

AUTHENTIC OR NEW CONSTITUTIONS OF OUR LORD THE MOST HOLY
EMPEROR JUSTINIAN.

THIRD COLLECTION.

TITLE I.

CONCERNING PANDERS.

FOURTEENTH NEW CONSTITUTION.

The Emperor Justinian to the People of Constantinople.

PREFACE.

The name and calling of procurer was so odious both to the ancient laws and to those of the Empire that many legal enactments have been published against persons committing offences of this description. We, Ourselves, have already promulgated a constitution increasing the penalties against those who are guilty of such wicked deeds, and We have, in addition, supplied by other laws what Our predecessors omitted, and have by no means lost sight of this matter, for We have very recently been informed of the evil consequences which such traffic has caused in this great city.

We are also aware that certain persons are accustomed to employ cruel and odious means for the purpose of obtaining wealth; making a practice of travelling through the provinces and other places, in order to deceive young girls by promising them clothes, and, after having obtained possession of them, they bring them to this Most Fortunate City, place them in their houses, provide them with wretched food and clothing, and deliver them up to others for the purpose of debauchery, they themselves' taking the entire profit of this wretched trade obtained from the bodies of their victims; and that they also draw up contracts by means of which the girls aforesaid are compelled to continue their wicked criminal life as long as those who have possession of them may desire.

Some of them, indeed, require sureties to be furnished, and to such an extent are their illegal acts carried, that they are perpetrated in almost all this Imperial City, as well as in the countries beyond seas; and (what is worse) houses of this kind exist in close proximity to holy places and religious establishments; and at the present time this wickedness is so prevalent that any persons who wish to withdraw these unhappy girls from the life that they are leading, and legally marry them, are not permitted to do so.

Some of these wretches are so unprincipled as to deliver over to corruption girls who have not yet reached their tenth year, and in order to ransom these unhappy beings for the purpose of contracting lawful marriage, great sums of money are exacted. Ten thousand means of effecting their ruin exist which are not susceptible of being described in words; and the resulting evil is so great, and the cruelty so widespread that, while it was first confined to the most remote parts of the Capital, it now not only extends over the city itself but also over all its suburbs.

Persons informed Us of this condition of affairs some time ago, and recently the Praetors have been directed by Us to make inquiry concerning it, which they have done, and made their reports to Us, and We immediately afterwards deemed it necessary to implore the assistance of God, and purge the city quickly of this iniquity.

(1) Therefore We direct all persons to live as chastely as possible, which, with confidence in God, can alone profit the souls of men. As there are many weak women, We absolutely forbid that any attempt should be made by fraud, artifice or compulsion to lead them astray, keep them in a house to be prostituted, or buy them for any other purpose. We also forbid all persons from drawing up contracts with these objects in view, of requiring sureties to be given, or of adopting any means by which they may force these wretched beings to lose their chastity against their will.

Nor shall it hereafter be lawful to deceive young girls, and induce them to prostitute themselves by promising them clothing, food, and ornaments.

We strictly prohibit all these things; and, after having considered the subject carefully, We direct that any bonds which may have been executed to secure the performance of such contracts shall be of no effect; and that those who are guilty cannot recover any gifts which they may have made to the girls with whom the said contracts were made; and that they themselves shall be expelled from this Most Fortunate City as pestiferous persons, and destroyers of public morals, because of having reduced free women to slavery by requiring them to lead a licentious life, deceiving them, and bringing them up for promiscuous debauchery.

Hence We decree that if anyone should hereafter remove a girl against her will, and compel her to remain with him, and, without providing her with sufficient food, appropriate for himself the wages of her prostitution; he shall be arrested by the respectable Prsetors of the People of this Most Fortunate City, and condemned to death. We have already entrusted the Praators of the People with the prosecution of persons guilty of pecuniary theft and robbery; and is there not much more reason for Us to do so where crimes against chastity are concerned? If any owner of a house should rent it to a procurer for this purpose, and, knowing who he is, should not eject him; he shall be sentenced to pay a fine of a hundred pounds of gold, and his house shall be confiscated. If anyone hereafter should draw up an agreement in writing as evidence of a contract of this kind, and receive a surety with reference to the same, he is hereby notified that he will not be benefited in any way either by the obligation of the girl, or by that of her surety; for as her agreement is void in every respect, her surety will, under no circumstances, incur any liability. The guilty person shall, as We have already stated, undergo corporeal punishment, and shall be expelled far from this great city. We exort the women of Our Empire to remain chaste, and not allow themselves to be persuaded or compelled to embrace a life of debauchery; We absolutely prohibit panderism, and when it is committed, We shall punish it.

These provisions apply to this Most Fortunate City and its environs, as well as to the adjoining provinces, which, from the beginning, have been subject to Our government, and especially those which have been donated to Us by God, for the reason that We desire to retain pure and without blemish the gift which He has seen fit to confer upon Our Empire, for We believe that the present law, enacted in the interest of chastity, will be acceptable to God, and be of great benefit to Our government, and that as a reward for it God will bestow all manner of blessings upon Us.

EPILOGUE.

We communicate this law to You, Our citizens, who will be the first to experience its beneficial effects, in order that you may be aware of Our zeal for your welfare, Our desire for the preservation of good morals, and the extent of the labors by means of which We hope that Our Empire will be preserved in the enjoyment of every advantage.

A copy of this law, with a slight change of phraseology, is also addressed to the Most Glorious Master.

As soon as Your Highness has received a copy of this law, you will publish it by a special proclamation, and communicate it to all the subjects of Our Empire, including not only the citizens of Constantinople, but also those of the provinces, who shall implicitly obey it; and all to whom it is directed shall receive it as being authorized by God, to whom it is dedicated.

Given at Constantinople, on the *Kalends* of December, during the Consulate of Belisarius, 535.

TITLE II. CONCERNING THE DEFENDERS OF CITIES.
FIFTEENTH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Pratorian Prefect, twice Consul and Patrician.

PREFACE.

Unless We make haste to recall the defenders of cities to the performance of their duties, their ancient titles will no longer be applicable; for, as formerly, names indicative of their functions were given to magistrates, and that of defender certainly indicates that such officials were charged with seeing that no injustice was committed; so in like manner, in paternal language We style them defenders, because they were appointed to defend persons suffering from the acts of wicked men. When, however, the name of defender is treated with contempt in many parts of Our Empire, and is so despised that its use is rather considered an insult than a distinction; the reason for which is that it is not so much a judicious choice as pity which is responsible for such appointments, they being conferred upon obscure men who have nothing to live upon, and who obtain these employments by solicitation. Then, defenders are entirely dependent upon the Governors, by whom they are removed at will, without any reasons, or on insufficient grounds, and are then replaced by others, who are treated merely as holders of the position; and as many removals take place during the same year, the result is that the officials, the municipal magistrates, and the citizens themselves have not the slightest respect for the defenders, nor is any confidence reposed in the documents which they execute, and which the defenders themselves refuse to draw up if the Governor forbids them to do so; for, being absolutely subjected to his authority, they comply with his slightest inclinations. When documents are drawn up by them in the first place, they only do this for money; and then, as there are no archives in which these documents can be deposited, they are lost; and no monuments of former times are ever found in the possession of those who receive them, but when a demand is made upon their heirs or other successors, they either do not have them, or where any are found they are not worthy of consideration, or have been defaced to such an extent that they can no longer be deciphered.

Therefore, as We have already decreed with reference to Governors, to whom We have granted great authority in the provinces, and who should exercise supervision over cities at a distance, We think that it is necessary to also regulate the conduct of defenders, and We believe that the relations existing between these officials will be advantageous to both, if We confer judicial authority upon the defenders of cities, for then the Governor of a province will be regarded as a judge of judges, and his office will appear more honorable than formerly, in accordance with the rule that the distinction of a superior magistrate is always increased in proportion to that of an inferior one.

CHAPTER I.

NO INHABITANT OF A CITY SHALL BE PERMITTED TO REFUSE THE OFFICE OF DEFENDER.

Notice is hereby given, in the first place, that no man shall be allowed to reject the appointment of defender, and that all the nobles of cities shall be required to exercise its functions regularly in their turn, for We have learned that in the early ages of the Republic this course was productive of great benefit, hence no person can decline this office, even when he belongs to the rank of those who are styled illustrious, or is invested with a military employment, or can plead some privilege bestowed by the Imperial enactments, or produces a pragmatic sanction authorizing such an exemption. A list of the principal inhabitants alternately eligible for the office of defender shall be drawn up, and when this list has been exhausted, each one of those included therein shall again begin to discharge the same public functions in his order; and this is provided in order that he who occupies this position in any city shall rather be considered as a judge than a defender. When the list is to be drawn up, all owners of property resident in the city, with the exception of those who do not have their domicile therein, shall be sworn.

