THE INSTITUTES OF GAIUS.

THE FOUR COMMENTARIES OF GAIUS ON THE INSTITUTES OF THE CIVIL LAW.

FIRST COMMENTARY.

I. CONCERNING CIVIL AND NATURAL LAW.

(1) All peoples who are ruled by laws and customs partly make use of their own laws, and partly have recourse to those which are common to all men; for what every people establishes as law for itself is peculiar to itself, and is called the Civil Law, as being that peculiar to the State; and what natural reason establishes among all men and is observed by all peoples alike, is called the Law of Nations, as being the law which all nations employ. Therefore the Roman people partly make use of their own law, and partly avail themselves of that common to all men, which matters we shall explain separately in their proper place.

(2) The Civil Law of the Roman people consists of statutes, plebiscites, Decrees of the Senate, Constitutions of the Emperors, the Edicts of those who have the right to promulgate them, and the opinions of jurists.

(3) A statute is what the people order and establish. A plebiscite is what the commonalty order and establish. Moreover, the commonalty is distinguished from the people by the fact that the entire body of citizens including the patricians, is designated by the appellation, "the people"; but the other citizens, exclusive of the patricians, are indicated by the term commonalty; for which reason the patricians formerly declared that they were not bound by plebiscites, as they were enacted without their sanction; but subsequently the *Lex Hortensia* was passed, by which it was provided that plebiscites should bind the entire people; and hence, in this way, they were placed on the same footing as laws.

(4) A Decree of the Senate is what the Senate orders and establishes, and therefore it obtains the force of law, although this formerly was disputed.

(5) An Imperial Constitution is what the Emperor establishes by a decree, an edict, or a letter, and there was never any doubt that it had the force of a law, as the Emperor himself derives his authority from a statute.

(6) The magistrates of the Roman people have the power of promulgating edicts, but the highest authority attaches to the edicts of the two prætors, the urban and the foreign, whose jurisdiction is vested in the governors of the provinces; as well as to the edicts of the curule Ædiles, whose jurisdiction the quæstors administer in the provinces of the Roman people, for quæstors are not appointed in the provinces of the Emperor and, therefore, the latter edict is not published in these provinces.

(7) The answers of jurists are the decisions and opinions of those who are authorized to define the law. If the opinions of all of them concur, what they agree upon obtains the force of law; if, however, they disagree, the judge has a right to follow whichever opinion he may wish, and this is set forth in a rescript of the Divine Hadrian.

II. CONCERNING THE DIVISIONS OF THE LAW.

(8) All the law which we make use of has reference either to persons, to things, or to actions. Let us first consider persons.

III. CONCERNING THE DIFFERENT CONDITIONS OF MEN.

(9) The principal division of the law of persons is the following, namely, that all men are either free or slaves.

(10) Again, men who are free are either freeborn or freedmen.

(11) Freeborn are those who are free by birth, freedmen are those who have been manumitted from legal slavery.

(12) Moreover, there are three classes of freedmen, namely, Roman citizens, Latins, and *dediticii*. Let us consider each of these separately, and, in the first place, *dediticii*.

IV. CONCERNING DEDITICII AND THE PROVISIONS OF THE LEX ÆLIA SENTIA.

(13) It is provided by the *Lex Ælia Sentia* that slaves who have been placed in chains by their masters, or have been branded, or have been subjected to torture for some offence and convicted, or have been delivered up to fight with others or with wild beasts, or to contend with gladiators, or have been thrown into prison and have afterwards been manumitted by the same, or by another master, shall become free, and belong to the same class as that of enemies who have surrendered at discretion.

V. CONCERNING ENEMIES WHO HAVE SURRENDERED AT DISCRETION.

(14) Those enemies are called *dediticii* who, having formerly taken up arms and fought against the Roman people afterwards have been conquered and have surrendered at discretion.

(15) From this it is evident that slaves who have been guilty of criminal acts of this kind, no matter in what way, or at what age they may have been manumitted, and even though their masters had complete authority over them, can never become either Roman citizens or Latins, but must always be classed among enemies who have surrendered at discretion.

(16) If, however, a slave has not been guilty of such criminality, we declare that by manumission he sometimes becomes a Roman citizen, and sometimes a Latin.

(17) Where the following three requisites are combined in the person of a slave, that is to say where he is over thirty years of age, where his master is invested with full civil rights, and he is set free by proper and lawful manumission through the intervention of the prætor, by enrollment on the register of the census, or by will, he becomes a Roman citizen; if, however, one of these requisites should be lacking, he will become a Latin.

VI. CONCERNING MANUMISSION, AND PROOF OF THE REASON FOR IT.

(18) The requisite of the age of the slave was introduced by the *Lex Ælia Sentia*, for this law did not permit slaves under the age of thirty years, who had been manumitted, to become Roman citizens unless they were set free by the wand of the prætor, after proof of good reason for the manumission had been established in the presence of the Council.

(19) A good reason for manumission exists where, for instance, anyone offers for manumission before the Council a natural son or daughter, or brother or sister, or foster-child or teacher, or a slave with the intention of appointing him a steward, or a female slave on account of prospective marriage.

VII. CONCERNING THE CONSTITUTION OF THE COUNCIL.

(20) The Council in the City of Rome consists of five senators and five Roman knights of the age of puberty. In the provinces it consists of twenty magistrates who are Roman citizens, and who are convoked on the last day of the term. At Rome, however, manumissions take place in the presence of the Council upon certain days. Slaves who are more than thirty years of age can be manumitted at any time, and the ceremony can be performed even while walking in the streets, as for instance, when the prætor or the proconsul is on his way to the bath or the theatre.

(21) A slave, who was under the age of thirty years when manumitted, can become a Roman citizen if he was granted his freedom and appointed heir by the will of his master who died insolvent. . . .

(22) Slaves manumitted in certain ways are called *Latini Juniani; Latini* for the reason that they are classed with Latin colonists, *Juniani* because they received their freedom under the terms of the *Lex Junia*, as before it was passed they were considered slaves.

(23) The *Lex Junia* does not, however, permit them either to make a will, or to take under the will of another, or to be appointed testamentary guardians.

(24) What we have said with reference to their being unable to take under a will must be understood to mean that they cannot take anything directly as heirs, or legatees, but, on the other hand, they have a right to take under the terms of a trust.

(25) Those, however, who belong to the class of *dediticii* can, under no circumstances, take under a will, any more than a foreigner; nor can they, in accordance with a majority of the decisions, themselves make a will.

(26) Hence, only the lowest degree of freedom is possessed by those who belong to the class of *dediticii* nor is any way afforded them of obtaining Roman citizenship either by a law, by a Decree of the Senate, or by an Imperial Constitution.

(27) Moreover, they are forbidden to dwell in the City of Rome or within the hundredth milestone of the Capitol; and if they should disobey, they and their property are ordered to be publicly sold under the condition that they shall remain slaves beyond the hundredth milestone of the City of Rome, and that they shall never be manumitted; and if they should be manumitted, they are ordered to become the slaves of the Roman people; and these things are included in the *Lex Ælia Sentia*.

IN WHAT WAY LATINS MAY OBTAIN ROMAN CITIZENSHIP.

(28) Latins obtain Roman citizenship in many ways.

(29) For, by the *Lex Ælia Sentia*, where slaves under the age of thirty years are manumitted and become Latins, if they marry either women who are Roman citizens or Latin colonists, or those who belong to the same condition as themselves, and prove this by the testimony of not less than seven Roman citizens who have arrived at the age of puberty; and they have sons, and the latter are a year old, authority is granted them by this law to appear before the prætor — or, in the provinces before the governor — and prove that they have married wives in accordance with the terms of the *Lex Ælia Sentia*, and have sons by them who are a year old; and if the magistrate before whom this proof is adduced should declare it to be true, then the Latin and his wife, provided she and her son are of the same condition, are ordered to become Roman citizens.

