defender of the district, or the municipal magistrates; and the court official to whose care the case has been committed must carry into effect whatever has been decided by the arbiter, unless an appeal is taken; for then he who appointed the judge who was considered suspicious, having considered the application for an appeal, shall render a decision in accordance with law.

Given on the *Ides* of November, during the Consulate of Lampadius and Orestes, 530.

TITLE II.

CONCERNING THE COSTS AND EXPENSES INCURRED IN DIFFERENT CASES, AND THE EXECUTIVE OFFICERS OF THE COURT.

1. *The Emperors Gratian, Valentinian, and Theodosius to Potitus, Deputy.*

When anyone has been summoned to court, We order that the bailiff to whose charge he is committed shall, in the first place, keep him under observation, until the case has been terminated. If anyone should, under any pretext, disobey this Our decree, after it has been issued the official responsible for it shall be sentenced to pay a fine of five pounds of gold.

Given at Milan, on the *Kalends* of July, during the Consulate of Ausomius and Olybrius, 379.

2. *The Same to Julian, Prætorian Prefect.*

We grant permission to all judges, with the exception of those specially appointed by Us, who are classed as illustrious, distinguished, or eminent, and to members of the bar of every prefecture, or any others of those who have been delegated to hear cases by Our judges, to remove from office any of their subordinates, if they neglect their duties, and to deprive them of the business of which they have charge, as well as fill their places with others who are qualified, and even to impose fines upon them.

If the judges are such as are styled illustrious, they can impose fines up to six *solidi;* others, however, can not exceed one of three *aurei;* and the latter should send the culprit to competent magistrates in order that they may inflict corporeal punishment upon them. Our judges of the highest rank shall have permission to impose even more severe penalties and corporeal punishments upon the said subordinates when they have been guilty of embezzlement while in office; in order that they may know that they cannot practice any deception with reference to litigants, and that the course of justice may not be obstructed on account of their greed of gain.

Given on the fifth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

TITLE III.

CONCERNING SPECIAL JUDGES.

1. *The Emperor Gordian to Vicanius.*

It is clear that Our Deputies, when not occupying the place of Governors of provinces, have no authority to appoint judges to decide disputes between private persons; and therefore, if (as you allege), he whom you mention has thought proper to appoint arbitrators to dispose of a controversy between private persons, any award rendered by them cannot stand under the law.

Given on the *Kalends* of February, during the Consulate of Atticus and Prætextatus, 243.

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

We desire that Governors should, themselves, take cognizance of cases, which, for the reason that they were not able to determine them, they formerly appointed special judges to decide; but, if they cannot hear them on account of their public duties, or because of the multiplicity of matters of this kind, they are granted authority to appoint judges to do so. This, however, should not be understood to mean that permission is given them to appoint judges in cases which they are accustomed to hear in the ordinary course of their official duties, for jurisdiction of these must be retained by the Governors in order to prevent their authority from appearing to be diminished. The judges, themselves, must decide cases involving free birth, of which they formerly could take cognizance, as well as such as have reference to manumission.

3. *The Same, and the Cæsars, to Serapion.*

We desire that you intimate to such judges as you may see fit to appoint that, after having

rendered their decisions, they put an end to the business entrusted to them, and that in cases in which they should, and can render judgment, they must not assume authority to assign them to her judges; and especially where a decision seems to one of the parties litigant to be unjust, he shall be granted full power to interpose an appeal from the entire decision.

Given at Antioch, on the eighth of the *Kalends* of April, during the Consulate of the Cæsars, 294.

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

We desire that, whenever special judges have been appointed, after issue has been joined in a case, and they have necessarily been compelled to take charge of some other business, or to go into another province for some reason connected with the public welfare, or have died, and on this account the matters which have been begun cannot be terminated, other judges should be appointed in their stead, who may dispose of the unfinished litigation; lest otherwise some impediment may arise in the administration of justice.

Given on the tenth of the *Kalends* of ..., during the Consulate of Tiberius and Maximus, 295.

5. *The Emperor Julian to Secundus, Prætorian Prefect.*

There are certain matters which it would be superfluous to bring before the Governor of a province, and therefore We grant authority to Governors to appoint special judges, that is to say, such as may decide questions of minor importance.

Given at Antioch, on the fifth of the *Kalends* of August, during the Consulate of Mamertinus, 362.

TITLE IV.

WHAT JUDGES CAN DELEGATE THEIR JURISDICTION, AND WHO CAN BE DELEGATED.

1. *The Emperors Theodosius and Valentinian to Cyrus, Prætorian Prefect.*

In the delegation of cases, We order that it shall, by all means, be remembered that only such appointments are valid which come within the jurisdiction of the judge who makes them, for if anyone should think that he has a right to delegate a case belonging to another jurisdiction, We decree that the person appointed need pay no attention to the order; and if he obeys the official who appointed him contrary to law, We direct that everything which has been done under said appointment shall be considered void, just as if those judges who were delegated had themselves assumed another jurisdiction, so that no necessity exists for the defeated parties to appeal from their decisions.

These rules shall apply unless judges have been especially delegated by Us, and have themselves assigned cases to be heard by others; for, where such persons have been delegated, appeals can only be made from them to Us, without any distinction of persons or cases.

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

TITLE V.

NO ONE SHALL DECIDE HIS OWN CASE OR INTERPRET THE LAW FOR HIMSELF.

1. *The Emperors Valens, Gratian, and Valentinian to Gracchus, Urban Prefect.*

We decree by this general law that no one shall act as judge in his own case, or interpret the law for himself, as it would be very unjust to give anyone the right to render a decision in an affair which is his own.

Given on the *Kalends* of December, during the Consulate of Valens, Consul for the sixth time, and Valentinian, Consul for the second time, 378.

TITLE VI.

WHO HAVE THE RIGHT TO APPEAR IN COURT, AND WHO HAVE NOT.

1. *The Emperor Gordian to Candida.*

If, at a time when you were still a minor, you appeared in court with your adversary, without the authority of your guardian, and the Governor of the province rendered a decision against you, it will have no judicial authority.

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

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

In matters relating to a private right, a ward can sue and be sued by his guardian, and an adult can both bring and defend a suit with the consent of his curator.

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

3. *The Emperors Honorius and Theodosius to Julian, Proconsul of Africa.*

An action to obtain temporary possession can be brought by anyone, but a petition to recover property under the pretext of obtaining possession should not be productive of injury, especially when the action appears to have been begun by someone not legally qualified to do so; for any business transacted directly with a minor will be of no advantage to him, as this should be attended to by his curator.

Given at Ravenna, on the second of the *Nones* of March, during the Consulate of Constantius and Constantine, 339.

TITLE VII.

NO ONE SHALL BE COMPELLED AGAINST HIS WILL TO BRING AN ACTION, OR TO ACCUSE ANOTHER.

1. *The Emperor Diocletian to Camerius.*

No one shall be forced to bring a suit, or to accuse anyone, against his will.

Given on the *Ides* of October, during the Consulate of Carinus, Consul for the second time, and Numerianus, 282.

TITLE VIII.

CONCERNING THE ORDER OF JUDGMENTS.

1. *The Emperors Severus and Antoninus to Marcellina and Others.*

Go before the Governor of the province, and inform him that the will of Favius is broken by the birth of a posthumous son. Nothing will prevent him from taking cognizance of the case, which involves the question of status, although he cannot usually examine matters of this kind; as this is part of the duty of the judge having jurisdiction of estates, and of every incidental question relating to the same, for he does not determine the condition of the person but that of the estate.

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

2. *The Emperor Antoninus to Magnilla.*

If no question is raised with reference to your condition by those whom you allege to be your first cousins, application must be made to the Governor of the province, in order that an action in partition may be brought. If, however, any doubt as to your status exists, the said illustrious official shall, in the first place, and in accordance with the formalities of the law, examine the truth of your birth.

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

3. *The Emperors Valerian and Galliemis to Demetrius.*

When a criminal question arises in the discussion of a civil one, or where a criminal prosecution having been begun a civil suit is added to it, the judge must dispose of both at the same time.

Given on the *Nones* of ..., during the Consulate of Gallienus, Consul for the fifth time, and Faustinus, 203.

4. *The Emperor Constantine to Calphurnius.*

When, during a civil investigation, as frequently happens, a criminal accusation is first examined, as a matter of greater importance takes precedence of ones of less; therefore, the criminal charge having been disposed of, the civil case should be definitely decided, so that the termination of the criminal prosecution may date from the day on which the civil action was begun, and judgment be rendered between the parties.

Given on the *Ides* of March, during the Consulate of Nepotian and Facundus, 336.

TITLE IX.

CONCERNING JOINDER OF ISSUE.

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

A case is not considered as actually brought into court where only a simple demand is made, or where the defendant is notified beforehand of the action to be instituted against him; as a great difference exists between the joinder of issue and the origin of a suit, for issue is considered to be joined only when the judge begins to hear the cause of action discussed.

Given on the *Kalends* of September, during the Consulate of Severus, Consul for the third time, and Antoninus, 201.

Extract from Novel 53, Chapter HI. Latin Text.

Notice is served upon the party who is summoned to court, and then, after the plaintiff has deposited the costs and furnished security, the defendant will be entitled to twenty days during which to make up his mind whether he will pay the claim, or contest it, or whether he will reject the judge, or ask that another be associated with him, unless the judge is one whom he himself has already petitioned for, after having rejected the first. Then the party "who is present is asked whether the time to plead has passed, which ought to be shown not only by his answer, but also by the date of the summons. This is the first thing to be done. When issue is joined without the observation of this formality, it must be considered of no effect.

Extract from Novel 96, Chapter I. Latin Text.

The plaintiff shall not serve the notice before furnishing security to the party whom he alleges to be liable, and to the bailiff in charge that, if issue should not be joined within two months, he will pay the defendant double the amount of damages which he has sustained, the sum specified in the bond, however, should not exceed thirty-six *aurei.*

TITLE X.

CONCERNING CLAIMS FOR MORE THAN IS DUE.

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

With the intention of abolishing the odious subtleties of contracting parties, We order that if anyone, when a certain amount is due to him, should fraudulently and deceitfully exact security for a larger sum, and cite his debtor to court, and then, before the case is heard, repent

of his knavery, and acknowledge the true amount of the claim, he shall not be put to increased expense. Where, however, proceedings have been begun, and it is proved during the trial that a false amount has been added, the plaintiff shall not only be deprived of it, but shall also lose the entire debt; still, if a compromise or a subsequent admission was made, whether it has been recorded or not, it shall, in this instance, be confirmed, for such agreements must not be violated.

Given on the fifteenth of the *Kalends* of November, during the Consulate of Lampadius and Orestes, 530.

TITLE XI.

CONCERNING DELAYS.

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

As it frequently happens that a judge is through necessity compelled to grant delay in order to insure the production of either documents or persons, it is proper that the time demanded for their production should be granted. If the persons or papers asked for are in the province where suit was brought, not more than three months should be granted; if, however, they are in any of the adjoining provinces, it is in accordance with justice for six months to be allowed. When they are beyond sea, a delay of nine months should be given.

This having .been determined, the judges should know that under the rule they are not permitted to grant delays arbitrarily, and they are hereby notified that where the urgency of the case, and the necessity of obtaining the desired information demand such a step, delay should not be granted more than once, nor, under any pretext, be prolonged.

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

2. *The Emperor Constantine to Ursus, Deputy.* When anyone presents a rescript to a specially appointed judge, a delay shall be absolutely refused him, but it must be granted to a person summoned to court for the purpose of proving its falsity, whether it authorizes the production of certain documents or witnesses, as he who, contrary to his expectations, has been brought before another judge could not have been informed.

Given on the second of the *Nones* of March, during the Consulate of Volusianus and Annianus, 314.

Extract from Novel 53, Chapter I. Latin Text.

Recourse to another judge should not be had unless the plaintiff furnishes security to pay a certain sum if he does not try the case, or if, having done so, he fails to gain it. Therefore, if he should not proceed within ten days after the time prescribed, and the defendant is present, the latter shall be discharged, and the sum promised shall be exacted, if the defendant should swear that he has not expended more in the case than was included in the estimate of the judge.

3. *The Same to Profuturus, Prefect of Pannonia.*

Whether the delay is granted for a portion of the prescribed term, or for all of it, the judge should remain inactive until the time requested has elapsed. Holidays, whether they are unusual or established, are, however, not excepted from the term of the delay, but are included in it.

Given on the seventh of the *Ides* of February, during the Consulate of Licinius, Consul for the fifth time, and Crispus, 318.

4. *The Same to Catullianus, Proconsul of Africa.*

It is not proper to ask a judge for delay during the proceedings, even if it should be granted while both parties are present, for this cannot be done unless proper cause is shown, which it

is preferable to ascertain by judicial consideration of the matter, rather than through general inquiry; and if the demand for delay should be opposed by the adverse party, the question must be decided by the court.

Given on the fifth of the *Ides* of February, during the Consulate of Licinius and Crispus, 318.

5. *The Same to Maximus, Prætorian Prefect.*

When a rescript has been issued by Us on an appeal, or on an application for an opinion, whether delay was asked for at the time of the first judgment and was not accorded, or whether it was not applied for at all, no one is permitted to grant it, as it is not customary for Us to do so, when We take cognizance of a case.

Given at Rome, on the eighth of the *Kalends* of April, during the Consulate of Probrian and Julian, 322.

6. *The Emperors Constantine, Constans, and Constantius to Petronius, Vicegerent of Africa.*

When proceedings are instituted between private persons and the Treasury, the right to petition for delay, when exercised by their defenders, is not denied either party, if good reason exists for demanding ,it.

Given on the fifth of the *Ides* of April, during the Consulate of Acindynus and Proculus, 340.

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

A delay of more than nine months for the purpose of producing documentary evidence, or obtaining the presence of persons beyond sea, should not be granted to the parties in a suit where civil condition, or a patrimonial estate is involved.

Given on the sixth of the *Kalends* of December, during the Consulate of Eutropius and Theodore, 399.

TITLE XII.

CONCERNING FESTIVALS.

1. *The Emperors Constantius and Maximian, and the Cæsars, Severus and Maximian, to Verinus.*

As you ask, my dear Verinus, whether the same rule should be observed, so far as the times of appeal are concerned, that apply to the festivals established by Us to celebrate the occurrence of fortunate events, We are pleased to answer you that you should, where cases are appealed, observe the prescribed terms in their regular order, without the addition of days of this kind, for, under such circumstances, additions cannot be made to the observance of the days aforesaid.

2. *The Emperor Theodosius to Vicenus.*

Although it is lawful to manumit and emancipate on Sunday, other business or litigation cannot be attended to on that day. The harvest festival extends from the eighth day of the *Kalends* of July until the *Kalends* of August; and permission is given to institute proceedings in court from the *Kalends* of August until the tenth of the *Kalends* of September. The festival of the vintage lasts from the tenth of the *Kalends* of September until the *Ides* of October. We desire the Holy Festival of Easter, that of the Epiphany, and the birthday of Our Lord, as well as the seven days which precede, and the seven which follow, to be quietly observed; and anything which is done in violation of this provision shall be absolutely void.

3. *The Emperor Constantine to Elpidius.*

Let all judges, the people of cities, and those employed in all trades, remain quiet on the Holy Day of Sunday. Persons residing in the country, however, can freely and lawfully proceed with the cultivation of the fields; as it frequently happens that the sowing of grain or the planting of

vines cannot be deferred to a more suitable day, and by making concessions to Heaven the advantage of the time may be lost.

Given on the *Nones* of March, during the Consulate of Crispus and Constantine, Consuls for the second time, 311.

4. *The Same to Severus.*

No judge shall presume to appoint festival-days by his own authority. Such festivals as a ruler establishes shall be called Imperial holidays, and therefore if they are deprived of the name they should also be deprived of the benefit.

Given during the Ides of April . . .

5. *The Emperors Valentinian, Valens, and Gratian to Olybrius.*

You must proceed with criminal and fiscal cases during the two months of festivals, that is to say, without any interruption.

(1) Hereafter, also, during these same days, examination shall be made of matters in which bakers are interested.

Given on the fourth of the *Nones* of May, during the Consulate of the Noble Prince Valentinian, 368.

6. *The Emperors Gratian, Valentinian, and Theodosius to Lucianus, Vicegerent of Macedonia.*

Every investigation of criminal matters shall be prohibited during the four days which precede the auspicious season of the ceremonies of Easter.

Given at Thessalonica, on the sixth of the *Kalends* of April, during the Consulate of Gratian, Consul for the sixth time, and Theodosius, Consul for the first time.

7. *The Emperors Valentinian, Theodosius, and Arcadius to Albinus, Urban Prefect.*

We order that all days shall be proper for the administration of justice, and that only those shall be considered holidays, which, during the two festival months, the year seems to set apart for rest from labor; that is, the days of summer, in order to be better able to endure the heat; and those of autumn, for the purpose of gathering fruit.

We also devote to leisure the days of the *Kalends* of January, which it is customary to observe for this purpose, and to these We add the days of the foundation of the great cities of Rome and Constantinople, during which the administration of justice should be suspended, because it owes its origin to them. We include in the same category the sacred day of Easter, and the seven which precede and follow it; the day of the Nativity, and that of the Epiphanies of Christ; and the time when the commemoration of the Apostolic Passion of all Christianity is properly celebrated by the entire world.

During the above-mentioned most holy days, We do not permit any public exhibitions to be given. The day sacred to the sun, to which the ancients very properly gave the name of Sunday, which returns after a certain period of revolution, must also be respected, so that there shall be no investigation of legal disputes on that day, either before arbitrators or judges, whether they have been appointed or voluntarily chosen.

This rule shall also apply to the days which We first saw the light, or which witnessed the origin of the Empire. During the fifteen days of the celebration of Easter, compulsory distribution of provisions and the collection of all public and private obligations shall be postponed.

Given at Rome, on the second of the *Ides* of August, during the Consulate of Timasius and Promotus, 389.

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

All employments, whether public or private, shall be suspended during the fifteen days of the Festival of Easter; still, every person shall have the right of emancipation and manumission during that time, and any proceedings relating to them are not prohibited.

Given on the *Kalends* of January, under the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

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

The Governors of provinces are notified that, so far as the torture of robbers, and especially of Isaurians is concerned, they must not think that any of the forty days of Lent, or the venerated Festival of Easter should be excepted, lest the betrayal of the designs of the criminals, which might be obtained by torture, may be deferred. This should the more readily be accomplished, as, during this time, there is greater hope of pardon by the Almighty, and the health and safety of many persons are secured.

Given at Constantinople, on the fifth of the *Kalends* of March, during the Consulate of Bassus and Philip, 408.

10. *The Emperors Leo and Anthemius to Armasius, Prætorian Prefect.*

We do not wish holidays dedicated to the majesty of God to be employed in public exhibitions, or be profaned by any annoyances resulting from collections.