(1) The defender who is about to assume office shall swear to perform his duties in accordance with law, and without distinction of persons, and shall (as is at present the case) be confirmed by Our Glorious Prefect. He shall remain in office two years, after the expiration of which time he shall be replaced by someone else; the Governor of the province shall not be authorized to remove him, but if he should not discharge his duty properly, the prefects must be notified, so that he may be dismissed by the same officials who appointed him.

CHAPTER II.

We absolutely forbid Governors as well as defenders to cause substitutes for themselves to be appointed. For We do not wish magistrates in cities to be succeeded by any other persons than defenders, who alone shall represent them, and should exert all their efforts for the welfare of the cities in which they reside.

CHAPTER III.

ALL DOCUMENTS SHALL BE REGISTERED BY DEFENDERS.

All wills, donations, and other documents of this kind shall be registered by defenders; and no Governor of a province shall prohibit any instrument from being drawn up or published, for We do not grant permission for anything of this kind to be done. We think it would be most absurd for men to be compelled to refrain from necessary transactions, in accordance with the unreasonable wishes of the authorities; and We desire full liberty to be granted everyone to make any contract he wishes, and publish the same; and even if what is done has reference to the Governor of the province, or to any other official, it still shall not be forbidden. For those who are in charge of the government, or hold some position of responsibility, should conduct themselves so as not to prevent any charge from being brought against themselves, but, on the other hand, they should render their conduct so irreproachable that no occasion may exist for such complaints to be made; and whether the Governor is in the city or not, no one shall be prohibited from filing documents with the defenders in any matter whatsoever, with the exception of such as are not in his jurisdiction, but belong to that of the Governor.

(1) Again, the defenders of cities shall, along with the other officials charged with this duty, collect taxes, and if anyone should prove refractory, and refuse to pay what is due, they must draw up the papers necessary under the circumstances; and We order that this shall be done without delay; and also that they exercise strict supervision over persons of bad behavior, and obtain evidence against them.

They must also repress all public sedition, and, in every respect, exercise the functions of judges, especially when the latter are absent; and all the officials of the province who are in the city where the defender exercises his authority are required to obey and assist him, so that where the Governor is away, his presence will not seem to be necessary. Defenders shall have a clerk subject to their orders, as well as two officers to carry their decrees into execution.

(2) Defenders shall have jurisdiction in all pecuniary cases where the sum involved is not more than three hundred *aurei*; and Our subjects shall not be permitted to appeal to the illustrious Governors of provinces, where the amount in controversy is less than the aforesaid sum.

CHAPTER IV.

A plaintiff shall not estimate the property in dispute in excess of its real value, for the purpose of avoiding the jurisdiction of the defender, and bringing his action before the Governor of the province. If anyone should commit an act of this kind, and the judgment shows that the property in litigation was worth less than three hundred *aurei*, and that its value had been designedly increased in order to bring the case before the Governor of the province, and prevent the defender of the city from deciding it, the plaintiff shall be liable to all the costs of litigation.

CHAPTER V.

Appeals from the decisions of defenders of cities shall be brought before Governors. When officials are guilty of any abuse of defenders the Governors of provinces can punish them. If the Governors should fail to do this, We grant the defenders permission to have recourse to Your Highness, who will afford them any relief which may be proper. Defenders are authorized to prosecute persons guilty of crime, ^ust as Governors can do.

(1) When the office of defender of a city becomes vacant, it shall immediately be bestowed upon the person next on the list, who shall be sworn, and shall be confirmed by letters from Your Highness. We (as has previously been stated) by no means desire that defenders shall be permitted to substitute anyone in their places, lest, if this should be done, matters will again be involved in confusion.

(2) Your Highness will issue orders in every province for a building to be furnished in which the defenders can keep their documents, and someone must be selected to have charge of the same, in order to prevent their destruction, and enable them quickly to be found by persons desiring to inspect them; and thus archives will be provided for the defenders, and what hitherto has been lacking in cities will be supplied.

CHAPTER VI.

As the defenders of cities discharge the duties of their office without any compensation, when they are residents of a large city, they shall not pay more than four *aurei* to the court of Your Highness for their letters, and where they hold office in smaller towns, they will only be required to pay three *aurei*, as has already been prescribed by Our laws; but where they are paid by the public, they shall continue to receive their salaries, as has been customary.

(1) Defenders shall take cognizance of minor offences, and inflict proper punishment for their commission. Where persons are arrested for serious crimes, they shall place them in prison, and then send them to the Governor of the province, so that in this way every town will enjoy the benefit of a judicial examination. The entire province, being under the jurisdiction of a superior magistrate of high rank, will experience the beneficial effect of his wise administration, and the great care that Governors take for the benefit of those subject to them will be diminished, for the reason that defenders, in devoting all their attention to their own cities, will prevent oppression; remove the doubts which arise in the transaction of business; and (as has been often stated) will communicate to the government the names of persons who discharge their duties with fidelity.

When anyone opposes the levy of taxes, the Governors shall order the defenders to proceed against him, and they shall take measures to do so. Where, however, the appointment of a defender is made in any other way than the one prescribed, or someone appointed to this position in the order in which his name appears on the list refuses to assume its duties, whether this be on account of his dignity, his military rank, some special privilege, or for any other reason whatsoever, he shall be liable to a penalty of five pounds of gold, and after the defender then in office retires, he shall be compelled to take his place. For it is proper that this employment should always be exercised by the most distinguished inhabitants of the city in return for the residence which it affords them.

EPILOGUE.

Your Highness will, by means of special proclamations publish throughout the provinces in your jurisdiction the provisions which We have determined to enact and promulgate by means of this Imperial law, in order that everyone, no matter what his rank or fortune, may become aware that Our solicitude extends to all persons, and that there is nothing to which We do not direct Our attention. Your Highness will issue orders to the Governors of provinces, and they, as soon as they have received them, will see that in every city a list of the most distinguished citizens who are eligible to perform the duties of defender is drawn up (as has already been stated), and that general appointments are made followed by the prescribed oath; to the end

that the names in the list may be determined, and that, for the future, defenders may continue to exercise their functions for the term of two years; and that, finally, when each one of those included in the said list for any reason fails to act, another may immediately be introduced in his stead (always after having taken the oath), whose selection shall be made by the bishop, the venerable members of the clergy, and other persons of good reputation in the city.

These provisions, embodied in a general law, shall (as already has been stated) hereafter be complied with in every respect. Defenders who are at present in office shall, if considered worthy, be included in the list, and shall serve the remaining portion of the two years, and in case their term of office has expired, they shall be replaced by others, provided that they themselves are not reappointed for another term of two years. If, then, such defenders as are considered eligible have not served the entire two years of their term, they shall do so, and, after the said term has elapsed, none of them shall remain in office; and when (as has just been stated) a defender is reappointed with the consent of the entire city, and without any opposition, he shall serve another term of two years, at the expiration of which time he shall retire without being eligible to reappointment, until his term again arrives, which rule We establish in order not to confer too much authority upon anyone by the frequency and duration of his terms of office.

This law shall be valid for all time, as We have drawn it up with the greatest zeal and care, and after having implored Divine assistance, We have communicated it to Our subjects.

Given at Constantinople, on the sixteenth of the *Kalends* of August, during the Consulate of Belisarius.

TITLE III.

CONCERNING THE NUMBER OF CLERKS WHO SHOULD BE ORDAINED.

SIXTEENTH NEW CONSTITUTION.

The Emperor Justinian to Anthemius, Most Holy and Sacred Archbishop of Constantinople, and Universal Patriarch.

PREFACE.

We have recently published a law having reference to ordinations, prescribing that their number shall not be excessive, either in the Most Holy Principal Church of this Most Fortunate City, or elsewhere, and We now desire to confirm this law, and decree that it shall remain in full force. For as Our intention is to diminish the number of ordinations and reduce the expenses of the principal church of this city within reasonable bounds, We do not neglect anything to accomplish this, and therefore We promulgate the present law, which in no respect changes the former one, but is rather a continuation of the same, by means of which the Most Holy Principal Church shall enjoy still greater advantages.

CHAPTER I.

