

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

FOURTH COLLECTION.

TITLE I.

CONCERNING MARRIAGE.

TWENTY-SECOND NEW CONSTITUTION.

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

PREFACE.

A great number of different laws have been promulgated by Us with reference to every branch of legislation; but as many of them appear to Us to be imperfect, We desire to open a way to Our subjects for better things, and explain to them in what way their condition may be improved. This law, which is applicable to all Our subjects, establishes a general rule for their conduct. For as marriage is so advantageous that it seems to provide an artificial immortality for the human race, in that, by the procreation of children, families are constantly renewed, and if God, in his mercy, by this means, confers an eternal existence upon our species, as far as is possible, it is only proper for Us to devote the greatest care to matters relating to marriage. Other laws that We have previously enacted on this subject are not applicable to all men in every instance, nor for all times; and since, as We have already stated, marriage is something which concerns all persons, as the human race is constantly renewed by its agency alone, there is nothing more deserving of Our attention. Ancient jurisprudence did not, however, establish a sufficient distinction between first and second marriages, but allowed fathers and mothers to contract an indefinite number of matrimonial unions without depriving them of any advantage, and the entire subject became confused even in its simplicity.

The greatest care of the legislator with reference to this matter was exhibited during the reign of Theodosius the Great, and succeeding Emperors were also animated with the same feeling, especially Leo, of pious memory. We, also, have published many decrees relating to this question in Our Book of Constitutions, and have deemed it necessary to amend it, and make certain corrections by means of better provisions; giving attention not only to the laws enacted by others, but also to such as have been promulgated by Us. For We should not blush to amend laws which We have published, and ought not to leave this to others, when We ascertain that they can be improved and rendered more effective.

CHAPTER I.

THIS CONSTITUTION SHALL BE OPERATIVE IN THE FUTURE, BUT SHALL NOT
APPLY TO ANYTHING THAT IS PAST.

We publish two provisions antecedent to this law. First: all decrees already promulgated, either by Us or by Our predecessors, shall remain in full force, and shall not be altered by the present law; they shall be executed in every instance whenever they apply; all preceding occurrences shall be controlled by them; and they shall not be affected by this enactment. The latter shall only be applicable to cases which may arise hereafter; to first or second marriages which may be contracted; to marriage settlements that may, in time to come, be agreed upon; and to successions to the estates of children. We leave whatever has occurred in the past to be decided by the laws already published, and by means of the present one We regulate whatever may hereafter occur. Thus the question arising from second marriages; the successions of children born of a first marriage, and to which their parents are entitled; profits resulting from dowries; donations made in consideration of marriage, or for any other reason, whether there are or are not any children by a former union; all these matters shall be decided in accordance with the laws in force at the time of their occurrence.

Both men and women shall enjoy the benefit of the present legislation, whether they have married a second time, or their first marriage still exists; or whether they have succeeded their children; or no matter what they have done, if it was in conformity with previous enactments. For where a contract was made with reference to such laws, no one can be guilty of not having taken the future into consideration, if he trusted to those in existence at that time, and had no fear of others which had not yet been passed. All past events shall then continue to be governed by former legislation; and the future alone shall be subject to the provisions of the present decree, which (as has already been stated) when marriages are contracted hereafter, shall be solely observed in every case to which they are applicable.

This is the first law of this Constitution.

CHAPTER II.

MARRIED PERSONS CAN BY WILL RELEASE THEMSELVES FROM THE PENALTY IMPOSED BY THIS LAW UPON THOSE WHO CONTRACT SECOND MARRIAGES.

The second provision is as follows: Every testamentary disposition whatsoever, which either a husband or a wife may make with reference to these matters, shall from this day forward be valid. Hence anyone can dispose of his estate in a suitable manner, and his will shall be legal, as was provided by the more ancient Code of the Roman Republic, a short time after its foundation (We refer to the Twelve Tables), which stated: "Every one can bequeath his own property; let this be the law."

Hence no one will have the power to act contrary to the wishes of the testator, even though he may have in his possession an Imperial Rescript, or some other document authorizing him to do so.

(1) Where the testator neither said anything, nor made any disposition unprovided for by former legislation, or contrary to the laws in general; in this case the present constitution shall be applicable, for it, as far as humanly possible, includes everything in a small compass; amends the laws having reference to first and second marriages, as well as those relating to the successions to children; to the dissolution of marriage caused either by death or by separation; and to events that take place before or after the widow's term of mourning has expired; and operates as a supplement to the one enacted on these different subjects; improving legislation which was formerly incomplete, frequently changed within five, fifty, and a hundred years, very inconsistent with itself, and, in many instances, ambiguous and constantly requiring correction.

CHAPTER III.

IN WHAT WAY MARRIAGE IS EFFECTED AND DISSOLVED.

Reciprocal affection constitutes marriage, without it being necessary to enter into a dotal contract; for when the parties are once agreed and have been influenced by pure affection, it is not requisite to stipulate for a dowry, or a donation on account of marriage. We shall treat of this relation as regards both its origin and end, whether the latter is accompanied by the penalty or not, since every tie effected by men is capable of being dissolved.

A penalty is also prescribed where marriages contracted without a dowry are dissolved; and these We shall consider first.

CHAPTER IV.

CONCERNING DISSOLUTIONS OF MARRIAGE AND DIVORCES WHICH TAKE PLACE BY COMMON CONSENT AND IN OTHER WAYS.

Marriages occasionally are dissolved by common consent during the lives of the contracting parties, but it is not necessary to examine this kind of separation, because the parties interested settle their affairs by agreement among themselves; at other times, they are dissolved for some good reason, and this kind of separation is called divorce by common

consent; in other instances, separations take place without any cause whatever, and in others still, for one which is reasonable.

CHAPTER V.

CONCERNING MONASTICISM.

Divorce takes place without blame whenever either the husband or the wife enters monastic life, and desires to live in chastity; for another law of Ours specially provides that either a man or his wife, who devotes himself or herself to a monastic life, is authorized to dissolve the marriage, and separate from his or her consort by serving a notice by way of consolation. And whatever the parties may have agreed upon in case of the death of either, as set forth in their marriage contract, shall enure to the benefit of the abandoned wife or husband. The reason for this provision is, that wherever anyone embraces a different mode of life from that of his or her companion, he or she is considered to have died, so far as the marriage is concerned.

CHAPTER VI.

CONCERNING IMPOTENCE.

Marriage is dissolved for a necessary and not unreasonable cause, when the husband is incapable of copulation with his wife, and cannot do what nature created him for; and, in conformity with the law which We have already promulgated, if two years should have elapsed after the marriage, and the husband still not be able to show that he is a man, either his wife or her parents shall be permitted to dissolve the marriage, and give notice of repudiation to her husband, even if the latter should be unwilling to consent; the wife shall be entitled to the dowry, if one was given, and the husband shall return it if he received it; and the latter, on the other hand, shall be entitled to the ante-nuptial donation, and shall suffer no loss of his property.

We amend this law by making a certain addition thereto; for We decree that not two years, but three, shall elapse from the date of the marriage; as We have ascertained that some persons who were impotent for the term of two years have afterwards showed that they are capable of the procreation of children.

CHAPTER VII.

CONCERNING CAPTIVITY.

The effect of captivity is to dissolve marriage by mutual consent, where one of two married persons is in the hands of the enemy; for where the husband suffers a misfortune of this kind, and his wife remains at home; or, on the other hand, the wife is reduced to captivity, and her husband remains in his country, the marriage is dissolved for a reason derived from the condition of slavery; as, where a person is once reduced to servitude, the inequality of condition does not permit the equality derived from the marriage state to continue to exist: Therefore, considering cases of this kind from an humane point of view, We desire that the marriage shall remain undissolved as long as it is clear that either the husband or the wife is still living, and while this is the case, neither the husband, nor the wife, who is free, shall presume to contract a second marriage without suffering the consequences of his or her rashness, and becoming liable to punishment, which We decree shall be for the husband, the loss of the antenuptial donation, and for the wife, the forfeiture of her dowry.

When any doubt arises *as* to the survival of the person in the hands of the enemy, then, when either the husband or the wife is captive, it shall be ascertained whether the term of five years has elapsed, after the expiration of which time, whether the fact of death is established or remains uncertain, the person who is free will be permitted to marry without incurring any risk; which species of separation is classed by jurists among transactions concluded by common consent. We approve of this, since, under such circumstances, no notice of repudiation is necessary between persons thus separated from each other, and neither obtains

any advantage; for the husband does not acquire the dowry, nor the wife the ante-nuptial donation, but each remains in possession of his or her own property.

CHAPTER VIII.

CONCERNING PENAL SERVITUDE.

We manifest Our indulgence in an instance in which the severity of the law was formerly exhibited. For when either the husband or the wife was, by virtue of a judicial decree, sentenced to the mines (such as are now situated in the islands of the Sea of Marmora, or in what is called Gypsus), he or she became a slave; and this being established by the ancient legislators as a part of the penalty, the marriage was dissolved on the ground that the culprit had been sentenced to punishment and to service as a slave.

We now annul this provision, and do not permit any person who was well born in the beginning to become a slave as a part of his punishment; for We by no means desire anyone who is free to be reduced to a servile condition, as We have long since embraced every opportunity to promote the manumission of slaves. Hence marriage is in no respect affected by a decree of this kind, and shall continue to exist among persons who are free.

CHAPTER IX.

DISCOVERY OF THE SERVILE CONDITION.

If a judicial decree should reduce a free man, a free woman, or their children to slavery, and the marriage took place before sentence was passed, and it should afterwards appear that one of them is a slave, this will cause a separation of the parties interested, just as if death had occurred; for Our predecessors declared that where slavery

was imposed it did not greatly differ in its effect from death. Therefore, in a case of this kind, the one who is free shall be entitled to his or her property; the children shall receive the shares which would go to them if their father or mother, who was reduced to slavery, had died; and the balance shall belong to the person in servitude.

CHAPTER X.

CONCERNING PERSONS WHO MARRY FEMALE SLAVES SUPPOSING THEM TO BE FREE.

Where a man marries a woman under the impression that she is free, and she afterwards proves to be a slave, We do not say that the marriage is dissolved, but that no marriage existed from the very beginning, in accordance with what has previously been stated by Us relative to the inequality of conditions; hence, no advantage can be provided for (nor anything else of the kind) in such a marriage, but actions for the recovery of the property of both parties will lie. We hereby decree and decide that a marriage of this description is void only where the person who contracted it did not know what he was doing, or the owner of the slave did not consent to the marriage, and there was no evidence of malicious intent or negligence on his part.

CHAPTER XI.

When a master gives his female slave in marriage, representing her to be free, and the man who marries her is free, and, having confidence in her master, who delivers her to him, receives her, whether any dotal contract is drawn up or not, as the master is responsible for the marriage, it will not be just for such an union to be dissolved, hence the slave shall receive his or her freedom by implication; and, as the master is responsible for this, the said male or female slave shall immediately pass to the condition of freeborn persons and be considered such.

Where, however, the master did not cause the marriage to be celebrated, but was aware of what was being done, and designedly kept silent in order afterwards to be able to bring suit against the husband, who is free, and his wickedness should be proved, We punish it by depriving him of his slave, and confirm the marriage, just as if the owner had given his

consent in the beginning; and he shall lose his ownership of the slave, who shall be considered freeborn, and this will result, whether the master gave his consent or designedly kept silent. It is clear that any children born of such a marriage will be free and freeborn, in accordance with this Our law.

CHAPTER XII.

WHERE A MALE OR FEMALE SLAVE WHO IS ILL IS ABANDONED BY HIS OR HER MASTER.

There is much more reason for such marriages to be valid where a slave of either sex, who is ill, has been abandoned, or has been treated with contempt and sent away against his or her will. Slaves treated in this manner shall hereafter be considered free, and shall belong to no one; nor can they afterwards be molested by those who formerly disdained to possess them.

CHAPTER XIII.

Deportation, and the ancient interdiction of fire and water, as specified by Our laws, does not dissolve marriage; for this was decided long since by Constantine, and has been confirmed by Us; hence We have not included it in the present enactment, and, such being the case, the rule shall remain as it formerly was.

CHAPTER XIV.

THE FIFTH MANNER OF DISSOLVING MARRIAGE BY COMMON CONSENT, AND CONCERNING ABANDONMENT.

We are aware that the founder of this Our Most Fortunate City (We refer to the Emperor Constantine, of Divine memory) enacted a law which provided that where anyone went upon a military expedition, and four years elapsed without his communicating with his wife, or giving her any evidence of his affection, she was free to marry a second time, after having served notice in writing upon the general-in-chief of the army, in order that he might bear witness that this was done; and, under these circumstances, she would incur no penalty by marrying again, nor would she lose her dowry, or be entitled to the ante-nuptial donation. The Most Holy Constantine promulgated this law. It does not, however, seem to Us to have been the result of careful deliberation, for the sorrow that a husband should experience from being deprived of the society of his wife, while he is exposed to the hardships of war, is certainly not less than when he is captive in the hands of the enemy. For this reason We are not willing for the wife to contract a second marriage as soon as was decreed by Constantine, but she shall be required to wait until ten years have elapsed, after which time, in case she should continue to write to her husband or send him messages by anyone, and he formally renounces the marriage, or remains absolutely silent, then the wife shall serve notice upon the Most Glorious Commander-in-chief, general, or tribune, to whose orders her husband is subject; and she can even address a petition to Us (which, however, shall not be permitted until after she has complied with the prescribed formalities), and then she will be free to contract a second marriage; but she is hereby notified that if she does not do what We have directed, she will be liable to the penalties prescribed by law for having rashly contracted a second marriage.

(1) These are the milder ways of dissolving marriages, just as if the parties had a common interest in severing the matrimonial tie by mutual consent.

CHAPTER XV.

CAUSES FOR REPUDIATION.

Causes must be sought for the accomplishment of other kinds of divorce when they are employed either by the husband or wife, in order that the one who is at fault may be punished by the loss of his or her property; that is to say, either the dowry or the donation given on account of marriage. The ancient Emperors established several different causes for divorce. Theodosius the Younger adopted some of them, introduced others, and published the

constitution having reference to repudiation, and We have added certain other causes which We have thought had reference to the fault of either the husband or the wife.

(1) The following are the causes of divorce prescribed by the Constitution of Theodosius, of pious memory. If the wife can show that her husband has been guilty of adultery, homicide, or the administration of poison; or has taken part in sedition; or (which is the worst of all offences) has plotted against the government; or has been convicted of forgery, of violation of sepulchres; or has stolen anything belonging to a religious house; or has led a dishonest life; or has been guilty of theft; or is one of those cattle-thieves (who employ themselves in stealing animals or beasts of burden belonging to others, and transporting them elsewhere); or is proved to be a kidnapper, or to be living a debauched life, and, while his wife is living, cohabits with other women (conduct which especially exasperates married women who are of exemplary chastity, and careful to maintain the honor of the marriage bed), or if the wife can prove that her husband has attempted her life either by means of poison, by the use of arms, or in any other way (for there are numerous means by which human malice can be manifested); or where he has beaten her, these are valid causes for divorce. Therefore, when a wife can show anything of this kind, the law gives her permission to avail herself of repudiation to annul the marriage, and receive her dowry or ante-nuptial donation intact, not only where all these causes of divorce are susceptible of proof, but also where only one of them can be established.

(2) On the other hand, the law allows a husband to repudiate his wife if he ascertains that she has committed adultery; or has been guilty of the administration of poison; or of homicide, of kidnapping, of the violation of sepulchres, or the commission of sacrilege; or has aided thieves; or, without the knowledge, and against the wishes of her husband, she has enjoyed the pleasures of the table with guests unfit to associate with; or where, in violation of the orders of her husband and without good cause, she is in the habit of passing the night away from home; or, without his consent, she makes a practice of enjoying herself at the circus, and frequenting plays and theatres (We mean by this where comedies and similar exhibitions are presented, or where she attends combats between men and wild beasts); or where she treacherously attempts the life of her husband by means of poison, weapons, or any other means; or where she becomes the accomplice of persons plotting the establishment of tyranny; or where she has been proved guilty of forgery; or has laid violent hands upon her husband. Under such circumstances the law grants the husband the right to repudiate his wife, when he is able to prove only one of the causes hereinbefore enumerated, and authorizes him to take the dowry and ante-nuptial donation.

(3) But, in case either of these persons should give notice of repudiation without good cause for so doing, and, in consequence, the marriage should be dissolved, he or she shall be liable to the penalties which We have previously prescribed. Moreover, if the wife has been guilty of one of the above-mentioned offences, or has served notice of repudiation without sufficient reason, she will be prohibited from marrying again for five whole years; and any marriage which she may contract before the expiration of this time shall not be considered legal, and any person can appear in court and accuse her of having violated the law.

CHAPTER XVI.

If, however, a woman has good ground for serving notice of repudiation, and, in case of a contest, should be successful; or if her husband, having repudiated her without sufficient cause, has been subjected to punishment; she will be entitled both to the dowry and the donation given in consideration of marriage; but she will have reason to blush if she marries a second time before an entire year has elapsed. This requirement, however, is not imposed upon a husband who has repudiated his wife without good cause; for although he will not obtain any pecuniary advantage by doing so, he can immediately marry again, as no reasonable suspicion can be raised with reference to his offspring, on which account women are very properly forbidden to remarry before a year has expired; and this prohibition is so important that even though the marriage may have been dissolved by common consent, still,

according to a constitution of Anasta-sius, of pious memory, the interdiction of a second marriage is still imposed upon women for the term of a year.

(1) These are the causes for divorce which Theodosius has communicated to Us, to which We have added three others taken from former laws. For where a woman is so depraved as designedly to commit abortion thereby rendering her husband unhappy, depriving him of the hope of having children; or where she is so licentious that, for the sake of pleasure, she even bathes with men; or where, while she is still united to her husband, she refers to her marriage with others; permission is accorded by Us to her husband to repudiate her, and acquire the dowry and ante-nuptial donation; since these causes are sufficient for the dissolution of the marriage, and are included among those for which the Constitution of Theodosius, of Divine memory, prescribed penalties.

CHAPTER XVII.

CONCERNING SERFS WHO CANNOT MARRY FREE WOMEN.

A serf, who is under the control of another, is not allowed to marry a woman who is free, whether the person entitled to his services does not know it, or, being aware of it, consents; and where anything of this kind takes place, the master of the serf shall, himself, be permitted to either punish him by a moderate castigation, or the Governor of the province can order this to be done, and separate him from the woman with whom he has been fruitlessly united; for a legal marriage does not take place under such circumstances, nor is the tender of the dowry or ante-nuptial donation valid; but there is merely the punishment of an illegal act.

(1) Such are the causes of the dissolution of marriage during the lifetime of the contracting parties; and such are also the pecuniary penalties, which consist of the loss of the dowry and the betrothal gift.

CHAPTER XVIII.

CONCERNING MARRIAGES CONTRACTED WITH DOTAL INSTRUMENTS.