(1) Hence We decree that Sunday shall always be honored and respected, and exempt from all executions. No notice shall be served upon anyone; no security shall be exacted; bailiffs shall remain quiet; advocates shall cease to conduct cases, and this day shall be free from the administration of justice; the harsh voice of the public crier shall be silenced; litigants shall have a respite from their disputes, and enjoy the interval of a truce; adversaries may approach one another without fear; repentance will have an opportunity to occupy their minds, they can enter into agreements and discuss compromises.

We do not permit persons who are at leisure during this sacred day to devote themselves to obscene pleasures; and no one shall then demand theatrical exhibitions, the contests of the circus, or the melancholy spectacle of wild beasts; and when Our birthday happens to fall on Sunday, its celebration shall be postponed. If anyone should think that upon this holiday he can venture to interest himself in exhibitions; or the subordinate of any judge, should, under the protest of any public or private business, violate the provisions of this law, he

shall suffer the loss of his employment and the confiscation of his property.

Given at Constantinople, on the *Ides* of September, during the Consulate of Zeno and Martian, 469.

TITLE XIII.

CONCERNING THE JURISDICTION OF ALL JUDGES AND THE COMPETENCY OF TRIBUNALS.

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

Our Procurator was not a competent judge in this matter where only the litigation of private individuals was concerned, but as you yourselves chose him, and he rendered a decision with the consent of your adversary, understand that you should not oppose what has been done with your acquiescence, since he has authority to decide between certain persons, and you, being well aware that he was not a competent judge in your case, nevertheless selected him.

What you suggest with reference to other similar judges will also apply to actions brought by a plaintiff, as well as to exceptions interposed by a defendant.

Given on the second of the *Ides* of January, during the Consulate of Messala and Sabinus, 215.

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

You ask that the order prescribed by law shall be transposed, and that the plaintiff shall not follow the residence of the defendant, but the defendant that of the plaintiff; for wherever the defendant has his domicile, or had it at the time when the contract was made, there alone he must be sued, even though he afterwards may have changed it.

Given on the sixth of the *Ides* of October ....

3. *The Same to Judea.*

The consent of private persons does not render him a judge who has no right to preside in court, and anything that he decides will not have any judicial authority.

Given on the sixth of the *Kalends* of January, during the abovementioned Consulate, 293.

4. *The Emperor Constantine to All the People of the Provinces.*

No one, after issue has been joined, can question the jurisdiction of an ordinary judge, and before a decision is rendered, no appeal can be taken to the Prætorian Prefect, the Count of the East, or any other superior magistrate, but where an appeal has been taken in accordance with law, it shall be brought before Our Tribunal.

Given on the *Kalends* of October, during the Consulate of Bassus and Ablabius, 331.

5. *The Emperors Arcadius and Honorius to Vincentius, Prætorian Prefect of the Gauls.*

In criminal matters, the accuser shall follow the residence of the defendant.

(1) Anyone who has submitted his case, whether it be a civil or criminal one, to a tribunal which has no right to hear it, or demands a military execution, if he is the plaintiff, shall be punished with the loss of the action which he has brought, and if he is the defendant, he shall be considered as condemned. Tribunes and deputies are hereby notified that they will be liable to capital punishment, if they permit their own, or any other prohibited military execution, to take place.

Given at Milan, on the fifth of the *Kalends* of January, during the Consulate of Lucius, 413.

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

We grant authority to commanders of the army to hear and determine even civil questions arising between military men, or a civilian plaintiff and a military defendant, especially when this is done with the consent of the litigants, and it appears that the military defendant cannot either be produced in court, or punished by his own judge, if he should be guilty.

Given on the fifth of the *Kalends* of May, during the Consulate of Lucius, 413.

7. *The Emperor Anastasius to Constantine, Prætorian Prefect.*

We consider that those act unjustly and rashly who, while known to exercise certain professions and occupations, attempt to evade the jurisdiction and authority of officials having supervision of the said professions or occupations. Wherefore, We order men of this kind not to reject the authority of such persons, on account of their military rank or the prerogatives of their office or dignity; but those who, under the law, belong to some military organization, or have formerly done so, or who claim any privilege, shall be compelled to obey such judges in public as well as in private cases, without interposing any exception, where their jurisdiction extends to the profession or occupation which the parties practice; with the exception of that of soldiers (as has already been stated); provided, of course, they obey the judges within whose jurisdiction the military or civil service in which they are engaged is situated.

Those who try to violate the provisions of this law shall be deprived of their military rank, or their civil honors, for being guilty of such an attempt.

TITLE XIV.

WHEN THE EMPEROR TAKES COGNIZANCE OF THE CASES OF MINORS, WIDOWS, OR OTHER PERSONS WORTHY OF PITY, THEY SHALL NOT BE COMPELLED TO APPEAR.

1. *The Emperor Constantine to Andronicus.*

Where anyone has obtained a Rescript from Us against minors, widows, or those who are worn out and debilitated by chronic disease, the above-mentioned persons shall not be compelled by any of Our judges to appear before Our tribunal; but, on the contrary, the case shall be tried in the province in which the litigant and the witnesses or documents are to be found, and every precaution shall be taken to prevent the adverse parties from being forced to leave the province. If, however, the said minors, widows, or other unfortunate persons should request Our tribunal to decide their cases, especially when they are in dread of the influence of some powerful individual, their adversaries shall be obliged to appear before Us.

Given at Constantinople, on the *Kalends* of July, during the Consulate of Optatus and Paulinus, 334.

TITLE XV.

WHERE IT IS NECESSARY TO PROCEED IN CRIMINAL CASES.

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

It is well known that proceedings in the case of crimes punishable by the laws, or in an arbitrary manner, should be instituted in the places where the offences were committed, or begun, or where the guilty parties may be found.

Given on the fourth of the *Nones* of October, during the Consulate of Dexter and Priscus, 194.

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

He who knowingly sells a freeman is guilty of the crime of kidnapping, and therefore when the judge having jurisdiction has been applied to by the person entitled to make complaint, he must take cognizance of the suit in the place where the man lives who you say sold a boy who was freeborn.

Given on the second of the *Nones* of February, during the Consulate of the Cæsars, 294.

Extract from Novel 69, Chapter I. Latin Text.

Where anyone has committed an offence in a province, or is a defendant in a case involving money or connected with crime, whether it has reference to boundaries, possession, ownership, hypothecation or anything else, or is implicated in some other matter, it is a well-established principle of law that he shall be tried where the act was committed, and the right is not barred by lapse of time. Therefore if both plaintiff and defendant are in the province, the case shall be heard there without the allowance of any privilege.

If he from whom I have suffered any injury is absent, I will be obliged to sue the person responsible for it or his curator, to whom time should be given to permit him to inform the principal in the case. If the latter himself should not appear, or send anyone to represent him, and he who was first sued is in court, he shall be condemned, as well as the party who refused to send a representative, and himself is guilty; for he will be liable out of his own property if the one who is present should not prove to be solvent.

When, however, he whose duty it is to represent the owner does not appear after having been summoned by the crier, he shall have judgment rendered against him, for the reason that his

contumacy is considered to take the place of his presence. But when the plaintiff fails to appear, and the defendant comes, or sends someone to represent him, the latter should be discharged and be reimbursed his expenses.

An exception will lie where the case is conducted as a public one, and the defendant has been notified by an Imperial Rescript to appear before the Council of the Emperor; or where this is done under the law having reference to appeals. The time of delay has been fixed by a new constitution at four months, according to the difference in places, when the province in which the action is brought is a neighboring one, or either or both of the parties have their domicile in the middle of it, the time will be four months. If the distance is greater, it will be six months. If either of the parties resides in Palestine, or Egypt, or in some other distant country, eight months will be sufficient. The term of nine months will be granted if either of them lives in the western or northern regions of the Empire, or in Lybia.

TITLE XVI.

WHERE AN ACTION TO OBTAIN POSSESSION MUST BE BROUGHT.

1. *The Emperors Valentinian and Valens to Festus, Proconsul of Africa.*

Where violence is alleged to have been employed, or temporary possession is demanded, the judge must decide the case against the party who interrupted the possession, in the place where the property is situated.

Given on the eighth of the *Kalends* of June, during the Consulate of Gratian and Dagalaiphus, 366.

TITLE XVII.

WHERE THE EXECUTION OF A TRUST SHOULD BE DEMANDED.

1. *The Emperors Severus and Antoninus to Demetrius.* There can be no doubt that the execution of a trust should be demanded in the place where the estate was left.

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

TITLE XVIII.

WHERE HE WHO PROMISED TO MAKE PAYMENT IN A CERTAIN PLACE SHOULD BE SUED.

1. *The Emperor Alexander to Heraclida.*

When anyone binds himself to make payment in a certain place, and he does not do so in full, if the judge was selected by the parties he can be sued in an action in another place, and the amount of extra expense incurred by the plaintiff as estimated by the judge shall be included in this action, on account of payment having been made in another place than where it was demanded.

Given on the sixth of the *Ides* of March, during the Consulate of Fuscus and Dexter.

TITLE XIX.

WHERE AN ACTION IN REM SHOULD BE BROUGHT.

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

An action *in rem,* should not be brought against the vendor, but against the possessor of the property in dispute. Therefore, it is useless for you to allege that he who claims the ownership should not bring suit against you, but against him from whom you obtained it, and this is because you assert that you are in possession, for if you should have notified the person who sold you the property, understand that he runs the risk of eviction, for the former jurisdiction

should not be changed when both the plaintiff and possessor reside in the same province, because you allege that he from whom you obtained the property resides in another.

Given on the *Ides* of April, during the Consulate of the abovementioned Emperors, 293.

2. *The Emperor Constantine to All the Inhabitants of the Provinces.*

When anyone who possesses immovable property, under any title whatsoever, has an action *in rem* brought against him, he must immediately state in court who the owner of the property is, so that, whether he lives in the same town, in the country, or in another province, a certain number of days may be fixed by the judge during which he can be notified, and he himself either come or send an attorney to the place where the land is situated, in order to defend the title of the plaintiff. If, however, after the time granted has elapsed, he should prefer to confess judgment, the case will be considered as having been begun on the day on which the possessor was summoned to court, which will have the effect of interrupting the prescription of long time. As the owner of the property did not appear after he had been given time to do so, the judge shall take care that he shall be summoned in accordance with the provisions of the law, and if he still remains of the same mind, after having examined the matter summarily, the judge shall not delay to place the plaintiff in possession of the property, the right of the absent party with reference to the principal question always being reserved.

Given on the tenth of the *Kalends* of August, during the Consulate of Bassus and Ablabius, 331.

3. *The Emperors Valentinian, Theodosius, and Arcadius.*

The plaintiff follows the residence of the defendant, whether the action be a real or a personal one, but We order that the real action shall be brought against the possessor in the place in which the property in dispute is situated.

Given on the tenth of the *Kalends* of July, under the Consulate of Arcadius and Bauto, 385.

TITLE XX.

WHERE AN ACTION RELATING TO AN ESTATE SHOULD BE BROUGHT, AND WHERE TESTAMENTARY HEIRS SHOULD DEMAND TO BE PLACED IN POSSESSION OF THE SAME.

1. *The Emperors Valerian and Gallienus to Messala.*

The heirs should demand to be placed in possession of the estate in the place where you allege that it is situated. The contest should be decided where the party sued has his domicile, or wherever the property belonging to the estate may be.

Given on the seventh of the *Kalends* of May, during the Consulate of Secularus and Donatus, 261.

TITLE XXI.

WHERE AN ACTION TO COMPEL THE PRODUCTION OF EITHER PUBLIC OR PRIVATE ACCOUNTS SHOULD BE BROUGHT.

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

Anyone who has administered the affairs of another, either as a guardian or in any other fiduciary capacity, must render an account of the same where he transacted the business.

Given on the seventh of the *Kalends* of August, during the Consulate of Annibalio and Asclepiodotus, 292.

2. *The Emperors Honorius and Theodosius to Macedonius, Military Commander.*

No one who has been discharged from the army, and, after having returned to private life, is

notified to render an account by a member of the corps in which he served or which he himself commanded, because of some business which he attended to while in the service, can avail himself of an exception; for everyone must defend himself before a military tribunal in all public matters of this kind, which he had charge of while he was a soldier, or where he is called upon to render a military account because he is alleged to have taken advantage of his comrades; and, in an investigation of this kind, the proceedings must be regular, and the witnesses heard, and the proper documents produced.

TITLE XXII.

WHERE SUITS WITH REFERENCE TO THE CONDITION OF PERSONS SHOULD BE BROUGHT.

1. *The Emperor Alexander to Aurelius Aristocrates.*

Your female slave, while in your service, fled and betook herself to another province, and as she asserts that she is free, it will not be unjust to compel her to try her case in the place from whence she fled; and therefore the Governor of the province who administers justice in that locality must take care to send her back to the province in which she served as a slave, but she should not be heard in the place where she was seized.

Given on the thirteenth of the *Kalends* of September, during the Consulate of Pompeianus and Pelignus, 232.

2. *The Emperor Decius to Felix.*

It is known to all persons that Our Procurators cannot take cognizance of cases in which the civil condition of persons is involved.

Given on the *Kalends* of December, during the Consulate of Decius, Consul for the second time, and Gratus, 251.

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

If you are in the possession of freedom, as the plaintiff must always follow the residence of the defendant where questions of status are involved, this action, which relates to liberty, must be brought in the place where the alleged female slave resides, even though the plaintiff may be invested with senatorial dignity.

Given on the second of the *Ides* of March, during the Consulate of the above-mentioned Emperors, 297.

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

If anyone who is in slavery asserts that he is free, it is an undoubted rule of law that the action to establish his status must be brought where the party who alleges that he is his master has his domicile.

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

5. *The Same, and the Cæsars, to Diogenes, Governor of the Islands.*

It has already been established by Us that where any case involving freedom and slavery arises, in the provinces, between the Treasury and private persons, it must be sent to the Steward or Superintendent of Our Private Affairs, that is to say, to the place where the controversy originated. If, however, free birth is involved, it should be investigated by the Governor of the province.

Given on the fourth of the *Nones* of August, during the Consulate of the Cæsars, 294.

6. *The Emperor Justinian to Menna, Prætorian Prefect.*

We order that in actions in which the question to be decided is whether someone is freeborn or a freedman, the prescription of five years (after which term the ancient laws declare that an Imperial Rescript is necessary), shall hereafter cease to have effect; and proceedings of this kind, after the above-mentioned term has elapsed, like others which are heard in the provinces before the Governors, shall, in this Fair City, be decided by competent magistrates of superior jurisdiction.

We decree that this rule shall be observed, whether the party is of illustrious rank or servile condition.

Given on the third of the *Nones* of August.

TITLE XXIII.

WHERE ANYONE BELONGING TO THE CURIÆ, OR THE COURT ATTENDANTS, OR OF ANY OTHER CONDITION, CAN BE SUED.

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

If anyone belonging to the *curiæ* or attached to the office of a judge, or to any other body, should be arrested in a province by those from whom he was fleeing, without any notice having been received from the magistrate from whom he obtained his position by means of corrupt practices, and he is tried before the judge who has jurisdiction in the place where he was arrested, without any attention being paid to the exception based on official privilege to which he is not legally entitled, and he is convicted by satisfactory evidence, he shall again be placed in the class which he abandoned.

Given at Milan, on the twelfth of the *Kalends* of August, during the Consulate of Cæsarius and Atticus.

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

By this permanent law We decree that persons belonging to the *curiæ,* or those who are said to be employed for the service of the courts, or are members of other bodies, cannot plead an exception to the provincial tribunal. The same rule applies to those who are convicted of extortion or peculation, excepting such as form part of the armed soldiery, or can defend themselves by a special Rescript of the Emperor.

The name of their *curiæ* or cohort should be required of military men, in order that the Governor of the province may send them to your tribunal, to their commander, or to some other competent authority, and that those who are demanded as liable may be delivered up to the tribunals of the province, and may expect the result of the trial where the laws direct questions of this kind to be determined.

No one shall be permitted to plead the exception where questions of public duties or debts are involved, except those specially empowered to do so.

We also decree that others cannot reject the jurisdiction of your illustrious tribunal, or that of the Governors of the provinces, in any matter whatsoever, so that all who obstinately attempt to violate such a very salutary law as this may know that sentence for contumacy can be passed upon them by the Governors of provinces.

Given on the twelfth of the *Kalends* of October, during the Consulate of Cyrus, 441.

TITLE XXIV.

WHERE SENATORS OR PERSONS OF ILLUSTRIOUS RANK MAY BE PROCEEDED AGAINST EITHER CIVILLY OR CRIMINALLY.

1. *The Emperor Constantine to Octavianus, Count of the Spains.*

Anyone whosoever, that is not of illustrious but of noble rank, who ravishes a virgin, removes

landmarks, or is caught in the act of committing any offence, or crime, shall be tried in the province in which he perpetrated it, and cannot avail himself of the jurisdictional exception, for the commission of the offence destroys the effect of all privileges of this kind.

Given on the day before the *Nones* of December, during the Consulate of Gallicanus and Bassus.

2. *The Emperors Valens, Gratian, and Valentinian to the Senate.*

In pecuniary cases, senators, whether they reside in this Fair City or in its suburbs, shall be subject to the jurisdiction of the Prætorian Tribunals and the Urban Prefecture, as well as to that of the Master of the Offices, whenever We have directed this to be done. If, however, they reside in the provinces, they shall answer wherever their domicile is, or where the greater part of their property is situated and they pass the most of their time.

Given on the *Kalends* of March, during the Consulate of Valentinian and Nepterius, 390.

3. *The Emperor Zeno to Arcadiiis, Prætorian Prefect.*

If persons who are now, or have formerly been of patrician rank, or who have administered the Prætorian or Urban Prefectures of this great City, men of consular dignity, whether they have obtained it in an ordinary manner or by the special favor of the Emperor, those who have become illustrious through the exertion of military command, those who have performed the duties of Master of the Offices, Quæstor, or Imperial Chamberlain, and, having retired, have been invested with senatorial rank, those whom We have appointed to govern the Imperial Household, and those to whom We have committed the care of Our treasures, or of the private affairs of Our most August Consort, after having relinquished their administration, should be accused of any public or private offence (which cannot be defended by an attorney), either in this Fair City or in the provinces, no matter where they may reside, We order that no judge shall have jurisdiction of such cases, but that cognizance of the same shall belong to Us alone, or to him to whom by an Imperial Rescript We have delegated Our authority to hear actions of this kind; so that they may be tried before such a judge, without the aid of any office or order, according to the custom and practice of the Imperial regulations, and moreover, without observing the time allowed for the institution of proceedings; and Our Masters of Requests, having complied with the ordinary formalities, such cases shall be heard by them. In order that the person accused of crime may not suffer any injustice before conviction, he shall have the right to be seated in a certain part of the court, which is lower than that occupied by the judge, but higher than that where his accusers are stationed.