We decree that if a priest, deacon, reader, or chorister should happen to die in any one of the holy churches dependent upon the principal church, and whose expenses are paid by the latter, a stranger shall not be ordained in his stead, before having previously inquired into the number of the clergy attached to the said church, for the reason that if it should exceed the established number, no ordination shall take place until the number has been reduced to the prescribed limit.

Where, however, the number of the clergy, being so small as to cause apprehension that the ranks will not be full, and it becomes necessary to appoint an ecclesiastic to take the place of the one who is dead, Your Holiness will inquire whether in any other churches than the principal one there is an ecclesiastic of the same order, who is in excess of the established number, and if any should be found, he shall be transferred to the church which has need of him, and there will be no necessity to make a new ordination. For in this way any ecclesiastics who are lacking in a church will be replaced by those who are in excess in another, their

number will be reduced to the prescribed limit, and, by degrees, the Holy Mother Church will be released from its indebtedness.

Otherwise, if We did not adopt this plan, and ecclesiastics should be ordained the moment that anyone died in the church, the consequence would be that the same number would always exist, and that an indefinite time would elapse before the surplus could be disposed of.

EPILOGUE.

Your Holiness will hasten to carry into effect these regulations which We have prescribed for the welfare of the churches. If this law should not be obeyed, and anyone should violate its provisions, he who has presumed to dispute Our authority is hereby notified that the ordination will be void, and the reverend stewards cannot claim any expenses from the principal church; so that in this way they may become aware of the penalty for their negligence.

Given at Constantinople, on the *Ides* of August, after the Consulate of Belisarius.

TITLE IV.

CONCERNING IMPERIAL MANDATES.

SEVENTEENTH NEW CONSTITUTION.

The Emperor Justinian to Tribonian, Quaestor of the Imperial Palace and Ex-Consul.

PREFACE.

Your Highness is aware how many legislators have, each one in a single volume, written on the mandates of the Emperors in the ancient books which enclose the laws of the Roman name. Therefore We, who have re-established the already perishing and diminished respect accorded to legislation, have determined not only to commission magistrates appointed to inferior and intermediate administrations of no matter what description, whether of judicial, consular, or higher rank, but, in addition to this, to lay down certain rules in conformity with which they can exercise their official functions in a praiseworthy manner. Hence We have composed a book of instructions, which, written in both languages, is appended to the present law. It is issued in both Greek and Latin, and addressed to Our officials in the language spoken in the countries where they perform their duties, in order that they may become familiar with their obligations; and they must not neglect to comply with the salutary rules which We have promulgated, but must employ them to govern Our provinces and the subjects of Our Empire.

Your Illustrious Authority, being charged with the quaestorial censorship, will order these instructions to be recorded in the book of laws, and deposited in the Imperial archives, so that when officials receive them with their commissions, they may not be ignorant of how they can render themselves useful to the government.

Given on the sixteenth of the *Kalends* of May, after the Consulship of Belisarius.

In the Name of Our Lord Jesus Christ Our God, the Emperor Ciesar, Flavins, Justinian, Alananicus, Gothicus, Francicus, Germanicus, An-ticus, Alanicus, Vandalicus, Africanus, Pious, Fortunate, Glorious, Victor, Triumpher, Always Adorable and Augustus.

Although We have already stated in a law the manner in which those who are appointed to office should conduct themselves in the discharge of their duties, and have prescribed the oath to be taken by them, still, We deem it necessary to act with reference to you in the same manner as Our predecessors were accustomed to do, under the same circumstances, who issued certain rules called Imperial Mandates, directed to magistrates when assuming their offices, and which the latter were obliged to comply with.

CHAPTER I.

MAGISTRATES APPOINTED GRATUITOUSLY SHALL PERFORM THEIR DUTIES WITHOUT REWARD, AND REMAIN PURE IN THE SIGHT OF GOD, THE EMPEROR, AND THE LAW.

As you have received your office without any expense to yourself, your administration should, above all, be pure in the eyes of God, of Ourselves, and of the law; you must not attempt to profit by it to any extent, either great or small; you will not engage in any transaction injurious to Our subjects; you will remain content with the compensation given you by the Treasury; and, together with Your subordinates, You will observe the rules of law in every respect. In the first place,

You must vigilantly require the payment of the fiscal tributes; you must use every effort to insure the payment of all demands due to the Treasury; and You shall preserve at all times everything belonging to it; for as We come to the relief of private individuals who are suffering injustice, We also desire that the interests of the public may remain uninjured. Hence citizens must be kept free from all oppression, in order that they may easily and promptly pay their taxes; and if those who have been guilty of fraud, and still remain indebted to the Treasury, from this time forward discharge their obligations, they shall be released from liability.

CHAPTER II.

MAGISTRATES SHOULD TAKE CARE TO PREVENT SEDITION, AND SEE THAT PUBLIC TRANQUILLITY is MAINTAINED BY PERSONS OF ALL RANKS.

Next, it is proper for you to see that the people do not foment sedition against one another, and that peace is preserved in all the cities given Us by God; while justice is dispensed from here to Our subjects, and Our conduct toward them is not, under any circumstances, determined either by the desire of gain, or by passion.

CHAPTER III.

CASES OF INFERIOR IMPORTANCE SHALL BE DECIDED WITHOUT HAVING THE PROCEEDINGS REDUCED TO WRITING. THE PRESENT RULE GOVERNING THE TAXATION OF COSTS SHALL BE OBSERVED.

In the third place, you will endeavor to be mindful of equity in rendering Your judicial decisions, and summarily dispose of all cases of inferior importance, especially where the parties are of low degree; nor shall the proceedings in such cases be reduced to writing. You will avoid all unnecessary arguments, and only in a controversy where the property in litigation is under the value established by Our laws shall you permit the parties litigant to pay the costs provided they are able to do so.

Moreover, you will hear and determine all causes gratuitously; you will use every effort to prevent anyone from coming from a province to this city and annoying Us with his complaints. For you are hereby notified that We shall examine anyone who makes an appeal of this kind, and if after he has applied to Us We should ascertain that he has been refused justice, Our indignation will be directed toward you. But if he presumes to come to this Imperial City without having previously appeared before You, We shall punish him, and send him back without giving him an answer.

CHAPTER IV.

MAGISTRATES SHALL NOT PERMIT THEIR SUBORDINATES OR ATTENDANTS TO COLLECT ANYTHING FOR THE REPAIR OF HARBORS OR PUBLIC MONUMENTS.

In the next place, it will be your duty not to allow any officials despatched by Us, or by any other magistrate or court, to oppress Our subjects, or extort from them anything more than is

due. Where any requisition of this kind is made, and a complaint is filed, you must obtain indemnity for the person injured, and not permit anyone acting under orders of any court whatsoever, which have reference to the repair of aqueducts, harbors, highways, statues and walls, as well as the demolition of houses that have been erected in public places, or other similar matters, to do anything to the detriment of Our subjects, for We do not wish them to suffer loss under such circumstances. You will see that everything is done without injury, in all cases of this kind. If anyone who has been directed to carry out such orders should come into your jurisdiction, you must by no means receive him, unless he is the bearer of a written Imperial pragmatic sanction, and even then, although you may acknowledge it, you must not permit it to be executed before having notified Us, and obtained a second order to the same effect.

(1) You will also maintain the public works of cities in good condition, and obtain for the municipal magistrates the money necessary to repair buildings, bridges, highways, harbors, and other public works of the province in your jurisdiction; you will take good care of the ports and walls; and you will by all means give attention to, and cause to be performed, all labor beneficial to the people and advantageous to the towns.

(2) The soldiers stationed in your province shall be subject to your orders, whenever you have need of them to enforce your decrees. If you should find them disobedient, you can inflict on them a suitable penalty, and will cause the inhabitants of provinces who have been injured by their acts to be properly indemnified.

CHAPTER V.

CONCERNING CRIMES.

You will not permit persons guilty of crime to avail themselves of any privilege in order to avoid punishment; but you should only manifest indulgence toward those who are shown to be innocent of what they are accused. You must severely punish persons guilty of homicide, adultery, the rape of virgins, trespass with force and arms, and oppression; punishing the culprits according to Our laws, in order that the penalties inflicted may enure to the safety of all persons.

(1) You must restrain all your subordinates, and not permit them to plunder Our subjects; for as they are under your orders, it will be supposed that they have acted in compliance with your wishes.