(30) I added the clause, "If the son is of the same condition", for the reason that if the wife of the Latin aforesaid is a Roman citizen, her son is a Roman citizen by birth under the terms of the recent Decree of the Senate promulgated by the Divine Hadrian.

(31) This right of acquiring Roman citizenship, though at first only conferred upon those who had been manumitted under thirty years of age and had become Latins by the *Lex Ælia Sentia*, was afterwards, by a Decree of the Senate issued under the consulship of Pegasus and Pusio, granted to all Latins, even though they were more than thirty years of age at the time when they were manumitted.

(32) However, even if the Latin should die before he was able to prove that his son was a year old, the mother of the latter can prove his condition, and hence both she and her son (if she is a Latin) will become Roman citizens. If the mother should not be able to prove this, the son himself can do so when he reaches the age of puberty. If the son himself is a Roman citizen, for the reason that he is born of a mother who is a Roman citizen, he must still prove his condition in order to become the heir of his father.

(32a) What we have stated with reference to a son being a year old we also understood to apply to a daughter of the same age.

(32b) Moreover, by the *Lex Visellia*, persons become Roman citizens, where by manumission they have become Latins, when either under or over thirty years of age, if they have served for

six years in the guards at Rome. A Decree of the Senate is said to have been subsequently enacted by which Roman citizenship was bestowed on Latins if they had served for three years in the army.

(32c) Likewise, by an Edict of the Divine Claudius, Latins obtain the rights of Roman citizens if they build a ship with a capacity not less than ten thousand measures of grain, and the said ship, or one substituted for it, should transport grain to Rome for the term of six years.

(33) Moreover, it was established in an Edict published by Nero that if a Latin who had property worth two hundred thousand sesterces, or more, should build a house in the City of Rome on which he expended not less than half his estate, he should obtain the right of Roman citizenship.

(34) Finally, the Divine Trajan decreed that if a Latin should exercise the calling of a miller in the City of Rome for the term of three years, and should grind each day not less than a hundred measures of grain, he could acquire Roman citizenship.

(35) Slaves who become Latins either because they are under thirty years of age when manumitted, or, being over that age, have been informally manumitted, may become Roman citizens by being again manumitted either by the wand of the prætor, or by inscription on the register of the census, or by will; and in either of these cases they become the freedmen of the party who manumitted them a second time. Therefore, if a slave forms part of your property by bonitarian right and belongs to me by quiritarian right, he can be made a Latin solely by you, and he can be manumitted a second time by me but not by you, and in this way he will become my freedman; and if he obtains the right of citizenship in other ways he still will be my freedman.

The possession of his estate at the time of his death is however granted to you, no matter in what way he may have obtained Roman citizenship. But, if he is manumitted by one who has in him both bonitarian and quiritarian rights he can be manumitted by the said party, and become both a Latin and a Roman citizen.

(36) Every one who desires to manumit a slave is not permitted to do so.

(37) For he who manumits a slave for the purpose of defrauding his creditors or his patron, commits an act which is void, for the reason that the *Lex Ælia Sentia* prevents the grant of freedom.

(38) Likewise, by the same law a minor owner under the age of twenty years is not permitted to manumit a slave, except by the intervention of the prætor, after proper cause has been shown for the manumission in the presence of the Council.

(39) The following are proper causes for manumission, for instance, where anyone manumits his father, his mother, his teacher, or his foster-brother. Moreover, the reasons which we have designated above with reference to a slave under thirty years of age may be adduced also in the case of which we speak; and likewise, on the other hand, the same reasons which we stated with reference to an owner under the age of twenty years may be advanced where the slave is less than thirty years old.

(40) Therefore, as a certain restriction on the manumission of slaves is imposed upon owners under the age of twenty years by the *Lex Ælia Sentia*, the result is that anyone who has completed his fourteenth year, although he can make a will, appoint an heir to his estate, and bequeath legacies, still, if he is under the age of twenty years, he cannot grant freedom to his slave.

(41) And even though an owner under the age of twenty years may desire to constitute a slave a Latin, he must, nevertheless, prove before the Council, that he has a good reason for doing so, and afterwards manumit the said slave in the presence of friends.

(42) Moreover, by the *Lex Fufia Caninia* a certain limit is established with reference to the manumission of slaves by a will.

(43) Hence, he who has more than two slaves and not more than ten, is permitted to manumit as many as half of that number. He, however, who has more than ten and not more than thirty slaves, is permitted to manumit a third of that number; and he who has more than thirty slaves and not more than a hundred, is granted authority to manumit one fourth of his slaves. Finally, he who has more than one hundred and not more than five hundred, is not permitted to manumit more than a fifth; and, no matter how many slaves a man may have, he is not permitted to manumit more than this, as the law prescribes that no one shall have the right to manumit more than a hundred. Still, where anyone has only one or two slaves, his case does not come under this law, and therefore he has free power of manumission.

(44) Nor does this law have any reference whatever to persons who manumit in any way except by will, and therefore those who do so either in the tribunal of the Prætor, or by enrollment on the registers of the census, or in the presence of friends, are permitted to liberate their entire bodies of slaves; provided however, that no other reason prevents their receiving their freedom.

(45) What we have stated with reference to the number of slaves which can be manumitted by will should be understood to mean that where a man has a right to liberate the half, the third, the fourth, or the fifth part of his entire body of slaves, he shall in no case be restricted to a smaller number than he would have been permitted to manumit had the estimate been made according to the next preceding scale. This provision is in accordance with reason, for it certainly would be absurd for any one to be permitted to liberate five out of his ten slaves, because he is granted authority to manumit half of that number; while another, having twelve slaves, would not be permitted to manumit more than four; and anyone who has more than ten and not more than thirty, under the same rule should be permitted also to manumit five, the same number which he who has ten is allowed to liberate.

(46) If freedom should be granted by a testator in his will to a greater number of slaves than is above mentioned, and the names are written in a circle so that no order of manumission can be ascertained, none of the said slaves shall become free; because the *Lex Fufia Caninia*, as well as other special Decrees of the Senate, have declared all testamentary provisions devised for the purpose evading the law to be void.

(47) In conclusion, it should be noted that, as it is provided by the *Lex Ælia, Sentia* that slaves who have been manumitted for the purpose of defrauding a patron, or creditors, do not become free; for the Senate, at the suggestion of the Divine Hadrian, decreed that this rule should also apply to foreigners, while the other provisions of the same law do not apply to them.

(48) There is another division with reference to the law of persons, for some persons are their own masters, and some are subject to the authority of others.

(49) Again, of those persons who are subject to the authority of another, some are in his power, others are in his hand, and others are considered his property.

(50) Let us now consider those that are subject to the authority of another, for, when we ascertain who they are, we shall then understand what persons are their own masters.

(51) In the first place, let us examine those who are in the power of another.

(52) Slaves are in the power of their masters, and this power is acknowledged by the Law of Nations, for we know that among all nations alike the master has the power of life and death over his slaves, and whatever property is acquired by a slave is acquired by his master.

(53) At the present time, however, neither Roman citizens nor any other persons who are under the empire of the Roman people are permitted to employ excessive or causeless severity

against their slaves; for by a constitution of the Most Holy Emperor Antoninus anyone who kills his slave, without good reason, is not less liable than one who kills the slave of another; and the excessive harshness of masters is restrained by another constitution of the same Emperor; for he, having been consulted by certain governors of provinces with reference to slaves who flee for refuge to the temples of the Gods or the statues of the Emperor, ordered that if the cruelty of masters appeared to be intolerable, they should be compelled to sell their slaves; and in both cases he acted justly, for we should not make a bad use of our rights, in accordance with which principle the administration of their own property is forbidden to spendthrifts.