We have also made provision for the punishment of marriages where persons contract them without any agreement for a dowry, and separate without good cause; for where a man marries a woman, or a woman marries a man, merely by consent, and without any contract for a dowry or the bestowal of a gift at the time of betrothal, the result will be that if a separation takes place on some frivolous pretext, the person who has been so rash shall not be liable to any penalty.

We have enacted a constitution which provides that if anyone should marry a woman who is under the control of her parents, with the consent of the latter, or even if he should marry one who is independent, and no dowry is given, or dotal instrument drawn up, the husband cannot, on this account (although We have known it to be done in many instances), drive the wife from his house, where none of the aforesaid reasonable causes exist which Theodosius, as well as We Ourselves, have enumerated. When, indeed, anything of this kind occurs, and the husband repudiates his wife without good cause, or even when he states a reasonable cause why his wife should be divorced from him, he shall be compelled to give her the fourth part of his property; and if it should amount to four hundred pounds of gold, she shall be indemnified by the gift of a hundred pounds, that is to say the fourth of the same; and when his estate amounts to less than this, the portion to be given shall always be the fourth. If, however, the estate of the husband should be worth more than four hundred pounds of gold, he shall not be required to give her more than a hundred pounds; for, in promulgating this law, We have considered this sum to be that which, for the most part, is provided for in the constitution of a dowry, it being, of course, understood that the property of the husband shall, in accordance with Our laws, be free from all indebtedness.

On the other hand, if a wife who has received no dowry, is separated from her husband on account of some fault of her own, or if she should give notice of repudiation without any reasonable cause, she will be liable to the same penalty which We have already mentioned;

and if she is to blame for the dissolution of the marriage, she must wait five years before contracting a second one. But if the separation results from some act or fault of the husband, or this takes place by common consent, she shall only be compelled to wait a year to avoid any doubt as to the offspring, and in order that Our law may >be perfect in every respect.

CHAPTER XIX.

CONCERNING REPUDIATIONS MADE BY SONS UNDER PATERNAL CONTROL.

Another pious and beneficial provision has been added by Us where notice of repudiation has been served during the existence of the marriage, for We forbid fraud to be committed against their parents by children under paternal control, as We have ascertained that sometimes men designedly, and without good cause, give notice of repudiation to their wives, and *vice versa*; and the marriage is dissolved in order that their parents may be compelled to pay the dowry or the betrothal gift, just as if this was legally done; while the husband and wife secretly cohabit with one another, and their parents are deceived as a reward for having treated their children with kindness.

Hence We have drawn up this law, which provides that emancipated children, or those still under paternal control, whether male or female, shall not be permitted to dissolve their marriages to the prejudice of their fathers or mothers who have given or received dowries or ante-nuptial donations, either alone or along with their children; for as We require the consent of the parents in the execution of marriage contracts, We do not allow a marriage to be dissolved to the prejudice of the parents without their consent.

Where, however, notice of repudiation is served, We do not permit the penalties to be exacted from the parents, if they had given or received anything either alone, or along with others; for it would be unreasonable when a parent cannot dissolve the marriage without the consent of his child, for the latter, while still a minor, and not knowing what would be advantageous to him, to be permitted to dissolve it contrary to the wishes of his parents, and in this way injure them. The philosophical Emperor, Marcus, was the first one who provided for this, and Diocletian followed him. We also have approved of this rule; and We here terminate what relates to the dissolution of marriage where the contracting parties are living.

CHAPTER XX.

We shall next discuss marriages dissolved by death, which puts an end to all things. When a matrimonial union is terminated by the death of either the husband or the wife, if the husband survives, he shall be entitled to the benefit of the dowry, as set forth in the terms of the dotal agreement; and if the wife survives, she shall receive the nuptial donation as was agreed upon by the contracting parties; they are not, however, prohibited from giving unequal amounts of property under such circumstances, but they are not permitted to provide for unequal advantages in their contracts, a regulation established by Leo in his laws, and which We, having adopted, have set forth with greater clearness. For where either of the parties in their agreement makes arrangements for either greater or less pecuniary benefits, it will be uncertain whether the amount should be increased on one side or be diminished on the other. Wherefore We have decided that the larger donation must be reduced to the size of the smaller one; for example, if one of the contracting parties has given a third and the other a fourth, the fourth alone will constitute the donation of each, and the amount in excess of this shall be equally divided; but this rule shall not apply to property which the parties themselves have agreed upon.

(1) When the marriage is dissolved for one of the causes hereinbefore specified, it will be better for both parties to remain single, and not sadden their children by contracting other marriages. If they should separate without marrying again, they will be entitled to retain what belongs to them, that is to say, the woman shall have the dowry, and the husband the ante-nuptial donation; still We do not impose any penalty when they contract second marriages. In this case they shall obtain the same advantages as in the first instance, for the husband shall be entitled to the dowry, and the wife to the antenuptial donation, the right to which shall

severally vest in them, and the title shall in no way differ from that of their other possessions; so that, during their lives, they can alienate them in the same way as other property belonging to them from the beginning. If, however, they should die, they shall be permitted to dispose of such property to strangers by means of legacies and trusts, and We permit alienations of this kind to be made under the terms of constitutions already promulgated by Us.

(2) When, however, married persons appoint their children heirs to a portion of their estates and strangers heirs to the remainder, the property above mentioned shall be considered as not alienated, for alienation is not held to take place when a stranger is appointed heir, but the property still remains in the children. For if anyone should appoint all his children heirs to unequal shares of his estate, they will not receive the dowry or ante-nuptial donation in proportion to their hereditary shares, but will divide them equally, according to their number; and they will do this even if their father did not appoint any of them, but only strangers, his heirs; or they will be indemnified in some other way, even if they should not be the heirs of their parents.

We have made this provision presuming what the wishes of the parents would be, for as they did not alienate the dowry or antenuptial donation while they were living, when they were not obliged to do so, and when at death they did not expressly dispose of such property in favor of other persons than their children, and did not leave it to strangers, this property, according to Our law, will go to the children as a preferred legacy, even though they did not become the heirs of their father or mother, or both of them, as well as where some of them become heirs, and others reject the estate; for this seems to Us more just than the rule established by Our predecessors. The benefit resulting from this law is that the children will not be disturbed or their rights affected, unless they themselves have given cause for this to take place.

CHAPTER XXI.

CONCERNING UNGRATEFUL CHILDREN.

If any child should be found ungrateful, We give its property to the other children who have not acted in this manner, in order that We may compel children to honor their parents and imitate the example of their brothers. But where all of them are ungrateful, then the property of the deceased, including the dowry and ante-nuptial donation, shall go to the other heirs, just as if it had been left to them; for We do not give it to the children, because they should not be rewarded for having treated their parents with disrespect.

(1) Where, however, there are children, and grandchildren representing others who are dead, We give the shares of the latter to their offspring, if they are the heirs of the father; otherwise We grant it to the brothers of the deceased. Hence, in enacting this law, We desire that this provision shall not only apply to the dowry, but also to the ante-nuptial donation, and also be applicable where no dowry has been provided for, on account of the advantages introduced by Our Constitution. For when parents do not contract second marriages but remain single, the property shall belong to the children in the same manner which We have previously mentioned.

CHAPTER XXII.

CONCERNING SECOND MARRIAGES.

Where persons, not content with their first marriages, marry again, it is necessary for the law to provide for cases where there is no issue by the second marriage; or where there is issue by the second; or where, on the other hand, there are no children by the second marriage but there are some by the first; or where there are children by both marriages; or where there are none by either. Therefore, where the " first marriage, or both, are childless, no penalty will attach to the second marriage, as the husband shall be free from the observance of any rule, and the wives shall only be required to permit a year to elapse before marrying again, for they are notified that if they marry before the expiration of this time, they will be liable to punishment and this punishment shall be more severe when there are children by the first

marriage than when there are none. When there is no issue, the woman will be branded with infamy on account of the haste which she shows to contract another marriage; and she shall not be entitled to anything which may have been left to her by her first husband, nor shall she enjoy the use of the ante-nuptial donation; and she cannot give to her second husband property in excess of the third part of her estate; nor can she receive anything from a stranger, nor any estate, trust, legacy, or donation *mortis causa*; but all these things shall pass to the heirs of the deceased, or to her co-heirs, where she is called to the succession in default of other heirs.

But where other heirs are appointed, or are entitled to the succession *ab intestate*, they shall receive the property bequeathed to a woman of this kind, and the Treasury shall not claim it (in order that We may not seem to have appropriated such property for the benefit of the Treasury), and whatever may come to her from any outside source shall belong to them. Anything left by her first husband shall, under such circumstances, pass to persons related to him in ten degrees of succession, as enumerated in the Edict; that is to say ascendants, collaterals to the second degree, and the other degrees in their regular order. In case none of these exists, the property shall go to the Treasury. The woman will not be entitled to the estates of her own cognates any farther than the third degree who may die without leaving a will, for beyond that degree her relatives have other heirs. We decree that one penalty to be inflicted upon such a woman is infamy, from which, however, she can be released by Imperial Letters, provided she has no children by her first marriage. If, however, she should have children of either sex, she can petition the Emperor to be relieved of the reproach of infamy, but she cannot obtain any benefit from rescripts. Where she wishes to enjoy the full effect of Imperial clemency and be released from other penalties, she must bestow upon her children by the first marriage half of her property absolutely, and without any condition whatsoever, nor can she retain the usufruct of the same; and this applies to all the property which she had when she married the second time, half of which (as We have already stated) must be transferred to the children who are the issue of the first marriage. This property the said children shall divide equally among themselves, and where they have offspring, they will transmit it to them (for it is necessary to add something to the ancient laws), but where the deceased did not have any children, her share shall pass to her brothers; and if all these should be dead, the mother shall be entitled to the property by way of consolation for her unhappiness; and We make this provision where the children die intestate, for where the mother has once been dispossessed of the property, We forbid them to bequeath it by will; or, when they survive, to dispose of it in any way they may wish. Women who marry before their year of mourning has expired incur these penalties; and this law forms a supplement to the three constitutions already promulgated on this subject.

CHAPTER XXIII.

WHERE A WOMAN MARRIES AGAIN AFTER THE YEAR OF MOURNING HAS ELAPSED, AND CONCERNING THE PROFIT OF THE DOWRY AND ANTE-NUPTIAL DONATION.

When a woman allows the prescribed time to elapse without marrying again, and by so doing escapes the above-mentioned penalties, and she then contracts a second marriage (as has been previously stated), she can do this without any risk, provided she has no children. But when there is issue by the first marriage, as the law considers children dishonored on this account, then all the property which she has acquired from her husband shall be taken from her, with the exception of the usufruct of the same.

This rule also applies to ante-nuptial donations and all other gifts bestowed by her first husband, either during his lifetime, or left to her by will, or by donations *mortis causa*,, whether she received them through an appointment under a will, or as a legacy, or under the provisions of a trust. And, generally speaking, where a woman forfeits all right to any property of her first husband which she may have received, her children shall be entitled to it, and the ownership shall pass to them from the time that their mother was married to another

man. This penalty is imposed both upon the husband and the wife, for if the husband has children and marries again, he cannot enjoy the benefit of the dowry on account of his gain by the second marriage, because he obtains other property from this source to which his right is indisputable. He can use and enjoy what he acquired by the first marriage as long as he remains single, and his children, even though they may be under his control, acquire the ownership of said property the moment that he contracts a second marriage.

We make no distinction where the dowry or ante-nuptial donation has been given by the contracting parties themselves; or where others have done this in their behalf; or whether members of their own family or strangers have given it. This rule applies to both ante-nuptial donations and dowries.

CHAPTER XXIV.

What is decreed in this law with reference to the profit derived by persons through marriage is so strict that it prohibits all alienations, and does not even permit parents to make them under such circumstances, or to hypothecate the property, and if they should do so, their own estates will be liable. This, however, does not prevent them from disposing of such property in any way which they may desire, for the law would blush to authorize children to punish their parents. It threatens others, who acquire the property, by making the transaction void; and persons are notified by this Our law that where they purchase property from parents under such circumstances, or accept it from them by way of donation, or commit any of these acts, the result will be that whatever has been done or written shall have no legal effect. For the children, their heirs and successors, can recover the property from the said third parties, their heirs and successors, who shall have no right to oppose them, unless the term of thirty years has elapsed in favor of those who obtained the property, and this shall begin to run against the children from the time when they attained their majority, or were emancipated, unless the fact that some of them have not yet arrived at puberty may cause the prescription to be extended.

CHAPTER XXV.

Property of this kind goes to all the children by the first marriage. We do not permit parents, by means of selection, to give them unequal shares through being generous to certain ones and unjust to the others, for all the children are disgraced alike by a second marriage; but as parents succeed to their children as heirs, receiving equal portions of their estates, why should they appoint some to the prejudice of others, and not distribute among them equally the property acquired in this manner? Hence every child shall be entitled to a share equal to that of each of the others, and if he has any children, he will transmit it to them. The grandchildren who divide the property among themselves cannot claim any more than what their father would have received.

CHAPTER XXVI.

CONCERNING THE BENEFIT TO BE DERIVED FROM DOWRIES AND ANTE-NUPTIAL DONATIONS WHEN AN AGREEMENT HAS BEEN DRAWN UP WITH REFERENCE TO THEIR BEING NO ISSUE BY THE MARRIAGE. (SEE NOVEL II, CHAPTER II.)

Since We have stated that the alienation of property obtained through a former marriage by parents is void, still it is proper to modify this to a certain extent. We have provided that such an alienation is absolutely void where all the children who were the issue of the first marriage are living, and their parents have died before them; but, on the other hand, if all the children should die first, the property will belong to the surviving parent; for who could impose such a restriction, when the children for whose benefit alone We have enacted this are no longer in existence? But an ingenious idea has enabled Us to establish a proper medium in these two instances; that is to say, where the children are still living and the father who married again is dead, no share of the property obtained by marriage will belong to those who have contracted second nuptials; and where all the children have died, the property reverts to them; hence if one of the deceased children has left any offspring, his property, as We have frequently stated,

will pass to them. But where the said child dies without issue, his share will not entirely accrue to his brothers, but the parent who is married again will acquire as much of it as he or she would have a right to by virtue of the non-existence of children, and the remainder will go to the successors of the son, namely, his brothers, or strangers who were appointed heirs (which usually happens when the mother marries again), whether the child dies intestate, or after having made a disposition of his property. We have inserted this rule into Our laws, and have been the first to adopt it, and to accord this indulgence. Therefore when a parent has alienated property obtained by a former marriage before contracting a second one, and then one of his children dies, the alienation which he made will only be valid so far as the share to which he would be entitled by virtue of the clause providing for the non-existence of offspring is concerned; and it will be void with respect to the other shares to which the heirs of the deceased children are entitled.

Hence the effect of the alienation will remain in abeyance, and subject to the occurrence of subsequent events; and it will either be entirely void from the very beginning, or perfectly valid; or it will be void or valid only to a certain extent.

(1) We make no distinction with reference to any nuptial property which children may acquire by the second marriage of their parents, where they are the heirs of the dead husband or wife, or of him who has survived either of them, when some of them have been appointed heirs, and others have not; for, as has already been stated, We grant the property obtained by marriage to all surviving children, whether they have been appointed heirs or not, as it should be divided equally among them, and any grandchildren will be entitled to their proportion of the share of their father. But (as We have previously stated) ingratitude will always be an impediment to a child in acquiring any of such property; for in Our laws We do not manifest indulgence to ungrateful children, but, on the other hand, We desire that they shall honor their parents and show them filial respect. As We prohibit any favoritism, and accord to all an equal share of the property, so also We do not repeal what has been provided in case of ingratitude. For it is clear that a child should be considered as ungrateful who has been guilty of such conduct either toward both its parents, or toward the one who died last.

CHAPTER XXVII.

CONCERNING THE PROHIBITION OF ALIENATING MORE THAN A SINGLE SHARE OF PROPERTY OBTAINED BY MARRIAGE.

The observations made by Leo, of Divine memory, with reference to the obligations of persons who contract second marriages, seem to Us to be excellent. For he says that where parents, who have had children by a first marriage, contract one or more subsequently, the father cannot give to his second wife, nor the mother to her second husband, either by a donation *inter vivos* or *mortis causa*, any amount in excess of the share that a child of either sex, the issue of the first marriage, could claim if he or she were living; and that where there are several children who succeed to equal shares, neither the stepfather nor the stepmother will be entitled to more than each one of them. Where a parent, who marries a second time, leaves his or her estate to his or her children unequally divided, the father is not allowed to give to his second wife, or the mother to her second husband, either by means of a donation *inter vivos*, or by last will, any more than a share of the estate equal to that of the child who is entitled to the least; and everyone is aware that formerly a fourth, and that at present a third, and, under certain circumstances, the half must be left to children, unless they have rendered themselves unworthy by ingratitude. This rule must likewise be observed where a grandfather or a grandmother, a great-grandfather or a great-grandmother having grandchildren or great-grandchildren of either sex under parental control, or emancipated, and descendants in the paternal or maternal line, marries.

Leo has also very properly observed that where anything has been left or given to a stepfather or a stepmother, in excess of the share to which either is entitled, this is considered as not having taken place, and the surplus shall be divided equally among the children.

It has also been stated in a constitution that children who are the issue of a second marriage have a right to share in this surplus, but We are not willing to sanction this, and only the children born of the first marriage, for whose benefit We have enacted this legislation, shall profit by it, without anyone being able to deprive them of this advantage, either by the interposition of other persons or in any other way. This surplus, however, shall only be divided among children who have shown proper respect to their parents, for We exclude from this privilege those who have been guilty of one of the kinds of ingratitude enumerated by the laws, in order that the hope of sharing in the aforesaid surplus may, in every instance, induce them not to manifest any insolence, and violate the laws of nature.

It is perfectly clear that if any of the children entitled to part of the surplus in question should die, his share shall pass to the surviving children, and the children of the deceased shall, in accordance with their number, each receive the portion to which he or she is entitled.

CHAPTER XXVIII.

Up to this time, it has not been determined by the laws to what date it is necessary to refer, in order to decide if the donation made to a second husband or wife is in excess of what is proper; that is to say, if it is necessary to revert to the time of the donation, or only to that of the dissolution of the marriage, and it appears to Us advisable to go back to the date of the death of the husband or wife who made the donation. For while men at the time of their decease dispose of more or less of their property, the distribution of their estates is generally dependent upon the caprices of fortune.

Hence, in order that there may be no mistake, reference shall be had to the time of the death of the husband or wife who has married a second time, and from this date the appraisement of the donation given by the second husband or wife shall be made; and if it exceeds the amount which could be bequeathed, the surplus shall be adjudged to the children of the first marriage; and, in all cases of this kind, not the date of the donation or testamentary disposition, but that of its occurrence shall be considered.

CHAPTER XXIX.

CHILDREN BY BOTH MARRIAGES SHALL RECEIVE RESPECTIVELY THE PROPERTY OBTAINED BY THE MARRIAGE OF WHICH THEY ARE THE ISSUE.