(2) You will be careful in selecting your legal adviser, as well as all other officials attached to your service, and be sure to select a man of high character, and in every respect irreproachable, who will be satisfied with the salary paid by the Treasury; and if he should take any more than he is entitled to, and you should find that he is abusing your confidence, you must dismiss him from office, and select another adviser who, keeping his hands clean, will observe the law and the principles of justice.

(3) You must conduct yourself both in public and in private in such a way as to cause terror to malefactors and persons who are slow in paying their taxes, and be gentle and kind to such as are quiet and prompt, treating them with the consideration of a father.

CHAPTER VI.

PRIVILEGES INVOLVING THE PUBLIC FAITH OR SECURITY SHOULD NOT BE INCONSIDERATELY BESTOWED.

You must not grant too readily or for a protracted period privileges which are established by oath, but this should only be done for a reasonable time, and not longer than for thirty days; and this is provided to prevent controversies among men from becoming interminable. If, however, you should grant a privilege to anyone orally, and afterwards someone should accuse him, you must keep your word to him, and have him brought before you and examine the case, still allowing him his privilege; and if it should be necessary to decide against him,

you will do so and give him the choice of one of two things, that is, of either absolutely rescinding the privilege and himself executing the judgment, or, if he is unwilling to do this, of being sent back to the place of asylum, and there having your judgment executed, which you will have done with all due reverence for the locality.

CHAPTER VII.

THE RIGHT OF ASYLUM DOES NOT ATTACH TO HOLY PLACES IN CASE OF HOMICIDE AND OTHER CRIMES.

You will not permit homicides, adulterers, and ravishers of virgins to enjoy the right of asylum in places where they have taken refuge, but you must remove them, and cause them to be punished; for it is not proper to show indulgence to criminals of this kind, as this right only applies to such as sustain injury, to prevent them from being oppressed by unjust persons. The privilege of taking refuge in temples is not granted by law to criminals but to persons who are injured, and it would not be possible for the protection of sacred places to be enjoyed by both those who commit wrongs and those who suffer them.

(1) You must see that the taxes are properly collected, even in the temples, as they are necessary for the maintenance of soldiers, as well as for the support of the temples themselves, and are useful to

the entire government. The defenders and stewards of the churches will assist you in this matter, and must not oppose those charged with the collection of taxes, or permit them, on this account, to be subjected to any violence or resistance, as they are notified that if they should do anything of this kind, they will be responsible to the Treasury out of their own property.

CHAPTER VIII.

TAX-COLLECTORS MUST STATE IN THEIR RECEIPTS THE AMOUNT OF THE PROPERTY SUBJECT TO TAXATION.

You will compel the collectors of taxes to state in their receipts the amount of immovable property, that is to say, the number of teams or yokes of animals, according to the method of enumerating them in different parts of the country, on which, as well as on what land, taxes are levied; as well as the amount of the latter, and whether it is payable in kind, or in money. And you must notify all persons that, if they have not complied with the laws previously enacted for this purpose, or the one which is now promulgated, they will sustain great loss of property, as well as the amputation of their hands.

If, indeed (as is sometimes the case), a collector should be found who says that he cannot estimate the amount of property to be taxed, We think that such persons are undoubtedly dishonest; however, neither the Treasury nor the taxpayer shall suffer any loss on this account, for the Treasury shall collect everything due to it without prejudice, and nothing more shall be collected from persons who have discharged their obligations and obtained regular receipts; for no one shall be oppressed, but the taxes shall be collected from all who owe them and paid into the Treasury. Notice shall be given to Our Prefects, to whom tax-collectors are required to show their registers, and if any doubt should arise with reference to the latter, the Prefect shall resolve them; and when the truth has been established concerning these matters the tax-collectors shall be obliged hereafter to describe in detail the various kinds of property subject to taxation, as has previously been decreed by Us.

(1) You will not permit officials of the *curia* or the census to be guilty of delay, and prevent the possession of land which has been sold from passing to the purchasers; but you will compel them to proceed without the change of ownership causing any loss of taxes, and whenever officers of the census state that the change of ownership should not be made, for the reason that the purchasers are insolvent, you will examine as to the truth of this allegation, without any expense ; and if the purchaser appears to be solvent, you will compel the officers of the Treasury to make the transfer of the taxes gratuitously.

If, on the other hand, you should find that the purchaser is insolvent, you must compel the vendor to state in the conveyance that he will be responsible for the payment of the taxes for which the purchaser will hereafter be liable, for We are aware that this course is pursued in many of the provinces of the East. In this way no loss will result to the Treasury; the taxes will be paid by the possessors of the property; and it cannot be said that one holds it, while the other pays the tax on the same; for payment should certainly be made by the party in possession, and not by him who no longer has it.

CHAPTER IX.

JOURNEYS MADE BY GOVERNORS SHOULD NOT BE A SOURCE OF ANNOYANCE OR VEXATION TO THE PEOPLE OF THE PROVINCES.

If We desire you to travel into another province, you must be content with the salary which you receive from the Treasury, and not oppress Our subjects by compelling them to pay your expenses. You must not use the money of the province for this purpose, and neither you nor your subordinates shall require the inhabitants to furnish you with transportation, but you must travel with your own horses, and at your own expense. You must obey what We have commanded, even though you do not pass beyond the boundaries of a province, and some necessary occasion requires you to go from one city to another.

CHAPTER X.

We absolutely forbid Governors to send deputies into the towns of the provinces under their jurisdiction, even though these deputies belong to the most distinguished classes of the nobility. Nor shall you permit any soldiers who may accompany you in your journeys to have their expenses defrayed, for We desire them to pay them out of their own salaries. If, indeed, they should not do this, but should take their expenses out of the taxes, and require horses to be furnished them, Our subjects must be indemnified, and you will see that the sums expended are deducted from the pay of the soldiers at your own risk.

CHAPTER XI.

GOVERNORS SHALL NOT OBEY ANY ORDERS HAVING REFERENCE TO RELIGIOUS MATTERS WHICH MAY BE COMMUNICATED TO THEM.

You will not permit anyone to cause annoyance on account of religion and heresy in the province which you govern, and you will oppose any order having reference to this subject from being executed within your jurisdiction; just as you will also, for the advantage of the Treasury, take care to investigate all innovations which may be attempted, and not allow anything to be done in religious matters which is contrary to Our orders. Where, however, either through the agency of bishops or other persons, an ecclesiastical controversy arises, you must hear and decide it along with the metropolitan of the province, and dispose of it in a way agreeable to God; preserve the orthodox

faith; secure the indemnification of the Treasury; and maintain the rights of Our subjects inviolate.

CHAPTER XII.

WHERE PERSONS ARE CONDEMNED TO DEATH THEIR PROPERTY SHALL NOT BE CONFISCATED BUT SHALL PASS TO THE NEXT OF KIN.

You will, in every instance, provide for the punishment of those who deserve it; you must not touch their property, but permit it to go to those entitled to the same either by blood or by law, according to their degree; for the property does not commit the crime, but those who possess it. Up to this time, the order has been reversed; persons meriting punishment have been discharged and deprived of their estates, and others whom the law calls to the succession have been punished in their stead.

CHAPTER XIII.

CONCERNING THE PROHIBITION OF EXERTING UNJUST PROTECTION.

We have ascertained that unjust protection is granted in Our provinces, and wishing to correct this in every respect, We forbid any person to assume the conduct of another's lawsuit, or to charge himself with contesting the title to property to which he has no right, or of promising to defend anyone to the prejudice of others, or with detriment to the Treasury. You will not permit persons to act for the owners of property in this way, for both the law and the Imperial favor should be sufficient to enable you to exert all the authority requisite.

CHAPTER XIV.

NO ONE SHALL PRESUME TO HARBOR SERFS BELONGING TO OTHER CENSUS TENANTS.

You will entertain great aversion for persons who harbor the serfs of others, and you must compel them to return immediately what they have illegally received; and if they should remain for a considerable time disobedient, you will impose all the expenses of the province upon those having serfs in their possession. Where the serfs are said to be in other provinces, you will address public letters to the Governors of the same, stating therein that they are fugitives, and requesting that they be surrendered along with any property in their possession, and returned to the province of which you are Governor; and you will punish those who have harbored them by forcing them to pay the amount of depreciation suffered, through the absence of the serfs, by the land to which they are attached. Hence, they will make good the diminished value of the said land, and will understand what it means to injure others.