(1) We have considered that the privileges attaching to such great offices should be increased to the extent that, after the crime has once been proved, We do not grant authority to anyone whom We have appointed as judge to decide with reference to either person or property, but these appointees, although they hear the cases instead of the Emperor, shall only be permitted to send Us a report of the proceedings after the crime which has been brought before their tribunal has been established, as the right to punish persons of such exalted rank is only vested in the Emperor.

It is, however, certain that in case the defendant should be acquitted, the false accusation can be punished in conformity with the laws, without consulting Us, unless the accuser is of a lower rank than the defendant; for, in this instance, it is not unreasonable that the Imperial authority should be consulted as to the punishment of a false charge made by an accuser of this description.

(2) We also decree that where men of illustrious rank, who reside in this Renowned City, and who, without having conducted any administration, have been decorated with honorable titles (even though they may have deserved such a privilege at Our hands), shall, nevertheless, be considered to have exercised administrative functions, and shall be subject to the jurisdiction of your magnificent tribunal, and to that of the illustrious Urban Prefecture; and also to that of

our distinguished Master of the Offices (whenever a special order committing the same to him has been issued by Us), in criminal cases, so that persons of this kind, who have been accused, cannot claim for themselves the right to be seated during their trials. The judges themselves are hereby notified that they cannot decide anything with reference to said parties or their property, after the crimes have been proved, and before they have referred the cases to Us.

(3) Whenever men of illustrious rank residing in the provinces (this, however, does not apply to those who are not appointed by Us, or hear cases in Our stead), are accused of criminal offences, they shall have a right, while the trial is in progress, to sit in the places usually occupied by magistrates, and if their guilt should be established, the judges must abstain from passing sentence involving their persons or property, as they are required to report to Us.

Moreover, where the accusers have been proved to have brought false charges, the provincial judges shall not delay their punishment; unless, as has previously been stated, those who were convicted are equal in rank to him whom they accused.

Given at Constantinople, . . .

TITLE XXV.

IN WHAT CASES SOLDIERS CANNOT AVAIL THEMSELVES OF AN EXCEPTION ON THE GROUND OF JURISDICTION.

1. *The Emperors Theodosius and Valentinian to Florentine, Prætorian Prefect.*

We order that all persons attached to the domestic service of the Emperor, as well as those who transact his affairs, and any who profess to belong to some corps, or to be of a certain rank, shall, so far as public duties are concerned, be responsible to the Governors of the provinces, and shall have no right to avail themselves of the exception on the ground of jurisdiction, if those who are collecting the public debts should attempt to do so. Moreover, We desire that where men occupied in the transaction of private business, who are either members of the provincial association, or are protected by their occupation as farmers of the revenue, but are not enrolled in the army, have rented land belonging to the Emperor, or to powerful persons, or to anyone else, no matter what his status may be, shall be subjected to the jurisdiction of the same judges, unless they can prove that they have obtained leave of absence for a year for the purpose of attending to their own affairs.

The same rule shall also be observed with reference to those who have obtained the privilege of trading as soldiers; namely, that they shall only be responsible to the Governor of provinces.

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

TITLE XXVI.

WHERE CASES RELATING TO THE PUBLIC TREASURY OR THE IMPERIAL PALACE, OR TO PERSONS ATTACHED TO THE SAME, SHALL BE BROUGHT.

1. *The Emperors Severns and Antoninus to Dioscorus.*

Who is ignorant of the fact that the question of avenging the death of a deceased person should not be investigated by Our Procurators, nor any property claimed by the Treasury, before proof of the crime has been established in the presence of the judge who has a right to impose punishment upon the parties, when convicted? When persons guilty of the homicide are dead, it is clear that reason will permit the action to be brought before the said Procurators.

Given on the seventh of the *Ides* of May, during the Consulate of Lateranus and Rufinus, 198.

2. *The Same to Arista.*

We do not understand why you desire cases belonging to the jurisdiction of Our Procurators to

be sent to be heard by the Proconsul; for if it is suspected that your father killed himself through fear of punishment, and, for this reason, his property should be confiscated to the Treasury, in this instance, there is no question of crime or the punishment of the deceased, but merely one involving his estate.

Given on the twelfth of the *Kalends* of October, during the Consulate of Aper and Maximus, 208.

3. *The Emperor Antoninus to Heliodorus.*

As My Procurator, who does not perform the functions of the Governor of a province, cannot exact the penalty for abandoning an accusation; so, he cannot, by his decision, order it to be paid.

Given on the tenth of the *Kalends* of September, during the Consulate of Lætus and Cerealis, 216.

4. *The Emperor Alexander to Maxima.*

As you allege that you have purchased certain lands belonging to an estate from My Procurator, you must necessarily pay the price of the same, but as you say that you have purchased and delivered the said lands to the persons who directed you to do so, and you bring suit against them, My Procurator shall decide the case if you select him for that purpose, so that you can recover the purchase-money due to you, and the interest owing to the Treasury may be paid.

Given on the fourth of the *Ides* of October, during the Consulate of Maximus and Paternus, 224.

5. *The Emperor Constantine to Ursus.*

The Imperial Accountant shall decide all cases having reference to the Treasury, and all extortion is prohibited.

Given at Constantinople, on the *Nones* of February, during the Consulate of Felicianus and Titian, 337.

6. *The Same to Italicus.*

When anyone thinks that an action should be brought against a tenant who has leased Our property, the case should be referred to the illustrious Count of Private Affairs, who must render a decision in accordance with his reputation as a magistrate, and with his duty.

Given during the *Kalends* of February, . . .

7. *The Same to Bulephorus, Imperial Accountant.*

We decree that you shall investigate any controversies arising between the tenants of the Emperor and those of private persons, for generals and other commanders of soldiers and camps, as well as Governors of provinces, must abstain from summoning and bringing tenants into court.

Given on the sixteenth of the *Kalends* of March, during the Consulate of Licinius, 318.

8. *The Emperor Constantine to Taurus, Prætorian Prefect.*

When a tenant, or a slave belonging to Our private estate, is said to have perpetrated an act against the public order, he shall be compelled to appear before the tribunal of the Governor of the province, so that the case between him and his accuser may be tried in the presence of Our Accountant or the Steward of the Imperial Household, and if the crime is proved he shall be punished with the severity prescribed by the law.

Given on the fifth of the *Nones* of March, during the Consulate of Arbitio and Lollianus, 355.

9. *The Emperors Valentinian and Valens to Philip.*

Let all persons be assured that, if anyone should be annoyed by some injury caused by the Steward of Our Private Affairs, or by Our Procurator, complaint of their insults or depredations shall be brought before your tribunal, or that of the Governor of the province, and he can, without fear, have recourse to public vengeance.

When the offence is established by positive evidence, We order and decree that he who has had the audacity to attempt anything of this kind against anyone residing in the province shall be publicly burned alive.

Given on the third of the *Nones* of July, during the Consulate of the above-mentioned Emperors, 368.

10. *The Emperors Gratian, Valentinian, and Theodosius to Polemius, Prætorian Prefect.*

No one of those employed in the office of the Imperial Accountant, either for the collection of taxes or the drawing up of documents, shall be brought before any other tribunal, unless an accusation formulated in accordance with law is filed against him.

Given on the third of the *Kalends* of May, during the Consulate of Arcadius and Bauto, 385.

11. *The Emperors Theodosius and Valentinian to Artaxus, Imperial Chamberlain.*

We order by this law that if any tenant, lessee, or slave belonging to Us, either accuses, or is accused in a criminal case, or is a party to a civil suit, the trial of the same shall not take place before any tribunal but yours, and that of the distinguished Count of Our Household, and that no exception on the ground of want of jurisdiction shall be permitted.

Given on the fifth of the *Ides* of April, ...

TITLE XXVII.

WHEN ANYONE MAY BE PERMITTED TO AVENGE HIMSELF OR THE PUBLIC, WITHOUT APPLYING TO THE JUDGE.

1. *The Emperors Valentinian, Theodosius, and Arcadius to the People of the Provinces.*

We grant to all persons full authority to defend themselves, so that where any soldier or nocturnal depredator enters upon the land of *a* private person, or stops him on the public highway, intending to attack him, everyone shall have permission to immediately subject him to proper punishment, and he shall suffer the death which he threatened, and undergo what he expected to inflict, for it is better to take advantage of the opportunity than to obtain retribution after death. Therefore, We authorize you to avenge yourselves, and We bring within the terms of the Edict those whom it would be too late to punish by a judgment; hence let no one spare a soldier, who must be encountered with weapons in the same manner as a thief.

Given on the *Kalends* of July, during the Consulate of Tatian and Symmachus, 391.

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

We hereby grant legal authority to the inhabitants of provinces to arrest deserters, and when they dare to resist, We order them to be punished immediately, wherever they may be. All persons are notified that, for the sake of the common peace, they have a right to inflict public vengeance upon robbers, and deserters from the army.

Given on the fifth of the *Nones* of October, during the Consulate of Theodosius and Rumoridius, 391.

TITLE XXVIII.

CONCERNING INOFFICIOUS WILLS.

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

When a son desires to attack the will of his mother, on the ground of its being inofficious, it will not be improper for him to bring suit against the person who has received the estate under the terms of a trust, as the beneficiary of the same is fully as liable as if he held it as heir, or possessor.

Given on the fifth of the *Kalends* of July, during the Consulate of Falco and Clarus, 194.

2. *The Same to Lucretius.*

Although you state that, being about to attack the will as inofficious, you have obtained possession of the estate, it is, nevertheless, unjust that the appointed heirs should be deprived of possession.

Given on the fourth of the *Kalends* of December, during the Consulate of Dexter and Priscus, 197.

3. *The Same to Januarius.*

Where a mother, after having appointed her two sons her heirs, had another son after making her will, as she could have changed it, but neglected to do so, the third son, having been passed over without good reason, can institute proceedings to declare the will inofficious. But as you allege that the woman died in child-birth, the injustice of the unexpected event should be rectified by the conjecture of maternal affection. Wherefore We hold that an equal share of the estate should be given to your son, against whose claim nothing can be alleged except the fate of his mother, just as if she had appointed all of her sons her heirs. Where, however, the appointed heirs are strangers, then he will not be prevented from bringing suit to declare the will inofficious.

Given on the eighth of the *Kalends* of July, during the Consulate of Lateranus and Rufinus, 198.

4. *The Same to Soterius and Others.*

As you have obtained your freedom under the terms of a trust, and in accordance with a decree of the Prætor, and as you have afterwards had children; although the will of your master may, upon the application of your son, have been pronounced inofficious, it is not just for any question to be raised with reference to your freedom.

Given on the sixth of the *Ides* of March, under the second Consulate of Antoninus and Geta, 106.

5. *The Emperor Antoninus to Helius.*

If your father, after having brought an action, or after having made up his mind to attack the will of your brother as inofficious, should die, leaving you his heir, you will not be prevented from proceeding with the case, which he had begun, in any way whatsoever.

Given on the second of the *Nones* of October, during the Consulate of Gentian and Bassus, 212.

6. *The Same to Ingenuus.*

When the question is asked whether sons can attack the will of their father as inofficious, it should be ascertained whether, at the time of his death, the testator left them the fourth part of his estate.

Given at Rome, on the seventh of the *Kalends* of July, during the Consulate of the two Aspers,

213.

Extract from Novel 18, Chapter I. Latin Text.

It is provided by the latest law that, where there are four sons or less, they can take the third part of the estate of the deceased, but if there are more than this, they will have a right to half of what is left no matter under what title, and this share shall be equally divided among them; and that the children cannot in any way be defrauded of the usufruct by their ascendants.

Extract from Novel 92, Chapter I. Latin Text.

Therefore, if a parent has made an unreasonable donation to one or several of his or her children, each one will be entitled under the Falcidian Law to as much of the estate as would have been due to him before the donation was made. It is, moreover, permitted to him who received it to abstain from laying any claim to the estate, provided he makes up the shares of the others out of the donation, if any necessity exists for doing so.

7. *The Same to Secundus.*

You should not be ignorant that the granddaughter of the deceased can institute proceedings to declare his will inofficious, even though her father may have died emancipated.

Given at Rome, on the sixth of the *Kalends* of July, during the Consulate of Lætus and Cerealis, 216.

8. *The Emperor Alexander to Florentinus.*

The distribution of their estates made by parents between their children should not be set aside, provided those who know that they were entitled to succeed to the deceased, if he died intestate, have obtained their fourth by the will of their father.

(1) He who has accepted the will of the deceased, either through having paid the indebtedness of his father in proportion to his hereditary share, or by settling it in any other legal manner, cannot, if he is over twenty-five years of age, attack as inofficious his father's will, which he accepted, even if less was bequeathed to him than he was entitled to.

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

9. *The Same to Romana.*

It is a positive rule of law that children cannot attack as inofficious the will of a soldier, a centurion, or a tribune, whether it was made in accordance with military or civil law.

Given on the *Ides* of May, during the Consulate of Maximus, Consul for the second time, and Ælianus, 224.

10. *The Same to Quintinian.*

If the property of the heirs of Quintinian (who you say was your father, and against whose representatives you are about to bring an action to declare the will inofficious), belonged to the Treasury by the right of succession, or it holds the property of Quintinian, as being without an owner, you can bring your action before Our Procurator.

11. *The Same to Ingenuus.*

Anyone who has not been sentenced to fight in the arena, but has voluntarily selected that profession, can succeed to an estate as heir at law, as his rights as a citizen and a freeman remain intact. If, however, his father made a will, the son cannot call it in question as being inofficious, nor shall he be entitled to possession of the estate, for the father very properly decided that his son was unworthy to succeed him, unless he himself was of the same condition.

Given on the fourth of the *Kalends* of January, during the Consulate of Julian, and Crispinus, 225.

12. *The Same to Licinianus and Diogenes.*

If the father of the girl whose curator you allege that you are, after having appointed heirs, that is to say, his son to half his estate, his daughter to a third, and his wife to the remaining sixth, charged his children that, if either of them should die before reaching the age of twenty-five years, his or her share should go to the survivors, and also charged his wife to give to his children any part of the estate which might come into her hands, you should not, against the just wish of the testator, bring the action of calumny to declare the will inofficious, as by a restitution of this kind under the trust, the share of the mother, as well as that of the brother, will come into the hands of your ward.

Given on the *Nones* of December, during the Consulate of Alexander, Consul for the third time, and Dio, 236.

13. *The Emperor Gordian to Prisciamts.*

Two heirs having been appointed, one to five and the other to seven-twelfths of an estate, you allege that you brought a proper action against the one who was appointed heir to seven-twelfths, but that you were defeated by the other, and consequently the will is broken, so far as that portion of it is concerned, as he who is entitled to the estate *ab intestato* will succeed, and neither the legacies nor the trusts will be due, although the grants of freedom will take effect directly, and the trusts should be executed.

Given on the third of the *Kalends* of February, during the Consulship of Gordian and Aviola, 240.

14. *The Same to Priscus.*

Where a party litigant has been unable to prove the complaint of inofficiousness brought against a will, it has been decided that he is not barred from declaring it to be forged.

The same rule should be observed where, on the other hand, someone has attacked a will as having been forged, and afterwards desires to bring suit to declare it inofficious.

Given on the sixth of the *Kalends* of December, during the Consulate of Gordian and Aviola, 240.

15. *The Emperor Philip to Aphrodisia.*

It is a settled principle of law that a daughter who has been passed over by her mother cannot aspire to the succession of the latter without having previously instituted proceedings to declare the will inofficious.

Given on the fifth of the *Kalends* of August, during the Consulate of Philip and Titian, 246.

16. *The Emperors Valerian and Gallienus, and the Cæsar Valerian, to Theodora.*

Where persons over the age of twenty-five years bring two actions attacking a will, one for the reason that it was not drawn up according to law, the other that it was inofficious, although it may have legally been executed, the prescription of five years, dating from the time of the first judgment, does not run as long as one of the actions remains to be tried.

Given on the *Ides* of August, under the Consulate of Tuscus and Bassus, 259.

17. *The Emperors Carinus and Numerianus to Flora.*

When you state that your son, having passed you over, appointed his sister his heir, you can bring suit before the Governor of the province to declare the will inofficious.

Given on the second of the *Ides* of February, during the Consulate of Carinus, Consul for the

second time, and Numerian, 284.

18. *The Emperors Diocletian and Maximian to Faustina.*

As you say that you have not violated your filial affection, but were unwilling to separate from your husband whom you had married, and because your father was angry and irritated on account of this, he disinherited you, you will not be prevented from filing a complaint against the will as being inofficious.

Given on the *Kalends* of May, under the Consulate of Maximus, Consul for the second time, and Aquilinus, 285.

19. *The Same to Apollonarius.*

If you think that your daughter should be excluded from your estate because she lives a dishonorable and shameful life, and if you have not been influenced by sudden anger to take this course, but your hatred is founded upon reason, you will be free to make your last will in accordance with your wishes.

Given on the fifteenth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 293.

Extract from Novel 115, Chapter III. Latin Text. Where, however, you postponed the marriage of your daughter after she had reached the age of twenty-five years, and she then committed sin with her body; or if, without your consent, she married a husband who is free, you cannot disinherit her.

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

Where a daughter, after her father's death, married with the consent of her mother, and, living on good terms with her husband, did not offer any reason for complaint, after her mother had repented of having consented, she cannot be compelled by law, whether still married, or a widow, to be subject to the momentary caprices of her mother.

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

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

Nephews or nieces, or paternal and maternal uncles or aunts will, in vain, attack a will as inofficious, as no relative in the collateral line, with the exception of a brother or sister, is permitted to do so; but they are not prevented from bringing a criminal accusation alleging that the will is forged.

Given during the Consulate of the Cæsars, 294.

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

If your husband, by his will, appointed you heir to his entire estate, and disinherited a daughter who was under his control, such a disinheritance will not be permitted by law, where nothing has been left to her, and she did not give him any just cause for offence; for there is no doubt that if she should attack the will as inofficious, she can obtain the entire estate.

Where, however, she has already obtained it, or afterwards brings suit to recover it, she must surrender to you whatever her husband owed you at the time of his death.

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

23. *The Same, and the Cæsars, to Philip and Others.*

As you acknowledge that you prevented your mother from making a will in the presence of witnesses, you have evidently given just cause for offence.

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

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

The will of a soldier, who is a son under paternal control, disposing of his *castrense peculium,* cannot be set aside, either by his father or his children, on the ground of its being inofficious.

Given at Nicomedia, on the third of the *Nones* of December, during the Consulate of the Cæsars, 294.