(54) But, as among Roman citizens, a double ownership may exist (for a slave is understood to be subject to bonitarian or quiritarian right or to belong to both these classes) so we merely say that a slave is in the power of his owner if he forms part of his property by bonitarian right, even if at the same time he may not belong to him by quiritarian right; for anyone who has the bare quiritarian right in a slave is not understood to have him in his power.

(55) In like manner, our children whom we have begotten in lawful marriage are under our control. This right is peculiar to Roman citizens, for there are hardly any other men who have such authority over their children as we have, and this the Divine Hadrian stated in the Edict which he published with reference to persons who petitioned for Roman citizenship for themselves and for their children, for he said: "It does not escape my knowledge that the Galatians hold that children are in the power of their parents."

(56) Roman citizens are understood to have contracted marriage according to the Civil Law and to have the children begotten by them in their power if they marry Roman citizens, or even Latins or foreigners whom they have the right to marry; for the result of legal marriage is that the children follow the condition of the father and not only are Roman citizens by birth, but also become subject to paternal authority.

(57) Therefore, certain veterans are usually granted permission by the Imperial Constitutions to contract civil marriage with those Latin or foreign women whom they first marry after their discharge, and the children born of such unions become Roman citizens by birth, and are subject to the authority of their fathers.

(57a) Marriage, however, cannot take place with persons of servile condition.

(58) Nor are we permitted to marry any free woman, as we should refrain from contracting matrimony with certain ones of this class.

(59) For marriage cannot be contracted between persons who sustain to one another the relation of ascendants and descendants, nor can legal matrimony exist between them; for instance, between father and daughter, mother and son, or grandfather and granddaughter; and if such persons form unions they are said to have contracted nefarious and incestuous marriages.

To such an extent does this rule apply that, although the relationship of parents and children may have been established by adoption, they cannot contract matrimony with one another, and even if the adoption has been dissolved, the same rule of law will continue to apply; so that I could not take as a wife a woman who sustains to me the relationship of daughter or granddaughter by adoption, even if I have emancipated her.

(60) This rule also applies to persons related in the collateral degree, but not to the same extent.

(61) Marriage is indeed prohibited between brother and sister, whether they are born of the same father or mother or merely of one of these parents in common; but although legal marriage cannot take place between me and my sister by adoption as long as the adoption continues to exist, still if the adoption is dissolved by emancipation I can marry her, and if I

should be emancipated, no impediment to the marriage will exist.

(62) It is lawful for a man to marry the daughter of his brother, and this first became customary when the Divine Claudius married Agrippina, his brother's daughter, but it is not lawful for anyone to marry his sister's daughter, and this rule is stated in the Imperial Constitutions. It is likewise illegal for a man to take as his wife his paternal or maternal aunt.

(63) Moreover, I cannot marry my former mother-in-law or daughter-in-law, or my step-daughter or step-mother. We make use of the word "former," because if the marriage by which affinity of this kind was established is still in existence, there is another reason why I cannot marry her, for a woman cannot marry two men, nor can a man have two wives.

(64) Therefore, if anyone should contract a nefarious and incestuous marriage he is considered to have neither a wife nor children, hence the issue of such a union are considered to have a mother but no father, and for this reason are not subject to paternal authority, but resemble children whom the mother has conceived through promiscuous intercourse; and they, in like manner, are understood to have no father, as he also is uncertain; therefore they are ordinarily called illegitimate children, either from the Greek word meaning conceived indiscriminately, or because they are children without any father.

(65) It sometimes happens that children when born are not under the control of their fathers but are afterwards subjected to their authority.

(66) For instance, under the *Lex Ælia Sentia*, if a Latin, after having married, should have a son who is a Latin by a Latin mother, or who is a Roman citizen by a Roman mother, he will not have him under his control; but if he should afterwards obtain the right of Roman citizenship by the evidence required by law, his son will, at the same time, be brought under his power.

(67) Likewise, if a Roman citizen should marry a Latin or a foreign woman through ignorance, believing that she was a Roman citizen, and should have a son, the latter will not be under his control because he will not be a Roman citizen, but either a Latin or a foreigner; that is to say, he will belong to the same condition as his mother, as no child follows the condition of its father unless the right to legal marriage existed between its parents; but by a Decree of the Senate it is permitted to prove the cause of error, and in this way the wife and the son will both obtain Roman citizenship, and the son will, from that time, begin to be under the control of his father. The same rule applies where a Roman citizen marries a woman belonging to the class of the *dediticii*, except that the wife does not become a Roman citizen.

(68) Moreover, if a female Roman citizen should, through mistake, marry a foreigner under the impression that he was a Roman citizen, she will be permitted to prove the cause of error, and in this way both her son and her husband will obtain Roman citizenship, and, at the same time, the son will begin to be subject to the authority of the father. The same rule also applies if the woman marries a foreigner as a Latin under the terms of the *Lex Ælia Sentia*, as provision for a case of this kind is specially made by the Decree of the Senate. Again, the same rule applies to a certain extent if she should marry a man belonging to the class of the *dediticii*, as being either a Roman citizen or a Latin under the provisions of the *Lex Ælia Sentia*, except that her husband belonging to the class of the *dediticii* remains in the same condition, and therefore his son, although he becomes a Roman citizen, is not subjected to the authority of his father.

(69) Likewise, if a Latin woman should marry a foreigner believing him to be a Latin in accordance with the *Lex Ælia, Sentia*, on the birth of a son she can, under the Decree of the Senate, prove the cause of her error, and then all the parties will become Roman citizens, and the son will pass under the control of his father.

(70) The same rule has been established where a Latin man marries a woman who is a foreigner under the impression that she is either a Latin or a Roman citizen, with a view to

taking advantage of the *Lex Ælia Sentia*.

(71) Moreover, a Roman citizen who thinks that he is a Latin, and for this reason marries a Latin woman, will be permitted to prove the cause of his error in case of the birth of a son, just as if he had married his wife under the provisions of the *Lex Ælia Sentia*. Likewise, those who being Roman citizens think that they are foreigners and marry foreign women, are permitted by the Decree of the Senate, on the birth of a son, to prove the cause of their error; and this having been done, the wife becomes a Roman citizen, and the son not only obtains to Roman citizenship but also is brought under the authority of his father.

(72) Whatever we have said with reference to a son is also understood to apply to a daughter.

(73) And, so far as proving the cause of the error is concerned, as nothing with reference to this was provided by the Decree of the Senate, it makes no difference how old the son or daughter may be unless he or she should be a Latin; because it was also declared by the *Lex Ælia Sentia* that in this case if the son or daughter is less than a year old the cause cannot be proved. It has not escaped my observation that it was stated in a rescript of the Divine Hadrian, with reference to the proof of the cause of the error, that the child must be a year old, but the right did not seem to be of general application, as the Emperor issued the rescript under peculiar circumstances.

(74) If a foreigner, believing himself to be a Roman citizen, married a woman who is a Roman citizen, the question arises whether he could prove the cause of error under the Decree of the Senate. He could not do so, however, as this privilege is not granted by the Decree of the Senate to a foreigner, even though he, being mistaken, should have married a Roman citizen, unless this right was especially conferred upon him. But, when a foreigner married a woman who is a Roman citizen, and after a son was born, he obtained Roman citizenship in some other way, then when the question arose whether he could prove the cause of error, the Emperor Antoninus stated in a rescript that he could do so, just as if he had remained a foreigner; from which we gather that even a foreigner can prove the cause of error.

(75) From what we have said, it is apparent that where either a Roman citizen marries a foreign woman or a foreigner marries a woman who is a Roman citizen, the child born of the union is a foreigner. If, however, a marriage of this kind should have been contracted through mistake, the defect can be remedied in the manner which we explained above. But if no error took place, and the parties, aware of their condition, contracted marriage, the defect of an union of this kind can, under no circumstances, be remedied.