You will see that these provisions are executed, whether owners of land have harbored the fugitive serfs, or whether this was done by persons holding the property under lease or by virtue of any other lawful contract; for both of them must avoid obtaining what does not belong to them, thus wickedly profiting by the injury of others.

CHAPTER XV.

CONCERNING THE ASSERTION OF CLAIMS TO THE PROPERTY OF OTHERS.

You are hereby notified that to place inscriptions asserting a claim to the land of others, or to inscribe a name as owner upon property in a city which does not belong to the person who does so, is a dangerous proceeding; and those who act in this manner are liable to have their possessions confiscated to the Treasury. For if anyone should attempt to obtain anything by the exercise of a right enjoyed only by the Government and the Treasury, he shall be personally responsible, and his punishment shall afford an example to others; and where he has any accomplices, they shall be subjected to the same penalty. Therefore you will observe all these provisions, being aware that Our opinion of you will be regulated in accordance with your behavior, whether you are disobedient, or comply with Our precepts and laws.

CHAPTER XVI.

WHAT GOVERNORS SHOULD DO WHEN THEY FIRST ENTER THEIR PROVINCES.

As soon as you enter your province, all the people of the metropolis should be assembled (We mean the bishop, the clergy, and the principal citizens), and you will cause Our Imperial instructions to be recorded in their presence, and post a copy of the same not only in the capital, but also in the other towns in the province, transmitting them by means of your subordinates without expense, so that all persons subject to your authority may see that you obey these regulations, and show yourself to be worthy of Our choice.

CHAPTER XVII.

CONCERNING ARMS.

If you obey Our orders, you will exercise the functions of the office with which We have invested you with more glory and for a longer time; above all, if you were careful not to allow

anyone, who is not a soldier, to make use of weapons. If you do this, you will render yourself very dear to God, to the laws, and to Us.

Again, if any person attempting to stir up sedition should, at any time, leave this great city either alone, or in the company of others, and repair to the province which you govern, you must make diligent inquiry concerning him, ascertain the place of his residence, and inform Us of the same, in order that if investigation of his conduct should be necessary, he can be brought to this Most Fortunate City, and undergo the penalty which the law has prescribed in such cases.

Given at Constantinople, on the sixteenth of the *Kalends* of May, during the Consulate of Belisarius, 535.

TITLE V.

CONCERNING THE LEGAL PORTIONS OF THE THIRD AND HALF OF ESTATES ; AND OF THE SUCCESSIONS OF NATURAL CHILDREN AND GRANDCHILDREN; OF HOTCHPOT AND DISTRIBUTION; AND OF THE DISAVOWAL OF THE EXECUTION OF INSTRUMENTS OR THE PAYMENT OF MONEY, AS WELL AS OF PROPERTY IN THE POSSESSION OF OTHERS.

EIGHTEENTH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Imperial Prefect of the East, Ex-Consul and Patrician.

PREFACE.

The government of the Romans which, as someone has said, was certainly founded by God, has already many good laws relating to wills; Our Codes abound in them; and not only have ancient jurists and pious Emperors written on this subject, but We, Ourselves, no less than Our predecessors, have devoted much attention to this branch of legislation. And, as We are accustomed to consider God in everything that We do, Our sole desire is to please Him, and to perform acts worthy of honor. With this object in view, We incessantly direct Our attention to laws which are agreeable to Nature, and corrective of former enactments ; hence We have frequently been surprised that jurists and Emperors only allowed the fourth of an estate to be left to legitimate children who have not been disinherited by their parents, which share was given the name of a debt, whilst they permitted the remainder of the estate to be disposed of as the father might desire; and he often leaves it to cognates, strangers, or slaves who have been bequeathed their freedom.

We are all the more surprised that the jurists and Emperors made no distinction where there are numerous children, even when they had not offended their parents; and, in every instance, even where there are ten, or a greater number, they did not allot them any more than three-twelfths of their father's estate. The result of this is that children who are in good circumstances during the lifetime of their father become poor after his death.

CHAPTER I.

CONCERNING THE LAWFUL SHARE WHICH FATHERS SHOULD LEAVE TO THEIR CHILDREN; THAT IS A THIRD WHERE THERE ARE FOUR OR LESS, AND HALF WHERE THERE ARE MORE THAN FOUR.

These reasons induce Us to amend the law, and to provide that where fathers or mothers have one, two, three, or four children, they shall be required to leave them not merely three-twelfths of their estates, but the third of the entire property, that is to say four-twelfths; and if the parents have more than four children, they must leave them half of their estates, namely, six-twelfths; and the four-twelfths where there are four children, and the six where the latter exceeds this number shall be apportioned among them in equal shares; for We are not willing that the allotment shall be determined inequitably through convenience in dividing the property (for where, under these circumstances, what is good is given to some, and what is

bad to others, injustice will result), but such measures should be taken that each participant in the estate shall receive property of the same quality and quantity as the others; which will occur whether the father bequeaths his estate with the appointment of an heir, or distributes it by means of legacies or trusts. So far as the eighth, or six-twelfths belonging to the residue of the estate is concerned, the father shall be free to dispose of it for the benefit of his children or leave it to others; hence it is only after having done what they owe to nature, that parents shall have the right to manifest their generosity to strangers.

The advantages of the present law shall extend to all persons to whom are conceded the right to complain of inofficiousness, in instances where the ancient fourth of the father's estate was not left to them.

CHAPTER II.

THE LEGAL SHARE OF CHILDREN OCCUPYING MUNICIPAL OFFICES SHALL BE NINE-TWELFTHS OF THE ESTATE.

The law recently promulgated by Us concerning decurions, and which provides that nine-twelfths of an estate shall go to the sons or daughters of decurions, is an exception to the general rule; and the remaining three-twelfths may be disposed of by the parents in accordance with their wishes. All laws relating to inofficious testaments and ungrateful and natural children, and especially those enacted by Us, shall remain in full force; and, in accordance with what has already been stated, We only increase the amount of the legal shares.

CHAPTER III.

WHERE A FATHER LEAVES HIS CHILDREN THE MERE OWNERSHIP OF HIS PROPERTY AND HIS WIFE THE USUFRUCT OF THE SAME.

We hereby prohibit an existing evil which, while it appears to have a lawful motive, is still productive of hard and bitter cruelty. For We have ascertained that when persons who are about to die have left the entire usufruct of their property to their wives by will, not acting in a paternal manner as men should do, but manifesting weakness and disregard for duty by leaving their offspring the bare ownership of their estates. Wherefore, I think that the object of a will of this kind is to enable wives to obtain the property, and the children to die of hunger. For how can they be brought up and have their daily food after the death of their father when nothing has been left to them, and the hatred of the wife which perhaps has no reasonable foundation, and deprives them of their daily subsistence? It shall not be lawful, hereafter, for anyone who has children to act in this manner, for he must, by all means, leave them their legitimate share, which We now establish, as well as the usufruct and ownership of the property, if he does not wish his children to perish suddenly of hunger, but to live in health, and call him father.

We decree that these rules shall not only apply to the father but to the mother, grandfather, great-grandfather, and the wives of these persons; that is to say the grandmother, and great-grandmother on both the paternal and maternal sides.

CHAPTER IV.

IN WHAT WAY CHILDREN DESCENDING IN THE FEMALE LINE CAN SUCCEED IN CASE OF INTESTACY.

In the future, the law which provides that children and grandchildren, who are not proper heirs or under paternal authority, shall not be entitled to the third part of the estates which their parents, when living, ought to have left them by will, shall not be observed. Nor do We except grandchildren born to the son of paternal grandparents, for they can receive the entire share to which their father would be entitled if he were living. Grandchildren, however, descended from a grandfather through a daughter, whether on the father's or mother's side, shall have a third less of the estate; but only one order of succession shall apply to grandchildren and

great-grandchildren, as We are not willing that females shall be distinguished from males by obtaining a smaller share under such circumstances. For neither a male nor a female alone is sufficient for the propagation of the race, but as God has formed both for the work of generation, We also preserve the same equality so far as both of them are concerned.

(1) We make this law even more comprehensive, for We decree that it shall be applicable to such children as are only legitimated by marriage, even though dowries were not given after the ceremony took place; for the reason that the undoubted affection manifested by the parties is a sufficient justification of the legitimacy of their offspring. Not the gift of a dowry, but the affection of those who were united, constitutes a marriage. This law shall apply to children who, in accordance with Our Constitution, become legitimate after the subsequent matrimonial union of their parents, and this shall be the sanction of their legitimacy.

CHAPTER V.