25. *The Same, and the Cæsars, to Menedotus.* It has been established by law that a mother, who was suspicious of the morals of her husband, could consult the interests of her children by appointing them heirs, under the condition that they were emancipated by their father; and that if, after this agreement was made, the father did not comply with the condition, he could not obtain possession of the property in accordance with the terms of the will, nor could he bring suit in the name of his children to set aside the will on the ground of inofficiousness, as the mother had not injured them in any way, but had rather intended to provide for them; and therefore he should deliver the estate to them.

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

When a son has been appointed heir to three-twelfths of an estate, it is certain that a direct substitution can legally be made for him by his father, if he should die before the age of puberty.

Given at Nicomedia, on the fifth of the *Kalends* of September, during the Consulate of the Cæsars, 302.

27. *The Emperor Constantine to Verinus.*

Uterine brothers and sisters are absolutely prohibited from bringing an action for the purpose of proving the will of a brother or sister to be inofficious. Blood-relatives, however, whether agnation exists or not, can institute proceedings on the ground of inofficiousness of the will of a brother or sister, where the appointed heirs are, even to a slight extent, branded with infamy or dishonor, or where freedmen have obtained this great favor from their patrons, being at the same time wholly undeserving of it, except where a slave has been appointed a necessary heir.

28. *The Same to Claudius, Governor of the Province of Dacia.*

Children who institute proceedings to declare the wills of their parents inofficious must show that they have constantly manifested toward them all the respect which natural affection demands, unless the appointed heirs are able to prove that the children have been ungrateful to them. Where a mother attacks the will of her son as inofficious, We order diligent inquiry to be made whether the latter had any just cause for complaint against his mother, since he could thus exclude her from the benefit of his last will, as he did not even leave her his funeral expenses, or the amount to which she legally was entitled, so that, the will having been set aside, she may obtain the succession of the estate by law. If, however, she had annoyed her son by dishonorable acts and indecent machinations, and either openly or secretly had laid snares for him, or been on terms of friendship with his enemies, and had so conducted herself with others that she rather appeared to be his enemy than his mother, and these facts are established, she will be compelled to accept the will of her son, even against her consent.

Given on the third of the *Ides* of February, during the Consulate of Crispus and Constantius-Cæsar, Consuls for the second time, 321.

29. *The Emperor Zeno to Sebastian, Prætorian Prefect.*

As the new constitution of the Divine Leo directs that an antenuptial donation shall be given to a son, just as a dowry is given to a daughter, We order that such donations shall be charged to the fourth part to which the son is legally entitled.

In the same way, when a father or mother gives a dowry for his or her daughter, or an ante-nuptial donation for their son, or a paternal grandfather or grandmother gives one for his or

her granddaughter or grandson, or a paternal or maternal great-grandfather or great-grandmother gives one for his or her great-granddaughter or great-grandson, this dowry or donation shall not be bestowed upon the parties, but shall be deducted to the fourth part to which each is legally entitled, if it has been taken from the property belonging to the estate which is in dispute; and We desire this to be charged in this manner for the purpose of preventing the will from being attacked as inofficious.

Given on the *Kalends* of May, during the second Consulate of the same Emperor, 321.

30. *The Emperor Justinian to Menna.*

With the intention of treating the wills of testators with every consideration, We think, nevertheless, that the innumerable pretexts for setting them aside should be disposed of, in certain cases in which it was formerly customary for proceedings to be instituted for the purpose of declaring the wills of deceased persons inofficious, or of annulling them in some other way; but, by this certain and established law, provision is made for the interests of testators and their children, as well as for those of other parties who have a right to bring this same action; so that whether it is or is not stated in the will that the legitimate portion shall be paid, the will shall be valid; and it shall, moreover, be lawful for those persons who have the right to attack it as being inofficious or to set it aside in some other way, to exact what is lacking to them to make up their legitimate shares, without their being subjected to any burden or delay; provided that they have not legally been denounced as ungrateful, that is to say, if the testator did, not declare that they had manifested ingratitude towards him.

If, however, he did not allude to them as being ungrateful, his heirs shall not be permitted to accuse them as such, and to introduce a question of this kind.

We establish these rules with reference to persons whom testators have not mentioned as being ungrateful, and to whom they have left a certain amount of their estates, either as legacies or trusts, even though the amount may be less than what they are entitled to by law.

(1) Where, however, they have passed over any such person who was already born, or who was conceived before the will was made but was still unborn, or to whom absolutely nothing was left on account of his being disinherited, or having been otherwise unfavorably mentioned, then We order that the ancient laws shall apply, and that no innovation or change shall be caused by the present enactment.

(2) It is clear that whatever property has been obtained as profit from the estate of the deceased through an employment in the army should be deducted from the legitimate shares of the children and other persons who formerly had a right to institute proceedings to declare a will inofficious, and We wish this to be the case, and that, where a right of this kind can be sold, or if the soldier should die while in the service, the value of the same shall descend to his heirs. Therefore, in order that the value of the right which a soldier may obtain by the death of the testator may be ascertained, and as much may be charged to his legitimate share as is decided should be given, if he who acquired the property of the testator had died while holding his rank in the army, those officials of our Sacred Palace who are designated *silentarii* being alone excepted, to whom are granted special privileges, not only with reference to other matters, but also concerning money given by their parents for the purpose of obtaining the above-mentioned military employment; among which privileges we direct shall be included that such a donation shall not be deducted from their lawful shares of an estate.

We desire that the preceding regulations shall apply to all other persons.

Given at Constantinople, on the *Kalends* of June, under the Consulate of Justinian, Consul for the second time, 528.

31. *The Same to Menna, Prætorian Prefect.*

We order that the provisions which We have recently made for the purpose of protecting wills

shall not be readily abrogated, under the pretext that less than the amount fixed by the Falcidian Law has been left to persons who, in accordance with former laws, had a right to institute proceedings to declare a will inofficious; and that wills shall not be placed in danger, but whatever is lacking to a legitimate share, that is to say, to the fourth part of an intestate succession, shall only be contributed, those persons being excepted to whom nothing was left by will, with reference to whom the rights conferred by former laws shall remain unimpaired.

We order that these regulations shall also apply to wills which are not in writing.

Given on the second of the *Ides* of December, during the Consulate of Our Lord Justinian, Consul for the second time, 328.

32. *The Same to Menna, Prætorian Prefect.*

As We have established by former enactments that, if less than their legal shares are left to persons who could, under the ancient laws, bring suit to declare a will inofficious, it shall be made up to them, in order that the will may not be set aside on the ground that a smaller sum has been left them than they were entitled to, We think it should be added to the present law that, if the rights of those who formerly could bring the above-mentioned action appear to have been impaired by any conditions, delays, or dispositions which may cause any delay, diminution, or burden, the said conditions, delays, or dispositions causing such diminution or burden should be abolished, and that the matter should proceed just as if none of these things had been inserted into the will.

Given on the second of the *Kalends* of April, during the fifth Consulate of Decius, 529.

33. *The Same to Demosthenes, Prætorian Prefect.*

Where anyone, by his will, leaves the greater portion of his estate to one of his children, and the small residue to another, or to others, in order that there may be no ground for an action to declare the will inofficious, and that what is left to the heirs either by way of inheritance, or as a legacy or trust, may take the part of the share to which they are entitled by law, if he who obtains the smaller portion is willing to accept it, and the one who has been left the larger one (whether there be one alone, or several), refuses to deliver what the others are entitled to, without contention or delay, but compels them to go into court, and causes many and various disputes to arise with reference to the same, and, after a long lapse of time, reluctantly surrenders the property in compliance with the judgment, We intend that such cruelty shall be punished by a suitable penalty; hence, where a case of this kind occurs, the offender shall not only be condemned to relinquish what the testator wished him to give up, but also the third part of an equal amount which was left by will, which he shall be compelled to surrender under all circumstances, in order that his avarice may be punished by the power of the law; and all other matters which have been included in the same will, whether it be written or not, shall be carried into effect as therein provided.

(1) We have addressed Ourselves to the promulgation of this law for the purpose of remedying the injustice of former legislation, and that the former objectionable rule, which Julius Paulus mentions in his Book of Questions, may no longer be a source of reproach. For he stated that a child could not be accused by its mother of being ungrateful, and could not, for this reason, be excluded from her estate, unless she did so through dislike to her husband, by whom the said child was begotten; and We considering it to be unjust that anyone should suffer from hatred entertained toward another, order that this rule shall be abolished; and We do not permit any reason of this kind to be advanced either against children of tender age, or against others of any age whatever, as a mother can leave her estate to her son under the condition of his being emancipated, and, in this way, gratify her aversion to his father, and not injure the rights of her child, or show herself lacking in natural affection, for it seems to Us to be cruel for anyone to be considered ungrateful who has not yet the power to form an opinion.

Given on the twelfth of the *Kalends of* October, during the Consulate of Decius, Consul for

the fifth time, 529.

34. *The Same to John, Prætorian Prefect.*

Where anyone disinherits his son, and appoints a foreign heir, but leaves a grandson by the son aforesaid, who is either already living or as yet unborn, and while the appointed heir is deliberating whether to accept the estate, the disinherited son should die without having made, or prepared to make a claim for the estate on the ground that the will is inofficious, he deprives the grandson of all opportunity for relief, as the father of the latter, at the time of his death, did not leave him any recourse against the will of his father, because after the estate was entered upon by the foreign heir, his father survived his grandfather, and the grandson could not, under the terms of the Velleian Law, succeed his father and thereby rescind the will; and some jurists, in discussing this point, have sustained this inhuman opinion.

We, however, who think We entertain paternal affection and feeling for all Our subjects, and Our children and grandchildren, and, as far as possible, having a view to the advantage of all, do hereby order that, in cases of this kind, every right shall be conferred upon a grandson to which the son was entitled; and although no preparation may have been made for bringing an action to declare the will inofficious, a grandson can, nevertheless, bring this action, and if the heir does not prove by perfectly conclusive evidence that the father of the grandson was ungrateful towards the testator, the will having been set aside, the grandson shall be called to the succession as intestate, unless a certain amount was left to his father which was less than the share to which he was entitled; for then, in accordance with the New Constitution which We have promulgated, the grandson can have the deficiency of the fourth part made up to him, if his father had not already received it, so that he may enjoy the benefit that We confer, a privilege which indeed, neglected in ancient times, has been established by Our authority, unless the father, during his lifetime, either rejected his right to bring suit to declare the will inofficious, or remained silent for five years from the day when the estate was entered upon.

Given on the third of the *Kalends* of August, during the Consulate of Lampadius and Orestes, 530.

35. *The Same to Julian, Prætorian Prefect.* Whenever the permission of the Emperor is given to anyone freely to make a will, he is considered to have granted nothing more than that the party in question may enjoy the legal and ordinary testamentary right; for it must not be believed that the Roman Emperor, who maintains the laws, would, by a concession of this kind, intend to overthrow all the regulations relating to wills which have been devised and framed with so much care.

(1) We also decree that, if anyone should receive a certain sum of money, or a certain amount of property from his father, and agrees that he will, under no circumstances, bring suit to declare his will inofficious, and, after the death of his father, the son, having examined

his will, should be unwilling to accept it, and should think that it ought to be contested, an opinion was given by Papinianus in which he stated that a son ought, by no means, to be oppressed by an agreement of this kind, but that children should rather be induced to show respect to their parents than be restrained by contracts.

We adopt this opinion, unless the son should have made a compromise with the heirs of his father in which he clearly accepted the will of the latter.

(2) And, generally speaking, We say that when a father leaves his son a smaller share of his estate than that to which he is legally entitled, or gives him something either by a donation *mortis causa* or by one *inter vivos,* under the condition that the donation *inter vivos* shall be deducted from his lawful fourth, and the son, after the death of his father, simply acknowledged what was left or donated to him, or executed a release to the heirs for the same, but did not add that he would not raise any question with reference to what he was entitled to make up his lawful share, he does not prejudice his rights in any way, but can demand the

deficiency, unless he expressly stated in writing either in the release or the compromise, or otherwise agreed, that he would be content with the share which had been left or given to him, and would make no demand for what was lacking; for then, all ground for complaint having been removed, he should be compelled to accept his father's will.

(3) This law shall extend not only to sons and daughters, but also to all other persons who have a right to institute proceedings, to declare the last testaments of deceased persons inofficious.

Given on the *Kalends* of September, during the Consulate of Lampadius and Orestes, 530.

36. *The Same to John, Prætorian Prefect.*

We know that before the promulgation of the constitution by which it was provided that if a father left his son a smaller share of his estate than he legally was entitled to, although it may not have been added that the balance owing to him should be granted in accordance with the judgment of a reliable citizen, the deficiency will be due and payable by operation of law. Hence, when anyone accepted property which had been donated either *inter vivos* or *mortis causa,* or by legacies, or under the terms of a will, and kept it as his share, and the property was afterwards evicted, either wholly or in part, the question arose whether, in accordance with the terms of Our Constitution, the lawful share should be made up after eviction, or whether the legacies, trusts, or donations *mortis causa* should be diminished in accordance with the Falcidian Law, so that, in this instance, a reserve might be established to prevent the heir, if he attempted to obtain all of the Falcidian portion, from losing the entire benefit of the estate.

Therefore, We order that, in all these cases, the defect shall be corrected whether there is total or partial eviction, and that either other property or money shall be given, or the deficit made up, without taking into consideration the Falcidian portion; so that whether there was something lacking in the beginning, or some other outside cause had arisen for imposing the burden on the property, either with reference to the amount, or the time, the deficiency shall by all means be made up, and the privilege which We have granted be enjoyed by the children without modification.

The deficit should be made up from the property forming part of the estate of the father, but not where the son has acquired anything from other sources, either through substitution, or by the right of accrual, as, for instance, through usufruct. For the sake of humanity, We order that he shall enjoy the benefit of all property which he may have acquired from foreign sources, and that the deficiency shall be made up only from that which belonged to his father.

(1) Where anyone, after having appointed a stranger his heir, provided by his will that at the time of his death his estate should be transferred to his son, or postponed such delivery to a specified date, for the reason that Our previously promulgated Constitution sets forth that all delay and hindrance with reference to the Falcidian portion shall be abolished, and that the said fourth part shall be immediately given to the son, a doubt arose as to what course should be taken in a case of this kind. Hence, We now order that the restitution of the aforesaid fourth shall immediately take place, without waiting for the death of the heir, or for the expiration of any term, and that any balance remaining after the payment of the lawful share shall be delivered at the time fixed by the testator, so that the son may, in this way, receive his share intact, as has been established by Our laws and Constitutions; and the appointed heir may legally enjoy the benefit of what was left to him by the testator.

(2) Moreover, We order that the time for filing a complaint on the ground that the will is inofficious, after the estate has been entered upon, shall be in conformity with the decision of Ulpianus; and that the opinion of Herennius Modestinus, who declared that the time for the bringing of such an action should date from the death of the testator, must be rejected; so that an heir shall not be permitted to enter upon an estate whenever he pleases, in order that a son

may not, by a device of this kind, be defrauded of that to which he is naturally entitled.

Therefore, We order that when a testator dies after having appointed a foreign heir, and it is expected that a suit to declare the will inofficious will be filed, the appointed heir — if there is one residing in the same province — shall be required within six months, or if he resides in another province, within a year from the time of the death of the testator, to declare his intention of either accepting or rejecting the estate; and that when the said term has elapsed, the son shall have the right to bring the above-mentioned action. Where the appointed heir does not accept the estate within the specified time, he shall be forced to do so by the judge. If, however, in the meantime, the son should die, that is to say, after the date of the death of the testator, but before the estate has been entered upon, he will transmit a right of action of this kind to his descendants, although he may not have been prepared to assert it; but, in accordance with the ancient authorities, he will not transmit it to foreign heirs, excepting where he had previously made arrangements to proceed.

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

37. *The Same to John, Prætorian Prefect.*

As it was stated by the ancient laws that military wills were not liable to proceedings to declare them inofficious, many other instances arose in which it was necessary to dispose of doubtful questions which presented themselves. For in cases involving *castrense peculium,* another division was introduced, for *peculium* was found to be derived from three different sources, as it was either civil, acquired through military service, or occupied a middle place between the two, and was designated *quasi castrense.* When the *peculium* called *quasi castrense* was involved, permission was granted to certain persons to dispose of it by will, but not as soldiers, in any way they chose, but by observing the common, legal, and customary formalities which have been established with reference to Proconsuls, the prefects of legions, the governors of provinces, and, generally speaking, all those who have been appointed by Us to different offices or employments, or who receive certain salaries from public sources; for persons of this kind have testamentary capacity solely for the purpose of disposing of the *peculium* just mentioned, that is to say, the *quasi castrense.* Veterans, however, who have acquired *peculium* during their time of service, after they have left the army, are not prohibited from making wills, but they must do so in the regular manner. Therefore, when with reference to all these *quasi castrense peculiums* a doubt arose whether wills disposing of property of this kind could be attacked on the ground of inofficiousness, the first question to be decided was whether all those who had *quasi castrense peculium* could bequeath it, for the reason that this was granted as a privilege only to certain persons, and not to everyone indiscriminately; as soldiers and veterans had been everywhere permitted to make wills disposing of their *castrense peculium;* but while soldiers in active service could do so by virtue of their own exclusive right, veterans were only entitled to dispose of their *peculium* under the rules of the Common Law.

It was also doubted whether other persons, upon whom this special privilege had not been conferred, could bequeath their *peculium* by will; as, for instance, advocates, clerks of courts, those who have charge of the property of others, as well as professors of liberal arts, physicians, and all persons who receive public salaries or allowances.

(1) Hence We order that such persons can make testamentary disposition of what composes their *quasi castrense peculium,* for the reason that it has been established in imitation of the *peculium castrense,* provided this is done strictly in accordance with law, but only where the property in question forms part of the *quasi castrense peculium.*

This privilege is granted to them in order to avoid suit being brought to declare their wills inofficious; for where a freedman, who was undoubtedly his own master, has acquired any property while in camp, his patron has not, according to the tenor of the ancient laws, any

right to the possession of such property, even if he should be passed over by his ungrateful freedman in his will; and, as this is the case, why should the *peculiums* which have been introduced in imitation of the *castrense* be liable to the complaint of inofficiousness?

(2) This rule, however, shall be observed until those in possession of the *castrense peculium* have returned to the homes of their relatives; for if they should become their own masters, there is no doubt that their wills disposing of property which formerly constituted their *castrense peculium* can be attacked on the ground of inofficiousness, as the distinctive name of *peculium* no longer exists, and what it represents is merged in other property, and is subject to the same fate as that which was collected from all other sources into a single estate.

Given at Constantinople, on the *Kalends* of September, after the fifth Consulate of Lampadius and Orestes, 532.

TITLE XXIX.

CONCERNING INOFFICIOUS DONATIONS.