(76) We, however, are speaking of persons who have not the right to contract legal marriage; for, otherwise, if a Roman citizen should marry a foreign woman with whom civil marriage can be contracted as is stated above, a legal marriage takes place, and a son born to the parties is a Roman citizen, and will become subject to the authority of his father.

(77) Likewise, if a female Roman citizen should marry a foreigner who is entitled to contract a legal marriage, and a son is born, he will be an alien, and the lawful son of his father, just as if he had begotten him with a foreign woman. At the present time, however, by a Decree of the Senate enacted at the instance of the Divine Hadrian, even if the right of civil marriage did not exist between a woman who is a Roman citizen and a foreigner, the child born of the union is the lawful son of his father.

(78) What we have stated, however, with reference to a female Roman citizen marrying a foreigner, and their issue being an alien, is derived from the *Lex Minicia*, by which it is provided that where a child is born of an unequal marriage it follows the condition of the parent of inferior rank. On the other hand, it is provided by the same law that if a Roman citizen should marry a foreign woman with whom the right of legal marriage did not exist, the child born of this union will be a foreigner. The *Lex Minicia* was not especially necessary in a case of this kind, for, without this law, the child would have followed the condition of its

mother, as this is the rule by the Law of Nations, among those between whom the right of civil marriage does not exist. This provision of the law which directs that the issue of a Roman citizen and a foreign woman shall be a foreigner seems to be superfluous, for even without this law this would be the case under the Law of Nations.

(79) Moreover, to such an extent does this rule apply that the issue of the marriage between a Roman citizen and a Latin woman follows the condition of its mother, for in the *Lex Minicia* not only are alien nations and peoples designated as "foreigners," but also those who are called Latins; and it also refers to other Latins who had their own peoples and states, and were included under the head of foreigners.

(80) On the other hand, by the same rule, the son of a Latin father and a mother who was a Roman citizen, whether the marriage was contracted under the provisions of the *Lex Ælia Sentia* or not, is born a Roman citizen. There were some authorities, however, who held that where a marriage was contracted under the *Lex Ælia Sentia* the child was born a Latin; for the reason that in this instance the right of legal marriage was conferred upon the parties by the *Lex Ælia Sentia et Junia*, and legal marriage always has the effect of giving the child the same condition as its father; for, if the marriage were otherwise contracted, the child, by the Law of Nations, would follow the condition of its mother, and for this reason would be a Roman citizen. We, however, make use of the rule established by the Decree of the Senate at the instance of the Divine Hadrian, by which it is declared that, under all circumstances, the child of a Latin man and a woman who is a Roman citizen is born a Roman citizen.

(81) In conformity with these provisions, the said Decree of the Senate, enacted at the instance of the Divine Hadrian, also prescribes that the issue of a Latin man and a foreign woman, as well as that of a foreign man and a Latin woman, follows the condition of the mother.

(82) The result of this is that the child of a female slave and a freeman is, by the Law of Nations, born a slave; and, on the other hand, the child of a free woman and a male slave is free by birth.

(83) We should note, however, whether any law or enactment having the force of law, in any case changes the rule of the Law of Nations.

(84) For example, under the Claudian Decree of the Senate, a woman who is a Roman citizen and has sexual intercourse with a slave belonging to another with the consent of his master will, in accordance with the agreement, remain free herself while she gives birth to a slave; for the contract entered into between her and the owner of the slave is declared to be valid by the Decree of the Senate. Afterwards, however, the Divine Hadrian, influenced by the injustice and impropriety of the law, restored the rule of the Law of Nations, so that as the woman herself remains free, her child is also born free.

(85) Likewise, by another law, children born of a female slave and a freeman could be born free; for it is provided by the said law that if anyone should have sexual intercourse with a female slave belonging to another and whom he believed to be free, and any male children should be born, they will be free; but any female children would be the property of him to whom their mother, the female slave, belonged. In this case, however, the Divine Vespasian, influenced by the impropriety of the law, restored the rule of the Law of Nations, so that, in every instance, even if female children should be born, they will become the slaves of the person who owned their mother.

(86) Another section of the same law remains in force, namely, that any children born to a free woman and a slave who is the property of another, and whom she knew to be a slave, are born slaves; hence among those who are not subject to this law, the child follows the condition of its mother by the Law of Nations, and on this account is free.

(87) In those cases, however, where the child follows the condition of the mother and not that of the father, it is perfectly clear that it is not subject to the authority of his father, even though

the latter may be a Roman citizen; and therefore we stated above that in certain instances where a marriage which was not lawful was contracted through a mistake, the Senate could intervene and remedy the defect of the marriage, and in this way generally bring it about that the son should be subjected to the authority of his father.

(88) If a female slave should conceive by a Roman citizen and afterwards, having been manumitted, should become a Roman citizen and a child should be born, although the latter would be a Roman citizen like its father, it would still not be under the control of the latter, for the reason that it was not conceived in lawful marriage, and because an union of this kind is not declared to be legal by any decree of the Senate.

(89) The decision which was made that if a female slave should conceive by a Roman citizen and then, after having been manumitted, her child should be born free, is in accordance with natural law, for children who are illegitimately conceived assume their status at the time when they are born, and therefore, if they are born of a free woman, they will be free, nor does it make any difference by whom their mother conceived them while she was a female slave; but those who are lawfully conceived assume their status at the time of conception.

(90) Therefore, where a female citizen at Rome, who is pregnant at the time, is interdicted from fire and water, and for this reason having become a foreigner, gives birth to a child; many authorities make a distinction, and are of the opinion that, as she conceived in lawful marriage, her child is born a Roman citizen, but if she conceived as the result of promiscuous intercourse, her child will be an alien.

(91) Likewise, where a woman who is a Roman citizen while pregnant, becomes a slave under the Claudian Decree of the Senate, for the reason that she had intercourse with a slave belonging to another, against the consent and protest of his master, many authorities make a distinction and hold that as the child was conceived in lawful marriage, it will be born a Roman citizen, but if it was conceived as the result of promiscuous intercourse, it will be born the slave of the person to whom his mother belongs.

(92) Again, if an alien woman should conceive as the result of promiscuous intercourse, and afterwards become a Roman citizen and bring forth a child, the latter will be a Roman citizen. If, however, she should conceive by an alien whom she married in accordance with foreign laws and customs, she will, under the terms of the Decree of the Senate enacted at the instance of the Divine Hadrian, be held to give birth to a Roman citizen, provided Roman citizenship has also been conferred upon the father.

(93) Where an alien has acquired Roman citizenship for himself and his children, the latter do not pass under the control of their father unless the Emperor should expressly cause them to do so; and this he only does when, after the case has been examined, he thinks that this would be advantageous to the children. He, moreover, makes a more diligent and minute investigation with reference to children who are under the age of puberty and absent; and this rule is set forth in an Edict of the Divine Hadrian.

(94) Likewise, where anyone with his wife, during her pregnancy, is presented with Roman citizenship, although the child, as we have mentioned above, is born a Roman citizen, he still does not pass under the control of his father; and this is stated in a rescript of the Divine Hadrian. For this reason if he knows that his wife is pregnant, and he petitions the Emperor for citizenship for himself and his wife, he should, at the same time, ask that his child shall be subjected to his authority.

(95) The rule is otherwise in the case of those who, together with their children, attain to Roman citizenship by the right of being Latins, for their children pass under their control.

(96) This right has been granted to certain foreign States, either by the Roman people, or by the Senate, or by the Emperor.

The right of Latinity is either greater or less. Greater Latinity is that of those who are elected decurions or administer any honorable office or magistracy, and by this means obtain Roman citizenship. The lesser right of Latinity is where only those who administer the office of magistrate or any other honorable employment attain to Roman citizenship; and this difference is referred to in many Imperial rescripts.

(97) Not only as we have stated are natural children in our power, but also those whom we adopt.

(98) Adoption takes place in two ways; either by the authority of the people, or by the command of the magistrate, as for instance, of the Prætor.