CONCERNING CONCUBINES AND NATURAL CHILDREN, AND IN WHAT WAY THEY CAN SUCCEED IN CASE OF INTESTACY.

We have considered Nature alone in the enactment of the following provisions, for many weeping children, who are in distress, have frequently addressed their petitions to Us; and, indeed, We have always treated them with indulgence, but We have blushed because We could not do this legally; and therefore We have enacted the present law in order to benefit Our subjects and afford them all a legal remedy. We hereby permit the fathers of legitimate offspring to leave to their natural children any amount up to one-twelfth of their property, which share they must divide with their mother (as was formerly the case), and, where there are no legitimate children, an amount equal to half their entire estates. These provisions are contained in laws formerly promulgated by Us, which authorize a father to transmit this lawful share either by will, or in any other way whatsoever.

On the other hand, the present law establishes the right of succession to the estates to the fathers of natural children, in case of intestacy, and therefore lays down a new rule. For if anyone should die without having made a testamentary disposition of his property, leaving no legitimate issue (We mean children, grandchildren, or other descendants entitled to the succession), or a lawful wife, and the cognates, for example, or the patron who claims the estate, or even Our Treasury, is called to the succession (for it is Our intention not to show any partiality), and while the deceased was living he had in his house a free woman with whom he lived in concubinage, and by whom he had issue (We do not permit this to be applicable except where it is certain that the concubine and her children resided in the father's house), We grant these children their maintenance; and, no matter what their number may be, they shall, in case of intestacy, be entitled to two-twelfths of their father's estate, and shall share the said two-twelfths with their mother in such a way that she will have a portion equal to that of one of them.

This rule shall be observed, whether the father has children resulting from his cohabitation with a single concubine, or whether he has in his house other children of a concubine who is dead, or from whom he is separated; for in both instances We concede to all .of them two-twelfths of the property of their father who died intestate. Where, however, a father has been given to licentiousness to such an extent that, having had several concubines in addition to the first one, he leaves at his death a number of them with their children, such a man is odious, and We absolutely exclude him from participation in the benefits of this law. For, as when a man is married to a lawful wife, he cannot have other wives and legitimate issue by them, so in like manner, We do not permit anyone who has children by a recognized concubine (as We have previously stated) to let the offspring of his other acts of debauchery share in the distribution of his property when he dies intestate. If We did not lay down a rule of this kind, a number of women would be found who were more or less attached to the deceased, and this would also be the case with children; and We are not enacting laws for the benefit of those living licentious lives, but for those who are chaste. We make no distinction whether the children are male or female, for, in accordance with nature, We do not prescribe one rule for

women, and another for men. Therefore this law shall be observed for the future, and We shall repeal all others on the subject, as it corrects and explains many things which formerly were not intelligible or observed; and it shall not be applicable to what is past, for such matters cannot be subjected to rules which did not exist when they originated.

Such are the provisions which have been established by Us with reference to the aforesaid successions.

CHAPTER VI.

CONCERNING COLLATION IN CASE OF DOWRIES OR ANTENUPTIAL DONATIONS.

We think that it is advisable to enact what is contained in the following law. For, according to former constitutions, where parents died intestate, everything was brought into hotchpot, but where the deceased executed a will without mentioning it, hotchpot did not take place; and any dowry or other property which had been given remained intact, and only what had been bequeathed was taken into consideration. Without adopting this principle in its entirety, We order that, whether the deceased died testate or intestate (as it is uncertain whether he voluntarily failed to mention the donations which he made, or that this occurred on account of the suffering which preceded his death), collation shall be made in every instance, and that the estate shall be divided in conformity with preceding laws, unless the father expressly stated that it was not to be collated; but, on the contrary, his intention was that he whom the laws compel to collate property should keep what had already been given him, as well as what he was entitled to by the will.

Everything heretofore provided by Us with reference to collation shall remain in full force.

CHAPTER VII.

WHERE A FATHER DESIRES TO DIVIDE HIS ESTATE AMONG HIS CHILDREN DURING HIS LIFETIME.

We think that it is necessary to insert in the present law a matter which has often been judicially determined by Us. For it frequently happens that fathers who have many children wish to divide their property among them before they die, in order to prevent them from engaging in fraternal controversies, which might cause even greater and more bitter disputes. In order to do this, they must clearly distribute their estates by will, or draw up other instruments making such a distribution and sign them; for, by so doing, they will divide their property among their children without giving cause for any doubt; but fathers do not do this, since they either only describe in their own handwriting a portion of the division which they make (and this does not always happen), or they frequently interline some other document, or fail to give an exact description of the property to be divided, and do not leave the paper in the hands of persons worthy of confidence.

So far as the other part of the distribution not mentioned by them is concerned, this is usually done by a public writer, or by someone else who is corrupt; hence arise ten thousand grounds for litigation; because it is uncertain whether the division was voluntarily made by the father, or was due to the artifice of the person who, in drawing up the instrument, unduly favored one of those entitled to the succession.

We, desiring that, for the future, Our subjects shall no longer be annoyed in this manner, do hereby decree that where anyone wishes to divide all of his estate among his children, or to bequeath only a certain portion of the same as a preferred legacy, he ought, as far as* possible, to state this fact in his will, in order to benefit his children in a manner which will give no room for doubt. Where, however, by reason of some impediment which often embarrasses men, he failed to make such an arrangement and distribute his estate by his will, but nevertheless enumerated the articles which he desired to divide, and either signed the instrument with his own hand, or caused this to be done by his children, and his wishes are in this way rendered so clear that they cannot be doubted, the division shall be valid, and no

other security shall be required.

When anyone does not do this, but makes a confused division of his estate without the signature of witnesses (as very frequently happens) notice is hereby given that his children will reap no benefit from what he has done, but that they must divide the estate just as if no disposition whatever had been made of the same, and the judges of the case (whom the laws style judges of partition) will not be compelled to comply with what is stated in the document. For fathers must carefully provide security for their children, and not leave them any less than they are entitled to, or make any illegal bequests; for the reason that this gives rise to interminable difficulties, and often results in the commission of crime. All other provisions having reference to successions, collations, and other matters, made up to this time, are hereby confirmed.

CHAPTER VIII.

WHERE ANYONE DENIES HIS OWN HANDWRITING.

The perversity of certain persons renders it necessary for Us to re-enact a law which bore the name of a tribune, and received from him the name of the *Lex Aquilia*. In accordance with its provisions having reference to denials, a man guilty of duplicity who attempted to deny his signature was subjected to a double penalty; and this rule was also applicable to other acts committed under the same circumstances. This law was, by degrees, deprived of its force through the exertion of mistaken clemency, which usually encourages the malevolence of unprincipled persons; hence, it has appeared to Us necessary to subject persons guilty of such improper and base denials to the punishment aforesaid. Therefore, if anyone should produce a written instrument, and the other party should deny that it is genuine, or he should acknowledge it, but denies having received the money mentioned therein, and his opponent proves this in a lawful manner, in both these instances We order that he who makes the denial shall be liable to double damages. This provision is not enacted because We delight in severe laws, but for the purpose of diminishing litigation; as We believe that the fear of a penalty is more promptly instrumental in effecting the acknowledgment of the truth. We desire that this penalty shall be incurred by persons making all kinds of denials, and judges are notified that if they should fail to enforce this law, they themselves will be liable to it.

Where, however, the plaintiff does not attempt to prove the instrument, and gives his consent for the defendant to swear to its denial, the latter will not be liable to the double penalty, if, when the oath is tendered him, he immediately retracts. But if, in the course of the trial, the plaintiff should tender the oath to the defendant, and the latter should confess the truth, We release him from liability to the double penalty; but, on account of his denial, We condemn him to pay the plaintiff all the costs incurred up to that time in the proof of his claim, and to establish the amount of said costs, recourse shall be had to the oath of the plaintiff.

When the defendant, in the beginning, denies that the money has been loaned to him, and he afterwards admits certain payments, he shall be required to repay the entire debt by way of punishment for his original denial, just as one of Our Imperial predecessors decided; and We do not permit the judges to diminish this penalty, but, on the other hand, they must observe the law in its integrity. If, however, the defendant should produce receipts given by the plaintiff, and prove their genuineness, and the plaintiff disputes them, and claims not only the sums he denies having received, but a still larger one, the same reason exists for tendering him the oath under such circumstances.

CHAPTER IX.

CONCERNING DENIALS BY GUARDIANS AND CURATORS.