We do not think that We should neglect confirming what Theodosius the Younger, of pious memory, decreed, when he stated that where a woman, having had children by a first marriage, contracts a second by which she also had children, and then her second husband should die, and she herself should subsequently die intestate, the children born of the two marriages shall share her estate equally; but those in each line shall be entitled to the ante-nuptial donations of their respective fathers. Thus the children by the first marriage will receive the entire donation given in consideration of that marriage, just as the children born of the second will also have a right to all the advantages resulting from it, even when the wife does not marry a third time; for how would this benefit the children by the first marriage? And how can it injure the issue of the second marriage, if the children by the third marriage are not injured? Each set of children shall then participate in all the advantages enjoyed by their father; those by the first marriage will be entitled to its advantages, and those of the second to the benefits conferred by the latter, even though the woman may not marry a third time. As a natural consequence, whatever applies to the wife is also applicable to the father when he marries a second time. Hence, just as the dotal property of the first marriage is preserved for the children who are the issue thereof, so, likewise, that derived from the second will belong to the children born of it, even though the father may not contract a third marriage.

(1) But either a father or a mother, who contracts a second marriage, will be entitled to any advantages resulting therefrom through either legacies or trusts, even if he or she should marry a third time; for they will acquire full ownership without the third union being able to prejudice them in any respect, and the property will become a portion of their estates which

they can dispose of in any way that they may desire.

CHAPTER XXX.

NO MATTER BY WHAT KIND OF A DIVORCE A MARRIAGE MAY BE DISSOLVED,
ALL THE PROPERTY ACQUIRED THEREFROM MUST BE PRESERVED FOR THE
CHILDREN WHO ARE THE ISSUE OF THE SAME.

As We have established regulations concerning the dissolution of marriage which most frequently occurs through death, We desire to add a brief provision relative to the advantages acquired, whatever they may be, whether derived from the dowry or the ante-nuptial donation, when the marriage is dissolved through separation by common consent, or in any other way; for these advantages—like those obtained through the death of one of the married persons—shall entirely be preserved for the children; and this rule shall apply even where there is no dotal agreement, whenever, in accordance with one of Our laws, the presumption of either the husband or wife, who has given cause for repudiation, is punished. Nor do We make any distinction as to which one of them is to blame for the divorce. For no matter in what way it is obtained, the property derived from the marriage shall go to the children who are the issue of the same, whether the dissolution of the first or the second marriage be involved, even where no third marriage has taken place.

CHAPTER XXXI.

A DOWRY OR A DONATION ON ACCOUNT OF MARRIAGE GIVEN AT THE TIME
OF THE FIRST NUPTIALS CAN EITHER BE INCREASED OR DIMINISHED, AND
THIS CAN ALSO BE DONE IN CASE OF A SECOND MARRIAGE WHERE THERE
ARE NO SURVIVING CHILDREN WHO ARE THE ISSUE OF THE FIRST.

Some former laws have been enacted with respect to the increase or diminution of dowries and ante-nuptial donations, and, after due consideration, We have not only granted permission to married persons to increase donations on account of marriage during the existence of the latter, but We have also allowed them to do so from the very beginning; and as We have permitted them to augment these donations, so also We have allowed them to diminish them; but in order that what has been stated with reference to diminutions may not violate the provisions of the Constitution of Leo, of pious memory, We do not authorize married persons to make any such diminutions during the second marriage, when there are any children who are the issue of the first. For if an excessive dowry should be given at the time of the second marriage, or a similar ante-nuptial donation should be provided for, or any other extraordinary gift should be made, and afterwards, one of the parents having ascertained that this was prohibited by law, should defraud his children by diminishing the said dowry or donation, the consequence would be that the issue of the first marriage, having been injured, would not receive what they were legally entitled to, and the stepfather or stepmother would profit by their loss.

CHAPTER XXXII.

CONCERNING THE USUFRUCT LEFT BY A HUSBAND TO HIS WIFE OR A
DONATION MADE BEFORE THE MARRIAGE WAS CONTRACTED.

Where a husband has given to his wife, or a wife to her husband, by testamentary disposition, the usufruct of his or her estate, an ancient law prescribed that if the spouse who gave it should marry a second time, he or she would lose the usufruct in the same way in which they would be deprived of the ownership, if it had been left to either, and that the said usufruct would afterwards be acquired by the children; and, if they were under the age of puberty, the parent who married a second time would be accountable to them for the enjoyment of the usufruct during their minority, for this is what the law directs.

We do not think that this provision is satisfactory, and We decree that where the usufruct of property which anyone is permitted to dispose of in this way is bestowed as a gift, or as a donation *mortis causa*, the recipient will be entitled to the enjoyment of it during his lifetime,

even though he may marry a second time; and the same rule will apply to the use of the property, unless the husband or wife who either gave or bequeathed the usufruct expressly stated that if the one to whom it is given should marry again, the usufruct will determine, and revert to the ownership. We decree that these rules shall be observed whenever a gift of the usufruct is made.

CHAPTER XXXIII.

WHERE THE USUFRUCT OF PROPERTY IS GIVEN BY WAY OF DOWRY OR ANTE-NUPTIAL DONATION.

Where, however, the usufruct of property is bestowed by way of dowry, or at the time of betrothal, We establish no innovation with reference to it, but all previous regulations are hereby confirmed, and the property shall remain in the hands of the recipient during his or her lifetime, even though the persons who made the donations should revoke them ten thousand times when they are at the point of death; for a private individual is not authorized to deprive anyone of an advantage conferred by law.

CHAPTER XXXIV.

A FATHER DOES NOT LOSE THE USUFRUCT OF PROPERTY WHICH BELONGED TO THE MOTHER OR WAS ACQUIRED BY MARRIAGE.

While We are treating of the subject of usufructs preserved by the laws, it will be advisable to confirm the provisions included in the three preceding constitutions, which state that the father, even though he may marry again, will be entitled to the usufruct of all the property which passes to his children, whether through the maternal line, by means of donations in consideration of marriage, or in any other way; for the laws of Our predecessors have declared (and We hereby confirm it) that fathers, during their lifetime, have the right to the entire usufruct of property derived from the mother, or from anyone else, which belongs to the children. We, however, except from this rule all *peculium castrense* or *quasi castrense*.

CHAPTER XXXV.

WHERE A WOMAN WHO HAS GIVEN PROPERTY TO HER CHILDREN DESIRES TO REVOKE THE GIFT ON ACCOUNT OF THEIR INGRATITUDE, AFTER SHE HAS CONTRACTED A SECOND MARRIAGE.

Where a mother, who has given something out of her own property to her child, marries a second time, she will not be permitted under the pretext of ingratitude to revoke the gift which she made. For she cannot allege this reason because she will be presumed to have acted on account of her second marriage; still, the case will be otherwise if it is established that the child has openly attempted the life of its mother, or has raised impious hands against her, or has tried to deprive her of all her property.

CHAPTER XXXVI.

WHERE A WOMAN HAS CONTRACTED A SECOND MARRIAGE SHE CANNOT TAKE ADVANTAGE OF THE RANK OR PRIVILEGES OF HER FIRST. HUSBAND.

We do not permit a woman who has contracted a second marriage to continue to enjoy the dignities and privileges of her former husband, but she shall be reduced to the condition of the second; and the reason for this is that the woman who forgets her first marriage ought not to be allowed to profit by the advantages derived from it.

CHAPTER XXXVII.

CONCERNING FREEDWOMEN WHO MARRY THEIR PATRONS.

The Emperor Alexander, of Divine Memory, has taken precedence of many ancient legislators by having decreed that if anyone should manumit a female slave, and then marry her, and she, after having thus been raised above her rank, should obtain a divorce, the law will not permit her to marry a second time without the consent of her first husband; for it would consider this

second marriage not as a matrimonial union, but as mere fornication and debauchery, by means of which a disgraceful injury is inflicted upon him who gave her her freedom.

CHAPTER XXXVIII.

We have also found a constitution of the same Emperor which We think worthy of being confirmed by Us, which says that, as a mother appears better fitted to conduct the education of her children than anyone else, this law confers that right upon her, unless she contracts a second marriage.

CHAPTER XXXIX.

WHERE A HUSBAND RETURNS THE DOWRY TO HIS WIFE DURING MARRIAGE.

Dowries which the contracting parties have received are not readily transferred to wives during the existence of the marriage, unless for certain causes enumerated by the law; and where such a thing takes place, it is held to be merely a donation. If the woman should die, the husband who returned the dowry to his wife prematurely will receive it again from her heirs, together with any profits which may have accrued in the meantime; and he and his heirs will be entitled to the benefit of the same, in accordance with the terms of the nuptial agreement. If the husband should marry a second time, the children can hold the dowry without power of alienation, as is generally provided. But where the husband did not return the dowry while the marriage was in existence, it can be recovered from the heirs after the death of the wife, in compliance with the dotal contract.

CHAPTER XL.

WHERE A WOMAN WHO IS ADMINISTERING THE GUARDIANSHIP OF HER CHILDREN MARRIES A SECOND TIME.

When a woman who is administering the guardianship of her minor children, and has sworn that she will not contract a second marriage, disregards her first one and her oath by marrying a second time, without having previously had a guardian appointed for her said children, renders her account, and discharges all indebtedness, the law not only subjects her own property to hypothecation for the benefit of her children, but also that of her second husband; and it excludes her from the succession of any deceased child under the age of puberty, even though she may maintain that its father substituted her for it. This rule has been established by Our predecessors.

We, however, are surprised that when a woman is so wicked as to disregard her oath, and so desirous of contracting a premature marriage as to forget three most important things, the wrath of God, the respect due to her deceased husband, and the affection she should entertain for her children, legislators should have subjected her to such a light penalty, when they severely punished a woman who marries before her time of mourning has expired, and thereby manifests but little consideration for her children, establishing this regulation solely through honorable motives, even where the woman has no children; and, where she is so under the domination of her passions, did not subject her to the same penalties to which those women are liable who marry a second time before their term of mourning has elapsed.

Hence We decree that, hereafter, when women presume to perjure themselves in this way, they shall be liable to all the preceding penalties which We have previously formulated with reference to widows who marry before their term of mourning has expired, that is to say, infamy and other punishments. We, however, grant them the power to release themselves from these penalties in the same manner as the others are authorized to do, namely, by petitioning the Emperor, and giving half of their property to their children without reservation of the usufruct; and We place the woman who has thus prematurely contracted a second marriage, and the one who has married before her term of mourning has expired, in the same category. But where a woman who is administering the guardianship of her natural children (for We also have authorized her to do this) marries a second time, and does not do what is hereinbefore prescribed, she shall be liable to the same penalties. When a woman who is

discharging the duties of a guardian desires to marry a second time, provision shall be made in the provinces by the Governors of the same, and here by the Most Glorious Prefect of the City together with the Praetor having jurisdiction, for the appointment of a guardian for her minor children; and she must render her account, and discharge all indebtedness incurred by reason of the trust.

CHAPTER XLI.

THE LAW OF ZENO, RELATING TO A LEGACY SUBJECT TO A CONDITION LEFT BY A FATHER OR A MOTHER TO HIS OR HER CHILDREN, IS HEREBY CONFIRMED.

We adopt the Constitution of Zeno, of pious memory, which provides that when a father is directed to bequeath to his own son a legacy either under a condition, or at some specified date, security to preserve the legacy can only be required of him in case he marries a second time, for the obligation to furnish it is among the penalties imposed upon a husband who contracts a second marriage.

CHAPTER XLII.

CONCERNING ECCLESIASTICS WHO CANNOT MARRY. (SEE NOVEL VI.)

Where any member of the most reverend clergy (We refer to those above the rank of reader and chorister) contracts a marriage, We decree and desire that he shall be expelled from the priesthood. If a reader should marry, and then, through some inexorable necessity, should marry again, he shall not be raised above the rank of reader, and his affection for his wife will be an impediment to his promotion; but where a layman is about to be ordained a deacon, a subdeacon, or a priest, and it should subsequently be ascertained that he had married a woman who was not a virgin, but who had been divorced, or with whom he had formerly lived in concubinage, or if he who is about to be ordained has married a second time, he shall not obtain admission to the priesthood, and if he should obtain it by concealing the facts, he shall, by all means, be expelled.

CHAPTER XLIII.

WHERE A HUSBAND LEAVES PROPERTY TO HIS WIFE ON CONDITION THAT SHE DOES NOT MARRY AGAIN; AND CONCERNING THE LEX JULIA MISCELLA.

The matter which follows is of great antiquity, and has received many corrections, not only by others but also by Us, without, however, being rendered perfect; for which reason We now, by way of amendment, establish the present rules.

The ancient law, styled the *Lex Julia Miscella*, enacted with a view to the procreation of offspring, permitted women, even where their husbands had left them something on condition that they should not marry a second time, to do so, and to swear that they acted for the benefit of their children; and even where the woman married within a year the law authorized her to take what was bequeathed to her.

Where, however, she allowed the year to elapse without marrying a second time, the law did not permit her to obtain the legacy without furnishing security that she would not marry again. It was not Julius Miscellus who caused this to be enacted, but Quintus Mucius Scffivola, who was instrumental in having security furnished in cases where prohibitions of this kind existed. Therefore We, being aware that the large majority of women who had sworn not to marry again were induced to do so not for the purpose of having children, but through necessity, thus disobeying the directions of their deceased husbands, have thought that the more sacred part of this law should first be corrected, and the opportunity for committing perjury removed, and hence that they should not be required to take an oath, and thereby be tempted to swear falsely. For it certainly was not the intention of the law that women who have no children, as well as those who have, should be sworn, a proceeding which was offensive to God, as well as insulting to the memory of the deceased husband, when it was so easy to commit perjury,

especially when the procreation of children was so largely dependent upon chance.

Therefore, as We have by this Our law excused women from taking the oath under such circumstances, and authorized them to receive what was left by their husbands, We have considered it advisable (as this is something which has also been omitted by Us) to make provision with reference to the memory of the deceased husband. Hence We promulgate this law, for We do not desire the wills of deceased persons to be set at naught, or their widows to obtain anything which is illegal; for if We should say that a woman must, by all means, comply with the wishes of her husband by not marrying a second time, the law would with reason be considered too harsh; but, on the other hand, it would be too indulgent if it permitted her to marry again, and also to receive what was left to her; for it would be a most flagrant offence to treat the wishes of the deceased husband with contempt, and insult his memory, if permission were given to his widow both to receive the legacy and to contract a second marriage.

CHAPTER XLIV.

Wherefore We decree that when a husband forbids his wife, or a wife her husband (for the same rule is applicable to both) to marry a second time, and bequeaths a legacy under this condition, the spouse who was entitled to it shall have the choice of two things, namely: either to marry again and renounce the legacy, or if she should be unwilling to do this, and wishes to honor the memory of the deceased, always abstain from marrying a second time.

(1) But to prevent the matter from remaining in suspense, and, besides, in order that the return of the legacy may not be required after the lapse of a certain time, it seems to Us to be proper for the person entitled to the legacy to demand it before the expiration of a year, provided an exception is not made in his case on account of his entry into the priesthood, since he can then entertain no hope whatever of marriage.

(2) When, however, the year has expired, We permit the person to whom the legacy has been left to receive it, not absolutely or simply, but where it consists of immovable property, the legatee cannot acquire it without furnishing juratory security, and by encumbering his or her own property (which We give authority to be done tacitly under the terms of this law), and if the said person should contract a second marriage, he or she must return what was given, as well as any profits that may have accrued in the meantime.

(3) But where the property is movable, the person entitled to it, if solvent, can obtain it by providing the same security and hypothecation. But when restitution takes place, the property must be returned in the same condition in which it was when received, or indemnity must be furnished for any diminution in value which may have taken place.

(4) When the legacy consists of money with the interest which can be obtained from it, the person entitled to the same must furnish juratory security. Where, however, it was not absolutely given, but only the use of it, interest shall be paid to the legatee at the rate of four per cent.

(5) When the legatee is not a person of means, a surety will be required; and if he or she is unable to furnish one, then juratory security must be given, and the hypothecation of his or her property will take place (as has already been stated).

(6) As soon as the legatee has married a second time, whatever was given to him or her can be recovered by the person who gave it, or his representatives; and We order that this rule shall be observed in every case of restitution, whether the property be movable or immovable.

(7) When what has been bequeathed consists of money, and the legatee is not solvent, and cannot furnish a surety, and is himself unworthy of credit, the money will then remain in the hands of the person charged with its payment, and will bear interest at four per cent until the legatee becomes solvent, or contracts a second marriage (or until the accumulation of interest exceeds the capital), or until it becomes clear that the legatee will never marry again either through his or her entrance to the priesthood (in which instance nothing shall be paid), or in

case of death; for then the heirs shall be entitled to the legacy without being required to refund the interest.

(8) We have introduced this provision, which shall apply not only where married persons have made bequests reciprocally under such a condition, but also where a stranger has left a legacy to either the husband or wife conditionally, as aforesaid. This law shall be executed in accordance with its nature, whether the payment of the legacy or its restitution is involved.

This is what We have decreed with reference to the constitutions recently promulgated by Us on account of the *Lex Julia, Miscetta*; but the other kinds of legacies will take effect in accordance with the terms of the donation, and in conformity with the provisions which We have prescribed.

(9) The security above mentioned by Us shall be given to the heirs or their substitutes, or to those to whom they have been bequeathed, where there is a partial appointment, or portions of legacies are left, and when there is a donation *mortis causa*, the security shall be furnished entirely to the heirs. Where, however, an heir has been appointed to the entire estate under such a condition, security must be given to the substitutes, if there are any, or, by all means, to those who are called to the succession in case of intestacy, so that the law may everywhere be perfect in all its details, unless the testator directed that the person to whom he left something by special appointment or the whole estate, or a legacy, a trust, or a donation *mortis causa*, shall receive it without giving any security; for the wishes of the deceased must be complied with, and it is Our earnest desire to observe them whenever they are in accordance with law.

CHAPTER XLV.

CONCERNING THE ADMINISTRATION OF DONATIONS MADE IN CONSIDERATION OF MARRIAGE. (THE SAME SUBJECT HAS BEEN TREATED IN NOVEL II, CHAPTER IV.)

As We have heretofore made very few provisions with reference to the security of property, and as We are aware that a law of Leo, of Divine memory, relating to second marriages, provides that where a woman marries a second time, and cannot furnish a surety who will be responsible for the transfer of the property to her children, she shall be entitled to the interest on the same at the rate of four per cent, We now enact the present law, which is better than the one referred to, and makes a distinction in conformity with what has been established.

(1) We decree (as We have already done in a preceding constitution), that where anyone offers as an ante-nuptial donation property which consists entirely of immovables, the mother shall have a right to the use of said property after she contracts a second marriage, and she must accept, and not refuse it, but she cannot exact interest from her children in proportion to the value of the same; and she must exercise the same diligence as if the law had granted her the entire ownership of the property, and must preserve it for her surviving children as required by law; or if all of them should die, she must, in accordance with Our law concerning children who are no longer living, preserve it for the benefit of their heirs.

(2) Where, however, all the donations made on account of marriage are composed of money, or other movable property, the mother will be entitled to interest at four per cent, as the security previously referred to does not require money to be paid by the children unless it is certain that there is sufficient gold, silver, clothing, or whatever else was given to her out of the estate of the husband, to do this; for, under such circumstances, We grant the mother the choice of accepting the donation by furnishing a bond with a surety, or of receiving the interest at four per cent, as established by the ancient laws as well as by Our own.