1. *The Emperor Philip to Nicanor and Papiana.*

If, as you allege, your mother, for the purpose of avoiding an action to declare the disposition of her property inofficious, exhausted almost all of it while she was alive, by making donations either to certain children or to strangers, and after having appointed you heirs to two-twelfths of her estate, still further exhausted the two-twelfths aforesaid, by means of legacies and trusts, you do not unjustly ask that relief be granted you by means of proceedings to declare the will inofficious, inasmuch as you did not receive the fourth part of the estate to which you were entitled.

Given on the fourteenth of the *Kalends* of September, during the Consulate of Philip and Titian.

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

If your father, induced by a certain impulse of boundless generosity, bestowed all of his estate upon his son, whether he was under his control or not, and agreed that the arbitrator appointed for the purpose of making partition should give you the fourth part of the share which you would have received in case of intestacy, without deduction; or if the son had been emancipated, and for this reason the donation did not then require any other support, but in accordance with the Imperial Constitutions, relies upon its own force, the Governor of the province will assist you to proceed against the donation in the same way as against an inofficious will.

Given on the sixth of the *Kalends* of August, during the Consulate of Maximus, Consul for the second time, and Glabrio, 257.

3. *The Same to Ælianus.*

The Rescripts attached to your petition show that those parents who, during their lifetime, exhausted their estates by extravagant donations, after having executed wills, left merely an empty name to their heirs, and the same rule of equity should apply in this case as in that where persons die intestate.

Given on the tenth of the *Kalends* of November, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 258.

4. *The Emperors Diocletian and Maximian to Aristina.*

If your son has exhausted his estate through unbounded liberality, invoke the aid of the Governor of the province, who, after having ascertained the truth of the case, will determine whether you are entitled to complete restitution on account of the enormous amount of the donation made by your son, and will grant you relief by annulling everything which has been

improperly done; and therefore, it will not be necessary for you to proceed against this unreasonable donation, as you would in case you desired to establish the inofficiousness of a will.

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

5. *The Same to Cotabeus.*

If you have exhausted all your property by donations conferred upon your emancipated son, the amount which will be necessary to leave to children, who have not been ungrateful, for the purpose of avoiding proceedings to declare the will inofficious, must be deducted from the donations already made and restored to your estate; so that any sons or grandsons subsequently born during lawful marriage, may obtain the amount of property to which they will be entitled.

Given on the second of the *Ides* of March, during the Consulate of Maximus, Consul for the second time, and Acquilinus, 286.

6. *The Same to Demetriana.*

As you state that the property of your father has been exhausted by donations made to your brothers, and that the remainder has been divided between you by codicils executed by him; if you did not know his intention, and could not avail yourself of the benefit of age, so as to institute proceedings, the dowry given by your father, or the trust left by him for your benefit, are not sufficient to prevent you from bringing suit to declare the will inofficious; and the Governor of the province shall exert his authority to enable you to proceed against these excessive donations, in the same way as against an inofficious will.

Given on the *Kalends* of May, during the above-mentioned Consulate, 286.

7. *The Same to Ammiamis.*

If your mother has so exhausted her estate by her profuse liberality to your brothers that half of the fourth share, which would have been sufficient to prevent you from attacking the will as inofficious, was not included in the donations which she gave you, the unreasonable amount which she has bestowed shall be revoked.

Given on the fifth of the *Ides of* May, during the above-mentioned Consulate, 286.

8. *The Same to Auxanonus.*

If it can be proved that your mother, in order to prevent you from bringing an action to declare her will inofficious, exhausted her estate in donations made to one of her sons, as reason demands that the right to bring suit for inofficiousness should be accorded, in order to frustrate the designs of those who attempt to violate the rules established by the supreme authority, and deprive children of their rights, the donations which have been made must be diminished to the extent of the fourth due under the Falcidian Law, as in the case of an inofficious will.

(1) Where a wife received something from her husband by way of donation at the time of her marriage, and afterwards gave it to her emancipated son with the consent of her husband, it is only reasonable to hold that she donated it as part of the property of his father, because it could not be taken from it otherwise, as this is forbidden by the marriage; and if the same intention and result should be ascertained to exist in the disposition of any of his property, the same rule which We have promulgated with reference to the estate of the mother shall be observed.

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

9. *The Emperor Constantius, and the Cæsar Julian, to Olybrius.*

There should be no doubt that the complaint introduced by law with reference to excessive donations has been derived from the action to declare wills inofficious, so that, in both these instances, there might be an identical or similar cause, and the same intervals and method of procedure.

Given on the fourteenth of the *Kalends* of July, during the Consulate of Taurus and Florentius, 361.

TITLE XXX.

CONCERNING INOFFICIOUS DOWRIES.

1. *The Emperor Constantine to Maximus, Governor of Cilicia.* As all the property of your mother is said to have been exhausted by a dowry, and since it is proper for laws to agree with one another,

power to bring suit on the ground of the gift of an excessive dowry shall be granted, and the benefits claimed by the other children, and to which they are entitled, shall be bestowed upon them.

Given on the fourth of the *Kalends* of June, during the Consulate of Tatian and Cerealus, 358.

TITLE XXXI.

CONCERNING THE DEMAND FOR AN ESTATE.

1. *The Emperor Marcus Ælius Antoninus to Augurinus, Proconsul of Africa.*

The Decree of the Senate enacted at the suggestion of My Grandfather, the Divine Hadrian, by which it was provided that whatever had, at any time, been evicted from the government must be returned, not only applies to fiscal cases, but also to those of private persons claiming an. estate.

(1) *Bona fide* possessors cannot be compelled to refund interest which they have collected from the day of the sale of the property of an estate made by them before issue has been joined in a case; nor can they be forced to surrender the crops which they have gathered after issue has been joined, unless they have profited pecuniarily thereby. They will, however, be obliged, under all circumstances, to pay over not only the income of property which has not been sold, and which they have collected, but also whatever they could have collected, as well as any interest on the price of property sold which accrued before issue was joined in the case.

Given on the sixth of the *Kalends* of February, during the Consulate of Clarus and Cethegus, 147.

2. *The Emperors Severus and Antoninus to the Soldier Marcellus.*

When, after suit had been brought with reference to the estate of Menecrates, Museus, being aware that this had been done, purchased half of the property of the estate in dispute from the appointed heir, he himself, as a possessor in bad faith, as well as his heir, will be compelled to refund the profits. If, however, it should be clearly proved that the sale took place before the action was brought, the profits must be refunded from the day on which proceedings were begun, for an estate is increased by the profits when it is in possession of a person from whom it can be demanded. A purchaser, who is provided with his own title to possession, can also be sued for separate articles.

Given on the *Kalends* of July, under the Consulate of Severus, Consul for the second time, and Victorinus, 201.

3. *The Same to Epictesis.*

The claim made by you for the estate of your maternal aunt does not prevent you from making

a demand for another estate which proceeds from a different succession. But where the first claim was based upon the inofficiousness of the will, the fact that the case had been decided will offer no impediment to anyone claiming the same estate under another title.

Given on the fifth of the *Ides* of August, during the Consulate of Geta and Plautian, 201.

4. *The Emperor Antoninus to Vitalianus.*

In transferring the estate, compensation will be allowed for any expense which you can prove you have incurred on account of the illness of the deceased, or for his funeral, and which you have paid in good faith out of your own money.

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

5. *The Same to Posthumianus.*

If a decree has been issued requiring you to surrender the estate which you possess in good faith, you can, when delivering it, deduct whatever you can show that you have paid in good faith to the creditors of said estate, for whenever creditors have received anything to which they are entitled, it cannot be recovered from them.

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

6. *The Emperor Alexander to Firminus.*

If you think that the guardians of your grandsons were not legally appointed, for the reason that you allege they are under your control, do not delay to demand from them the estate of your emancipated son, the benefit of which you say belongs to you; and the judge will determine whether the act of those who appointed the guardians shall be set aside or not, as it is denied that they are subject to your authority.

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

7. *The Emperors Diocletian and Maximian, and the Cæsars, to Restituta.*

It is known to everyone that a demand for an estate which can be made against possessors in behalf of an heir will not be barred by a prescription of long time, as the law requires this to be answered in a mixed personal action. It is, however, clear that the estate can be recovered only by special actions *in rem,* where the right of the plaintiff to proceed has been extinguished by usucaption or prescription.

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

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

When a demand is made for an estate, it must be ascertained, before everything else, whether or not the testator was free.

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

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

If the appointed heirs have rejected the estate of your relative which was left to them, and you have demanded it, either under the prætorian or the Civil Law, you can bring suit to recover any property of the estate which is involved in this case.

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

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

When a son under paternal control has, for a long time, retained in his hands an estate which was left to him, for this very reason, as the estate has been accepted, he is considered to have acquired it for the benefit of his father.

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

11. *The Emperors Arcadius and Honorius to Æternal, Proconsul of Asia.*

It is unjust for the possessor of property to be compelled to disclose his title to possession to anyone who demands it, except that he should be obliged to say whether he holds the said property as possessor or as heir.

Given on the twelfth of the *Kalends* of April, during the Consulate of Arcadius, Consul for the seventh time, and Honorius, Consul for the third time, 396.

12. *The Emperor Justinian to Julian, Prætorian Prefect.*

When good ground exists for the claim of an estate, and an exception is filed which protects the claim, this should not be prejudiced, for the greatness and authority of the Centumviral Tribunal will not permit a claim to an estate to be interfered with by the schemes of others.

As many distinctions and controversies on this point arose among the ancients, in order to put an end to them We decree that when any person presents a claim for an estate, or expects to do so, or to institute proceedings to recover it, and someone else appears and thinks that it is necessary to represent the deceased in an action against either the plaintiff or the defendant, on the ground of a deposit, a loan, a legacy, a trust, or for any other reason, and he does this by virtue of the bequest of a legacy or a trust, he must comply with the following conditions, namely, the appointed heir cannot postpone the decision of the claim by furnishing security, but either the legacy or the trust can be demanded, if a bond or security in proportion to the rank of the parties is given.

Where, however, the heir is not successful, the legatee or the beneficiary of the trust must repay him the money which he received, with interest at the rate of three per cent; or he must give up the land with the crops which he has gathered, or the house with the rent which he has collected; of course, in either of these cases, after having deducted all necessary and useful expenses, or if he himself prefers to contest the action and await the result of the filing of the claim for the estate, he shall be permitted to do this; so that if restitution should be obtained it may be made to the legatee or the beneficiary of the trust, together with all lawful augmentations.

(1) But when an action based on certain contracts of the deceased, or on account of some property which is in dispute, is brought against the possessor of the estate, and the said property was either made the subject of a deposit or a loan, or was given in pledge, or encumbered in any other way, the trial should not be postponed under the pretext that a claim has been made to the estate; just as where money having been loaned at interest, suit is brought against the possessor or the plaintiff, or any other personal action is begun, judgment should not be deferred, but the case ought immediately to be brought to a termination. For, after the action for the estate has been disposed of, and the controversy between the claimant of the estate and the possessor has been decided, if the latter is defeated, he will not be compelled to surrender the estate, unless the claimant reimburses him for all the expenses which he has properly incurred. If, however, the plaintiff should be defeated, the court will compel the possessor, in like manner, to reimburse him, or if he should be remiss in this respect, he can under this law be forced to comply by a personal action based on voluntary agency.

(2) Whenever freedom is demanded by slaves from the possessor of the estate or the claimant of the same, to which it is alleged they are entitled either under the terms of a trust, or directly by operation of law, it will only be necessary to wait for a year after the death of the testator;

and if the action to recover the estate has been terminated within that time, the demand for freedom shall either take effect, or be extinguished, according to the event of the trial. But if the said period of a year should elapse without a decision, then on account of the favor with which freedom is regarded, as well as through considerations of humanity, the grants of freedom will become effective directly, or the slaves will obtain it under the terms of the trust; provided, however, that the will should not prove to be forged, and also under the condition that if the slaves in question had not had charge of some business or accounts; for even after they have obtained their freedom, they will be required to surrender any property belonging to the estate which may have remained in their hands, and to render their accounts by the right of patronage, that is to say, where this right is enjoyed by him who, by the laws, can be assigned to this duty.

(3) In order that no doubt may hereafter arise, it must be observed that a suit brought to recover an estate must always be included among *bona fide* actions.

Dated at Constantinople, on the *Kalends* of September, during the Consulate of Lampadius and Orestes, 530.

TITLE XXXII.

CONCERNING THE ACTION FOR THE RECOVERY OF PROPERTY.

1. *The Emperors Severus and Antoninus to Cæcilia.*. It has been decided that anyone who possesses the slave of another in good faith is entitled to the ownership of what is acquired by the labor of said slave, or from the use of his property; and therefore, if you possessed a slave of this kind in good faith, and he purchased any property with your money during the time he was under your control, you can avail yourself of your means of defence in accordance with the rules of law.

(1) A slave belonging to another cannot acquire anything for his possessor in bad faith, for he who holds him will not only be compelled to give up the slave himself, but also anything that he has obtained by means of his labor, as well as the offspring of female slaves, and the increase of animals.

Given on the third of the *Nones* of May, during the Consulate of Faustinus and Rufus, 211.

2. *The Emperor Antoninus to Aristenetus.*

If you can prove that the lower part of the building which is attached to the soil belongs to you, anything which your neighbor has built upon it will undoubtedly be your property, for whatever is erected upon your ground will belong to you by law, as long as it remains in the same condition; but if it should be demolished, the materials composing it will be restored to their former ownership, whether the building has been constructed in good or bad faith; provided it was not erected on land belonging to another with the intention of presenting it to him.

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

3. *The Emperor Alexander to Dominia.*

Your mother or your husband cannot, without your consent or knowledge, legally sell a tract of land which belongs to you, and you can claim it as yours from the possessor, without even tendering him the price. But if you afterwards consented to the sale, or lost your ownership of the property in some other way, you will have no right of action against the. purchaser, but you will not be prevented from bringing suit against the vendor, for the price, on the ground of business transacted.

Given on the third of the *Kalends* of November, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

4. *The Emperor Gordian to Munianus, Soldier of Africa.*

You are entitled to an action against the possessors who purchased your land in good faith from others who held possession of it in bad faith, if you should recover the ownership of the same before the purchasers have obtained it by usucaption or prescription, based upon long time.

Given on the twelfth of the *Kalends* of November, during the Consulate of Pius and Pontianus, 299.

5. *The Same to Herasianus.*

The Governor of the province shall order the house which you allege belongs to you as part of the estate of your mother, and which is now illegally occupied by an adverse party, to be restored to you, together with any rent that the occupant has, or could have collected, as well as the amount of all damage caused by him.

It has been very properly stated in a rescript that any expenses which may have been incurred cannot be recovered, as possessors in bad faith, who have expended money on the property of others, and have not transacted the business of those to whom it actually belongs, have no right to recover them, unless the said expenses were necessary; but they are permitted to deduct any useful outlay, if this can be done without injury to the former condition of the property.

Given on the second of the *Ides* of February, during the Consulship of Gordian and Aviola, 240.

6. *The Same to Ustronius.*

If you deposited money, and the person with whom you left it used it to purchase land for himself, which was delivered to him, it is contrary to law that the said land, or any portion of the same, should be transferred to you by way of compensation for the money expended, when this is done against the consent of him who obtained it.

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

7. *The Emperor Philip, and the Cæsar Philip, to Antony.*

It has been established by law that the offspring of a female slave follows the condition of its mother, and in a case of this kind the condition of the father should not be taken into consideration.

Given on the thirteenth of the *Kalends* of November, during the Consulate of Philip and Titian, 246.

8. *The Same, and the Cæsars, to the Soldier Philip.*

If (as you allege), your adversary has purchased certain property in his own name, with your money, the Governor of the province will not, in the name of justice, refuse you the right to which you are entitled as a soldier. He may, likewise, grant you an action of mandate, or one of voluntary agency, if you desire to bring it.

Given on the second of the *Nones* of March, during the Consulate of Præsens and Albinus, 247.

9. *The Emperors Carus, Carinus, and Numerian to Antony.*

Notify the Governor that the female slave, with reference to whom you have filed your petition, forms part of the dotal property, and this having been shown, there will be no doubt that she cannot be recovered by your wife.

Given on the third of the *Kalends* of March, during the Consulate of Carus and Carinus, 283.

10. *The Emperors Diocletian and Maximian, and the Cæsars, to Jamiarius.*

As you assert that you have no documents establishing your ownership over slaves born in your house, you should file your claim before the tribunal where proceedings have been instituted to recover what you have stated in your petition, since the judge will know that the ownership of the slaves must be established either by the production of documents, as well as by other evidence, or by the interrogation of the slaves themselves.

Given on the *Ides* of February, during the Consulate of the abovementioned Emperors, the first, Consul for the fourth time, and the second, Consul for the third time, 290.

11. *The Same, and the Cæsars, to Gallanus.*

When anyone knowingly sows or plants land owned by another, it is in accordance with reason that as soon as whatever is sowed or planted takes root, it will belong to the soil. For, by an act of this kind, the crop will rather belong to the owner than the soil to the other party. Where, however, he who did this is a possessor in good faith, it is well established by legal authority that he can, by means of an exception on the ground of bad faith, recover his expenses from him who claims the ownership of the land.

Given on the fourth of the *Kalends* of March, during the abovementioned Consulate, 293.

12. *The Same, and the Consuls, to Alexander.*

It is unjust and unusual that the slave whom you have delivered, and whose ownership you have relinquished by so doing, should be restored to you by Our Rescript, against the consent of the person to whom you delivered him; therefore, understand that where a female servant has become the property of a purchaser, any children subsequently born to her follow the ownership of him to whom their mother belonged at the time of their birth. You can, however, sue your adversary for the price, if it should not be proved that you have already received it.

Given on the *Ides* of April, under the above-mentioned Consulate, 293.

13. *The Same, and the Cæsars, to Cytichius.*

It is an ordinary rule of law that, where suit is brought with reference to slaves, the question of possession must first be determined, after the slaves have been produced in court, and that then their ownership shall be established by the same judge.

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

14. *The Same, and the Cæsars, to Septiana.*

As you state that you knowingly purchased from your mother a house which belonged to her son, if the latter should not succeed his mother, but should claim the ownership of the house, you cannot protect yourself by means of an exception; because if the son should obtain the estate of his mother who sold the property, you will not be prevented from availing yourself of an exception on the ground of bad faith with reference to the share of the estate which may come into his hands.

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

15. *The Same, and the Cæsars, to Aurelius Proculinus.*

Where an entire tract of land has been legally sold to two different persons, it is a plain rule of law that he to whom delivery was first made is entitled to the preference, so far as the ownership of the property is concerned. If, therefore, you can prove before the Governor of the province that you were the first to obtain possession, and paid the price, he will not permit you to be excluded, under the pretext that no instruments had been drawn up.