(99) We adopt, by the authority of the people, those who are their own masters, which kind of adoption is called arrogation, for the reason that he who adopts is asked, that is to say, interrogated, whether he desires to have the person whom he intends to adopt as his lawful son; and he who is adopted is asked whether he is willing to have this done; and the assembled people are asked whether they direct this to take place. By the command of the magistrate we adopt those who are under the control of their parents, whether they are in the first degree of descendants, as a son or a daughter, or whether they belong to an inferior degree, as a grandson or a granddaughter, a great-grandson or a great-granddaughter.

(100) Adoption by the people can only take place at Rome; and the other usually takes place in the provinces before the governors of the same.

(101) The better opinion is that women cannot be adopted by the voice of the people; but women may be adopted in the tribunal of the Prætor at Rome, or in the provinces in the tribunal of the proconsul or the lieutenant.

(102) The adoption of a child under the age of puberty by the vote of the people was at one time forbidden, and at another permitted; but at present, by the Epistle of the Emperor Antoninus addressed to the pontiffs, it is allowed under certain conditions, if there seems to be good cause for the adoption. We can, however, adopt persons of any age in the tribunal of the Prætor at Rome, or in the provinces in that of the proconsul, or the lieutenant.

(103) It is a rule common to both kinds of adoption that persons who are incapable of begetting children, such as eunuchs, can adopt.

(104) Women, however, cannot in any way adopt other persons, for the reason that they cannot exercise authority even over their natural children.

(105) Likewise, if anyone adopts another, either by the vote of the people, or by the consent of the Prætor or the governor of a province, he can give the son whom he has adopted in adoption to another.

(106) It is a question, however, with reference to both forms of adoption, whether a person can adopt another who is older than himself.

(107) It is peculiar to that kind of adoption which takes place by the vote of the people, that if he who gives himself to be arrogated has children under his control, he will not only himself be subject to the authority of the arrogator, but his children will also be under the control of the latter, as grandchildren.

(108) Now let us consider those persons who are in our hand, which right is also peculiar to Roman citizens.

(109) Both males and females are under the authority of another, but females alone are placed in the hands.

(110) Formerly this ceremony was performed in three different ways, namely, by use, by confarreation, and by coemption.

(111) A woman came into the hand of her husband by use when she had lived with him continuously for a year after marriage; for the reason that she was obtained by usucaption, as it were, through possession for the term of a year, and passed into the family of her husband where she occupied the position of a daughter. Hence it is provided by the Law of the Twelve Tables that if a woman was unwilling to be placed in the hand of her husband in this way, she should every year absent herself for three nights, and in this manner interrupt the use during the said year; but all of this law has been partly repealed by legal enactments, and partly abolished by disuse.

(112) Women are placed in the hand of their husbands by confarreation, through a kind of sacrifice made to Jupiter Farreus, in which a cake is employed, from whence the ceremony obtains its name; and in addition to this, for the purpose of performing the ceremony, many other things are done and take place, accompanied with certain solemn words, in the presence of ten witnesses. This law is still in force in our time, for the principal flamens, that is to say, those of Jupiter, Mars, and Quirinus, as well as the chief of the sacred rites, are exclusively selected from persons born of marriages celebrated by confarreation. Nor can these persons themselves serve as priests without marriage by confarreation.

(113) In marriage by coemption, women become subject to their husbands by mancipation, that is to say by a kind of fictitious sale; for the man purchases the woman who comes into his hand in the presence of not less than five witnesses, who must be Roman citizens over the age of puberty, and also of a balance-holder.

(114) By this act of sale a woman can not only make a coemption to her husband but also to a stranger, that is to say, the sale takes place either on account of marriage or by way of trust; for a woman who disposes of herself in this way to her husband for the purpose of occupying the place of his daughter is said to have done so on account of matrimony; but where she does this for some other purpose, either to a husband or to a stranger, as for instance in order to avoid a guardianship, she is said to have made a coemption by way of trust.

(115) The method by which this is done is as follows: If a woman wishes to get rid of her present guardians and obtain another in their stead, she makes this disposal of herself with their consent; and then the other party to the sale sells her again to him to whom she wishes to be her guardian, and he manumits her by the ceremony of the wand of the Prætor, and by this means becomes her guardian, and is designated a fiduciary guardian, as will hereafter appear.

(115a) Formerly a fiduciary coemption took place for the purpose of acquiring power to make a will, for women, with some exceptions, did not then have testamentary capacity unless they had made fictitious sales of this kind, and after having been resold, were manumitted; but the Senate, at the suggestion of the Divine Hadrian, abolished this necessity of making a fictitious sale.

(115b) Even if the woman makes a fiduciary sale of herself to her husband, she nevertheless occupies the place of his daughter; for if a wife comes into the hand of her husband for any reason whatsoever, it has been decided that she enjoys the rights of a daughter.

(116) It remains for us to explain what persons are subject to mancipation.

(117) All children of either the male or female sex who are under the control of their father can be mancipated by him in the same way as that in which slaves can be mancipated.

(118) The same rule of law applies to those persons who are in the hand of others, and they can be mancipated in the same way by those to whom they have been sold, just as children may be mancipated by their father; and while she who is married to the purchaser may only occupy the place of his daughter; still, though she may not be married to him, nor occupy the place of his daughter, she can still be mancipated by him.

(118a) Generally speaking, mancipation takes place either by parents or by those who obtain possession by coemption, when the parents and the so-called purchasers desire to release the persons from their authority, as will appear more clearly hereafter.

(119) Mancipation, as we have mentioned above, is a kind of fictitious sale, and the law governing it is peculiar to Roman citizens. The ceremony is as follows: After not less than five witnesses (who must be Roman citizens above the age of puberty) have been called together, as well as another person of the same condition who holds a brazen balance in his hand and is styled the "balance holder," the so-called purchaser, holding a piece of bronze in his hands, says: "I declare that this man belongs to me by my right as a Roman citizen, and let him be purchased by me with this piece of bronze, and bronze balance." Then he strikes the scales with the piece of bronze, and gives it to the so-called vendor as purchase money.

(120) In this manner both slaves and free persons are mancipated, as well as such animals as are subject to sale, among which are included oxen, horses, mules, and asses, as well as urban and rustic estates; for instance, Italian lands are usually disposed of in the same manner.

(121) The sale of land differs from the mancipation of other things, in that both slaves and free persons, as well as animals subject to mancipation cannot be disposed of in this way unless they are present; as it is necessary for him who acquires the object by mancipation to be able to grasp it with his hands, and the ceremony is designated mancipation because the property is seized with the hands. Lands, however, are usually mancipated at a distance.

(122) A piece of brass and a balance are employed for the reason that in former times only brazen money was in circulation, and this consisted of asses, double asses, half asses, and quarter asses; nor was any gold or silver coin in circulation, as we learn by the Law of the Twelve Tables. The value of the purchasing power of these coins was not estimated by their number, but by their weight; hence an as consisted of a pound of bronze, a double as of two pounds (whence it derived its name, which is still retained), while the half-asses and quarter-asses were estimated by their respective parts of a pound. Therefore, in former times, those who paid out money to anyone did not count it but weighed it, and the slaves who were permitted to disburse money were called "weighers."

(123) If anyone should ask what is the difference between coemption and mancipation, the reply is that the first ceremony does not reduce the party to a servile condition; but persons of either sex mancipated by parents or others are reduced to the condition of slaves, to such an extent that they cannot take either an estate or a legacy under the will of the party by whom they have been mancipated, unless they have been ordered to be free by the terms of the same will; just as the law is with reference to the persons of slaves. The reason for this distinction is clear, as the words used by parents and so-called purchasers are the same as those employed in the mancipation of slaves, but in the coemption of women this is not the case.

(124) Let us now consider in what ways those who are subject to the authority of another are released from it.

(125) And, in the first place, let us examine those who are under the power of others.