(3) Where, however, the property is of different kinds, and the donation is composed of money as well as of immovable property, the immovable property shall, by all means, remain in the hands of the mother, in order that she may obtain her maintenance therefrom. But, so far as the movable property is concerned, the rule which We have formerly promulgated shall apply, in case the entire donation comprises this kind of property; and the woman must be

careful not to neglect the immovable property, and to restore whatever she has received without it having suffered any deterioration.

CHAPTER XLVI.

CONCERNING THE SUCCESSION OF MOTHERS TO THE ESTATES OF THEIR CHILDREN, TO WHAT SHARE OF THE SAME THEY ARE ENTITLED, AND HOW THEY CAN ACQUIRE IT.

What We have heretofore provided impels Us to treat of the succession of children, to which mothers who contract second marriages are entitled. We have always promulgated a law with reference to these matters, which was addressed to Hermogenes, of glorious memory, Master of Our Imperial Offices, and dated the seventeenth of the *Kalends* of April, before the Consulate of the Glorious Belisarius; by which We authorized a mother, along with the brothers of the deceased, to be called to the succession of a son who died without issue, and granted them the undisputed ownership of the property, as well as the use of the same, whether an heir was left in the first place, or she had afterwards married a second time, and this law annuls all others which provide anything in contradiction to it.

We order that this Our law shall remain in full force solely with reference to parents who marry again; and We preserve for them indisputably any property which they may have received from their children either before or after having married a second time, where the said property has descended to them.

This, Our present law, applies to women who may hereafter contract second marriages. Hence when a child of either sex dies, whether it makes a will or not, whatever he or she does must be taken into account. We shall, in the first place, discuss cases where property is left by will, and then proceed to its disposal in case of intestacy.

(1) Therefore, when a son has disposed of all or only a portion of his estate in favor of his mother by will, she shall be entitled to it (because We desire that in every instance the wishes of deceased persons should be complied with), and she shall have what was left to her, whether the ownership of the property or merely the usufruct of the same was bequeathed. Moreover, it shall be lawful to leave the property to a stranger, and the second marriage of the woman will not in any way prejudice the heir; so, where anything is left to the mother, either through a testamentary appointment, or by a legacy, both the ownership and the usufruct can be bequeathed, whether the property comes to her from her father, or from some other source; nor can her brothers, on this ground, dispute the validity of the bequest.

(2) Where, on the other hand, a child dies intestate before or after its mother has contracted a second marriage, the latter shall be called to the succession with the brothers of the deceased son or daughter, in accordance with Our Constitution having reference to successions in case of intestacy; but the mother will only be entitled to the usufruct of property obtained by the son from the estate of his father, whether she marries before or after the death of the former. So far as property derived from another source than the paternal estate is concerned, the mother shall be called to the succession in the way which We recently stated ought to be corrected.

These rules which We establish have reference to property other than that included in the ante-nuptial donation. For We order that what has been decreed by Us in this respect, as well as what has been provided by the Constitution of Leo, of Divine memory, shall remain intact, in accordance with which the mother will only be entitled to the usufruct of the property.

(3) With reference to any other acquisition by the mother, which does not form part of the donation on account of marriage, whether the child acquired it through the medium of his father or otherwise, by will, or *ab intestato*, We decree that ungrateful children shall continue to be excluded from the succession to such property when their ingratitude is established; but We preserve intact all other provisions relating to the succession of parents to the estates of children, or of children to those of their parents.

(4) We consider ingratitude to be a cause of exclusion from inheritance, not only when it is displayed against the mother, as has previously been stated by Us, but also when exhibited toward the deceased brother himself.

CHAPTER XLVII.

As We are aware that many contentions often arise among brothers, We do not permit one who has shown himself to be ungrateful towards his brother to share in the succession to the latter's estate. This rule will also apply where anyone has attempted the life of his brother, or has brought a criminal accusation against him, or has attempted to deprive him of his property; for, under these circumstances, his share will pass to his surviving brothers and his mother. This law, which relates to the succession of children to which brothers are called, along with their mother, shall remain in force subject to the amendment which was made by Us with reference to widows who in the future may contract second marriages. As for women who have already married a second time, and can enjoy the benefits of Our above-mentioned law, they shall be entitled to the succession either by will or in case of intestacy, both as respects the ownership of the property and the usufruct of the same, and are fully authorized to alienate, bequeath, and transfer it, without any impediment being placed in their way by the present law at any time.

(1) We hereby confirm what We have enacted in a former law with reference to the issue of former marriages. For if an antenuptial donation which the mother obtained from her husband should happen to fall into the hands of her dying son, and hence become a part of his estate, his mother who succeeds him will not be entitled to the absolute ownership of the property comprised in the said antenuptial donation, but will only enjoy the use and usufruct of the same as long as she lives. Hence this provision shall continue to be operative in favor of the issue of former marriages, unless some settlement was made either by means of a judicial decision or a compromise before the aforesaid constitution took effect.

(2) In accordance with the terms of the Tertullian Decree of the Senate, the mother was excluded by a male child from the succession to her son, and was placed in the same position as the daughters. We, however, while not questioning the claim of the sons, hereafter grant the mother the legal right to their succession, and call her, along with the brothers of the deceased, to succeed to an equal share of the estate, no matter how many children there may be, so that she will obtain as much as each of the brothers. We establish the same rule where there are both brothers and sisters. Where, however, there are no other heirs but the mother and the daughters, the same Decree of the Senate gave half of the estate to the mother and the other half to the sisters, no matter how many of them there were. As We have not yet changed this, We do so now, and in this instance call the mother to the succession *pro rata* with the children; that is to say, she shall receive out of the estate of the deceased son a share equal to that of each of his sisters; and, under all circumstances, she shall be entitled to an equal share (which is the law), whether there are only male or only female heirs, or whether they consist of members of both sexes.

CHAPTER XLVIII.

PARENTS SHALL ENDEAVOR TO PRESERVE EQUALITY AMONG CHILDREN BY THE FIRST AND SECOND MARRIAGES.

We have thought proper to add what follows to this law. Hence if a husband or wife should die and leave children, the issue of a first and second marriage (which was contracted after the enactment of this law, for by it We are providing for the present), We have directed that under such circumstances any gain acquired by the marriage of which the children are the issue shall be preserved for them; and We have also designated the shares that parents should leave to their legitimate offspring who are not ungrateful, but it would not be just that their entire affection should be manifested for children of the second marriage by giving them all the remainder of their property, only leaving to those who were the issue of the first marriage that to which they were legally entitled, and bequeathing all the rest to the issue of the second; for

it is only just for something more to be left to the children of the first marriage than what is authorized by law.

Where, however, the parents entertain such an affection for a child born of either the first or the second marriage that they wish to give it preference over the others in the possession of their estates, We grant them permission to do so, but they must proceed in such a way as not entirely to diminish the shares of some and increase those of others; and, when favoring the children of the second marriage, they must be careful not to absolutely forget those of the first, and not violate the rule that Our predecessors established on this subject; for when fathers distribute their estates between the issue of two marriages, they should remember that all of them are their offspring, and this should induce them to make a proper division of their property by will. For as the law calls them all equally to the succession of intestates, it is proper for them to imitate the law, and not impoverish the children by depriving them of too large a share of their estates; as they should show themselves to be good parents and worthy of Our legislation, and they should be just in the observance of the law.

If, indeed, they should leave them anything over and above what the law prescribes, they will prove themselves to be at the same time just and humane. We do not include both grateful and ungrateful children in this statement (for We have already frequently spoken of those who are ungrateful), but We refer to such as are more or less beloved by their parents, as a great difference exists between children who are guilty of ingratitude and those who cause themselves to be beloved, as well as in the way in which both of them treat their parents.

Hence when We discussed the equality which parents should observe in the distribution of their estates among their children by the first and second marriages, We exhorted rather than ordered them, because, having elsewhere increased for all the share which was absolutely to be left to children in case of intestacy, and fixed the amount at four-twelfths of the paternal estate, where there are four children, or less, and half of it, where there are more than four, We have thereby given the children a sufficient consolation, and have relieved them from the poverty to which, according to the ancient apportionment, they were liable to be subjected.

(1) Therefore the present law, as We have frequently stated, is only applicable to the future, and has no retroactive effect, but, consolidated and included under one heading, it regulates almost everything concerning second marriages, and maintains in full force all preceding enactments, as well as explains matters having reference to second marriages, concerning which it introduces a nice and beneficial distinction. Hence, as has already been prescribed by Us, all these things will be embraced in a single constitution, which will be sufficient in every case in which such questions are involved.

EPILOGUE.

Therefore Your Highness will order this law to be published everywhere in your jurisdiction, so that all persons may know that We have devoted Ourselves to labors even greater than Imperial meditations, that We only attempt to provide for Our safety by collecting from every source the principles of justice, and that all persons may see that everything relating to this legislation is condensed under a single head, and learn that We have preserved laws formerly promulgated, and which We now confirm and declare shall be valid in the future.

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

Copies of this Constitution have been addressed to Patricius, Most Glorious Prefect of this City; to Basilides, Most Glorious Master of the Imperial Offices, Ex-Consul and Patrician; to Tribonian, Most Glorious

Quæstor, and twice Consul; to Germanus, General of Cavalry, Ex-Consul and Patrician; to Tziga, Most Glorious General of Infantry, Ex-Consul and Patrician; and to Florus, Most Glorious Count of Private Affairs, and Ex-Consul.

Your Excellency, when informed of the Constitution which it has pleased Us to promulgate,

will cause it to be published in Your Court, not only to the advocates, but to other persons under Your jurisdiction, and they must all observe it, as communicated to John, Most Glorious Praetorian Prefect of the East, twice Consul and Patrician.

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

TITLE II.

CONCERNING APPEALS, AND WITHIN WHAT TIME THEY SHOULD BE TAKEN.

TWENTY-THIRD NEW CONSTITUTION.

The Emperor Justinian to Tribonian, Most Glorious Quaestor and twice Consul.

PREFACE.

As We are accustomed to moderate the excessive severity of ancient laws, We think that it is necessary to pursue this course in the present case with reference to appeals. For the ancient law prescribed that anyone who conducted his own case and lost it should have only two days in which to take an appeal, but when this was done by means of an attorney, the time could be extended to three days. We, however, have learned by experience that this was productive of injury, for many men being ignorant of the subtlety of the law, and thinking that an appeal could be brought within three days, allowed the two days to elapse, and thereby lost their right. Wherefore We have considered it necessary to apply a suitable remedy.

CHAPTER I.

Hence We order that all appeals from the decisions of judges of either superior or inferior jurisdiction (with the sole exception of the Sublime Praetorian Prefects), whether instituted by the parties themselves or by their attorneys, defenders, curators, or guardians, shall be filed within ten days after the rendition of the judgment. We grant this term to persons engaged in lawsuits in order to enable them to determine whether they will take an appeal or not, and lest, through the influence of fear, an appeal may be taken without proper consideration, a course which would increase the number of appellants; but now all shall have a sufficient time for deliberation, which will restrain the unreflecting precipitancy of litigants.

CHAPTER II.

CONSIDERING CONSULTATIONS.

We have provided that when an appeal is taken to Our Consistory, and the hearing of the same has been deferred on account of the Emperor being employed with the dispatch of public business, and the senators cannot be called together for this reason, the appeal shall not be exposed to risk on this account. For how can the appellants be to blame when the Emperor is occupied with other matters? Or who has sufficient authority to compel the sovereign to convoke the senators and other officials, when he is unwilling to do so?

When anything of this kind happens, the case shall remain in abeyance until the Emperor voluntarily calls together the senators and nobles, and allows the matter to be brought before him, and everything to proceed as is customary.

CHAPTER III.

CONCERNING APPEALS IN EGYPT, ASIA, PONTUS, AND ELSEWHERE.

In this, the third chapter, a matter must be disposed of which was settled in ancient times, but has recently been neglected. For, formerly, when magistrates of superior, intermediate, and inferior rank, were appointed, appeals, when taken, instead of being brought before the superior magistrate, were filed in the tribunal of the intermediate judges, who, together with their associates, decided them. In modern times, however, this course is no longer pursued, for Our judges of superior rank are annoyed by appeals in cases of trifling importance, and litigants are subjected to great expense where insignificant matters are involved, so that the

value of the entire property in controversy is not as much as the costs incurred. Therefore We order that when an appeal is taken in Egypt, or in either Lybia, in a case where an article is worth ten pounds of gold, it shall not be brought to this royal city, but before the Augustal Prefect, who shall hear and dispose of it instead of the Emperor, and that no appeal can be taken after he has rendered a final decision.

(1) In like manner, whenever, either in Asia or Pontus, an appeal is taken in an action where property to the aforesaid amount of ten pounds of gold is involved, it shall be brought before the Counts, Proconsuls, Prators, or Governors whom We have especially authorized to hear it. These magistrates shall take the place of the Emperor, just as the Augustal Prefect does, and shall hear such suits and decide them, having the fear of God and the law before their eyes, without the right of further appeal. Cases which have been in abeyance in the East, because appeals have been taken, and which are limited to the said value of ten pounds of gold, shall be sent before the Count of the East, who shall hear and finally dispose of them.

CHAPTER IV.

APPEALS FROM MAGISTRATES SHOULD BE BROUGHT BEFORE THOSE OF HIGHER RANK.

It must be observed that magistrates having the title of *spectabiles*, or others invested with similar jurisdiction, cannot have their decisions reviewed by other judges of the same rank, when appeals are taken, no matter what may be the amount of the property involved (as appeals must not be brought before judges of equal authority, but from the decisions of those of inferior jurisdiction, to others of more exalted rank), but by the Illustrious Prefect (as has already been stated), who with the distinguished Quaestor in office at the time, shall decide them with the assistance of their subordinates, that is to say, the employees of the Imperial Bureau of Records and of the Praetorian Prefecture. We make this provision in order that appeals from the Proconsuls or other magistrates who, charged with no other public duties, have been appointed by the Emperor, may not be brought indiscriminately before the aforesaid judges without observing the distinction of rank.

We, however, desire that appeals from the Governors of provinces and judges appointed by Us, where the latter are not *spectabiles*, shall be restricted to cases where the above-mentioned amount is involved. But where superior judges have been appointed by Us whose rank is above that of those referred to, or Proconsuls, or any other magistrates of equal official dignity who have been commissioned by the Emperor, their appeals, no matter what the value of the property in dispute may be, shall be brought to this Imperial City, where competent magistrates will hear and determine them, in conformity with ancient custom.

Everything prescribed by the ancient authorities, by former constitutions, or by Ourselves, shall, in all other matters relating to appeals, remain in full force and effect.

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

EPITOME OF THE PRECEDING CONSTITUTION.

CONCERNING MAGISTRATES TO WHOM APPEALS SHALL BE TAKEN WHEN THE VALUE OF THE PROPERTY INVOLVED DOES NOT EXCEED TEN POUNDS OF GOLD.

Not only the parties litigant themselves, but their attorneys as well as their defenders, curators, and guardians, can take an appeal within ten days from the rendition of the judgment. It is not permitted to appeal from the decision of a Praetorian Prefect.

CHAPTER I.

If the time established by law should elapse without the appeal having been heard by the Emperor, the case shall in no way be prejudiced. When an appeal is taken to the Emperor either from Egypt

or from either of the Lybias, and the amount of property involved does not exceed ten pounds of gold, the appeal shall be heard and decided by the Augustal Prefect; in the East by the Count of the East; and in Pontus and Asia by the Counts, Proconsuls, Praetors and Governors, if they have been expressly charged with this duty. All these officials are hereby invested with imperial authority for this purpose, and no one shall question their jurisdiction when cases of this kind are brought before him.

CHAPTER II.

When an appeal is taken from a Governor, whether the property in controversy is worth more or less than ten pounds of gold, the Praetorian Prefect, along with the Quæstor and other officials, shall take cognizance of the same.

TITLE III.

CONCERNING THE GOVERNOR OF PISIDIA.

TWENTY-FOURTH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Imperial Praetorian Prefect of the East.

PREFACE.

We have thought that the ancient Romans never could have rendered their government, which arose from such insignificant beginnings, so vast and powerful, added to their territory (We had almost said) the entire earth, and been able to control and protect it by their domination, if they had not invested the eminent magistrates, whom they sent into the different provinces, with great dignity, as well as with military and civil jurisdiction, and had not selected such as were well qualified and capable of performing their official duties. They designated these magistrates by the name of "Praetors," an appellation derived from the fact that they were pre-eminent and superior to others, not only in the conduct of matters relating to warfare, but also in the execution of the laws. In consequence of this, the places in which they resided or publicly dispensed justice were styled *Pretoria*, and the greater portion of the Edicts published orally by the Praetors had the effect of statutes. Many Praetors governed Sicily, Sardinia, and Spain, while others extended the Empire over land and sea, and ruled the conquered countries.

Bearing these things in mind, and recalling with honor the ancient institutions of the Republic, as well as the dignity of the Roman name, and being aware that the two magistrates appointed for the administration of regions which have been the hardest to control up to this time were neither of them perfectly content with their condition, and that, on this account, in certain of Our provinces subject to both civil and military jurisdiction, the Governors were always quarrelling among themselves, and opposing one another, and, instead of accomplishing something beneficial to Our subjects, they, on the other hand, rather oppressed them, We have thought that it would be preferable to unite the civil and military jurisdictions into one, and again give the name of Praetor to the magistrate invested with this authority, so that the same official would have command of the soldiers in accordance with the title which he formerly enjoyed, and would also be invested with the execution of the laws, which was originally one of the functions of the Praetor, and that he would be entitled to the emoluments of both offices, and have a single court composed of a hundred subordinates (for this will be sufficient for him) which would be styled the Praetorian Cohort, and be established by letters issued by Us.

Being thus invested with great dignity, the Praetor would be terrible to robbers, and render it impossible for those guilty of injustice to escape. He could accomplish everything through his extraordinary power, and, as a law formerly promulgated by Us orders all judges to have clean hands, he must obey it; and having taken the oath he must govern in accordance with it, both in his military and civil capacity. If anyone of Our glorious Consuls should happen to be appointed to the aforesaid office, this would appear to be an imitation of former times, when Consuls and men of consular rank drew lots for provinces, as the Praetors are not much

inferior to them, since they have exalted the Roman name little by little, and increased its renown to such an extent that God has never before conferred such distinction upon any other Republic or Empire.

We have investigated the origin of the Pisidians, and have learned from ancient writers that this people formerly exercised dominion over a large portion of the earth, and now that this province needs a powerful and energetic magistracy (for it contains a great number of villages, and a large population who are especially seditious when it comes to the payment of taxes), We think it necessary to give to a country inhabited by a dishonest and blood-thirsty population of this kind, which, on account of its greed and wolfish voracity, has been called *Lycocranitse*, a magistrate who will leave here armed with proper power.