Where curators are involved in litigation, in matters in which persons subject to their control are interested, punishment for contradictions of this kind (when they are made in the writing of the said curators) shall not be inflicted upon those of whom they have charge, but against the individuals who made the base and improper negation. Where anyone has rendered

himself liable to the penalty of double, triple, or quadruple damages prescribed by the ancient laws, or contained in the Constitutions of the Emperors, it shall continue to be imposed as formerly, just as We have decreed in Our Institutes, Digest, and Book of Constitutions, for the present law is only intended to be a continuation of the former ones.

CHAPTER X.

CONCERNING EXCEPTIONS OF BAD FAITH PLEADED BY POSSESSORS.

We think that what follows with reference to judicial decisions is more important than anything that all Our predecessors have decided or established. For if someone, after having been sued on the ground that he has possession of property, which the plaintiff alleges does not belong to him but to a third party, and in which he himself has an interest, and he who brings the action is compelled to show either by documents, witnesses, or in any other way that the said property belongs to him, and finally the defendant who constantly denied that the property belongs to the third party admits his claim, and maintains that the latter has a better title to possession of the property in litigation than the plaintiff himself has, on account of hypothecation, or some other right vested in said third party, and as Our predecessors have not provided for this kind of a case, We think it proper to punish the defendant by granting the possession of the disputed property to the plaintiff, during the trial of the action, in order to indemnify him for having made the aforesaid proof; which, however, will not prevent the defendant, after having relinquished the property, from establishing the rights of the third party which he had at first refused to acknowledge, and where these rights are well founded, enable him to obtain the justice to which he is entitled, for the penalty only consists in the loss of possession during litigation.

These rules We have established with reference to successions, collations, the distribution of estates, and the security of litigants, to the end that the number of lawsuits may be diminished; and they shall hereafter be observed, and no one will have reason to plead ignorance of what relates to successions, collations, or the distribution of estates; and litigants who display bad faith shall no longer be able to deny their own handwriting, nor shall they deny that money has been paid to them, and afterwards avail themselves of acknowledgments of payment. Nor shall they, in conclusion, dispute the rights of third parties of whose property they have possession, but shall exhibit moderation and mildness in the legal controversies in which they are involved, and thereby obtain an impartial decision.

CHAPTER XI.

IN WHAT WAY CONCUBINES OF A SERVILE CONDITION CAN BECOME LAWFUL WIVES.

Doubts have been raised by certain persons, with malicious intent, concerning a subject treated of in some of Our Constitutions, and with reference to which several decisions have been rendered. As it is just that this condition should no longer prevail, We have disposed of it in the present law, for We have held that if anyone should live in concubinage with a reputable woman, and have children by her without the execution of any dotal instrument, and should afterwards desire to marry her, and a contract should be drawn up to this effect, and he should beget other children, then not only those born after this contract was executed, but also those born previously, will be legitimate. For the purpose of avoiding fraud and the malicious interpretation of persons constantly inclined to deceit, We have drawn up another constitution, by which We direct that even though no children may have been born after the dowry was given, or, if born, did not survive, the others shall be considered legitimate. Another doubt has been raised as to whether this rule is applicable to men living in concubinage with their freedwomen; but Our intention is clear in this respect, and this has already been decided by Us, for marriage with a freedwoman is by no means prohibited, and what We have decided with reference to other persons is also applicable to them.

In order to dispose of all ambiguity on this point, We decree that if anyone, who has no legitimate wife or children, should entertain affection for his female slave, and have children

by her, while she is in servitude, and should afterwards manumit her and her children, and confer upon all of them the rank of freeborn persons, and honor them with freedom in accordance with the prescribed formalities, and then should marry the woman, and, after the ceremony, should draw up a nuptial contract; whether any children are born afterwards or not (We include in this provision both cases of Our Constitution), she shall be his legal wife, and his children shall be under his control, and his proper heirs, as well as his heirs at law, in case of necessity (We refer to those born before the marriage), and by this means all of them will be placed in the rank of freeborn persons, and by the subsequent marriage they will enjoy the privilege of legitimacy.

EPILOGUE.

Therefore Your Excellency will publish special proclamations in the provinces which you govern for the purpose of making all Our subjects acquainted with this law, and informed that, as We exert Ourselves to insure their welfare, We shall be fully rewarded for Our solicitude and foresight by the glory which God has conferred upon Our reign.

Given at Constantinople, on the *Kalends* of May, the year after the Consulate of Belisarius, 536.

TITLE VI.

CONCERNING CHILDREN BORN AFTER THE EXECUTION OF THE DOTAL CONTRACT.

NINETEENTH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Praetorian Prefect of the East, twice Consul and Patrician.

PREFACE.

It has come to Our knowledge that certain persons have, without good reason, doubted whether what We have decreed concerning children begotten before the execution of the dotal contract should have a retroactive effect, and be applicable to preceding litigation which had not yet been terminated by either judgment or compromise. We very clearly recall that when We enacted the laws with reference to this subject We expressly directed in a former constitution that it should apply to previous cases which had not been decided or disposed of by compromise, whether the fathers were living or not; and subsequently We published another constitution supplementary to the first one, by which We declared that the provisions already established in favor of children born before the dotal contract was drawn up should be observed, and that such children should be considered legitimate, whether there were none born after the contract, or whether, having been born, they were no longer living; and We added to this constitution that its provisions should relate back to former times, and We only excepted from its application such cases as had been terminated by judicial decree or compromise.

After the enactment of these two laws, certain audacious persons tried to change their meaning and give them a false interpretation, which compels Us to promulgate a third law, providing that where a man who was married to a lawful wife had children by her, and, after the dissolution of his marriage, brought about either by the death of his wife or by her repudiation, he had children by another woman whom it was lawful for him to marry, but with whom he did not contract marriage until after the birth of said children, the latter shall be legitimate.

But, for the reason that We did not insert in this third constitution, or in the two preceding ones, that they would apply to lawsuits not yet terminated; certain individuals have thought that We did not intend them to have a retroactive effect in favor of children born before their publication, for they said that this retroactive effect is clearly stated in the first and second constitution of Our Code. This opinion We consider to be absurd. For We very properly

omitted this in the first and second laws, and did not include it in the third; since, though in special enactments, it may be necessary to expressly mention their retroactive effect, We did not insert this clause in another law which was only a repetition of a former one, in order that the Code might not be encumbered with a multitude of superfluous provisions.

We did not insert in the third constitution anything with reference to the time when it would become operative, for the reason that it is understood that one law which is interpretative of another is dependent upon the one to which it relates.

CHAPTER I.

THE LAST CHAPTER OF THE TWELFTH NOVEL HAS REFERENCE TO CASES WHICH HAVE NOT YET BEEN DECIDED OR COMPROMISED.

We have enacted this law for the purpose of disposing of the objections raised by certain persons who are constantly employed in contention, and who adopt erroneous opinions; again ordering that the three constitutions aforesaid shall be observed, and shall have a retroactive effect so far as the cases on account of which they have successively been promulgated are concerned, that is to say, whether the fathers of children of this description are still living, or whether they are dead; all cases terminated before the enactment of these laws by either compromise or judgment solely being excepted.

EPILOGUE.

It is Our pleasure that Your Highness shall provide for the publication of the present law.

Given at Constantinople, on the fifteenth of the *Kalends* of August, after the Consulate of Belisarius.

TITLE VII.

CONCERNING THE OFFICIALS CHARGED WITH PRESENTING APPEALS TO THE EMPEROR.

TWENTIETH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Praetorian Prefect, twice Consul and Patrician.

PREFACE.

We have already enacted a law concerning appeals which prescribes the method of presenting them, and designates those to whom they should be made. This law was at the same time addressed to Your Highness, and the Most Glorious Quaestor; but because doubt has arisen concerning the officials charged with this duty, and as the employees of the Imperial Bureau of Epistles have claimed this service for judges, and, on their side, the officials belonging to your jurisdiction have stated that their rights would be infringed if any innovation should be made, and they be prevented from discharging the functions with which they were formerly invested with reference to appeals taken from the illustrious Governors of provinces, through your tribunal, as well as to what took place when you alone had cognizance of such appeals in your consistory; but as the distinguished title accorded to these Governors caused appeals to be taken to the Imperial Consul from the tribunal where you and the Most Glorious Quaestor preside; and the employees of the Bureau of Imperial Records, who took part in the presentation of appeals to the Quaestor, did not alone discharge the duties of the two offices combined in the tribunal of Your Highness, and still more often in that of the Most Glorious Quaestor; they themselves brought up this same question which you recently verbally referred to Us. Your application does not seem to Us unimportant, as, in the meantime, Paphlagonia and Honoria, formerly divided between two Governors, have been united under a single magistrate invested with the title of Praetor, appeals from whom undoubtedly belong to your jurisdiction; just as one Governor, with the rank of *spectabilis*, has been substituted for the two magistrates who formerly presided over the provinces of The Hellespont and Pole-moniac Pontus, where the same question again came up; for appeals taken in these provinces should

only be brought before your tribunal, in accordance with what is provided at the end of the constitution which treats of this subject.