(126) We can understand from what has been stated above with reference to the manumission of slaves, how they are freed from the power of their masters.

(127) Children who are under the authority of their father become their own masters at his death. The following distinction, however, must be made, namely: When a father dies, his sons and his daughters always become independent; but when a grandfather dies, his grandsons and granddaughters do not, under all circumstances, become independent, but only where, after the death of their grandfather, they do not again pass under the control of their father. Therefore, if at the time of the death of their grandfather their father was living and was under the control of his father, they pass under the control of their father after the death of their grandfather; but if, at the time of the death of their grandfather, their father was either

dead or had been released from the control of his father, then the grandchildren, for the reason that they cannot pass under his control, will become their own masters.

(128) As a person who, on account of the commission of some crime, has been interdicted from water and fire under the *Lex Cornelia*, loses his Roman citizenship, and for this reason is excluded from the number of Roman citizens, his children cease to be under his control, just as if he were dead; for reason does not permit that a person of the condition of an alien should have a Roman citizen subject to this authority. In like manner, if anyone who is in the power of his father is interdicted from water and fire, he ceases to be under his control, as it is not reasonable that a man of the condition of an alien should be under the parental authority of a Roman citizen.

(129) Even if the father should be taken captive by the enemy and thereby become the enemy's slave, nevertheless, his authority over his children remains in abeyance under the law of *postliminium*, by which those who were captured by the enemy and return, recover all their former rights; and, therefore, if he should return, he will have his children in his power. If, however, he should die while in captivity, his children will become their own masters; but it may be doubted whether this took place at the time when the father died in the hands of the enemy, or at the time when he was captured. Likewise, if the son himself, or a grandson, should be taken captive by the enemy, we say that the authority of the father remains in abeyance on account of the law of *postliminium*.

(130) Moreover, male children are released from paternal authority if they are installed priests of Jupiter; and females, if they are chosen Vestal Virgins.

(131) In former times also, when the Roman people were accustomed to establish colonies in Latin territory, sons, who, by the order of their father, placed their names upon the roll of the Latin colony, ceased to be under the control of their father, because they became citizens of another State.

(132) Again, children cease to be under parental authority by means of mancipation. A son, however, by three mancipations, and other children either of the male or female sex by a single mancipation, are released from parental authority; for the Law of the Twelve Tables only mentions three mancipations with reference to a son, as follows: "If a father sells his son three times, let him be free from the control of his father." This ceremony takes place in the following manner. The father sells his son to a third party, and the latter manumits him by the wand of the prætor, and by doing so, he is restored to the control of his father; and the latter then sells him a second time, either to the same person or to another (but it is customary to sell him to the same person); and he again manumits him in the same way, and by this act the son is again placed in the power of his father; and the father then sells him a third time, either to the same person or to another (it is customary, however, for him to be sold to the same person), and by virtue of this sale he ceases to be under the control of his father, even though he has not yet been manumitted, but still remains in the condition of one who has been sold.

(133) It should, however, be noted that one who has a son, and by him a grandson under his control, has full power to release his son from his control, and still to retain authority over his grandson; or, on the other hand, he has the right to manumit his grandson, or to render both parties their own masters. We understand that this rule also applies to great-grandsons.

(134) Again, parents also lose their authority over their children by giving them in adoption. Where a son is given in adoption, three sales are required, and two intervening manumissions must take place, as is customary when the father releases a son from his authority, in order that he may become his own master. Then, the son is either resold to the father and he who adopts him claims him as his son before the prætor; and, if his natural father does not claim him, he is given by the prætor to the party who claims him by adoption; or, if he is not sold again to his father, he who adopts him claims him from him to whom he was sold for the third time. It is, however, more convenient for him to be resold to his natural father. In the case of

other offspring of either sex, one sale is sufficient, whether a resale is made to the natural father or not. The same ceremony ordinarily takes place in the provinces, in the presence of the governor.

(135) When a grandson is conceived after the first or second sale of a son, although he may not be born until after the third sale of his father, he, nevertheless, remains under the control of his grandfather, and may be emancipated, or given in adoption by him. A grandson, however, who is begotten after the third sale of a son, is not born under the control of his grandfather; but Labeo holds that he is born under the control of him to whom his father was sold. We, however, make use of the following rule, that as long as its father is in mancipation the right of the child remains in suspense; and if the father should be manumitted, the child will pass under his authority; but if he should die before the ceremony of mancipation has been completed, the child will become its own master.

(135a) We understand that the same rule applies to the case of a grandson who has been mancipated once, as it does to that of a son who has been mancipated three times, for, as we stated above, what three sales accomplished with reference to a son, one accomplishes in the case of a grandson.

(136) A woman placed in the hand of her husband by confarreation is not, for this reason, at present, released from paternal authority unless the ceremony of coemption has been performed; for it is provided by the *Lex Asinia Antistia* enacted during the Consulate of Cornelius Maximus and Tubero, with reference to priestesses of Jupiter being in the hand of their husbands as far as relates to the sacred rites; but in all other respects they are considered as not being under such restraint. Where, however, women are placed in the hand of their husbands by coemption, they are released from parental control; and it makes no difference whether they are placed in the hand of their husbands, or in that of strangers; although those alone are considered to occupy the place of daughters who are placed in the hand of their husbands.

(137) Women placed in the hand of their husbands by coemption cease to be subject to this authority in the same way as daughters under the control of their father; that is to say, either by the death of him in whose power they are, or because he has been interdicted from water and fire.

(137a) They also cease to be in the hand of their husbands by remancipation; and if emancipated after a single sale they become their own mistresses. A woman who has concluded a coemption with a stranger by way of trust, can compel him to sell her again to anyone whom she may select; but one who has been sold to her husband, in whose hand she is, cannot compel him to do so, any more than a daughter can compel her father, even though she may be an adopted daughter. A woman, however, can, by serving notice of repudiation, force her husband to release her, just as if she had never been married.

(138) As persons who have been sold in this way are considered to occupy the position of slaves, if they should be manumitted either by the prætor, or by enrollment in the census, or by will, they become their own masters.

(139) In this instance, however, the *Lex Ælia Sentia* does not apply. Therefore, we do not require the party who manumits, or the one who is manumitted, to be of any particular age; and no attention is paid to whether the party granting the manumission has either a patron or a creditor; and not even the number prescribed by the *Lex Fufia Caninia* is considered with reference to persons of this description.

(140) But even if the party having possession of the one who is sold should be unwilling, the latter can obtain his freedom by being enrolled on the register of the census; except in the case of one whom his father has mancipated under the condition that he should be again sold to him; for, in this instance, the father is considered to have reserved, to a certain extent, his own

power for himself which he received by mancipation. And, indeed, he is not said to have received his freedom by enrollment on the register of the census, against the consent of the party who holds him in mancipation, if his father gave him up as the result of a noxal action; for instance, where his father has been condemned on account of a theft committed by his son and has surrendered him by mancipation to the plaintiff, for then the plaintiff holds him instead of the payment of a sum of money.

(141) In conclusion, we observe that no insulting act should be committed by us against persons whom we hold in mancipation; otherwise, we shall be liable to a suit for injury committed. And, indeed, men should not be retained for any length of time in this condition, but, for the most part, as a matter of form, and only for an instant, unless the parties are mancipated on account of a noxal action.

(142) Let us now pass to another division. For persons who are neither subject to paternal authority, nor are in the hand, nor are held in mancipation by another, may still be under guardianship or curatorship, or may be free from either of these restrictions. Let us first consider those who may be under guardianship and curatorship; for then we shall understand who the other persons are who are subject to neither of these restraints.

(143) And, first, let us examine those who are under guardianship.

(144) Parents are permitted to appoint testamentary guardians for their children who are subject to their authority, who are under the age of puberty, and of the male sex; and for those of the female sex, no matter what their age may be, and even if they are married; for the ancients required women, even if they were of full age, to remain under guardianship on account of the levity of their disposition.