And as this magistracy should include both military and civil jurisdiction on account of the danger of revolt, all the military forces in the province shall be subjected to its authority. All the civil officials shall be called by and honored with the name of Praetor, for who will not stand in terror of his name? And who will not respect him, when civil and military jurisdiction are combined in a single official, when he knows what his duties are, and that he must obey the laws; provided he is well disposed and wishes to preserve his life, being aware that, in case he is disobedient, he will immediately be put to death, and the laws be enforced by arms?

CHAPTER II.

It therefore is necessary for anyone who undertakes the duties of this magistracy (for We always bestow it gratis, and without any payment of money whatever, in order that the incumbent may, in every instance, be free from corruption, and remain satisfied with those emoluments alone which he received from the public, as Our first law has also stated), to act with justice and honesty, and bear himself with a certain degree of severity, but still with kindness towards those subjected to his authority, as We have previously decreed, and banish from his province homicide, adultery, the rape of virgins, and, in a word, all other offences; and punish those who commit them as prescribed by Our law, without evincing any respect for the malefactors, even though they may be men of high rank; nor must he submit to those who offer no excuse for their acts, or only give such as are abominable; but he shall maintain justice in every instance, and regulate his conduct by Our enactments, rendering judgment in accordance with them, so that Our subjects may also form their lives and their rules of conduct in conformity thereto; and he must, above all things, keep the fear of God and of Us in mind, and never plan anything in contravention of Our precepts.

We forbid him to leave his province frequently and come here to annoy Us with unreasonable communications, but he must hear all cases in the first place himself, and decide them with a view to the importance of the office to which We have appointed him, and he must so conduct himself in this respect that no one will have reason to file charges against him on account of his administration of the magistracy, being aware that if anyone, after having applied to him, should not obtain justice, and be compelled to refer the matter to Us, he will be responsible for the result of the controversy which We shall subsequently determine, for as We have honored him with an increase of authority, so, if We find that, in opposition to Our intentions and wishes, he has abused his administration, We shall inflict suitable punishment upon him, and in this way We shall serve God as well as assist in the execution of the laws, whether he has been guilty of dishonesty, or has acted illegally through the influence of either favor or enmity; for We wish again to relieve Our subjects of the evils which formerly existed, and, without being deterred by the greatness of the undertaking, We have hastened to turn Our attention to this subject.

CHAPTER III.

This official must not only perform the duties which have already been enumerated by Us, but he must see that there is a great abundance of provisions in the towns, and that no citizen is without subsistence. He must inspect the public works in the different cities, and not allow them to fall into decay, but keep all aqueducts, bridges and highways in good repair, and not

permit the collectors of taxes to oppress Our subjects in any way; and We forbid him to receive any of those orders which, in conformity with a practice that We do not approve of, are issued by your court for the repair of walls, the opening of public highways, and innumerable other purposes. He shall not, under the pretext of orders of this kind, or, for any other reason, permit anyone to inflict injury upon Our subjects, nor shall he execute any decisions proceeding from your office, which in any respect may be improper (for We have already prohibited such things), but he alone must assume supervision of all public works.

If, however, in accordance with the provisions of Our law, We should address a pragmatic sanction to your prefecture, the Praetor must himself carry out what We have ordered to be done, without any other person being permitted to annoy Our subjects, for while We are rendering Our provinces more and more flourishing by increasing the number of citizens, We do not wish a multitude of men to repair to the capital who dare not return to their homes on account of the iniquity of Governors.

For this reason We order that Your Excellency shall for the future not hold two distinct magistracies in Pisidia, but that only one shall exist there under a Praetor, who shall possess both civil and military jurisdiction and shall have charge of both public and private civil matters, and be in command of the soldiers, so that in this way he will enforce his authority by their aid, and on the other hand, his military jurisdiction will be adorned by the law. No sedition will hereafter take place in the cities, if for the future We select for Praetor a man whom We deem worthy of both these offices which have been combined in one.

CHAPTER IV.

Therefore the Treasury will pay the Praetor of Pisidia the ordinary salary which We in the notice appended to this law order that he shall receive. We wish this magistrate to bear Our Imperial name, and that he be styled the Justinianian Praetor. The body of Praetorian officials approved by Our letters (as We have previously stated) shall be appointed, and shall have charge of all affairs and persons, both civil and military. This Governor and his subordinates shall also be responsible for the collection of taxes, and he shall enjoy all the distinctions and insignia which are customary, that is to say, the curule chair of silver, and the axe and *fasces*; he shall also have among the soldiers an *adresponsus*, to whom We grant authority over the soldiers of that department, enjoining him to command them properly, preserve discipline, and make use of them not only for the pursuit of thieves, but to retain Our subjects in order and tranquillity.

The Praetor shall not permit seditions to break out in the cities, or the counts to appropriate anything belonging to the Treasury, but he shall have authority over all, without any exception whatever. This magistrate shall be placed among those that are of intermediate rank, and be classed with such as are designated *spectabiles*. Hence he will be invested with all the attributes formerly possessed by vicegerents and which to-day attach to the Justinianian Counts of Pacatian Phrygia, and First Galatia, as well as those of the Count of the East and the Proconsuls; he shall also be a magistrate of the rank of *spectabile*, and appeals taken from his decisions shall be decided here, as is customary in the case of other *spectabile* magistrates, by the tribunal of the Most Glorious Praetorian Prefect, with whom shall be associated in the determination of causes the Most Glorious Quaestor of Our Imperial Palace; for the reason that although this office is invested with a military character, still, because it will hereafter also possess civil jurisdiction, the same order which was formerly customary in the case of magistrates of the rank of *spectabile* must be observed.

CHAPTER V.

As We have recently stated in an Imperial Constitution that, where the property in controversy did not exceed in value the sum of fifty pounds of gold, appeals should be taken from Governors, and heard and determined in the Imperial Audience-Chamber, We decree that where an appeal of this kind is taken in Pisidia alone, from the decision of a judge whom We have appointed, or from that of one of Our superior magistrates, it shall not be brought before

the Justinianian Count of Pacatian Phrygia (which We have prescribed by former laws), but before the Praetor himself, and be heard just as it would be in the Imperial Audience-Chamber (for We also honor the magistrates in this way) and be permanently decided by him, and not sent to this city, in order that We may prevent persons who engage in litigation concerning matters of slight importance from being subjected to inordinate expense.

CHAPTER VI.

In order that the subordinates of the Praetor of Pisidia, or persons appointed to other offices which We have established or shall hereafter establish, may be informed of the manner in which it is proper for them to govern their provinces, it has seemed proper to Us not only to give them the distinctive insignia of their rank with their commissions, but also to prescribe for them certain rules of official conduct, in accordance with which they may govern their provinces (which preceding legislators designated "advices to Governors") so that they might conduct their administration with these before their eyes, and by means of them Our subjects everywhere be benefited.

Wherefore We order that instructions of this kind shall be filed in the Imperial *Laterculus* and with their commissions be delivered to the magistrates, who will take the oaths which We have laid down in Our Constitutions, as well as observe all the regulations which We have prescribed therein. A schedule appended by Us to this law states the amount which the Praetor must pay after his nomination, either to Imperial *Laterculus*, or to the Forum of the Most Glorious Prefect, for the commissions of his office; and also fixes the compensation which the Praetor himself and his assessor shall receive from the public. Having taken personal cognizance of everything relating to the consolidation of the magisterial offices in question, the Praetor must, on his part, exert every effort to deserve Our esteem, and appear blameless in Our eyes.

This law shall be recorded in the Book of Our Constitutions (for We order that it shall also be included among them), and you will see that it is executed, and always observed and recognized in the cases to which it has reference.

Three hundred *solidi* shall be paid to the Praetor of Pisidia by way of subsistence, capitation, and indemnity; seventy-two *solidi* shall be paid to his assessor; and fifty-two to the members of his court. The Praetor himself must pay for the commissions of his office the following sums: nine *solidi* to the *chartularii* of the Imperial Bedchamber; forty-five to the Chief to the Illustrious Tribunes of the Notaries and the *laterculensii*; three *solidi* to his assistant, and sixty to the Cohort of the Most Glorious Praetorian Prefect for orders and all other purposes.

TITLE IV.

CONCERNING THE PRAETOR OF LYCAONIA.

TWENTY-FIFTH NEW CONSTITUTION.

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

PREFACE.

When We consider what writers and historians have stated concerning the origin of the people of Lycaonia, and call to mind their extraordinary affinity with the Romans, which afforded such a good reason for their reunion, We thought that it was but just to give to this magistracy a rank superior to that which it had hitherto enjoyed. Tradition relates that, in ancient times, Lycao, who was King of Arcadia in Greece, lived on Roman soil, and that after having conquered the Enutrians, he, so to speak, founded the Roman Empire (We have reference to times much more ancient than those of *JEnseas* and Romulus), and a colony having been established in these parts, he seized a large portion of Pisidia, and imposed his own name upon it, calling this region Lycaonia after himself; hence it is but just that this province should be subjected to the government of one of the magistrates that the ancient Romans invested

with so much honor and distinction, and that the authority of both the magistrates who governed the said province at that time (We allude to the civil Governor, as well as to the one having military jurisdiction) should be combined in a single official designated by the appellation of Praetor. This title is peculiar to the Roman government almost by paternal right, and was in use under the Republic even before that of Consul. For the ancient Romans called their Emperors Praetors, and at the same time invested them with military command; they obeyed the laws promulgated by them; and, afterwards, this magistrate, moderate in the exercise of both jurisdictions, displayed as much resolution in battle as he did in the enactment of laws, and the preservation of order.

CHAPTER I.

Hence We are determined to combine these two administrations into one, and We designate the magistrate who is entrusted with them by the name of Praetor, so that the character of a magisterial office of this kind, to which such an appellation is given, may acquire great respect for the incumbent, and as he is not invested with a single office (such, for instance, as that of military or civil jurisdiction), but united both of them, he will show himself stern and severe when military affairs are concerned, but lenient and gentle in the administration of civil justice; and for this reason he will display a more terrible spirit towards malefactors, but will conduct himself in a more gracious and moderate manner towards persons who are honorable.

We have established these regulations not without good reason, and have bestowed the name of Praetor upon the aforesaid magistrate alone, being induced to do so on account of the requirements, as well as for the benefit of the province. For, indeed, this country is inhabited by brave men, and does not in any respect differ from Isauria; it is, like it, situated in the centre of the earth, exposed to the rays of the sun, suitable for the pasture of horses, and supports numerous inhabitants and many horses; in it are many large towns, and it contains a multitude of men suitable for cavalry and for archers, whose minds are readily inflamed, who are prompt to take up arms, and are fit subjects for military government, because they are opposed to having their fortunes solely under the control of civil magistrates, whom they think should be despised; for bold men are unwilling to obey the law when it is not rendered formidable by a proper display of force.

These considerations have impelled Us to appoint but a single magistrate, as We have previously done among the Pisidians, and to confer upon him the appellation of Praetor, together with Our name, for We desire that he shall be styled the Justinianian Praetor of Lycaonia, as is the case with those of Pisidia and other provinces. We also combine both courts over which civil and military magistrates formerly presided into one, designating it as the Praetorian Tribunal; and it shall be established in the accustomed manner by means of letters issued from the office of the Imperial Secretary, from which the Proconsuls received theirs; and We grant to the Praetor, as well as to his assessor and other subordinates—who are limited to a hundred in number—the salaries of the two offices, and fix the amounts thereof in the notice appended to the present law. Finally, the Praetor shall be entitled to an *odresponsiis*, or apocrisiary, whose duty will be to maintain order among the soldiers, and to this end We direct that he shall have the command of the other soldiers stationed in said province.

CHAPTER II.

We shall send a man to discharge the duties of this office, who is of approved reputation, and of the same eminent rank from which those Praetors formerly were selected that adorned the Republic with their labors, who being a resident of Italy, will soon depart for his seat of government. This man must always be mindful of the requirements of his office, and, no matter how he may have obtained it, he must cause himself to be respected by Our subjects; he must render himself terrible to robbers and other malefactors, and always conduct himself with courage. For there is no doubt that he will discharge his duty with clean hands whenever he obtains his place gratuitously; and, moreover, the law recently enacted by Us orders all magistrates therein described to refrain from corruption (as they are sworn to do), to render

judgment according to Our laws, and, in every instance, to dispense equity and justice to Our subjects. "It was under circumstances of this kind that the old Romans adorned their Republic, and obtained the domination of the world. For who is there who would not at the same time reverence and fear a magistrate of this kind, regarding him as exercising his functions in a twofold capacity, who can both readily execute what the law commands, and properly employ military force where it is violated in any respect?

(1) We have been induced by the same reasons which existed in the case of the appointment of a Praetor to the government of Pisidia to give the same title to the Praetor of Lycaonia. For as he must, under all circumstances, receive his office without paying anything for it, and, remaining content with those emoluments alone which are bestowed upon him by the Treasury, in conformity with the former law promulgated with reference to the duties of Governor, absolutely abstain from base and avaricious conduct, so also he must show himself to be sincere and just in the administration of his office, and act in such a way as to maintain harmony in his province, by treating those subject to his rule sometimes with firmness and severity, and again with leniency, as circumstances may demand.

(2) This magistrate must detest and punish all cases of adultery, homicide, and especially the rape of virgins, with extreme rigor; he must also punish other malefactors who are, as it were, afflicted with an incurable disease, without exception; and he should also endeavor to induce those who are less guilty to lead better lives. In addition to this, he must show no favor to anyone who is guilty of dishonorable behavior,' even though he may be rich or enjoy high rank, for the reason that We have chosen him from among the latter class is that he may not find it necessary to treat with consideration anyone but Ourselves, and the laws, in accordance with which he must dispense justice, and regulate the affairs of Our subjects.

CHAPTER III.

The Praetor must not abandon himself to idleness, or be guilty of injustice to anyone, lest the inhabitants of the province over which he has jurisdiction may be compelled to leave it, and incessantly annoy Us with their affairs. He must hear and determine all cases brought before him, and always remember the honor which We have conferred upon him; he must devote himself incessantly to the duties of government, in order to obtain Our praise and avoid being required to render an account of his administration. He may rest assured that, if any litigant having failed to obtain justice in a case in his jurisdiction should appeal to Us, We will send him back without giving him any answer. But We warn him that where any person applies to him without obtaining redress, and then has recourse to Us, the result of the decision which We shall render will make him responsible instead of the appellant; and as We have increased his authority, if We should ascertain that he is idle and careless, and does not properly avail himself of the power with which We have invested him, We shall come to the assistance of the law by prosecuting him relentlessly; and as he did not respect either Our instructions, Our laws, or the form and rank of his magistracy, We shall not show any regard for him, but shall take measures to compel him to improve his administration; and whether he be guilty of corruption, of partiality, or of violating Our laws, We shall call him to account for his acts, in order that it may not be said that in the treatment of Our subjects We are only influenced by pecuniary interest, or that We are sparing them for some other reason which may redound to Our own advantage.

CHAPTER IV.

It is also necessary for this magistrate to take measures to maintain order in the towns under his jurisdiction; to prevent seditions from breaking out therein; to administer justice everywhere; and exercise the greatest diligence to avoid being too indulgent and lax in the maintenance of discipline.

(1) Again, he must not neglect the public works in the cities of his government, that is to say, the aqueducts, bridges, walls, and highways ; he must keep them in good condition, or report the expense of the repairs to Us, so that this may be partly met by the civil revenues, and

partly by Our liberality.

(2) He must not permit Our subjects to be oppressed by collectors sent from here by officials of high rank, or anything to be extorted from them by persons who have been given orders which formerly emanated from your throne, and are injurious to citizens in moderate circumstances; which orders sometimes have reference to the repair of walls, highways, statues, bridges, and harbors; or provide for the renovation of public water-courses, and the cleaning of public places; as well as the demolition of buildings which have been erected where this ought not to have been done, and other matters of this kind which are extremely annoying to Our subjects; but the Praetor himself must discharge this duty, and cause the necessary labor to be performed without any expense to those under his authority.

If, however, it should appear to Us that repairs of this description require special examination, We shall, under such circumstances, avail Ourselves of a pragmatic sanction addressed to you, by which someone else will be authorized to do the work. In this way Our subjects will be relieved; Our cities will flourish; their inhabitants will be greatly increased, and will not be compelled to flee from their country; and the fear with which they regard their Governors will no longer induce them to abandon their property.

CHAPTER V.

Therefore Your Excellency will be aware that hereafter there will be only one magistrate in Lycaonia, and not two; that all the emoluments formerly given by the Treasury to the incumbents of both offices will now be paid to the Praetor and his subordinates, in conformity to the notice appended to this constitution; and this shall take place in the same manner as heretofore.

(1) The collection of public taxes shall be committed to the officials of the Praetorian Tribunal, as well as to the Praetor himself, to whose authority they are subject; and he will be entitled to the insignia of both offices, although the greater portion of these are of a military character. He will take his seat upon the silver chair, the axe will precede him (for this is the emblem of consular power), and the *fasces* also will be borne solemnly before him; the entire army stationed in the province shall obey his orders; and he must be careful to suppress brigandage and protect persons who have suffered from injustice, and maintain peace and concord among Our subjects.

(2) He shall not permit the Counts to levy public taxes or to take any part in their collection. He shall take rank among the *spectabiles*, even though he may be promoted to a higher office, for the honor of those who govern provinces is such that We do not think that the dignity of anyone is diminished when he is called upon to administer their affairs. Therefore it is proper for this official to be numbered among the *spectabiles* on account of the importance of the place which he holds, in which rank are also included the Proconsuls, and the Counts of the East, of Galicia, and of Phrygia.

(3) He shall hear all legal controversies arising in his province, whether they be pecuniary, civil, or relating to freedom, and he can delegate his authority to other magistrates. Appeals from his decisions shall be heard in the same way as has already been prescribed in the case of *spectabile* magistrates, by the Most Glorious Praetorian Prefect and the Most Glorious Quaestor (as We stated in the beginning) ; the reason for which is that this office becomes civil by means of the laws to which We desire even military jurisdiction to be subordinated.

CHAPTER VI.

In conformity to the law recently promulgated by Us, when, in a case where the value of the property in controversy does not exceed five hundred pounds of gold, an appeal is taken from the decision of one of the magistrates of Praetorian jurisdiction, not the Count of Pacatian Phrygia (as We have previously stated) but the Praetor himself must hear it, even though the judge whose decision is appealed from may have specially been appointed either by Us, or by someone of high rank; and it will not be necessary, for the reasons already stated, for this

judge to be *spectabile*; but the Praetor shall decide the appeal without (as was formerly the case) it being possible for recourse to be had to Us, and to prevent Our subjects from being compelled to incur great expense where the value of the property is insignificant.

We give the Praetor information on these matters in order that he may learn properly to represent Us; We confer upon him not only the honor of his office by the commissions (for they are so designated) which it is customary to give to magistrates of *spectabile* rank, but We also communicate to him the Imperial mandates, which the ancient legislators styled "instructions to Governors." When We drew up these instructions We directed that they should be filed in Our Imperial Bureau of Records, in order hereafter to be delivered to the magistrates with their commissions, for the latter confer the authority, and the former indicate the way in which it is to be exercised.