You will, indeed, have the choice of retaining the land, or of receiving the purchase-money which you have paid, with interest; but, in the latter instance, an account of the crops which

have been gathered and of the expense incurred must be rendered. It has been decided that if you both claim the ownership on the ground of a donation, he to whom possession of the land was first transferred will have the preference.

Given on the second of the *Kalends* of October, during the abovementioned Consulate, 293.

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

When anyone builds a house upon land owned in common with others, the rule of law establishes joint-ownership among all of you, and hence, if you should desire to claim the share of the person who, while in possession, built the house in good faith, you must make a tender of the expenses, in order to avoid being barred by an exception on the ground of bad faith.

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

17. *The Same, and the Cæsars, to Sabinus and Others.*

If you notified the person who intended to purchase your land that it did not belong to him who wished to sell it, he who bought it against your protest, or, in any other way, made a contract in bad faith, will commit an illegal act; and if you apply to the Governor of the province, he will not only order that the land which you prove belongs to you, but also the crops which the vendor is shown to have gathered in bad faith, shall be restored to you.

Given on the twelfth of the *Kalends* of December, during the abovementioned Consulate, 293.

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

When your property is in the possession of someone else, any mistake in ownership growing out of this fact cannot prejudice your rights, unless some other question may be interposed against you.

Given on the third of the *Kalends* of January, during the abovementioned Consulate, 293.

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

Absolute proofs which are not rejected by law are not less worthy of confidence than documentary evidence; for which reason if you have doubts with reference to the ownership of a house, and the matter has not yet been decided, you will not be prevented from introducing what testimony you have.

Given on the second of the *Kalends* of January, during the abovementioned Consulate, 293.

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

You understand that you cannot sue a slave who you say retains your property, but you must proceed against his master in order to recover it.

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

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

After having demanded your slaves from those who have possession of them, and having instituted proceedings to establish your ownership of the same, if afterwards, when your claim has been allowed, your slaves should not be restored to you, the judgment shall be executed after the formal oath has been taken.

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

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

There is no doubt that it is customary for all the crops along with the land to be surrendered by a possessor in bad faith; and that possessors in good faith must only restore the present crops, but, after issue has been joined, everything must be delivered up.

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

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

If other persons, without any good reason, should sell your slave, who had been carried away by force or stolen, you will not be reduced to the necessity of paying the price given for him when you bring suit to recover the ownership of the slave.

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

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

The law forbids possessors to demand ownership, if they did not obtain possession by a good title; and therefore, if usucaption does not take place, the claim of ownership can never be asserted. Hence, in a case of this kind, where the owner returns under the law of *postliminium,* the direct right to prosecute the claim to the property remains unimpaired, without his having recourse to the *Actio rescissaria.*

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

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

Where anyone has paid for another the rent of property which is in possession of the latter, and no sale takes place, he does not, by any means, become the owner of the same by virtue of the payment.

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

26. *The Same, and the Consuls, to Heliodorus.*

The delays incident to litigation are of no advantage to a possessor for the acquisition of the property by prescription based upon long-continued possession, for this is only computed after issue has been joined in the case.

Given on the *Ides* of December, under the Consulate of the Cæsars,

294.

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

A purchaser cannot bring suit to recover a slave who has not immediately been delivered to him.

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

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

He who is in possession of property belonging to another cannot be compelled to restore it to its owner, even though he may have no good cause to retain it, unless the alleged owner proves that it is his.

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

TITLE XXXIII.

CONCERNING USUFRUCT, LODGING, AND THE SERVICE OF SLAVES.

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

Where the usufruct of her entire estate was left by the will of a wife to her husband, although she may have forbidden any bond to be required of you, still, you cannot accept money in payment from debtors, unless you furnish security in compliance with the terms of the Decree of the Senate.

Given on the *Kalends* of October, during the Consulate of Anulinus and Pronto, 200.

2. *The Same to Felix.*

We note that the usufruct of certain land has been bequeathed to you by the terms of a will which you have inserted into your petition, but this does not prevent the owner of the property from encumbering it to his creditor, provided the right of the usufruct to which you are entitled remains unimpaired.

Given on the sixth of the *Ides* of May, during the second Consulate of Antoninus and Geta, 206.

3. *The Emperor Antoninus to Antonianus.*

If the usufruct of property was bequeathed to you by your father, you will obtain nothing after his death, as an usufruct which has been left by will, or is acquired in any other manner, ordinarily reverts to the property at the time of the death of the person to whom it was bequeathed.

The right of use and enjoyment is not extinguished during the life of the usufructuary, even though the owner of the property may die.

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

4. *The Emperor Alexander to Verbicius.*

An usufruct having been established, it follows that security which would be approved by a good citizen must be furnished by the person who enjoys the benefit of it, that he will cause no injury to the property by making use of the same; and it does not make any difference whether the usufruct was established by will or by voluntary contract.

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

5. *The Same to Evocatus and Others.*

If your father left the usufruct of certain land to your mother during the time of your puberty, and the usufruct terminated after you grew up, you can recover the crops gathered by her after the abovementioned time, for she knew that she had no reason to take them as they belonged to another.

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

6. *The Same to Stratonica.*

It makes a difference where your husband received the sole usufruct by way of dowry, and where the ownership was given as dowry, and a contract was entered into that at his death possession would be restored to you, for an usufructuary cannot pledge the property. He, however, who has received land as dowry, after it has been appraised, is not, for that reason, prevented from encumbering it, as, if the marriage should be dissolved, the appraised value must be repaid to you.

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

7. *The Emperor Gordian to the Soldier Ulpian.*

It is an established rule of law that the person to whom an usufruct belongs must, at his own expense, make such repairs as the roofs require. Hence, if anything more than was necessary has been expended by you, you can prove the amount of the outlay, and bring an action to recover it.

Given on the *Kalends* of February, during the Consulate of Arianus and Pappus, 224.

8. *The Emperors Diocletian and Maximian to Ethero.*

No prescription, or lapse of time, will authorize an usufructuary or his successors to acquire the ownership of property to the usufruct of which alone they are entitled.

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

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

Where the usufruct of certain lands and slaves was left to your mother, she is forbidden to alienate the land or manumit the slaves; for, as she has not the ownership of the slaves whose services were bequeathed to her by will, it is clear that her act will be void if she should convey the property to anyone, or manumit the slaves, both of which belong to the heir of the testator.

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

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

If the owner of the property has leased the usufruct of the same to your wife, subject to the payment of a certain sum every year; your wife should not be denied the privilege of use and enjoyment of the property after the death of the person who leased it to her.

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

11. *The Emperor Justinian to Theodore.*

The right to occupy a lodging is terminated by death, and he who enjoys it cannot, by bequeathing the property, exclude the owner from recovering the same.

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

12. *The Emperor Justinian to Julian, Prætorian Prefect.*

With the intention of disposing of the ambiguity of the ancient law, We decree that when anyone has left an usufruct to his wife, or to any other person, to be enjoyed for a certain time until his son or someone else shall become of age, the usufruct shall stand for the time prescribed by the testator, whether the person with reference to whose age it was established arrives at that age or not, for the testator did not have the life of the individual, but a certain specified term in view, unless he to whom the usufruct was bequeathed should die; for then it would be impossible for the usufruct to be transmitted to his successors, as it is an undoubted rule of law that an usufruct is absolutely extinguished by death.

Where, however, the condition was inserted that it would continue to exist while the son, or anyone else remained insane, or under other similar circumstances the result of which was uncertain, and the said son or other party concerning whom the provision was made should recover his senses, or the condition should be complied with, the usufruct will be terminated. But if the person referred to should die while still insane, then the usufruct will continue to exist, as it would be considered to have been bequeathed for the life of the usufructuary, since it was possible that the testator had in mind its continuance during the entire time of the life of the usufructuary, rather than that the insane person should recover his mental faculties, or the condition be complied with; and it is perfectly equitable that the usufruct should be extended during the lifetime of the parties alluded to; for, if the usufructuary should die before the condition had been complied with, or the insanity ended, it would be extinguished; and therefore it is just for it to be prolonged during the life of the usufructuary, even if the insane person should die before him, or the other condition fail to be executed.

Given at Constantinople, on the *Kalends* of August, during the fifth Consulate of Lampadius

and Orestes, 530.

13. *The Same to the Same Julian, Prætorian Prefect.*

As a doubt arose in ancient times, when the usufruct of a house was bequeathed, in the first place (as the instances are similar), whether the right of lodging referred to the use and usufruct or to neither of them, that is to say, to a peculiar right and a special privilege, and whether the person to whom the right of lodging had been bequeathed could afterwards lease the same, or claim for himself the ownership of the property, We, for the purpose of disposing of the disputes of litigants, have removed all such doubts by the following concise opinion. Where anyone has bequeathed a lodging, it appears to Us to be the more humane opinion to also grant to the legatee the right to lease it, for what difference does it make whether the legatee himself remains there, or gives it up to another for the purpose of receiving compensation? This is much more apparent if he left the usufruct of the dwelling, as it gives rise to greater difficulty where the name usufruct is added, for We do not desire that the lodging should take precedence of the usufruct. The legatee should not expect to obtain the ownership of the right of residence, unless he can prove by the clearest evidence that the ownership of the house was also left to him, for then the will of the testator must in every respect be obeyed.

We decree that this decision shall apply to all places in which a right of habitation can be established.

Given on the eighteenth of the *Kalends* of October, during the fifth Consulate of Lampadius and Orestes, 530.

14. *The Same to the Same Julian, Prætorian Prefect.*

Where anyone bequeathed a tract of land, or any other property to another by will, it was formerly doubted to what extent the usufruct would remain with the heir, and whether a legacy of this kind would be valid. Some authorities thought that it would be void, for the reason that the usufruct could never return to the ownership, but would always remain with the heir, and they probably held this opinion because the second heir and all other successors appeared to be the heirs of one person, and therefore an usufruct of this kind, in accordance with the ancient distinction, could not be extinguished in the ordinary way. Others, however, thought that a legacy of this description should not be rejected.

In order to put an end to all such disputes, We decree that such a legacy shall be valid, and such an usufruct shall be extinguished with the death of the heir, or shall be terminated if he loses it in any other lawful manner, for wherefore should an usufruct of this kind enjoy such a privilege that it alone can be excepted from the general rule which governs the extinction of usufruct? It is perfectly clear that there is no good reason for this opinion, and therefore We, by directing that the usufruct shall be terminated and returned to the ownership, and the legacy be valid, have disposed of all this ambiguity in very few words.

Given on the thirteenth of the *Kalends* of October, during the fifth Consulate of Lampadius and Orestes, 530.

15. *The Same to the Same Julian, Prætorian Prefect.*

A disagreement arose among the jurists of ancient times, when an usufruct was acquired by a slave for his master, and, on account of the occurrence of certain events (for many unforeseen changes take place in the affairs of mortals), part of the said slave comes into the possession of another person, whether the entire usufruct, which was formerly held by a single individual through the said slave, continued to belong to him, or whether it was entirely extinguished, or was divided, and only a portion of it remained under the control of him who formerly enjoyed it all.

Three opinions were given on this point; one was to the effect that the entire usufruct was

diminished by the alienation of the slave; another, that the usufruct was only diminished in proportion to the alienation of the slave; the third, that a share of the slave could be alienated, but that, nevertheless, the entire usufruct would belong to the person who formerly owned the entire slave. We find that the eminent legal authority Salvius Julianus adopted this last opinion.

In order to dispose of this matter, We have decided to accept the opinion of Salvius Julianus, and of the others who agreed with him, who considered it more humane that the retention and not the destruction of the usufruct should be considered, and hold that, even if a part of the slave was alienated, still no portion of the usufruct will be extinguished; but it will, in accordance with its nature, remain intact and unimpaired, and that it will be preserved just as it was in the beginning, without being affected in any way by art occurrence of this kind.

Given on the tenth of the *Kalends* of October, during the fifth Consulate of Lampadius and Orestes, 530.

16. *The Same to the Same Julian, Prætorian Prefect.*

It was decided by the ancients that there were many causes for the extinction of an usufruct; for instance, the death of the usufructuary, loss of civil rights, non-user, and many others equally well known. No question, however, existed with reference to the usufruct itself; but doubts arose concerning the personal action which originated from it, whether the usufruct was conveyed by a stipulation, or had been left by will. All the authorities, however, agreed that it was extinguished by the death of the usufructuary, and by the forfeiture of civil rights, but they differed as to whether the right of personal action was extinguished by non-user, if the usufructuary failed to claim the usufruct for one or two years.

(1) In order to remove these doubts, We hereby decree that not only the action which arises from the usufruct, but even the right itself shall not be lost by non-user, but only by the death of the usufructuary or by the destruction of the property; but that anyone shall continue to hold intact as long as he lives an usufruct which he may have acquired, unless an exception based on prescription is pleaded against him, which can be done even if he claims the ownership, for this will exclude him whether he is present or absent.

Although innumerable accidents occur in the affairs of mortals, on account of which men cannot continue to hold property which they have, it is doubly hard to lose, through difficulties of this kind, what one has once had in his possession.

(2) We, however, do not permit our subjects to suffer injury through every kind of loss of civil rights, for if you are a son under paternal control, and have an usufruct which has been acquired from your *castrense peculium,* and to which your father has no right, why should you lose by emancipation what you have in your possession? But, according to what has been stated, it will now only be lost when the usufructuary dies, or the property is destroyed; and as long as he has breath, or the substance of the property exists, the usufructuary will continue to exercise his right, unless barred by the above-mentioned exception, or where he has suffered such a loss of civil rights as deprives anyone of freedom or Roman citizenship; for, under such circumstances, the usufruct will be absolutely extinguished, and will return to the ownership of the property.

Given on the *Kalends* of October, at Constantinople, during the fifth Consulate of Lampadius and Orestes, 530.

17. *The Same to John, Prætorian Prefect.*

The following question, taken from the books of the Sabinians, has been referred to Us. A doubt having arisen whether an usufruct acquired by a slave, or a son under paternal control, will continue to exist after the greater or intermediate loss of civil rights by the son, or after his death or emancipation, or after an alienation of the slave or his death or manumission, We

decree that, in cases of this kind, even if the said slave, or son under paternal control, should be placed in either of the aforesaid positions, the usufruct which was obtained by the father or the master through the above-mentioned persons shall not be extinguished, but shall remain intact.

Nor, even if the father should suffer either the greater or the intermediate loss of civil rights, or should be removed by death, will the usufruct be lost; but it will belong to the son, even if he was not appointed an heir by his father, for the usufruct acquired through him will remain under his control after his father's death; as it is very probable that the testator, in bequeathing the usufruct, had the son rather than the father in his mind.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 541.

TITLE XXXIV.

CONCERNING SERVITUDES AND WATER.

1. *The Emperor Antoninus to Calpurnia.*

If you think that you have any right of action against the person who rebuilt his house in a different way than it formerly was, and which now interferes with your lights, you will not be prevented from applying to the court in the usual manner. The judge will be aware that custom observed for a long time takes the place of a servitude, provided the party who makes complaint does not hold possession by violence, or clandestinely, or under a precarious title.

Given on the third of the *Ides* of November, during the Consulate of Gentianus and Bassus, 212.

2. *The Same to Martial.*

If you have conducted water through the premises of Martial, with his knowledge, for the time prescribed by law for the establishment of a servitude, you have acquired it. If, however, the use of the land was forbidden to you for that period of time, you will, in vain, ask that the expenses incurred by you for that purpose be refunded to you; for any work performed on the land of another belongs to the owner of the same, as long as it remains in the same condition.

Given on the *Kalends* of July, under the Consulate of Lætus and Cerealis, 216.

3. *The Emperor Alexander to Ricana.*

The right to conduct water through the field of a neighbor, as well as other servitudes, can be established in a province, if all the formalities required for the creation of servitudes have previously been complied with, as agreements made between contracting parties should be carried out; therefore you will not be ignorant that where former possessors could not legally prevent water from being conducted through their premises, the same land charged with the same servitude will pass to purchasers.

Given on the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Ælianus, 224.

4. *The Same to Cornelius.*

The Edict of the Prætor does not permit water, whose source is on the ground of another, to be conducted on the land of someone else, without the consent of him to whom the use of said water belongs.

Given on the *Ides* of August, during the Consulate of Maximus, Consul for the second time, and Ælianus, 224.

5. *The Emperor Philip to the Soldier Lucian.*

If your opponent has unlawfully constructed anything which interferes with the servitude

owing to your house, the Governor of the province shall take care to restore everything to its former condition, and cause satisfaction to be made for the damage produced, in accordance with its seriousness.

Given on the *Kalends* of February, during the Consulate of Præsens and Albinus, 247.

6. *The Emperor Claudius to Priscus.*

The Governor of the province will not permit you to be deprived of the use of water which flows from a spring which you allege belongs to you, contrary to the rule established by custom; as it would be hard, and almost cruel, for a water-course which arises on your premises to be unjustly used on those of your neighbors, when your own land has need of it.

Given on the seventh of the *Kalends* of May, during the Consulate of Claudius and Paternus, 270.

7. *The Emperors Diocletian and Maximian, and the Cæsars, to Julian, Prætorian Prefect.*

If it can clearly be shown that the right to make use of water flowing from certain places on certain lands has been established by ancient custom and constant use, Our deputy shall provide that no innovation be made contrary to this ancient rule and long-observed custom.

Given on the fourth of the *Nones* of May, during the Consulate of Maximus, Consul for the second time, and Acquilinus, 286.

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

If your house does not owe a servitude to the land of your neighbor, the owner of the latter cannot prevent you from raising your building higher. If Julian should be convicted of having, either by violence or clandestinely, opened a window in your wall, he can be compelled to remove the work at his own expense, and restore the wall to its former condition.

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

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

If Heraclius has built the wall of his house higher than he should have done because of a servitude due to you, his neighbor, he can be compelled by the Governor of the province to remove the new work at his own expense; but if it is not proved that you are entitled to a servitude, your neighbor cannot be forbidden to raise his house to a greater height.

Given on the fifth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 293.

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

If the Governor should ascertain that you are entitled to the servitude of conducting water, and he does not find that you have lost it by nonuser during the time prescribed by law, he must take measures to enable you to again enjoy your right. Where, however, it is not proved that this is the case, the owner of the land cannot be prevented from retaining the water on his own premises, after having done work for that purpose in such a way that your field will not be irrigated.

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

11. *The Same, and the Cæsars, to Aurelian.*

A neighbor is not permitted to walk or drive through the land of another who does not owe him a servitude, but no one can be legally prevented from making use of the public highway.

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

12. *The Same, and the Cæsars, to Valeria.*

Not the extent of the land, but the nature of the servitude, determined the course of the water.