(145) Therefore, if anyone appoints a guardian for his son and daughter by will, and both should arrive at the age of puberty, the son will cease to have a guardian, but the daughter will nevertheless remain subject to guardianship; for it is only under the *Lex Julia et Papia* that women are released from guardianship by the birth of children. Those whom we speak of do not include Vestal Virgins, whom the ancients desired to be free on account of the honor of the priesthood; hence this was provided by the Law of the Twelve Tables.

(146) We can, however, only appoint testamentary guardians for grandsons and granddaughters, if after our death they do not again pass under the control of their father. Therefore, if my son was under my control at the time of my death, my grandsons by him cannot have a guardian appointed by my will, although they were under my control at the time; for the reason that by my death they were placed under the control of their father.

(147) As in many other instances posthumous children are considered as already born, in this case also it has been decided that testamentary guardians can be appointed for posthumous children, as well as for those previously born; provided, however, that if born during our lifetime, they would have been subject to our authority. We can also appoint them our heirs, but it is not permitted to appoint posthumous strangers heirs.

(148) A testamentary guardian can be appointed for a wife who is in the hand of the testator; just as if she were a daughter; and, likewise, one may be appointed for a daughter-in-law who is in the hand of a son, just as if she were a granddaughter.

(149) A guardian can most properly be appointed in the following manner, namely: "I appoint Lucius Titius guardian of my children." If, however, the appointment was made as follows: "Let Lucius Titius be the guardian of my children and my wife," it is understood to be legally made.

(150) The choice of a guardian may be left to a wife who is in the hand of the testator, that is to say, he can permit her to select any guardian whom she may choose, as follows: "I give to Titia, my wife, the selection of her guardian." In this instance, the wife is permitted to appoint

a guardian either for the administration of all the property, or only of one or two things.

(151) Moreover, the choice may be granted either absolutely or with restrictions.

(152) It is ordinarily granted absolutely in the way that we have mentioned above. Where it is granted with restrictions, the following form is usually employed: "I grant to Titia, my wife, only one choice of a guardian"; or: "I only grant her the right to make two selections."

(153) These privileges of selection are very different, for she who has an unlimited right of choice, can choose a guardian twice or three times, or oftener; but she who has a limited right of choice cannot make more than one if only one is granted; and if only two are granted she has no right to make more than two selections.

(154) Guardians who are especially appointed by will are called "dative"; and those ta whom the selection of a guardian is left are called "optative."

(155) By the Law of the Twelve Tables the nearest agnates become the guardians of children for whom no guardian was appointed by will, and they are styled legal guardians.

(156) Agnates are blood relatives through the male sex, for instance, through the father; as a brother having the same father, the son of a brother, or a grandson by him, and also a paternal uncle and his son and grandson. Those who are related through the female sex are not agnates, but cognates, according to natural law. Therefore, agnation does not exist between a maternal uncle and a son or a sister, but cognation does. In like manner, the son of my maternal aunt, or the sister of my mother, is not my agnate, but my cognate; and, on the other hand, I am related to him by the same rule, because children follow the family of their father, and not that of their mother.

(157) Formerly, however, according to the Law of the Twelve Tables, females had agnates as legal guardians, but afterwards the *Lex Claudia*, which abolished the guardianship of agnates, so far as females were concerned, was enacted, and therefore a male child under the age of puberty has his brother, who is above the age of puberty, or his paternal uncle, as his guardian; but a female child cannot have a guardian of this kind.

(158) The right of agnation is extinguished by the loss of civil rights, but the right of cognation is not affected by it, for the reason that a civil law can abrogate civil rights, but cannot extinguish natural rights.

(159) The loss of civil rights is a change of former condition, and this takes place in three ways; it is either greatest, or less, which some call intermediate, or least.

(160) The greatest loss of civil rights occurs when anyone forfeits at the same time both his citizenship and his freedom, which happens to those who are not inscribed on the register of the census, and are in consequence ordered to be sold; which rule has for some time been abolished by disuse. Under the terms of the *Lex Ælia Sentia, dediticii* are liable to the same penalty for violation of its provisions

if they have established their domicile in the City of Rome. It also takes place where, under the Claudian Decree of the Senate, free women become the slaves of the owners of other slaves with whom they have cohabited against the consent and protest of their masters.

(161) Less, or intermediate, loss of civil rights occurs when citizenship is forfeited but freedom is retained, which happens when anyone is interdicted from fire and water.

(162) The least loss of civil rights results when both citizenship and freedom are retained, but a man's domestic condition is altered; which happens to those who are adopted, as well as to women subject to coemption, and also in the case of those who are given in mancipation and are afterwards manumitted; so that as often as anyone is mancipated, or remancipated, or manumitted, he suffers a loss of civil rights.

(163) The right of agnation is extinguished not only by the two greater losses of civil rights but also by the least; and therefore if a father should emancipate one of two children, neither can be the guardian of the other by the right of agnation after his death.

(164) When agnates have a right to guardianship, all of them are not entitled to that right at once, but only those in the nearest degree.

(165) By the same law of the Twelve Tables, the guardianship of freedwomen and freedmen under the age of puberty belongs to their patrons and the children of the latter. This kind of guardianship is also styled legal, not because special provision is made for it by this law, but for the reason that this has been accepted by interpretation just as if it had been expressly stated in the words of the statute; for as the law directed that the estates of freedmen and freedwomen who died intestate should belong to their patrons and the children of the latter, the ancient authorities held that the law intended that they should be entitled to their guardianship because it ordered that agnates whom it called to the succession should also be guardians.

CONCERNING FIDUCIARY GUARDIANSHIP.

(166) As in the case of patrons, another kind of guardianship which is also designated legal, has been established. For, if anyone should give in mancipation to another, under the condition that he would remancipate him to himself, either a son or a grandson by that son, who is under the age of puberty, or a daughter or a granddaughter by a son, and their descendants, whether they have arrived at the age of puberty or not; and he should manumit them after they have been remancipated, he will become their legal guardian.

(166a) There are other kinds of guardianship which are styled fiduciary, that is to say, such as we are entitled to for the reason that a free person has been mancipated by us, or by a relative, or by a party to coemption and afterwards has been manumitted.

(167) The guardianship of Latins of both sexes who are under the age of puberty does not invariably belong to those who manumit them, but to those to whom they belonged by quiritarian right before their manumission. Therefore, if a female slave who belonged to you by quiritarian right, but who was mine by bonitarian right, should be manumitted by me alone without your taking part in the ceremony, she would become a Latin, and her property will belong to me; but you will have the right to her guardianship, as provision for this is made by the *Lex Junia*. Hence, if the said slave should be made a Latin by one who had both the bonitarian and quiritarian rights, her property as well as her guardianship will belong to him.

(168) Agnates, patrons, and those who manumit free persons are permitted to transfer the guardianship of a female ward to another in court; it is not, however, permitted to transfer the guardianship of male wards, for the reason that this is not considered onerous, as it terminates at the age of puberty.

(169) He to whom a guardian is thus transferred is designated a cessionary guardian.

(170) If he dies, or loses his civil rights, the guardianship reverts to the party who transferred it;, and if the latter should be either dead or have forfeited his civil rights, the guardianship will leave the cessionary guardian and pass to the one next in degree to the party who transferred it.

(171) So far as agnates are concerned, however, cessionary guardianship does not at present exist, as guardianship of female wards by agnates was abolished by the *Lex Claudia*.

(172) Certain authorities hold that fiduciary guardians also have no right to transfer their guardianship, as they themselves have voluntarily assumed the burdens of the same; but, although this has been decided, still in the case of a parent who have given either a daughter, granddaughter, or a great-granddaughter in mancipation to another under the condition that she shall be again mancipated to him, and, this having been done, he manumits her, the same

rule should not apply; as he is considered a legal guardian, and the same privilege should be granted to him as to a patron.