The notice appended to this Our law fixes the amount to be paid by the Praetor for his commissions, when he is appointed, and the salaries to which he, along with his assessor and his court, are entitled from the public. If Your Excellency should ascertain that the Governors of the provinces included in the jurisdiction of the Praetor of Lycaonia are negligent in rendering an account of the taxes, you will not remove them, but will notify the *spectabile* magistrates, in order that they may reprimand such Governors as are devoted to idleness, and they themselves see that the taxes are paid into the Public Treasury.

EPILOGUE.

Therefore We order that the present law shall be inserted in the Book of Our Constitutions; it shall carry with it the eternal memory of Our benefits; and Your Excellency, as soon as you have received it, shall cause it to be enforced.

The following schedule of payments is applicable to the office of the Praetor of Lycaonia. He shall receive by way of subsistence, capitation, and salary, three hundred *solidi*; his assessor shall receive seventy-two, and his attendants fifty-two. On the other hand, the Praetor shall pay for his commissions nine *solidi* to the Chief of the Chartularies of the Imperial Bedchamber; twenty-four to the Chief of the Illustrious Tribunes of the Notaries, and officials of the *Later-cidus*, three to the assistant of the Chief, and sixty to the subordinates of the Most Glorious Prefects, for orders and other purposes.

TITLE V.

CONCERNING THE PRAETOR OF THRACE.

TWENTY-SIXTH NEW CONSTITUTION.

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

PREFACE.

It is an admitted fact that when anyone mentions the country of Thrace there straightway arises in his mind a spirit of courage, and a desire for war and battle. And, indeed, such a desire is innate in this people, and is, as it were, an inherited attribute. For this reason We first determined to establish better conditions in that country, and, after having long considered the subject, We have finally drawn up

the present law. We are aware that two vicegerents are stationed at Long Wall, one of whom is in command of the military (for there are a great number of soldiers in that neighborhood), and the other has charge of civil matters. But as one of them performs the duties of Most Glorious Prefect and the other those of general of the army, they never agree among themselves; and although the Treasury furnishes them with subsistence and other emoluments separately, they, nevertheless, encroach upon the jurisdiction of each other so that controversies incessantly arise between them.

CHAPTER I.

Therefore, it has appeared advisable to Us to treat Thrace as We have treated other nations, although the people are not so fierce or so much in need of military government as those referred to; for We do not desire that two officials having respectively civil and military jurisdiction should any longer exist in Thrace, hence We now combine the two offices into one, which We entrust to a single magistrate of eminent character, who is worthy of respect, and will not only discharge the civil duties of the place, but will be careful to preserve proper military discipline, as anyone who performs the functions of Governor alone is not invested with sufficient authority for this purpose.

(1) If, however, the care of this region, the administration of all its affairs, and the preservation of order, as well as the command of the army require the service of a good man, and one who cannot only control the soldiers, but also issue orders in conformity with the laws, what name would be appropriate for Us to confer upon a place of such importance? How shall We designate the official appointed to this magistracy? Is it not clear that, just as the ruler of Pisidia and the supreme magistrate of Lycaonia have been created and appointed by Us, so also, in this instance, the official should be called Praetor joined with the name of Our majesty? For if the ancient Praetor of the Romans occupied the same position under the Republic as under the Empire, it must be admitted that no title is so applicable to this magisterial office as that of Praetor, since this dignitary commands the soldiers, and has not a few towns subject to his jurisdiction, in which he dispenses justice in accordance with Our laws.

Civil as well as military affairs require the services of a man of high character in these places, for in the early days of the Republic soldiers were always appointed to great offices; they not only commanded the army, but also governed Our other subjects at the same time, even though the latter were not enlisted in the army. Finally the invasions of barbarians demanded the adoption of more stringent measures, and it became advisable for the administration to be entrusted to a magistrate who could rule in accordance with Our laws, as there is a great difference between the maintenance and the disregard of order; and it is evident to everyone that when military power alone is exercised it exceeds the limits of propriety, and becomes too bold; while, on the other hand, a purely civil administration, when not supported by a military force, will be deficient in authority; but when both of these forms of government are united in the same ruler, the management of public affairs becomes more perfect and effective, not only for the prosecution of war but also for the preservation of peace.

CHAPTER II.

Hence the two administrations of this province shall be united, and the official invested with the government of the same shall be designated the Justinianian Praetor of Thrace. We grant him the insignia of his rank both by means of the commissions issued here like those given to *spectabile* magistrates, and by Imperial instructions which prescribe the method of governing the province, which said instructions Our predecessors called mandates of the sovereign, and were delivered to those who drew the provinces by lot, for the purpose of informing them of the manner in which they should discharge the duties.

The office of Praetor has always been regarded as one of the highest dignity; it has increased the greatness of the Roman name among many nations subject to Our Empire, especially in the West; and it is through the agency of the Praetors that the Romans have added to their dominions almost the entire North, South, and a large portion of the East.

You will communicate the provisions of this law, having reference to the government of provinces, and whatever We have also decreed concerning the Praetors of Pisidia and Lycaonia, to all persons, so that these magistrates may be appointed gratuitously, and may also, without reward, devote themselves to the welfare of Our subjects; and there is all the more reason for this, as the law referred to applies to Our entire Empire, and is well known to everyone, for it prescribes the oath to be taken by Our magistrates when they assume their

official duties, and by means of it they devote their souls to God, and promise to govern Our subjects with equity and justice, as well as to refrain from all corruption, enmity, and partiality.

(1) The court of the Praetor of Thrace shall be composed of a hundred persons, and the Praetor shall be invested with the insignia of both military and civil magistracy. In addition to this, an *adre-sponsus* shall be assigned to him who shall have charge of the army stationed in that region, over which he shall have full command, and which the Praetor shall be authorized to make use of in every way which he may think will be to the advantage of the Government.

(2) The levy of taxes in that region shall be made by the Praetor himself and his subordinates, and the entire body of the latter shall be given the name of praetorian, and shall be appointed by letters issued by the Imperial Secretary's office, whence in former times the members of the vic'eregal court also received their authority.

CHAPTER III.

The Praetor must be careful, in the first place, to keep his hands clean from the acceptance of either bribes or presents, and afterwards, in public as well as private, to show himself to be just in every respect towards Our subjects, whether they are involved in litigation, or enter into contracts with one another; and he must take measures to prevent them from engaging in disputes. He must also employ his soldiers in military exercises, in order to render them more efficient and active; he must govern the other inhabitants in accordance with law, to the end that they may become just, and free from all wickedness and malice, by which they may the more readily be induced to practice equity, virtue, and courage; and when a military expedition is undertaken, he shall see that it is despatched as quickly as possible, and that every cohort is at hand, as the civil officials should co-operate with the military for the purpose of counter-acting any hostile operations of the enemy.

(1) Again, this magistrate must hear and determine all pecuniary, criminal, and other cases justly and in accordance with Our laws, without evincing any partiality, and not give any occasion to litigants to annoy Us with their importunities; for We are unwilling for Our subjects, when oppressed by their Governors, to be compelled to abandon their provinces in order to have recourse to Us. If, hereafter, the people of Thrace should appeal to Us for any reason, We shall carefully ascertain whether they have already brought their cases before the proper official in their province, and if We ascertain that this has not been done, We shall send them back with a severe reprimand. But if, after having made application to the Praetorian Tribunal, the magistrate has neglected to render judgment, or, if influenced by some dishonorable motive, he has not decided in accordance with law, We shall then devote Our attention entirely to him. For as We increased the power of the Praetor (that is to say, as We conferred upon him the functions of two offices) and have placed him in control of such a great multitude of men, if We should find that he has acted in any unworthy manner, We shall not overlook the fact, nor shall We impose a moderate penalty upon him; and as We shall exalt him if he discharges his duty properly, so We shall inflict the more severe punishment upon him when he does anything contrary to law. He must show no partiality whatever for anyone, no matter what his rank may be or what wealth he may possess; and We appoint men of distinction and authority to places of this kind in order that it may not be necessary to favor those who desire to make use of their wealth to inflict injury upon others.

CHAPTER IV.

The Praetor of Thrace shall see that the public works do not suffer any damage, for instance, the harbors, walls, bridges, and highways; but he himself must provide for all necessary repairs where the civil revenues are sufficient, and if any greater expenditures are necessary, he must inform Us of the fact, and accounts must be rendered, just as has already been prescribed by one of Our laws. Nor do We wish that persons who are ordinarily charged with the inspection of watercourses, and the repair of gardens, walls, pictures, and other things of this kind, should be sent from your prefecture (which indeed We have already prohibited) into

the province; but the Prsetor himself must ascertain what should be done, and render an account of the expenditures for repairs, in accordance with Our Constitution.

(1) But if We should determine to place another in charge of this office, We shall do so by means of a pragmatic sanction, which (if it seems advisable) shall be addressed to your prefecture. For, in order to prevent Our subjects from incurring too much expense, and because We are aware of the great power of money, and have made ample provision for the subsistence of Governors, their courts, and all their attendants, as is customary, We do not desire them to commit any discreditable acts on account of poverty or for any other similar reason, but honored with distinguished rank, and being members of the eminent body of the Senate, they should govern their provinces, having the glory of God and the memory of Ourselves constantly in mind. If the Prsetor does not in any respect disobey what We have commanded, he will greatly increase his reputation.

(2) And, as the ancient Romans only appointed men of consular rank and Prsetors to govern provinces, We do not do anything contrary to good morals when We designate persons for such a purpose who, repressing the violence of collectors of taxes, that, sent from here, seek to oppress Our subjects, can in this way render themselves useful in case of necessity.

We confer upon the Prsetor of Thrace power to investigate and prevent things of this kind, and thus correct these abuses, and his secretary shall inform Us of their existence, in order that if the Prsetor should be unable to remedy them, and the case demands it, Our authority may be interposed.

CHAPTER V.

We admonish magistrates by Imperial mandates, which We communicate to them along with the insignia of office, to remind them of the oath which they have taken, as well as of the instructions which We have communicated to them, so that if they desire to show themselves worth of Our approbation, they will lead proper lives, and, in accordance with Our laws administer the offices bestowed upon them. We have conferred authority upon these magistrates subject to the abovementioned condition, granting them (as has already been stated) full power to act, and render decisions in pecuniary, criminal, and all other cases; and appeals should be taken from them to Our Most Glorious Prefects and Quaestors, who shall decide them in the same way that they do cases referred to the Imperial Palace.

Where in this province a case in which a sum less than fifty *aurei* is involved is taken up on appeal, and it was originally decided by a judge appointed either by Us or by the Prsetor (provided the magistrate is not one of the rank called *spectabile*), the appeal shall be taken to the Prsetor, who shall hear it in accordance with the procedure of the Imperial Palace. For We honor his office in this way, and place him upon the same footing as the Count of the East, the Proconsuls, and the Counts of Phrygia and Galatia; and if he is of the abovementioned rank, as the magistrates of these provinces are, he can render judgment in the same way. Our law does not diminish the importance of the office of Governor, but the Praetor shall himself be charged with the execution of the laws in the province; that is to say, he shall exercise the same functions in the jurisdiction which We have just conferred upon him.

(1) A notice has also been appended to this law which establishes the sums to be paid by the Praetor for his commissions, and fixes the salary given him by the public by way of subsistence. We do not permit him to accept anything beyond that amount, and he must avoid making any profit, for if We grant liberal allowances to magistrates, they must indemnify Us for doing so by consulting the welfare of Our subjects, and always be mindful of the oath which it is customary for them to take.

We desire the present law to be recorded in the Book of Constitutions, and after having received it, you will see that it is perpetually observed hereafter.

The Praetor of Thrace shall be entitled to three hundred *solidi* by way of subsistence, capitation, and salary; his assessor shall have seventy-two *solidi*; and his attendants fifty-two;

but, on the other hand, the Praetor shall pay for his commissions the following sums, viz.: to the three chartularies of the Imperial Bedchamber nine *solidi*; to the Chief of the Illustrious Tribunes of the Notaries and the officers of the *Laterculi*, twenty-four *solidi*; to the court of the Most Glorious Prefect, for orders and other things, forty *solidi*.

TITLE VI.

CONCERNING THE COUNT OF ISAURIA.

TWENTY-SEVENTH NEW CONSTITUTION.

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

PREFACE.

The government which Our predecessors established in Isauria is at present in Our mind, and We remember at the same time that in First Galatia and Pacatian Phrygia, We united the office of Vicegerent (as it was formerly called) to the civil magistracy, and honored the official who administers them with the ancient appellation of Count, because of which one of these dignitaries bears the title of Count of First Galatia, and the other that of Count of Pacatian Phrygia, added to the name of Our Majesty.

CHAPTER I.

We make the same provisions with reference to the Province of Isauria, for We do not wish that he who in the future may administer this office shall use double commissions, assume the title of civil magistrate and at the same time be invested with the insignia of military authority, and bear a double appellation when, in fact, the two places are combined in one; hence, in order that he may have but a single office, We decree that he shall possess military jurisdiction, collect the public taxes, govern all the inhabitants under his control, and preside over only one tribunal which shall be called that of the Count, and shall receive the letters conferring his authority from the Bureau of the Imperial Secretaries. He shall, under all circumstances, obtain the magistracy gratuitously, and shall not give or pay out any money; and in order that he may be free from corruption, We send him the law which We have recently promulgated on this subject.

In addition to the commissions conferring the rank of magistrate which are delivered to him, We also give him the Imperial precepts, called mandates by former Emperors, and which have again been introduced by Us into the government, from which he may understand what is required of him in all matters both public and private, and in addition to this, what measures to adopt to prevent the Treasury from being subjected to any unnecessary expense, and learn in what way he should perform his official functions.

CHAPTER II.

He is notified that he is assigned a place among the *spectabile* magistrates, and that the Most Glorious Praetorian Prefect, along with Our Most Glorious Quaestor, will hear any appeals taken in his province, as the Augustal Prefect, the Proconsul, the three Praetors, whom We have recently appointed in Pisidia, Lycaonia, and Thrace, as well as the Count of the East, and the Counts of Pacatian Phrygia, and First Galatia do. When a case involving property of the value of less than fifty pounds of gold is hereafter appealed in Isauria the Count himself shall hear it, just as is done in the Auditorium of the Imperial Palace. For We grant him this privilege, adding thereby to the dignity attaching to his office.

EPILOGUE.

Your Excellency will conduct yourself towards the aforesaid magistrate just as you do toward the other magistrates hereinbefore mentioned.

We append to this law a notice stating what must be paid out of the Public Treasury to the Count, his court, and his assessor, and also what he must give in consideration of receiving his

commissions. These officials, who have recently been appointed by Us, are hereby notified that they must refuse to receive any money tendered for offices, which is not bestowed by Us either upon themselves, their assessors, and court attendants; for We have allotted large salaries to the Governors themselves, in order to prevent them from accepting anything from Our subjects. If you should discover that the Governors of provinces included in the jurisdiction of the Count of Isauria are negligent in the collection of taxes, you will not remove them, but you will notify the magistrates to threaten such idle and inefficient officials and exert every effort to increase their diligence; for it is only by their cooperation that the government of Isauria can be improved and acquire a greater lustre than it formerly enjoyed.

The Count of Isauria shall be entitled to two hundred *solidi* by way of subsistence; his assessor to twenty-two; and the attendants of his court to fifty-two. He must pay the following sums for the delivery of his commissions, namely, nine *solidi* to the Chartularies of the Imperial Bedchamber; twenty-four *solidi* to the Chief of Tribunes of Notaries, and the *Laterculensii*; and forty *solidi* to the officers of the court of the Most Glorious Prefect, on account of orders and for all other purposes.

TITLE VII.

CONCERNING THE GOVERNOR OF THE HELLESPONT.

TWENTY-EIGHTH NEW CONSTITUTION.

The Emperor Justinian to John, Praetorian Prefect.

PREFACE.

It is certainly not the part of a well-established and powerful government without good cause to alter and divide what has for a long time been settled and confirmed, as the strength of an empire does not depend upon a multitude of words, but upon the faithful and just administration of affairs. We have ascertained that this rule has been violated with reference to the two Provinces of Pontus, that is to say, the Hellespont and Polemoniac Pontus; for they were formerly subject to the authority of a single Governor, while at present there are two officials, without public necessity requiring it, or anyone being able to give a good reason for their existence. The proof that there is no good cause for this is that, up to this time, the two Provinces of Pontus have only had a single Count for the collection and expenditure of taxes; and if anyone should undertake to enumerate the different towns situated in both of them, he would hardly find enough for a single province. For instance, the Hellespont has eight: Amasia, Iborra, Euchaita, Zela, Andrappa, ^Egeum—whose climate, that is, its agreeable location, has caused it to be included—Sinopa, and Amisus, ancient municipalities, as well as Leontopolis, which formerly was numbered among cities.

Polemoniac Pontus contains five towns, namely: New Caesarea, Comana, Trapezus, Cerasus and Polemonium, for Pitius and Sebastopol should rather be included among forts than cities; and these are the towns included in the two Provinces of Pontus.

Lazica is situated near them, in which is the City of Petraeon, which by Our favor, is entitled to Our name and is styled Justinianian; and also Archa3opolis and Rhodopolis, both large and ancient fortified towns, are among those which We have received from the Persians; together with Scandis, Sarapanis, Murisius, and Lusiris, and if, in addition to these, any others are included in the country of the Lazi, We are not aware of the fact.

Next come the Tzani who, during Our reign, have for the first time been subjected to Roman rule. This nation has several towns which have recently been built, as well as others which are in course of construction. Then come the Suani, the Scymni, the Apsiles, the Abages, and others, who, with the permission of God, have either been subjected to Our dominion or included among Our allies.

CHAPTER I.

But as in treating this subject, We have been brought to the consideration of different

countries, We now return to the two Provinces of Pontus and the projected union of the same. We hereby establish a single province composed of the two Pontuses, which include thirteen cities, and We grant them their ancient form of government while retaining their modern appellation. For they are called the Hellespont by everyone, which name was given them by the Emperor Constantine, in memory of his most honorable mother Helena who recovered for Us the sacred emblem of Christianity. The ancient name of Polemon, which the greater number of the rulers of Pontus applied to that province, shall hereafter be abolished, first, because it was derived from that of one of the said rulers; second, for the reason that the province itself contains a city called Polemon; and finally, as it is better to designate Christian countries by the names of kings than to call them *Polemi*, which word conveys the meaning of war or tumult.

CHAPTER II.

The union of these thirteen cities into a single province will not have the effect of depriving either of the two capitals at present in existence (namely Amasia and New Caesarea) of that title; and the bishop of these cities shall continue to be consecrated at Constantinople by the prelates charged with this duty (as has been the custom up to this time), as We make no innovations so far as the priesthood is concerned; for many institutions of this kind having reference to bishops exist in every province, some of which have been established for centuries, and others We Ourselves have recently authorized. A single magistrate, ordinarily designated *Harmostes* in Greek, shall exercise jurisdiction under the title of Governor, but the name Governor is of high antiquity, and worthy of the greatness of the Romans, while the term *Harmost* was applied to a magistrate sent from Laca-demon with jurisdiction over conquered cities.