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

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

As an usufruct is extinguished by non-user during the term of two years in the case of land, and in a year where movable property or that which can move itself is concerned, We do not allow a right of this kind to be lost in so short a time, but We grant the terms of ten and twenty years for its extinction, and We decree that this rule shall apply to other servitudes, so that all servitudes cannot be lost by nonuser in two years (because they are always attached to the soil), but that they can be lost in ten years, when the parties are present, or in twenty when they are absent, in order that the rule may be the same in all cases of this kind, and all differences be abolished.

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

14. *The Same to John, Prætorian Prefect.*

The following point was discussed in the Sabinian Books: A certain man made an agreement with his neighbor to permit him to pass through his fields, or to allow his workmen to do so, and agreed that he should have this right of way for only one day in five years, and be permitted to go into his woods and cut down trees, or to do anything else that he might consider to be necessary.

The question was asked when a servitude of this kind would be lost through failure to use it, and some authorities held that if the grantee did not use the right of way during the first or second term of five years, the servitude would be entirely extinguished, as would be the case if it was not used for the term of two years, counting each period of five years as only one; others, however, were of a different opinion. It has seemed proper to Us to dispose of the matter as follows, namely, as We have already decided, in a law previously enacted, that servitudes shall not be extinguished by non-user during the term of two years, but during those of ten or twenty years, and, in this instance, if the grantee himself, or his employees, did not make use of the servitude for one day during the four terms of five years, they would then lose it through having neglected to avail themselves of it for twenty years, for he who does not use his right for so long a period of time will be too late if he desires its restoration.

(1) As that is a perfectly plain rule of law which forbids a neighbor to erect a building opposite the threshing floor of another, where, by trampling the dry grain, its benefit and utility may be secured, but, by the construction of such a building, the wind will be obstructed, and, in consequence, the straw cannot be separated from the grain, the wind being prevented by the building aforesaid from exerting its force everywhere, and, because of its position, the wind will be of no advantage to the threshing floor, We hereby decree that no one shall be permitted either to build any house, or do anything else to prevent the wind from being made use of in a proper and sufficient manner for the above-mentioned purpose, and thereby render the threshing floor useless to its owner, and unavailable for the separation of grain.

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

TITLE XXXV.

CONCERNING THE AQUILIAN LAW.

1. *The Emperor Alexander to Glytonis.*

If you can prove that you have sustained any damage on account of someone having burned your forest, or cut down its trees, you can make use of the action of the Aquilian Law.

Given on the seventh of the *Ides* of November, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

2. *The Emperor Gordian to Mutianus.*

Having brought suit under the Aquilian Law against the person who demolished your house, or burned it, or damaged it in some other way, you can compel the damage to be made good by applying to a competent judge. Moreover, if you have been unjustly deprived of the use of water to which you are entitled, you can, by application to the same judge, cause your property to be placed in its former condition. Given on the eighth of the *Ides* of November, during the Consulate of Gordian and Aviola, 240.

3. *The Same to Dolentus.*

There is no doubt that you have a right not only to bring suit for damages under the Aquilian Law, but also to bring a criminal accusation against a person who has rendered himself liable by having accused you of being responsible for the death of your female slave.

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

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

According to the Aquilian Law, when anyone denies that he has committed wrongful damage and he is convicted of having done so, he can be compelled to pay double the amount.

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

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

You can bring suit under the Aquilian Law for double the damage which you have sustained through your cattle having been unjustly shut up and killed, or allowed to perish by hunger.

Given on the fifteenth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors, 293.

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

You are by no means prevented from bringing suit under the Aquilian Law, for damages which you allege you have sustained on account of cattle having been permitted to pasture on your land.

Given on the fifth of the *Kalends* of November, under the Consulate of the Cæsars, 294.

TITLE XXXVI.

CONCERNING THE ACTION IN PARTITION.

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

If the entire estate of your father has not been divided with the consent of the heirs, and no decision has been rendered or compromise made with reference to it, you can bring an action in partition for the division of the estate.

Given on the eighth of the *Kalends* of October, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Antoninus to Vitianus.*

If your wife, after the death of your father, to whom she had given her dowry, and whose heir you have become, should still be united with you in marriage, you will, in accordance with the provisions of the ancient law, have the right to bring an action in partition against your co-heirs for the purpose of obtaining the dowry, and you can retain it even if she should die

afterwards, provided she is still married to you.

Given on the second of the *Ides* of February ....

3. *The Same to Rufus.*

Bring suit against your co-heirs for partition, in accordance with the prescribed legal formalities. If anything should be proved to have been taken from your share of the estate, the judge appointed to hear the case, having made proper investigation, shall render judgment in your favor, in accordance with the rules of law. An action for the crime of plundering the estate will, in vain, be brought by a co-heir, as he is considered to have been indemnified by the action in partition.

4. *The Emperor Alexander to Amonius.*

If, while you were a son under paternal control, and movable property, or that which can move itself, which might belong to *castrense peculium,* should be donated to you by your father, you will be entitled to it as part of your *peculium castrense,* which is not owned with your brothers; but the lands, although they may all have been conveyed to you by your father while you were in the army, will, nevertheless, not be included in your *peculium castrense.* Those lands which are acquired by a son under paternal control on account of his being in military service come under a different rule, as they constitute part of the *castrense peculium.*

5. *The Same to Statilia.*

It was in your husband's power, in a fit of anger, to change the provisions which he had made in his will with reference to his slaves, namely, that one of them should remain in perpetual servitude, and that the other should be sold in order to be taken away. Hence, if afterwards, his clemency should mitigate his anger (which, although it may not be proved by documentary evidence, still, nothing prevents its being established by other testimony, especially when the subsequent meritorious conduct of the said slave is such that the wrath of the master has been appeased), the arbitrator in the action in partition should comply with the last wishes of the deceased.

6. *The Emperor Gordian to the Soldier Pomponius.*

Property consisting of claims is not capable of division, for, according to the Twelve Tables, it is by operation of law divided into hereditary shares.

7. *The Same to Ælianus.*

Where the demand for the execution of a trust arises among coheirs, the Prætor or the Governor of the province, who has been appointed to decide the case, or the judge who is to hear the action in partition, shall exert himself to cause the will of the testatrix to be observed.

8. *The Same to Telesphorus.*

You can obtain a division of any property whatsoever which is held in common by you and your brother, and is derived from the estate of your father or mother, when the judge decides the action in partition.

9. *The Same to Verinus.*

There is no doubt that proceedings in partition are included among *bona fide* actions, and that your share of the estate (if you are entitled to any), will be increased by the addition of the profits.

10. *The Same to Telesphorus.*

When a testator divides his estate among all his heirs, and orders each of them to be content with certain lands, and the slaves which are attached to the same, it is clear that his will should be obeyed, if the authority of the Falcidian Law has not been violated; and when he thinks that

all his slaves should be recommended to his heirs, he does not by the words that follow change the disposition which he had made of all of them, and his first division does not become void, as he is considered to have made this statement with reference to those to whom he had decided to leave the slaves by his will.

11. *The Emperor Philip, and the Cæsar Philip, to Antony.*

It is an established rule of law that the estates of intestate persons should be equally divided between the sons and daughters of the deceased.

12. *The Emperors Gallienus and Valerian to Rufus.*

The division made between you and your brother should not (as you allege), be considered void, because it was not reduced to writing, as the certainty of the transaction sufficiently establishes the validity of the division.

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

It is certain that the *peculia* of children should, after the death of their father, be placed with the remainder of the property of the estate in order to be divided. Your brother and co-heir, however, who contracted obligations during the lifetime of your father, who himself was ignorant of the fact, cannot sue you and your other brother and co-heir, except in order to obtain the amount from his *peculium,* for sidered to have made this statement with reference to those to whom he made the contracts.

14. *The Same to Hermianus.*

If, in the suit for partition by which the estate of your father was equally divided between your brother and yourself, nothing was specially agreed in case of the eviction of the property adjudged to each of you, that is to say that each one would assume liability for his share, the Governor of the province shall, by means of the action *præscriptis verbis,* compel your brother and co-heir to pay, in proportion to his share, any damage which you may have sustained through the eviction of the property.

Given on the eighth of the *Kalends* of September, during the Consulate of the above-named Emperors, 293.

15. *The Same to Theophilus.*

It has been decided that, when a division has been made by agreement of the parties, and possession follows by common consent, and the entire ownership of the property which was decided to belong to your father has been assured to him, you will have the right to claim said property, if you succeed to his estate. If, however, the division was based upon an ordinary agreement, the arbitrator appointed to decide your action in partition shall determine how the community of interest shall be apportioned among you.

16. *The Same to Heraclius.*

Children have no power to cause the will of their father to be set aside, if they cannot prove that it is inofficious, but where some legal formality is lacking in either the will or the codicil, and the deceased in certain statements made by him, declared that it was his will, even though succession on the ground of intestacy may have taken place, it is established by the authority of the law that, in an action for partition, the judge must comply with the will of the father, with the exception of the reserve prescribed by the Decree of the Senate.

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

It is perfectly certain that, where co-heirs make a division with one another, the rights of one of them who is absent and is ignorant of the fact will not be prejudiced, and he can retain the undivided share which belonged to him in the beginning, to be deducted from all of the shares of the others, wherefore you can recover your share, with the income, by an action in partition,

without apprehending any loss from the division previously made by the co-heirs.

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

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

It has frequently been stated in rescripts that any property which a father has purchased in the name of the daughter shall be awarded to her by the arbiter in a suit for partition, if no contrary intention of the deceased is proved to have existed. Therefore, if you should become the heir of your father, and the property which you allege was purchased by him in your name still remains intact, you can avail yourself of the above-mentioned rescripts against your sister in proceedings brought before the Governor of the province.

(1) There is no doubt that any expenses incurred by one of the co-heirs in good faith, on account of an estate owned in common, should be adjudged to him in an action in partition, or in one based on voluntary agency.

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

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

It is a positive rule of law that, in a case in partition, where any of the heirs have appropriated any of the common property, or have caused it to deteriorate, they must be responsible for it, and indemnify the other heirs for the said property.

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

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

In the action in partition, the price of property owned in common and sold as such by one of the heirs does not entirely belong to the vendor, but if the price was paid, his co-heir can bring the action on mandate against him; or if he ratified the sale, the action on the ground of voluntary agency will lie in his favor. Where, however, one heir, having sold the property, withholds the purchase-money, the hereditary shares of the others in the same can be recovered.

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

Where, with the view to the future succession, a father divided his estate among his heirs, in accordance with his intentions, and, in any way whatsoever manifested his wishes with reference to the division among his heirs, the arbitrator appointed for the partition of the estate shall see that the reserve is made, as is done in the case of the Falcidian Law, and that a division of any property which the father did not leave to anyone either generally or specially takes place equally among the heirs and, in rendering his decision, he shall always comply with the wishes of the father.

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

When one of several heirs, without the consent of his co-heirs but through mistake, retains possession of a slave owned in common, the others believing that the slave belongs to him, he does not make the slave his own, as every good title to the latter is lacking; but it is clear that each of his co-heirs has a right to his hereditary share in said slave.

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

Although the action to which creditors are entitled against each heir to the extent of his hereditary share of the estate cannot be changed by an agreement for division, still, he who is bound by the agreement can be compelled to carry it out under the terms of the stipulation, and in accordance with law, and where no stipulation was entered into, he can be sued in an

action *præscriptis verbis,* if he is not proved to have violated his contract.

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

A testator, by means of entreaties, implored his son to transfer conditionally to his brothers and certain other persons a tract of land which he had in his possession, and which formed a part of the estate; but, after the condition had been fulfilled, the son retained his hereditary share of the land as his fourth under the Falcidian Law, setting off against it what he had received from his co-heirs as a loan. In case anything should be lacking to make up his fourth, and, after deducting what was paid by the others for the said land any excess over and above the said fourth should remain, he will be compelled to surrender it.

Given on the fifth of the *Nones* of January, during the abovementioned Consulate, 294.

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

If you should reject the estate of your grandfather, you cannot be forced to relinquish to your brothers property which you have acquired by a donation, or in any other way.

Given on the *Ides* of April, during the Consulate of Tuscus and Anolinus.

26. *The Emperor Constantine to Bassus, Prætorian Prefect.*

Where a will that has been begun but not completed, or a codicil, a father's letter, or any other written instrument is found which disposes of property in any way, or in any terms whatsoever, it should be executed only by the heirs themselves, no matter to what degree of relationship they may belong, whether they appear to be of the same degree, or have been emancipated, or are such as the Prætor calls to the succession; and in the action in partition (although the children may be called to an intestate succession), with the exception of the amount reserved by the Decree of the Senate, the dispositions of the deceased must be observed, even if they were not made in accordance with the formalities prescribed by law.

When, however, in a will of this kind, the name of a person other than the children above designated is found, it is certain that the will should be considered void only with reference to the said person.

Given at Rome, during the second Consulate of Crispus and Constantine-Cæsar, 321.

Extract from Novel 18, Chapter VII. Latin Text.

Provided there is attached to an instrument of this kind either the signature of the father himself, or those of all the children among whom the partition took place.

TITLE XXXVII.

CONCERNING THE DIVISION OF PROPERTY OWNED IN COMMON.

1. *The Emperor Antoninus to Lucan.*

If your brother sold only the share of the land which belonged to him, the sale cannot be revoked; but you must bring an action for the division of common property against him who owns the property jointly with you, and by this means you will obtain the entire tract of land, if you make a higher offer to your joint-owner for his share than he offers to you for yours. If, however, he should offer you more, you will take it and transfer your share to him. When the division of the land can conveniently be made without causing damage to anyone, you will acquire the part of it which may be adjudged to you. The following rule, however, should be observed, namely, that, after issue has once been joined, no one can alienate his share without the consent of all the other joint-owners of the property.

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

2. *The Emperor Alexander to the Soldier Avitus.*

If it should be proved before the Governor of the province that your brother gave in pledge certain vineyards owned by you in common, as he was unable to encumber to his creditor your share in said vineyards, the Governor shall order it to be restored to you, together with any crops which the creditor may have gathered from the same. The Governor must also provide for the division of the vineyards between you and your brother's creditor, and order him to deliver to you the portion which he received from your brother, after having been paid the price which he decides that your brother's share is worth; or he must order it to be transferred to your brother's creditor after your share has been appraised, and he has paid to you the amount of its valuation.

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

3. *The Same to Verecundianus.*

The duty of the arbiter appointed for the purpose of dividing property between you and your brother only has reference to such as is held in common by you and him; for any part of said property which he has sold will be owned in common by you and the purchaser, and you should ask for an arbiter for each one of them, if you wish the joint-ownership of said property to be dissolved. When, however, a tract of land is in such a place that it cannot conveniently be divided between the joint-owners, then a certain portion shall be adjudged to each one of them, after a just appraisement has taken place, and a mutual set-off for the price shall be made between them, so that if one receives a share of greater value he will be required to indemnify the other. Sometimes, even a purchaser who is a stranger is allowed to bid on the property, especially where one of the joint-owners acknowledges that his means are not sufficient to pay more than the very small sum offered by one of the others.

Given on the fifth of the *Nones* of May, during the Consulate of Julian and Crispinus, 223.

4. *The Emperors Diocletian and Maximian, and the Consuls to Heroda.*

If your sister, who is over twenty-five years of age, has divided property owned in common by yourself and her, it is settled that the division will stand, even though it is not proved to have been made either by written documents or other evidence. Where, however, she is a minor, and the time during which she is entitled to demand complete restitution has not yet expired, the Governor of the province, after proper investigation, shall determine whether complete restitution should be made on account of the division. He shall also provide that division shall be made of any property held in common by you, and shall require an account of the expenses to be rendered (if either of you has incurred any with reference to the said property), as well as an account of the profits, and of any fraud or negligence which may have taken place (as there is no doubt that all these things should be considered in an action brought for the division of property owned in common), in order that equality may be maintained in everything.

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

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

No one can against his will be compelled to retain his interest in the joint-ownership of property, or a partnership, therefore, after application has been made to the Governor of the province, he will provide for the partition of any property which he may ascertain is held in common by you and your sister.

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

TITLE XXXVIII.

MATTERS WHICH APPLY TO BOTH THE ACTION IN PARTITION AND THAT FOR THE DIVISION OF PROPERTY OWNED IN COMMON.

1. *The Emperor Antoninus to Marcus.*

It has been decided that a division of land has the effect of a sale. Given on the sixth of the *Kalends* of December, during the Consulate of Gentian and Bassus, 212.

2. *The Emperor Alexander to Euphrata.*

Even if someone who had no right to do so has appointed an arbitrator to make a division of property, still, if the partners gave their consent to such a division, each one of them has obtained the ownership of the property of which he acquired possession in accordance with the agreement.

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

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

It is customary to come to the relief of persons who have attained their majority, where divisions of property have been made through fraud or deceit, or unjustly, and not as the result of a decision in court, because in *bona fide* contracts whatever is established to have been done unjustly shall be corrected.

Given on the sixteenth of the *Kalends* of July, during the Consulate of the same Emperors, 293.

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

If your paternal uncle, while transacting business for himself, purchased a part of certain property owned in common, and did not thereby become a joint-owner of all of it, measures must be taken to indemnify you for the share to which you are entitled; and therefore it is contrary to the rules of law to demand that he shall divide with you the ownership of what he purchased.

Given on the sixteenth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 293.

5. *The Same, and the Cæsars, to Frontinus and Gaferio.*

With reference to the documents which you allege are jointly owned by your brother and yourself, the Governor of the province, having been applied to, shall determine with whom they should be deposited.

Given on the sixth of the *Ides* of February, during the abovementioned Consulate.

6. *The Same, and the Cæsars, to Thesidiana and Others.*

If you made a division of property with your paternal uncle, under the condition that he would swear that he had not been guilty of malicious fraud in the transaction, and he does not comply with what he agreed to, nothing can prevent you from claiming an undivided interest in the property which was the subject of the agreement, and was included in the division.

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

7. *The Same, and the Cæsars, to Severianus and Flavianus.*

If your brothers have encumbered their undivided interest in a tract of land without your consent, and the land comes into your hands in accordance with the contract for partition, without any mention having been made of the encumbrance, and the shares which belonged to

the other joint-owners before the partition was made and to which the lien solely attached, are evicted, you can bring the action *præscriptis verbis* against your brothers, under the stipulation, if one was made; otherwise you can sue for the value of your interest; for if you, being aware of the lien on the land, accepted the ownership of the same, you will not have the power to proceed against your brothers, unless you prove that the guarantee against eviction was made by a formal statement, or promised by an agreement.

Given at Nicomedia, on the second of the *Nones* of December, during the Consulate of the Cæsars, 294.