(173) Moreover, by a Decree of the Senate, women are permitted to demand another guardian to take the place of one who is absent; and this having been granted, the first guardian ceases to hold his office, nor does it make any difference how far he may be from home.

(174) An exception, however, is made in the case of an absent patron, as a freedwoman is not permitted in this instance to demand another guardian.

(175) Again, in the same class with the patron we have a parent who has obtained legal guardianship from the fact that he has manumitted his daughter, granddaughter, or great-granddaughter, who has previously been remancipated by himself. His sons, however, are only considered to occupy the places of fiduciary guardians, but those of a patron obtain the same guardianship which their father possessed.

(176) Sometimes, however, it is permitted to demand a guardian to take the place of an absent patron; as for instance, where an estate is to be entered upon.

(177) The Senate decreed that the same rule should apply to the son of a patron who was himself a ward.

(178) For by the *Lex Julia*, enacted for the purpose of regulating marriages, a female who is under the legal guardianship of a ward is permitted to demand a guardian from the Prætor of the City for the purpose of constituting her dowry.

(179) For the son of a patron, even if he is under the age of puberty, becomes the guardian of a freedwoman, although he cannot perform any legal act, as he is not permitted to do anything without the authority of his guardian.

(180) Likewise, if any female is subject to the legal guardianship of a person who is insane, or dumb, she is permitted by the Decree of the Senate to demand a guardian for the purpose of constituting her dowry.

(181) In these instances, it is clear that the patron or the patron's son is unquestionably entitled to the guardianship.

(182) Moreover, the Senate decreed that, if the guardian of a male or female ward was suspected of maladministration, and was removed from the guardianship; or if he should be excused for some good reason, and another guardian be appointed in his stead; after this has been done, the former guardian shall lose the guardianship.

(183) All of these provisions are observed both at Rome and in the provinces, but at Rome application for the appointment of a guardian should be made to the Prætor, and in the provinces to the governor.

(184) Formerly, when the ancient mode of procedure was in use, a guardian was appointed for another reason, namely, where a suit was about to be brought between the guardian and the woman, or the ward; since because the guardian could not grant authority in his own case, another guardian was appointed by whom the legal proceedings were instituted; and he was called a prætorian guardian, because he was appointed by the Urban Prætor. Some authorities, however, think that, after the ancient mode of procedure was abolished, this method of appointing a guardian became obsolete, but it is held by others that it is still the practice where an action is to be brought.

(185) If there should be no lawful guardian for a person, one is appointed for him under the *Lex Atilia*, in the City of Rome by the Urban Prætor and a majority of the tribunes of the people, who is styled an "Atilian guardian"; and in the provinces he is appointed by the governor under the *Lex Julia et Titia*.

(186) Hence if a guardian is appointed of anyone by will under a condition, or from a certain day, a guardian can be appointed while the condition is pending, or before the time arrives. Likewise, if a guardian should be appointed absolutely, a guardian can be demanded under these laws, so long as no heir appears, and he will cease to hold his office as guardian when the one appointed by will acquires the right to act.

(187) When a guardian is captured by the enemy, a substitute should be demanded under these laws, and he will cease to be guardian if the one who was taken captive should return, for, on his return, he will recover the guardianship by the law of *postliminium*.

(188) From this it is apparent how many different kinds of guardianships there are, and if we consider into how many classes they may be divided a long discussion will be required, for the ancient authorities entertained many doubts on this subject, and as we have examined it very carefully, both in the interpretation of the Edict and in the books which we have written on Quintus Mucius, it will be sufficient to state that certain jurists, for instance, Quintus Mucius, say that there are five classes, and others, like Servius Sulpicius, say that there are three; and still others, as Labeo, say that there are two; and others again, hold that there are as many kinds of guardianship as there are forms of the same.

(189) The law of all states declares that persons who have not reached puberty shall be under guardianship, because it is consonant with natural reason that one who is not of full age should be controlled by the guardianship of another. Indeed, there is scarcely any state in which parents are not permitted to appoint testamentary guardians for their children; although, as we have stated above, only Roman citizens are considered to have their children subject to paternal authority.

(190) There does not seem to be any good reason, however, why women of full age should be under guardianship, for the common opinion that because of their levity of disposition they are easily deceived, and it is only just that they should be subject to the authority of guardians, seems to be rather apparent than real; for women of full age transact their own affairs, but in certain cases, as a mere form, the guardian interposes his authority, and he is often compelled to give it by the Prætor, though he may be unwilling to do so.

(191) Therefore, a woman has no right of action under the guardianship against her guardian, but where guardians transact the business of their male and female wards, they must render an account of their guardianship in court, after their wards arrive at the age of puberty.

(192) The legal guardianship of patrons and parents are indeed understood to have a certain effect, for the reason that they cannot be forced to give their consent to the making of a will, to the alienation of property subject to mancipation, or to the assumption of obligations; unless there should be some urgent reason for the alienation of such property, or for undertaking the obligations aforesaid. These provisions have been made for their own benefit, in order that where the estates of persons who have died intestate belong to them, they can neither be excluded from them by will, nor have the estate come into their hands diminished in value on account of debts which have been incurred, or through the alienation of the most valuable part of the property.

(193) Women are not held in guardianship among foreigners as they are with us; still, they are generally, as it were, in a state of tutelage; as, for example, the law of the Bythinians directs that if a woman enters into a contract it must be authorized either by her husband or by a son who has reached the age of puberty.

(194) Moreover, a freeborn woman is released from guardianship if she is the mother of three children, and a freedwoman if she is the mother of four, and is under the legal guardianship of her patron. Those who have other kinds of guardians, as, for instance, Atilian or Fiduciary, are released from guardianship by having three children.

(195) A freedwoman may, however, have a guardian appointed in several other ways; for example, where she has been manumitted by a woman, for then she must demand a guardian under the *Lex Atilia*, or in the provinces under the *Lex Julia et Titia*, for she cannot be under the guardianship of a patroness.

(195a) Again, if she has been manumitted by a male and should enter into coemption with his consent, and then should be remancipated and manumitted, she ceases to have her patron as her guardian, and begins to have as a guardian the party by whom she was manumitted, who is designated a fiduciary guardian.

(195b) Likewise, if her patron, or his son, gives himself in adoption, a freedwoman should demand a guardian for herself either under the *Lex Atilia,* or the *Lex Julia et Titia*.

(195c) Likewise, under the same laws, a freedwoman should demand a guardian, where her patron dies and leaves no child of the male sex in the family.

(196) Again, when males reach the age of puberty they are released from guardianship. Sabinus and Cassius and our other preceptors hold that a person has arrived at the age of puberty who manifests this by the condition of his body, that is to say, if he is capable of procreation; but in the case of those who cannot show this condition, as for instance, eunuchs, their age should be considered to be that at which persons ordinarily reach puberty. Authorities belonging to another school, however, think that the age of puberty should be estimated by years; that is to say, they hold that a person has arrived at the age of puberty who has completed his thirteenth year. . . .

(197) After having been released from guardianship, the affairs of a minor are administered by a curator until he reaches the age when he is qualified to transact his own business; and this rule is observed among foreign nations, as we have stated above.

(198) In cases of this kind, in the provinces, curators are usually appointed by the governor.

(199) In order to prevent the property of wards and persons who are under the charge of curators from being wasted or diminished in value by their guardians and curators, it is the duty of the Prætor to compel guardians and curators to furnish security for this purpose.

(200) This, however, is not always the case, for guardians appointed by will are not compelled to furnish security, because their fidelity and diligence have been approved by the testator himself; and curators who have not obtained their office by law, but who are appointed either by a consul, a Prætor, or the governor of a province, are, for the most part, not required to furnish security, for the reason that they have been chosen on account of their being considered sufficiently trustworthy.