CHAPTER III.

Hence the official who undertakes this administration shall be called the Justinianian Governor of the Hellespont, and will assume command of the military forces stationed in that province. He shall also have an *adresponsus*, to whom all men, no matter to what civil condition they may belong, shall be subjected, without exemption on account of any privilege. He shall hear all cases pecuniary as well as criminal, and shall dispose of such as are insignificant in character, without record or expense; and, so far as those of greater importance are concerned, they shall be decided by him, and the proceedings recorded, but no other costs shall be incurred than those prescribed by Our Constitution.

The said magistrate shall receive the emoluments granted to the two preceding ones, which amount to seven hundred and twenty-five *aurei*; he shall have only one court, and with it he shall be responsible for the levy of taxes, for the reason that he is the only one appointed for government in the province; his assessor shall be paid seventy-two *aurei* out of the Public Treasury; and the two preceding courts, which have been combined in one, shall be entitled to four hundred and forty-seven and one-third *aurei*.

CHAPTER IV.

Moreover, the official who is discharging these duties shall not despatch deputies to the cities of his province (for the rules established by Our Imperial mandates shall be observed), but he himself shall visit the said cities, one after another, and he shall not be prevented from doing this by any law or pragmatic sanction previously promulgated, even though a former custom may have authorized something of this kind. He can establish his residence wherever he thinks best, either in one of the capitals, or in some other town, provided the latter is of sufficient importance to justify him in doing so. He must abstain from all corruption and illicit gain, and conduct his administration in such a way as not to involve the inhabitants in unnecessary expense. For neither he himself, nor any of his subordinates, nor any soldiers of his escort, shall accept anything from taxpayers, or exact anything gratuitously, and he must not molest Our subjects, or permit the soldiers who accompany him to do so, for this forms part of the instructions which We have given.

He must always be mindful of the oath which he has taken, and that he received the office without paying for it; and that if he is to prove worthy of an increased allowance, he must never venture to accept any gift, unless he expects to be compelled to return it, and be subjected to severe punishment. Nor shall he permit any of his subordinates, under any pretext, to exact anything, or accept it if it is offered. If he does not see that the soldiers under his command are content with the salaries paid them, he will not escape the effects of Our righteous indignation, and will be forced to reserve enough from their pay to indemnify any of Our subjects who have suffered from their impositions.

(1) We desire these dignitaries of high rank to be invested with great authority, not only through the number of persons composing their retinues (the Court of the Governor of the Hellespont shall consist of a hundred officials), but also because of their personal distinction (for We confer the rank of *spectabile* upon the Governor of the Hellespont), so that, in case of necessity, We may be enabled to avail Ourselves of magistrates endowed with formidable power, who may be in a position to assist Us. What could the Governors of provinces accomplish under the ancient form of administration, when they had very few attendants, were invested with but little authority, received but small salaries from the Public Treasury, and paid out large sums of money in order to obtain their offices? They were obliged to steal, they constantly granted favors and benefits to their creditors, who had loaned them money to enable them to purchase their offices, and who constantly threatened them. The result of this was that Governors compelled Our subjects to sell their property in order to procure for themselves revenues which were precarious and dishonestly obtained.

(2) This unworthy condition of affairs impels Us not only to reject the proceeds of the sale of public offices, but also to refuse to sanction the enormous expenses incurred by the payment of salaries to officials; and where any kind of magistracy was formerly conferred by Our predecessors in consideration of the payment of money, We shall provide a remedy for the evil, deliver Our taxpayers from this imposition, and pay out of Our own Treasury salaries to magistrates who have been appointed to office, and by so doing give them freedom. It is true that God has been liberal to Us in this respect, so that We have not only given peace to Africa and to the nations included therein, but He has also enabled Us to relieve from great expense and infamy peoples established, so to speak, in the midst of Our Empire, against whom a new action was instituted rigorously every year; and who, instead of being subjected to the authority of a single ruler, were, at frequent intervals, placed under the administration of new magistrates.

We have thought that the privilege of remedying this abuse has been conferred upon Us by God, who has placed the Imperial crown upon Our head, and who, for the common welfare, has invested Us with the purple, through the medium of Our Father, and, in short, has been more generous to Us in every respect than to any of Our predecessors.

CHAPTER V.

The magistrate appointed to this office is hereby notified that he will be invested with the government of many men and towns; that he should cause himself to be greatly respected; that the form of his administration from being consular and correctional has been changed and rendered a great magistracy; that he must consult the interests of Our subjects; preserve them from all oppression; govern them without bribery; increase the fiscal revenues and exert every effort for their preservation. He must avoid avarice; abstain from accepting gifts; administer justice to citizens in public as well as in private; visit the cities, and correct any vicious practices existing there, and do nothing for the sake of profit; he must not be animated by the desire of acquiring either a small or a great reputation, but he must act in such a way as to acquire one which is good and praiseworthy; he must religiously observe the oath which he has taken; and, in conclusion, he must endeavor to render himself acceptable to Us in every respect.

(1) He shall also take care that no one in Pontus is permitted to place notices upon the lands or houses of others, because this right is one of the privileges of the Treasury; and notices of this

kind are only placed upon the palaces belonging to Us, or to Our August Consort. If the Governor should ascertain that notices have been set up in the name of a third party, he must tear them down, and prosecute him who is responsible for it. Where, however, the notice has been affixed by someone claiming to be the owner of the immovable property, the Governor shall place a public notice upon said property, after having broken the others on the head of him who affixed them. But if this was done by an agent having charge of the property of others, the Governor must break the notice on the head of the latter (as We have already stated), and also subject him to moderate punishment; in order that the beneficiary of the illegal act may learn that neither he himself in person, nor through the agency of others, nor by means of anyone selected for the purpose of gratifying his avarice, will be permitted to commit any injustice against Our subjects.

CHAPTER VI.

In like manner the distinguished Governor will be required to prosecute thieves; men who make a practice of committing fraud; ravishers of women; and robbers who take property, beasts of burden, and other things of this kind by employing force; and he must preserve intact the rights of those subject to his authority, in order that it may be evident that We have made a good choice in giving him his appointment.

Persons guilty of such offences shall not afterwards be permitted to enter the province, which will have no reason to regret that We have done away with the officials formerly sent to suppress violence, and punish thieves, and We have subjected soldiers to the commands of the Governor in order that, with their assistance, he may be able to clear his province of all kinds of criminals.

CHAPTER VII.

Our wishes shall be communicated to the Governor in a few words, as he can by reading the general law (which law We promulgated at the time We established the rules for magistracies), as well as by familiarizing himself with the instructions of the Emperors, readily ascertain what must be done; as the said instructions, when given to him, will explain the way in which he should discharge his duties. If he discharges them properly, he will not only show himself to be grateful to Us, but at the same time will devote his soul to God, and be able to hope for a great reward for his beneficent administration.

A notice appended to the present constitution establishes the salaries which the Governor, his assessor, and his subordinates shall receive from the Public Treasury; and it also 'fixes the amounts which the Governor will be required to pay for his commissions. The latter, remembering the extent of Our generosity towards him and the moderate sum exacted for drawing up his commissions, should administer his government with justice, and, above all, with a view to the interests of the great provinces and the multitude of persons committed to his care.

CHAPTER VIII.

We further state that appeals taken from the decisions of the Governor of the Hellespont shall, like those from other magistrates, be brought before the Most Glorious Prefects, and Our Most Glorious Quæstor, and decided just as would be done in the Imperial Consistory. When appeals are taken in cases where the amount of property involved is less than five hundred *aurei* (even though this be done by delegation) but not from the decision of a magistrate of *spectabile* rank; the Governor himself, who is clothed with high powers, shall hear and determine the same; and shall bear in mind the increase of dignity with which We have honored him, and his public conduct should render him irreproachable in the eyes of Our subjects and Ourselves, and before Us, in those of God and the law.

EPILOGUE.

Your Excellency, after having received this constitution, will deliver to the Governor the great emoluments which have been granted him; and he, for his part, impressed with the importance

of his office, must endeavor to render himself worthy of the distinction which We have conferred upon him, by being careful to observe the provisions of this law.

TITLE VIII.

CONCERNING THE PRAETOR OF PAPHLAGONIA.

TWENTY-NINTH NEW CONSTITUTION.

The Emperor Justinian to John, Praetorian Prefect.

PREFACE.

The ancient race of the Paphlagonians was not formerly degraded, inasmuch as it sent out many colonies, and established itself in Venice in Italy, and by it Aquileia, the largest of the cities of the East, which had many controversies with kings themselves, was founded.

CHAPTER I.

This country of Paphlagonia suffered a diminution of territory during the reign of the Emperor Honorius, and lost certain cities, the reason for which is not known. We desire to restore to this province its ancient form of government, and to administer it in the same way as if it was a city, as well as to accomplish what We have done in the two Provinces of Pontus, in order that the official invested with authority who will govern the two provinces (namely Paphlagonia and Honoriades) may be designated Praetor (which is a Roman name applicable to the Governors of provinces), and have a single court of a hundred officials, made up of the members of the two previous courts combined.

This magistrate shall collect the public revenues not only from the Paphlagonians, but also from the inhabitants of Honoriades. He shall also be charged with the administration of all the cities originally included in each province, that is to say, in Honoriades, Prusias, Gratia, Hadrianople, Tio, Claudiopolis, and Heraclea. Some of these, for instance, Prusias, Heraclea the capital and chief city of the province, and Claudiopolis, were originally taken from Bithynia, and as this was done, We do not deem it advisable again to deliver them to the Bithynians, it will not be necessary to make any change in this respect. Thus the six cities included in Honoriades shall now form part of Paphlagonia. The Praetor shall also have jurisdiction over the six other cities which, from the beginning, have belonged to this province, namely: Germanicopolis, Gangra, Pompeiopolis, Dadybros, the heights of Amastridis, and Ionopolis, and thus twelve cities in all will be embraced in the territory of Paphlagonia.

We do not formulate any regulations with respect to the priesthood, but the metropolitans will continue to be consecrated as formerly, and receive their ordination from the patriarchs of this city; and ecclesiastics of inferior rank shall be ordained by them, and there shall be no dispute on this account, nor shall any confusion of jurisdiction arise. In consequence of this, there will be in the future but a single province, which, as in the case of others, will have several metropolitans.

CHAPTER II.

The official invested with the government of the entire province (which shall, as formerly, be designated Paphlagonia) must visit the different cities, but is not authorized to send deputies here and there to the towns throughout the province, even though this may not have been prohibited in former times by any pragmatic sanction. We forbid this to be done under any circumstances, as it would be disgraceful for him, after having been appointed to dispense justice in the province, to entrust this duty to someone else, in violation of the provisions of this law. He himself shall have the direction of everything, and shall collect the public taxes as quickly as possible, and, when doing so, must not exact anything more or less than is due. He shall see that Our subjects are equitably treated, and, at the same time, make provisions for any losses which may be sustained by the Treasury, and he must also prevent the cities from suffering any injury either in public or private matters.

This magistrate shall receive the same remuneration formerly paid to both the others, which amounted to seven hundred and twenty-five *aurei*; he shall have an assessor, who will be entitled to seventy-two *aurei*; and a single court composed of a hundred men, selected from the two former ones, to whose members emoluments shall be paid out of the Public Treasury to the amount of four hundred and seventy and one-third *aurei*. As he obtains his place gratuitously, he must also administer it in the same manner, for We hereby release Our subjects from the control of those who formerly were accustomed to accept gifts, when appointed to office; the salary of the Prsetor shall be paid to him by you out of the public taxes of his province; and We shall not suffer Our subjects to be reduced to servitude under the pretence of an increase of taxation. Nor shall We allow the subjects of Our predecessors, whom We have restored to their ancient freedom after they had been subjugated by the barbarians, and who have always been under Our government, to be enslaved by anyone else; for what offering could be more acceptable to God than the liberty of Our subjects, who have, up to this time, been oppressed by fresh extortions of their Governors (as far as this can be done) since God has made use of Us to bestow freedom upon many nations?

What We have said does not apply to recently appointed magistrates, for they are sufficiently secure in this respect; but in the future We do not permit money to be paid to obtain the office of magistrate, nor Our people to be bought as slaves, and the right to commit injustice again to become the subject of traffic.

Therefore Paphlagonia, formerly divided into two provinces (We do not know for what reason) shall hereafter only be considered one among the Provinces of Pontus; the magistrate charged with the administration of the same shall have (as We have already stated) the title of Justinianian Prsetor of Paphlagonia, and it shall even be permissible for him to be styled *Strategos*, in Greek.

CHAPTER III.

You will constantly remind the Praetor of the oath taken by him at his installation, when he swore to keep his hands pure and free from all corrupt gain, to increase the revenues of the Treasury by just and honorable means, and to dispense equity and justice to Our subjects in public as well as in private matters, whether these have reference to contracts or to judicial controversies. He shall visit the cities without imposing any burden upon Our subjects, so that neither he, his assessor, nor any of the persons in his train, nor any soldiers, court-attendants or slaves, may obtain any profit, or travel without incurring any expense. For he himself, and all his escort, must act with propriety, paying their expenses out of the salaries given them by the public; and the soldiers are notified that if, during their journeys, instead of being content with their emoluments, they venture to inflict injury upon Our subjects, cause them any loss, or take anything from them without compensation, this shall be deducted from their pay, by way of indemnity for the wrong committed; which the Praetor himself must attend to, and, if he does not do so, he will personally Be required to indemnify Our subjects.

CHAPTER IV.

This law, which We have enacted with reference to the Paphlagonians, renders their magistrate more honorable, places him in the rank of *spectabiles*, and confers authority not only upon him over the soldiers stationed in his province (provided he commands them with justice) but also over others; it does not permit anyone under his jurisdiction to be released from it, even where he may be authorized to do so by reason of some privilege, or is charged with the administration of the estates of powerful persons. He should take special care to prevent any other inscription than those of the Treasury or Royal Houses to be placed upon the property of others, which is something which frequently happens in Paphlagonia.

If the Praetor should learn of any offence of this kind, he must remove every trace of the inscription, and place those of the Treasury upon the property of the offender, after having broken his own over his head, if he is present. Where he is absent, and the agent in charge of the property is arrested, the Prsetor shall inflict corporeal punishment upon him, and at the

same time break the inscriptions over his head.

The Praetor is hereby notified that if he neglects to do what We have ordered, and We should ascertain that he has allowed inscriptions to be placed upon other lands than those belonging to the Treasury, and Ourselves and Our August Consort, he will render himself liable to the confiscation of his own property, for the reason that while invested with great power, he has, through negligence, permitted acts to be committed which could readily have been prevented.

CHAPTER V.

We desire the Praetor of Paphlagonia to pay great attention to the pursuit, arrest, and punishment of persons who are guilty of robbery, stealing the property of others, ravishing women, and other crimes, for all of which offences he must impose suitable penalties. He must, by all means, prevent injustice, nor allow men who are honest and peaceable to suffer injury, lest We may be compelled again to despatch officers charged with suppressing violence, apprehending thieves, and other duties of this kind, a measure which is intolerable to Us. We invest this magistrate with such honor and dignity that the appeals of cases decided in his province shall be brought before Your Excellency and the Most Glorious Quaestor of Our Imperial Palace, who shall take cognizance of the same and decide them, just as if they were brought before the Imperial Audience-Chamber.

The Praetor himself shall hear and determine all controversies where the value of the property involved is less than five hundred *solidi*, which have been tried in his province before magistrates of inferior rank, even though the judgments may have been rendered by delegation, whenever such cases remain in abeyance for the reason that appeals have been taken. He shall rank with the other magistrates whom We have recently created, and as such magistrates have more authority, they shall also enjoy greater distinction than their predecessors, and will be able to furnish Us greater assistance whenever this becomes necessary. In fact all their powers are greater, whether they have been bestowed by Our predecessors or granted by Us.

A notice appended to the present law fixes the salaries to which the Praetor, his assessor, and the subordinate officials of his court, shall be entitled out of the Public Treasury, as well as the sums which the Praetor himself shall be required to pay for his commissions.

(1) As the manner in which this Praetor shall conduct his government is only concisely stated here, it will be more explicitly set forth either by the general law which is applicable to all magistracies, or by the Imperial instructions which We intend to deliver to him with his commissions, when, in accordance with Our law, We require him to take the prescribed oath.

EPILOGUE.

After this constitution has been communicated to You, Your Excellency will deliver to the Praetor of Paphlagonia the great emoluments to which he is entitled; and he, impressed with the dignity of his office, and desirous of proving worthy of the Honor which We have conferred upon him, should exert himself to carry out the provisions of the present law.

TITLE IX.

CONCERNING THE PROCONSUL OF CAPPADOCIA.

THIRTIETH NEW CONSTITUTION.

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

PREFACE.

Persons who have studied history are aware that the people of Cappadocia bear distinguished names; that they had many transactions with the Romans before being subjected to their rule; and that their dominions formerly embraced all of Pontus, and gave birth to famous men who obtained a high reputation among the Romans. Cappadocia is of great extent and wonderfully

fertile, and found such favor in the eyes of the Emperors that the latter were accustomed to appoint as Governor of those regions a special magistrate of higher rank than that of a civil official. This country is extremely populous, and contains a great city which bears the name of Caesar, one which is very dear to Us, being that of a ruler who began the acquisition of the empire of the world which We at present possess, a name held in great veneration by all the people of the earth, and which We exalt above all the attributes of Imperial Majesty.

CHAPTER I.

It seems to Us contrary to all propriety and dignity that Cappadocia hitherto should have been subject to the jurisdiction of an inferior magistrate, as We have learned that almost constant seditions have arisen against the government; that the city is divided into two factions, one of which is styled Tamiacal, or Fiscal, and relating to the Treasury; and the other Eleutherical, that is to say, free; and while there is but one community enclosed by the walls, there are two bodies of persons entertaining different opinions. This gives occasion for seditions and quarrels, and if the inhabitants experience any evils it is due to this cause (so We think) and, when it is removed, We shall restore authority and concord, than which nothing better or more desirable can exist among men.

(1) With this end in view, We have established a different form of government, with other magistrates, *as* We have already done in the case of the Pisidians, the Lycaonians, and the Thracians, by the union of both the civil and military jurisdiction; but, as We desire it to be superior to theirs, We have added a third. For, in addition to the fact that the magistrate entrusted with the government of Cappadocia shall supervise the execution of the laws by the civil officials, and shall have command of the soldiers stationed in his province, as well as all the other provinces of Pontus, where Tamiacal lands are to be found, he shall also be invested with authority over soldiers stationed in those places. For We grant him jurisdiction over the men attached to Tamiacal lands, as well as over those forming part of the Comitian Court, who shall all obey him, and in this manner he shall administer a government of a threefold nature, for he will have civil and military jurisdiction, as well as control of Tamiacal property. Thus he will have two courts, Comitian, whose officers will execute his orders without reference to the Civil Court and that of the illustrious Governor of the province; these two courts shall be styled Proconsular, and We desire that each one of them, that is to say, the one formerly known as Comitian and the one called Civil, although they will have but one appellation (that is Proconsular) shall each exercise distinct functions. In this way the Civil Court will have charge of tributary and civil matters which We are aware from the beginning have always belonged to it; and the court which formerly was called Comitian will be restricted to the administration of property belonging to the Empire, and shall make collections in the manner which We shall presently explain.