CHAPTER I.

THE OFFICIALS ATTACHED TO THE PRAETORIAN PREFECTURE SHOULD ALONE BE EMPLOYED IN APPEALS.

As both your offices and those of the Quaestor have approved of it, it seems to Us proper to have the officials attached to the tribunal of Your Excellency alone discharge the duties of attendants in the appeals previously referred to; and these appeals shall (as was formerly the case) be heard and decided in the Imperial Audience-Chamber and Our Most Glorious Quaestor shall be present, and take part in the proceedings.

CHAPTER II.

As the Governor of First Cappadocia, whose appeals were formerly brought before your tribunal, has just been appointed proconsul, it is proper that appeals from this magistrate should, in conformity with Our Constitution, be heard in the Imperial Audience-Chamber, where Our Most Glorious Quaestor shall preside and give his opinion, and where your officers alone shall act as attendants, as was formerly the custom; for although the office of Count of the Houses has been merged into that of Proconsul of Cappadocia, and as formerly very few cases were brought before this distinguished Count, and very few appeals, indeed, were taken to Us from his tribunal, now that We have entrusted the administration of the Treasury to the Proconsul, and have charged other persons with these duties, there is no reason to limit your jurisdiction on this account, hence the officers attached to your court shall alone be employed where appeals are taken from the Proconsul of Cappadocia.

CHAPTER III.

This rule shall also apply to the Proconsul of Armenia, for while this province was formerly subject to an ordinary administration, We, without adding anything to it, have changed it into a proconsulate. And as the subordinates of Your Highness formerly had charge of appeals, and as these are now regularly brought before the Imperial Audience-Chamber (as We have previously stated), and both of you should examine them; your executive officers shall, nevertheless, be employed in these cases, as was done when the Province of Armenia was subject to ordinary administration, no change being made in the former method of procedure.

CHAPTER IV.

The Provinces of Lycaonia, Pisidia, Isauria, which originally were under the charge of Governors, and took their appeals to your tribunal, are now subject to Praetorian magistracy. Although it is apparent in what way this change of administration was effected, as at first there was a general stationed in each one of these provinces, We have, nevertheless, deemed it necessary, because of this innovation, to confer upon your tribunal and that of the Most Glorious Quaestor the right to take cognizance of appeals from the decisions of the Praetors of said provinces, but your subordinates will have the privilege of acting as executive officers in cases of this kind. We also direct that the same order shall be observed in cases of appeal, whether they have been brought before, or after the enactment of the present law.

CHAPTER V.

When two administrations, namely, those of the Count of the East and the Governor of First Syria, existed, appeals from the Governor of Syria were brought before your tribunal, where your subordinates alone discharged the duties of executive officers; on the other hand, appeals from the decisions rendered by the Count of the East, invested with the character of Imperial hearings, were brought at the same time before your tribunal and that of the Most Glorious Quaestor, where the employees attached to the Bureau of Imperial Records performed the functions of executive officers.

CHAPTER VI.

It has seemed to Us advisable, in these instances, to make the duties of court attendants common to the employees of the Bureau of Imperial Letters and the officials attached to your tribunal, but, so far as the two Vicegerents of Pontus are concerned, each of whom We have established in a separate province (that is to say one in Galatia, and of one in Pacatian Phrygia) appeals shall be taken from them to Your Highness, as well as to the Most Glorious Qusastor, and the attendants of your tribunal shall alone act as court messengers.

CHAPTER VII.

What We decree shall take effect, whether the case has been decided by the magistrate from whom the appeal was taken, for the reason that it was in his jurisdiction, or whether the magistrate rendered judgment by virtue of an assignment by Us. In both instances, the officers attached to the tribunal of Your Highness shall alone act as messengers.

CHAPTER VIII.

In like manner, the officials attached to your tribunal shall also exercise these functions, whether you, in person, take cognizance of the appeal by virtue of an assignment by Us, or whether you do so because of the rank of the magistrate from whose decision the appeal is taken, and as being in your jurisdiction.

CHAPTER IX.

Again, in cases in which We require the services of your officials and those of the employees of the Bureau of Imperial Letters, We desire that these services shall be rendered concurrently, whether the appeal of the case comes before you through assignment, or, whether (as We have just stated) you take cognizance of it because it naturally comes under your jurisdiction.

So far as cases which are not determined by the magistrates, but only by the advocates, are concerned, the appeal shall be taken to your tribunal, and to that of the Most Glorious Quaestor; and, under these circumstances, the functions of court attendants shall be discharged by the faithful employees of the Bureau of Memorials; as We do not make any change in this respect, and preserve the ancient form of procedure, which We also do with reference to everything else concerning which nothing new has been enacted; and if subsequently a reason should arise for making alterations, We shall designate the persons to discharge the duties of court attendants.

EPILOGUE.

Your Highness will, by special edicts, make known to all persons the matters which it has pleased Us to promulgate by means of this Imperial law, so that no one may be ignorant of what We have decreed.

Given on the fifteenth of the *Kalends*, after the Consulate of Belisarius, 535.

TITLE VIII.

CONCERNING THE ARMENIANS.

TWENTY-SECOND NEW CONSTITUTION.

The Emperor Justinian to Acacius, Proconsul of Armenia.

Desiring that the country of Armenia should be governed by good laws, and in no respect differ from the rest of Our Empire, We have conferred upon it a Roman administration; have delivered it from its ancient customs; and familiarized it with those of the Romans, ordering that it shall have no other laws than theirs. We think, however, that it is necessary, by means of a special enactment, to abolish a barbarous practice which the Armenians have preserved; for among them women are excluded not only from succession to the estates of their ascendants, but also from those of their own brothers and other blood-relatives; they are

married without a dowry; and are purchased 'by their future husbands. These barbarous customs they have observed up to the present time, and they are not the only ones who act in this cruel manner, for there are other races that dishonor nature in the same way, and injure the female sex just as if it were not created by God, and took part in the propagation of the human race, and finally, as if it was utterly vile, contemptible, and not entitled to any honor.

CHAPTER I.

Therefore We decree by this Imperial enactment that the laws in force in Our Empire, which have reference to the right of women to succeed to estates, shall be observed in Armenia, and that no difference shall hereafter exist between the sexes in this respect; that women, in accordance with the rule laid down in Our laws, shall inherit from their parents, that is to say, in the ascending line, from their fathers and mothers, grandfathers and grandmothers, indefinitely; and in the descending line, from their sons and daughters, no matter in what way either of these transmit their property.

Hence the Armenians shall no longer be subject to laws different from those of the Empire; and if they form part of Our subjects, and are under Our government like many other peoples, and enjoy the benefits conferred by Us, their women shall not be the only ones deprived of Our justice; and they shall all enjoy the benefit of Our laws, whether the latter have come down to Us from former ages and have been inserted into Our Institutes and Digest, or whether they are called upon to obey the Imperial Constitutions promulgated by Ourselves, or by Our predecessors.

CHAPTER II.

We decree that these provisions shall prevail for all time, from the beginning of the fourteenth indiction, the date when We have enacted the present law. If anyone examines the ancient laws of this nation, he will find in them great confusion, instead of the rules of a wise legislation; and, for the future (as We have already stated) from the fourteenth indiction, the rule of succession shall be uniform for all persons, and shall equally apply to men and women. We, however, permit everything to remain in the same condition as formerly, so far as other family property is concerned; for women shall have no share in estates which have already been distributed, or be entitled to successions belonging exclusively to the thirteenth indiction; for Our legislation shall only be applicable to them from the beginning of the fourteenth indiction, as aforesaid.

EPILOGUE.

Therefore Your Highness, Your successors, and Your subordinates, will be careful to see that what it has pleased Us to promulgate by means of this Imperial law, is perpetually observed.

Given on the fifteenth of the *Kalends* of April, after the Consulate of Belisarius.