8. *The Same, and the Cæsars, to Nicomacus and Others.*

If a division of property owned in common, made by you after reaching the age of twenty-five years, was perfected by the relinquishment or transfer of possession, and this was done in good faith and by common consent, it cannot be abrogated.

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

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

The action in partition, or the one for the division of property owned in common, can only be brought while joint-ownership of the property exists.

Given at Nicomedia, on the sixth of the *Ides* of December, during the Consulate of the Cæsars, 294.

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

Where all the property to be divided is specifically stated in a written will, nothing will prevent the heirs from demanding that any which the testator did not mention be divided.

11. *The Emperor Constantine to Cærulus.*

The division of land should be made in such a way that slaves or serfs attached to the soil may pass to each heir without being separated, so that the relationship or affinity of those most closely connected may remain unimpaired; for who can suffer children to be separated from their parents, sisters from their brothers, and wives from their husbands? Therefore, if anyone should, contrary to law, separate either slaves or serfs connected in this manner, he shall be compelled to again unite them.

Given on the third of the *Kalends* of May, during the Consulate of Proculus and Paulinus, 334.

12. *The Emperor Justinian to the Senate.*

The following provisions have appeared to Us to be in perfect conformity to justice. If anyone, having either signed or given an antenuptial donation in behalf of his son, or a dowry in behalf of his daughter, provided that what he gave may revert to him, either under the terms of a stipulation, or by the law, or if someone else, having given a dowry or an ante-nuptial donation, in such a way that the tenor of the stipulation or the force of the law will cause it to come into the hands of the father, and he, having made a will, appoints either his children or strangers his heirs, and makes no disposition whatever of the property which has reverted to him, or come into his hands in this manner, and other children of his are found who have obtained a part of their father's property during his lifetime, either as an ante-nuptial donation or as a dowry, or on account of service in the army, which (as long as a will stands), they cannot be compelled to place in the mass of the estate, then the son or daughter aforesaid shall have as his or her separate property whatever reverted to their father or came into his hands, which shall be computed as any other profit; so that, in the present instance, he or she will only be entitled to as much as his or her brothers obtained from their father by the means which We mentioned above, and they will not be compelled on account of the will to place it in the general mass of the estate.

But where nothing was given by their father to any of their brothers, they cannot claim this share for themselves, but it becomes, as it were, a part of the paternal estate to be divided among all the heirs, in accordance with the terms of the will, and this only applies where the distribution of the estate of the father was made among the children. If, however, foreign heirs were appointed, and nothing was stated by the testator in his will with reference to this portion of his estate, then the son or the daughter will undoubtedly be entitled to whatever reverted or came into their father's hands as a preferred legacy. When what was given to the brothers was less than what came into the father's hands in this way, an equal amount shall be reserved, and the balance having become a part of the paternal inheritance, shall be divided in accordance with the usual method of distributing estates.

It should undoubtedly be observed that, if the amount which the father received from this source is less than that which he gave to his children, the whole of it will belong to those on whose account the property reverts to the father. Therefore, We desire that those rules which We have declared apply to the father shall also be applicable to the grandfather, and the paternal or maternal great-grandfather, as well as to the mother, the grandmother, and the paternal or maternal great-grandmother.

Given at Constantinople, on the eleventh of the *Kalends* of August, during the fifth Consulate of Lampadius and Orestes, 550.

TITLE XXXIX.

CONCERNING THE ESTABLISHMENT OF BOUNDARIES.

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

The owner of a tract of land cannot be prevented from selling a certain portion of it after having removed the boundaries and retain- . ing the remainder. The purchaser cannot claim a greater amount of land than that which came into his hands in accordance with a contract of sale, under the pretext of certain boundaries existing during the time preceding the sale.

Given at Nicomedia, on the *Ides* of December, during the Consulate of the above-mentioned Emperors, 293.

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

The difference of succession, and the consent of neighbors can, by either adding to or taking from lands, frequently change the position of ancient boundaries.

Given at Nicomedia, on the ninth of the *Kalends* of January, under the Consulate of the above-mentioned Emperors, 293.

3. *The Emperor Constantine to Tertullian.*

Where anyone first raises a question concerning the boundaries of his property, and it has reference to the contest of the ownership of the same, the question of possession must first be disposed of, and then the surveyor will be directed to go to the place, so that the truth having been ascertained, the controversy relating to the boundaries may be terminated. If, however, the other party should absent himself, in order that this question may not be decided, the surveyor shall, nevertheless, proceed to go to the place designated by the Governor of the province, and take his measurements in the presence of the adverse party.

Given at Verona, on the sixteenth of the *Kalends* of March, during the Consulate of Gallicanus and Symmachus, 230.

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

If it should be established that someone who raised a question as to a boundary intended to seize the property of another before a decision had been rendered in the case, he shall lose not only what he wrongfully claimed, but (that everyone should be content with his own property

and not desire that of another), if he who is the aggressor, when demanding the land, should be defeated in court, he shall lose as much land as he attempted to take from the other party.

Given on the thirteenth of the *Kalends* of July, during the Consulate of Gallicanus and Symmachus, 330.

5. *The Emperors Valentinian, Theodosius, and Arcadius to Neoterius, Prætorian Prefect.*

The exception of five feet having been abolished, persons shall be free to bring actions for the determination of the boundaries, or the ownership of property of these dimensions.

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

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

For the purpose of finally disposing of all fraudulent schemes and machinations, We decree that so far as the determination of boundaries is concerned, not the prescription of long time, but only that of thirty years shall be applicable.

Given on the second of the *Nones* of November, during the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

TITLE XL.

CONCERNING PERSONS INTERESTED IN THE SAME CASE.

1. *The Emperor Julian to Secundus, Prætorian Prefect.*

All those exceptions having been abolished and rejected to which litigants were accustomed to have recourse, under the pretext that other parties were interested, in order to protract the decision of the case, permission is hereby granted to any of them (whether all are under the same jurisdiction or reside in different provinces), to bring the action or file the answer, without requiring the presence of one or more of the others, who may be interested in the suit.

Given on the third of the *Nones* of September, during the Consulate of Mamertinus and Nevita, 362.

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

After an action has been properly begun, a matter in which several persons are interested can proceed without a mandate, even where several of the parties are absent, if those present are prepared to furnish security that they who are absent will ratify what is done; or (if suit should be brought against them), that they will furnish security that the judgment will be paid.

Given on the sixth of the *Ides* of December, during the Consulate of the Divine Jovinian and Veronian, 364.

TITLE XLI.

CONCERNING NOXAL ACTIONS.

1. *The Emperor Alexander to Marcellus.*

If the sum of money which you allege was stolen from the estate of your father by a person who has proved to have been free, you will not be prevented from bringing suit to recover it, or one to compel its production in court; for while, in other instances, the damage follows the person, and a slave who has been manumitted is liable in an action of theft, which does not lie in favor of an heir, still, when a slave steals anything from his master, although he commits a theft, the action of theft does not arise, nor can it be brought against him, even after he has been manumitted, unless he continues to retain possession of the stolen property after his liberation.

Given on the thirteenth of the *Kalends* of December, during the Consulate of Maximus,

Consul for the second time, and .Ælianus, 224.

2. *The Emperor Gordian to Quintilian and Others.*

If your slaves, without your knowledge, or even against your express prohibition, have secretly cut down trees, penalty for which is prescribed by the law enacted with reference to forests, you need not apprehend that you will be compelled to surrender the slaves, in addition to being liable for the damage sustained, for where masters are ignorant of the crimes of their slaves, or have forbidden them to perform certain acts, if they should be sued in a noxal action, judgment shall be rendered against them to either surrender the slaves by way of compensation, or to retain them under their control, after having satisfied the judgment for damages.

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

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

If you are prepared to formally accuse a slave of kidnapping, you will not be prevented from appearing before the Governor of the province; or, if you should prefer to bring the noxal action, or that of theft against the master of the said slave, the Governor of the province will take cognizance of your case; but you are aware that if you should elect to sue the master, and cannot prove that the crime was committed with his consent, which you attempted to do, he will have the choice either of surrendering the slave by way of reparation to indemnify you for the damage, or of paying the penalty.

Given on the fifth of the *Nones* of October, during the Consulate of the above-mentioned Emperors, 295.

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

If a slave, without the knowledge of his master, or even if he is aware of it but is unable to prevent it, takes away your property with violence, you can bring suit for quadruple damages against his master before the Governor, if the available year has not yet elapsed; and if it has elapsed, you can bring the simple noxal action against him. When he prefers to surrender the slave by way of reparation, you will still not be prevented from suing him for the amount which came into his hands from the robbery; for if the act was committed with his knowledge and he could have prevented it, he should, by all means, be compelled to pay the amount of the judgment, without taking into consideration the surrender of the slave. Where, however, you intend to bring an accusation for public crime, on account of your wife having been carried away by a slave, you should bring it not against the master, but against the slave who you allege perpetrated the offence.

Given on the eighteenth of the *Kalends* of September, during the Consulate of the above-mentioned Emperors, 299.

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

If a slave, with the aid and advice of his master, has taken from you, by non-manifest theft, a female slave and other property, as a civil action cannot exist between a slave and a freeman, you can proceed against the master in a penal action for double damages on account of this crime; and so far as the other property is concerned, you can bring a real action to recover it or a personal action for its value.

Given on the fifth of the *Kalends* of April, during the above-mentioned Consulate, 294.

TITLE XLII.

CONCERNING THE ACTION TO COMPEL THE PRODUCTION OP PROPERTY IN COURT.

1. *The Emperor Alexander to the Soldier Crescens.*

If the ownership of the female slave, with reference to whom you have brought an action, belongs to your mother, she could not lawfully have been sold by your father; and if you claim her for yourself, the Governor of the province shall order her to be produced in order that the truth of the matter may be judicially ascertained.

Given on the *Kalends* of May, under the Consulate of Alexander, 227.

2. *The Same to Cyrus.*

Where a demand is made for a slave accused of some crime, the master should, by means of the action for that purpose, be compelled to produce him in court.

Given on the eleventh of the *Kalends* of December, during the Consulate of Alexander, 227.

3. *The Same to Felicissima.*

If you have now the right to bring suit for the production of property, or the one for its recovery, this cannot be contested on the ground that it has been extinguished, because, some time previously, judgment was rendered against you in an action for the production of property, since the present case is different on account of the proceedings having been changed.

Given on the *Kalends* of December, under the Consulate of Maximus, Consul for the second time, and Ælianus, 234.

4. *The Same to Flacilla.*

If you can prove that documents belonging to you are in the hands of the adverse party, and the latter does not produce them, the judge will be aware that you should be granted power to tender him the oath in court.

Given on the third of the *Kalends* of March, during the Consulate

of Agricola and Clementinus, 231.

5. *The Emperor Gordian to the Soldier Sabinianus.*

The opinion was very properly given by the jurist Modestinus, whose authority should not be despised by you, that not only the party in possession is liable to the action for the production of property in court, but also he who has been guilty of fraud to avoid producing it.

Given on the second of the *Ides* of February, during the Consulate of Gordian and Aviola, 240.

6. *The Emperor Philip to Palemonides.*

If, after a formal accusation has been made by you to the effect that the adverse party has seized documents necessary to establish your rights, and you bring a criminal action against him, you must prove the truth of your allegations. When, however, you bring suit for the production of the property in court, you will be obliged to proceed in the way which is customary in such cases.

Given on the second of the *Ides* of March, during the Consulate of Peregrinus and Æmilianus, 245.

7. *The Emperors Diocletian and Maximian, and the Cæsars to Vitalianus.*

Where anyone who is required to produce property in court has the power to do so, but commits negligence or fraud in obeying the order, and then produces it in a damaged condition, the equity of the proceeding demands that although an action to compel the production cannot be brought, still, one *in factum* can be granted against him.

Given on the sixteenth of the *Kalends* of June, during the Consulate of Maximus, Consul for the second time, and Acquilinus, 287.

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

If the person whom you mentioned in your petition has loaned or deposited your property, you can bring either the action for its production, or the one for its recovery against whomever has possession of the same. But if an agreement was made that the property should be restored to you, and you have succeeded him who deposited it, you cannot, on the ground of hereditary right, be prevented from availing yourself of the action of deposit.

If, however, you have not title to the estate under either the civil or prætorian law, understand that, strictly speaking, you have legally no right of action based on the contract executed by him against whom you ask for relief, but an equitable action of deposit will be granted you, in accordance with justice.

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

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

If you prove that you have paid a legal debt to the person to whom it was due under some contract, in the presence of the Governor of the province, he will order your notes, under which nothing more can be claimed, and the instruments evidencing the contract, to be produced and returned to you, as you have naturally been released from liability.

Given on the eighth of the *Kalends* of September, during the Consulate of the above-mentioned Emperors, 294.

TITLE XLIII.

CONCERNING GAMBLERS AND GAMES OP CHANCE.

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

The practice of games of chance is very ancient, and has been permitted to soldiers when they were not otherwise occupied, but, having been adopted by innumerable foreign nations, it has been the cause of many tears, for persons who were not professional gamblers and did not understand the game, playing day and night, lost all their property by staking their money, their ornaments, their precious stones, and their gold. As the result of this they are ordinarily led to blaspheme the name of God and curse Him, and execute instruments.

Therefore, having in view the welfare of Our subjects, We decree by this general law that no one shall be permitted to gamble either in public or private houses, or other places, or to watch those who do; and if this law should be violated no prosecution shall follow, but any amount which has been paid shall be returned, and can be recovered by proper actions, either by the person who paid it, or by their heirs — even if they have neglected to demand it — or by their attorney or their parents; or, if they should fail to do so, the Treasury can recover it by its representatives, notwithstanding the prescription, unless it has run for fifty years.

The bishops of the different dioceses shall see that this law is executed, and shall have the right to avail themselves of the aid of the Governors of provinces, and they shall regulate the following five games, namely: *comon-belon, comon-diaulomolon, rhindalca, kayron,* and *ecperusan.* We do not, however, permit the stakes in these games to exceed one *solidus,* no matter how wealthy the persons may be, and if anyone should happen to be beaten, he will not sustain a serious loss, for We not only legally regulate wars, but also matters connected with amusement.

We do not prescribe a penalty for those who violate this law, still, We grant authority to bishops to make an investigation, and demand the aid of Governors to enforce it; and We absolutely forbid the game called "wooden horses" to be played, and if anyone should lose while engaged in it, he can recover what he has lost, and the houses in which persons are found to be gambling in this manner shall be confiscated. When the person who paid the

money is unwilling to have it refunded, Our Procurator shall claim it, and employ it for public purposes. Judges shall likewise see that all persons abstain from blasphemy and perjury (which, indeed, should be prevented by their authority).

TITLE XLIV.

CONCERNING RELIGIOUS PLACES, AND THE EXPENSES OF FUNERALS.

1. *The Emperor Antoninus to Dorita.*

If the remains of your son should be threatened by the waters of a river, or any other just and necessary cause should arise, you can transfer them to another place, with the consent of the Governor of the province.

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

2. *The Same to Hilarianus.*

When a dead body has been brought on land belonging to you, either against your consent or without your knowledge, or a stone is placed there, this does not make the place religious. If, however, anyone should bring a corpse upon your land with your consent, the place will thereby become religious, as there is no doubt that a monument cannot be erected, nor any place be rendered religious, if the owner forbids this to be done.

Given on the *Kalends* of May, under the Consulate of Acquilinus, Consul for the second time, and Anulinus, 217.

3. *The Emperor Alexander to Rimus.*

The Governor of the province shall order that the legacy left you by the deceased shall be paid, as well as what you can prove that you have expended for the funeral, or for the deceased while he was ill, in accordance with the judgment of a good citizen.

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

4. *The Same to Lucian.*

If by the term "monument" you mean a sepulchre, you are informed that no one can claim it by the right of ownership; but where it belongs to the family the title to it will be vested in all the heirs, and in a partition it cannot be allotted to any individual one. Profane places, however, which are near it, and have always been connected with buildings intended for the use of men, will belong to the person to whom the structures to which they appear to have been attached are granted by the partition.

Given on the sixth of the *Nones* of November, during the Consulate of Maximus, Consul for the second time, and Ælianus, 224.

5. *The Same to the Soldier Cassius.*

A father and a mother who are the heirs of their son, who was a soldier, should not fail to comply with his will, in which he provided for the erection of a monument to himself, for although all complaints on this ground have been abolished by former constitutions, still, the parents cannot avoid experiencing regret, and being conscious that they have neglected their duty by failing to comply with the last will of the deceased.

Given on the eighth of the *Kalends* of May, during the Consulate of Julian and Crispinus, 225.

6. *The Same to Primitivus and Others.*

The inscriptions on monuments do not transfer to freedmen either the right of sepulture, or the ownership of a place which is not religious; but you can take advantage of prescription for a

long time, if there was good ground for it in the beginning.

Given on the eighth of the *Kalends* of July, during the Consulate of Julian and Crispinus, 225.

7. *The Emperor Gordian to Claudius.*

You are not forbidden to place statues upon a tomb, or to decorate with ornaments a sepulchre which you allege that you have built, for everyone is perfectly free to avail himself of his right, provided that he does not do anything prohibited by law.

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

8. *The Emperor Philip to Julia.*

The right of sepulture in a family tomb does not extend to persons connected by affinity, or to mere blood-relatives who have not been appointed heirs.

Given on the sixteenth of the *Kalends* of July, during the Consulate of Peregrinus and Æmilianus, 245.

9. *The Same, and the Cæsar Philip, to Faustina.*

It is evident that a religious place should not be sold; but it is none the less certain that a field which is not religious, and adjoins a monument, is subject to the law as profane property, and hence can legally be alienated.

Given on the sixth of the *Kalends* of December, during the Consulate of Philip and Titian, 246.

10. *The Emperors Diocletian and Maximian, and the Cæsars, to Aquilina.*

If the body was not permanently committed to the tomb, you will not be prevented from removing it.

Given on the eighth of the *Ides* of February, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

11. *The Same, and the Cæsars, to Gaudentius.*

We do not forbid criminals to be buried who have suffered the punishment that they deserved.

Given on the eighth of the *Ides* of April, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

12. *The Same, and the Cæsars, to Victorinus.*

It was long since forbidden that the remains of deceased persons should be buried inside a city, lest the sacred right of citizens might be defiled.

Given on the third of the *Kalends* of October, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

13. *The Same, and the Cæsars, to Dionysius.*

The family, as well as the hereditary right of sepulture, extends also to foreign heirs. The family right, however, is vested in its members, even if none of them is an heir, but it is enjoyed by no one else who is not an heir.

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

14. *The Emperors Valentinian, Theodosius, and Arcadius to Cynegius, Prætorian Prefect,*

No one can transfer a human corpse from one place to another without permission of the Emperor.

Given at Constantinople, on the third of the *Kalends* of March, during the Consulate of the

Noble Youth Honorius and Evodius, 386.