CHAPTER II.

Bearing in mind the example of former times, and the enormous injury inflicted by curators and stewards upon Our wretched subjects, We do not desire the names of these officials to longer exist. For this reason there shall be appointed for each separate house thirteen of the principal members of the Comitian Court, who shall be called first and second masters, and shall be personally liable, and thirteen others who shall be next in authority, and shall, like the first be assigned to each private house (as already stated); and the latter, under the supervision of the head masters, shall attend to the collection of the revenues, and preserve for the Treasury the property belonging to the same; it shall be their duty to correct the indolence of taxpayers, but they must be careful not to cause the latter any loss, for We warn them that they will be responsible for anything of this kind, and will give every public receipt at their own risk.

The first and second masters and the thirteen others who come next in order must be careful not to divert the public revenues to any improper purpose; nor shall they be compelled to pay any personal contribution to the Proconsul in office at the time on account of their commissions, or to do this under any other pretext; but each one of the thirteen collectors shall

pay fifty *aurei* to the thirteen head-masters.

CHAPTER III.

Collectors shall not take from peasants, or others from whom collections can be made by them, any more than has been prescribed by the Edict of Niceta, and they are forbidden to pretend that the taxpayers are indebted, and to oppress them under the pretext of compelling them to make payment to stewards, by way of greeting; or in the observance of some custom; or for any other annoying purpose; for We desire absolutely to deliver Our subjects from such exactions, as well as from the unlawful and onerous contributions that they formerly paid to stewards, and which prevented them from discharging the obligations which they owed to the public. We hereby annul every pragmatic sanction, or long-established usage, where any authorizing similar contributions exists; for by abolishing even the name of these officials, We destroy at the same time everything which has reference to them, and grant a special favor to Our subjects. If any collector should dare to take from tax-payers anything beyond what is authorized by the Edict of Niceta, and which alone We have permitted them to accept, he shall be deprived of his office, rank, and property.

CHAPTER IV.

As it may happen that among the thirteen collectors (We order that they shall be appointed to this office in regular gradation), one may be found who is not qualified for the collection of the revenue, We nevertheless allow him to be paid his entire salary. But We order that the thirteen principal masters, as well as those who come directly after them, shall, at their own risk, appoint an assistant who shall make collections in his stead; because in this way the collection of taxes may be promoted, and the Treasury will not suffer any loss through the imbecility of an incompetent official; who, however, shall not be deprived of his rank, or his time of service; but We repeat that the appointment of his assistant shall be made on the responsibility of the thirteen head-masters, and the thirteen other officials who are immediately subordinated to them.

Collectors will have reason to thank Us for having released them from the 'excessive contributions that they were formerly obliged to make, not only to the head-masters, but also to the Count in office at the time, and his attendants. If, however, We have freed them from this species of imposition, it has been done to prevent them from being guilty of injustice toward Our tax-payers, and that they may not invent pretexts; for instance, that of their assuming office, or various others, by which the means of peasants are exhausted, and that they remain content with what was allotted to curators by the Edict of Niceta, of illustrious memory, and abstain from exacting anything beyond this amount.

CHAPTER V.

The Proconsul shall decide all matters within the jurisdiction of civil, military, or Tamiacal authority. For We desire to place over Cappadocia a magistrate invested with greater power than in the other provinces; and as it was customary among the ancient Romans for the provinces to be apportioned by lot among the Consuls, or those officials who replaced them and were called Proconsuls, We desire that the Cappadocians also should possess a Proconsular Magistracy, an office by which the Romans are conducting the administration of Africa. We place the government of Cappadocia in a class so superior to the others that We designate the official to whom it will be entrusted in the way that We do Our Glorious Praetorian Prefects. He shall be called in a paternal manner the Justinianian Proconsul of Cappadocia, and he shall also have the special title of *Archegetes*, that is to say, Principal Magistrate. For it is not without reason that he should be invested with such extraordinary dignity, as his power extends to other localities by means of the Tamiacal possessions; he has civil jurisdiction over persons as well as property; and, as he, at the same time, commands the military forces, he will, in every respect, exercise great authority. He shall, however, be required to conform to custom in the administration of civil affairs, and shall properly direct the soldiers at his disposal.

(1) The Proconsul with the head-masters shall attend to the administration of such Tamiacal property as has been so deteriorated and exposed to the depredations of others that it is worth almost nothing, for We have been informed that such great abuses exist in that province that it is extremely difficult to apply proper remedies. Those who have charge of the estates of powerful persons (We almost blush to say it) conduct themselves on all occasions with intolerable insolence; they are accompanied by guards to prevent the multitude from following them, and they steal with the greatest impudence. We are surprised that the people of this province have been able to endure so many injuries.

Again, every day, a vast number of Cappadocians who have been oppressed by injustice, among whom are to be found many ecclesiastics, and women, lay their complaints before Us, while We are occupied in conducting the government, because no one can be found in their province who is able to prevent acts of this kind from being committed. Tamiacal possessions are almost reduced to the condition of private property; they are ravaged and torn up; everything belonging to them is removed; and no one makes any remonstrance because the mouths of those who could do so are closed with gold.

CHAPTER VI.

Therefore, being fully informed of these matters, We have decided to commit the government of Cappadocia to an official who, possessing triple jurisdiction, will unite in himself all administrative functions; who shall be invested with the insignia of civil office; be entitled to use a silver chariot, the axe, the fasces, and every other mark of Proconsular authority; and shall also command the soldiers, and collect the income of Tamiacal lands; shall see that the officials appointed for these collections are not guilty of fraud or negligence, and compel them to deliver to Us everything derived from this source to which We are entitled, and which should be given either to Us or to Our August Consort, whether it consists of gold or cloths, for We wish nothing of this kind to be retained.

(1) These articles, however, shall not be obtained—as has been the case up to the present time—from Our subjects by extortion (for We regard all such measures as abominable, and wish them to be excluded from Our government) ; but We order that they shall be acquired by the just and legal means which We have prescribed in this Our law.

The Proconsul shall obey these rules, and shall give to Our August Consort fifty pounds of gold, as has been stated; for We appoint him gratuitously, and give him his commissions without requiring him to pay for them, nor do We desire that anyone shall collect anything from him on this account.

(2) We grant the Proconsul a salary of twenty pounds of gold and his assessor two pounds; and each body of attendants shall, without any diminution, receive the same allowance which has, up to the present time, been furnished it by the public. We decree that the connection which the magistracy of Cappadocia has had with the Most Glorious Imperial Chamberlain shall be preserved; and We desire that the latter, as well as the entire corps of Palatines subject to his orders shall retain their former authority and rank in this province. But We forbid the Proconsul then in office, and his court, to exact anything whatsoever, whether it be gold, cloth, or other things, under the pretext of custom or subsistence; and if the Proconsul should violate this order, he will not conduct his administration honorably, and will not prevent the ruin of his province, for which very reason We have placed it under his exclusive jurisdiction.

CHAPTER VII.

The official whom We shall dispatch into Cappadocia to discharge the duties of the Proconsulate will have general supervision of Tamiacal lands. He must ascertain whether they consist of meadows, fields capable of tillage, vineyards, or other property or houses, and if held by private individuals, he shall recover them without the latter being permitted to plead any prescription of time, for to adopt such a measure against the Treasury is not allowed, and anyone who has taken possession of Tamiacal land cannot add it to his own estate; hence,

where some person is ascertained to have been induced by avarice to appropriate property of this kind, he will be much nearer poverty than wealth, because he will be compelled to return it, and will also be subject to reproach and disgrace.

(1) The Proconsul shall maintain peace in all the cities, and not permit any sedition to disturb his administration; he shall diligently and justly collect the public taxes, and give this matter his entire attention, without allowing either the Treasury or private persons to sustain any loss. He shall have the same authority over all men, whether they be soldiers, secretaries of the Most Glorious Prefect, generals of the army, members of the Civil Court; whether they are discharging the duties of a Tamiacal office, or are invested with great or little authority; or, finally, whether they are included in the body of ecclesiastics. This magistrate shall have jurisdiction over all persons, and shall make it his special duty to preserve his reputation unblemished; he must obey the laws, and, above all things, render himself acceptable to God; he shall see that the collection of public taxes is made without loss or delay by the Proconsular officers; he shall cause the revenues from Tamiacal lands to be paid into his Treasury by the said officers, and in this respect he will observe the rules ordinarily laid down by Our Most Glorious Imperial Chamberlain.

The collectors themselves must not accept a single *obolus* beyond the amount given them by the Most Glorious Imperial Chamberlain, nor can they take anything on the ground of its being authorized by custom, or under any other pretext, either from the Praetor in office at the time, from those who draw up the public receipts, from the Proconsul himself, from the members of his court, from the officials styled *Katascevastse*, or instructors, from stewards, or from any other person attached to the service of the Imperial domain.

The Proconsul shall have charge of both armies; he shall restrain the satellites of powerful men; he shall prevent the province from being depopulated and infested with brigands; and, finally, he shall not, in person, travel over it as formerly the Counts were accustomed to do. He shall not appoint any deputies in his stead, but shall be represented by the defenders of the different places and his own subordinates.

(2) When any part of the province has need of soldiers, the Proconsul shall direct those stationed therein to render assistance wherever it may be required; and they must travel at their own expense, without causing any loss or damage to Our subjects. The Proconsul shall also travel at his own expense, no matter where he goes, even when We direct him to repair to some other province; and the same rule shall apply to his assessor and his escort composed of Proconsular officers, even though they may have with them slaves or horses. But as We have previously stated, all the soldiers and persons residing in the province, as well as those composing the household of the Proconsul, shall be required to obey his orders, under the penalty of losing their places and their property, for the Proconsul can deprive them of both, if they refuse to obey him; and We confer authority upon him to do this in order to render him more formidable to Our subjects, and increase the respect with which he should be regarded. For if a soldier, an official of the Court of the Proconsul, or a member of his household should, while executing the orders which he has received, cause Our subjects any loss—provided he is performing his duties on his own responsibility—the Proconsul shall deduct enough from his salary to indemnify the person who has been injured. In conclusion, the Proconsul shall not permit any officials, sent from this city, to molest Our subjects.

(3) He shall also see that the public race-course is kept in good condition, for We except nothing from his jurisdiction, and if anyone despatched from a court into the province should be guilty of oppression, or exact anything more than he is entitled to, he must prosecute him.

CHAPTER VIII.

The Proconsul shall also take care of the city and of all matters relating to the public distribution of grain, as well as of the public works; take measures to have accounts rendered in accordance with Our law; and see that all revenues, Tamiacal as well as civil, are collected. He shall expel from the province any persons who are ordinarily charged with the repair of

aqueducts, walls, bridges, highways, and other public works of this kind, who formerly attended to these matters in accordance with an evil custom. He shall not permit such persons to execute orders of this description, or to obtain any profit under this pretext; and when We are convinced that an inspection of works should be made, and that it is advisable to send to the Proconsul a pragmatic sanction on this subject, We shall do so, after having notified Your Highness, in order that the entry into the province to collect money there may not appear to be easy to anyone. The official who discharges the duties of this office shall prohibit everything in his jurisdiction which he finds to be dishonorable. If, in order to do this, it is necessary to adopt more severe measures, he will communicate the fact to Your Excellency, as well as to the Most Glorious Imperial Chamberlain and the other eminent magistrates who have power to act in the matter; and finally he must have recourse to Us, and We will instruct him in what he has to do.

(1) The Proconsul shall not, in the province subject to his jurisdiction, affix to the real property of private individuals any other notices of claims than those of the Emperor, or of the Imperial domain, that is to say, the Treasury; he shall confiscate the property of persons who are guilty of this offence, and cut off their hands in case they are present; but where their agents have committed this violation of law in the absence of their principals, he shall punish the former. In addition to this, he shall break the inscriptions over the heads of those who have either themselves placed them upon the land, or have done so by their agents. He is hereby notified that, if he neglects to punish a crime of this kind when it is brought to his knowledge, he will render himself liable to the confiscation of his own property.

CHAPTER IX.

This magistrate must devote all his care and attention to the administration of justice, and must not (as was formerly the case) suffer rustics to be oppressed. Nor should the Cappadocians annoy Us any longer by their supplications and lamentations, for the Proconsul himself will act as their judge and decide their disputes. For if anyone should come here without previously stating his grievances at home, We shall send him back with a reprimand for having besought Our clemency before having applied to the magistrate of his province. But where injured persons have gone before the Proconsul, and the latter, steeped in debauchery and abandoned to pleasure, did not listen to their complaints, permitted them to make their applications in vain, and obliged them to have recourse to Us, especially if such persons are women, We, having ascertained the fact that they applied to him and he did not redress their wrongs, shall then regard his conduct as suspicious, and think that he has been influenced by the expectation of gain, or has acted through favor or consideration for certain persons, and shall interpose Our authority; for as he is invested with the functions of a threefold magistracy, he shall be punished in a threefold manner, by justice, by Us, and by the laws.

(1) It is proper for this official, who is entitled to public respect, to constantly bear in mind the instructions which We have given him (Our ancestors called these instructions Imperial Mandates), and always act in conformity to Our law, displaying equity in his judgments, honesty in his administration of affairs, and everywhere cultivating justice, than which there is nothing more powerful or admirable in men, or better adapted to secure the approbation of God and the Emperor.

A magistrate of this kind must act in such a way as to merit Our commendation, and We wish him alone to attend to all the business of his province, and no one else to take cognizance of cases; for, under these circumstances, it is not easy for Us to interfere with his decisions and appoint others to act in Our stead, or to dispatch officials into his province for the purpose of suppressing violence, or for any other reason whatsoever. For although, up to this time, officers of this kind have, by virtue of Our orders and the decrees of magistrates, been commissioned for this purpose, this shall not be done hereafter, and the Proconsul after receiving the administration of his entire province must not permit anyone else to have access thereto.

CHAPTER X.

Moreover, We confer upon this magistrate the rank of *spectabile*, which is enjoyed by all Proconsuls; appeals from his decisions shall be heard by Your Excellency along with the Most Glorious Quaestor of Our Imperial Palace, in the form and according to the procedure of consultations. But when, in Cappadocia, any case where property to the value of five hundred *aurei* is involved is suspended by appeal, even though it may have been determined by a judge appointed by Us, or by some other magistrate, who, however, is not of *spectabile* rank, the Proconsul himself must hear and decide it, according to the practice of the Imperial Consistory instead of the Imperial Audience-Chamber. We grant him this privilege, and thereby invest his magistracy with greater dignity than any which an official of this kind has hitherto obtained in Cappadocia.

The Proconsul must be just, a man of high principles, and have nothing before his eyes but Our service and compliance with the law, being aware that if he observes strictly what We enjoin upon him, he will hold his office for a long time, and afterwards deserve promotion to a more important one. But if he should neglect Our orders, and not treat Ourselves and the law with proper respect, or permit himself to be influenced by powerful persons, he shall immediately lose the authority with which We have invested him, and be considered as guilty, and unworthy of Our esteem.

CHAPTER XI.

This magistrate must punish with severity the crimes of adultery, the rape of virgins, fraud committed with the expectation of gain, and homicide, in such a way as to restrain the majority of persons by the punishment of a few. The law confers upon him the right to search for criminals with this end in view; for this is not ordinary humanity, but the highest degree of that virtue, where many are rendered safe by the castigation of a small number. If this official should favor anyone accused of crime on account of some office which he holds, or his civil or sacerdotal rank, or should endeavor to release him from liability under any other pretext, he is hereby notified that he will incur Our indignation. For no one can rely upon his own influence, and set up a defence which has no connection with the crime of which another is accused, in order to enable the latter to escape the severity of the law. And where anyone makes a defence of this kind, and the Proconsul admits it, there is every reason that he should incur the same penalty as the guilty party, since there is no distinction between the commission of an offence and a desire to release the offender from the hands of the law.

(1) A notice is appended to the present law fixing the emoluments that the Proconsul and his subordinates shall receive from the public, as well as what he will be obliged to pay for his commissions, and what will be due to the household of Our August and Pious Consort. He shall pay the latter, in consideration of the three jurisdictions entrusted to him, fifty pounds of gold, the same amount which has been customary up to the present time.

(2) And (as We have frequently stated) the Proconsul must govern Our subjects uprightly, as it is for this reason that We have taken so much pains, performed so much labor, incurred so much expense, and undertaken such great wars, in consequence of which God has not only granted Us the enjoyment of peace and the subjugation of the Vandals, the Alani, and the Moors, as well as enabled Us to recover all Africa and Sicily, but has also inspired Us with the hope of again uniting to Our dominions the other countries which the Romans lost by their negligence, after they had extended the boundaries of their Empire to the shores of both oceans, which countries We shall now, with Divine aid, hasten to restore to a better condition. Nor do We hesitate to encounter any difficulties, no matter how great they may be, in the pursuance of this object; and We shall undergo vigils, abstinence, and other privations, even beyond what can be endured by human nature, in order to promote the welfare of Our subjects. The Proconsul must constantly peruse Our instructions, which We shall give him with the commissions of his office, as We have previously stated; and if he complies with them scrupulously, he will show himself to be entitled to admiration and in every respect worthy of Our Empire.

EPILOGUE.

When the provisions of this law have been communicated to Your Excellency, you will deliver to the Proconsul the emoluments which We have allotted to him. His authority will be so great that many persons aspiring to the honor and distinction which We bestow upon him will be anxious to obtain his office.

TITLE X.

CONCERNING THE DIVISION OF ARMENIA INTO FOUR JURISDICTIONS.

THIRTY-FIRST NEW CONSTITUTION.

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

PREFACE.

While there are certain matters which, being mingled in confusion are, nevertheless, susceptible of proper adjustment, there are many others which though separate are deemed disgraceful, even though this may not actually be the case; for, being without elegance, they still are not absolutely devoid of refinement, or are considered disarranged and discomposed, although they are in reality clear and distinct. As this observation applies to Armenia, We have thought that this country should be regulated and brought into harmony, in order that We might the better render its condition more stable, impart greater strength to its government, and establish better order within its territory.

CHAPTER I.

Hence We divide Armenia into four provinces, one of which shall be called Interior, and shall have for its capital a city which bears Our name, and which formerly was called Bazanis or Leontopolis; and We honor this province, which was formerly governed by the magnificent Acatius, with a Proconsulship. The magistrate appointed shall be of *spectabilis* rank, and be invested with all the honors pertaining to his office. For We bestow upon him the consular robe, as well as other insignia, and include in his jurisdiction the City of Theodosiopolis, which already belonged to it, Satala, Nicopolis, Colonea (as it was formerly called), which We have taken from Armenia, Trapezunte, and Cerasunte, which belonged to what was originally Polemoniac Pontus, all of which cities were formerly governed partly by an illustrious provincial Governor, and partly by another magistrate. Thus Interior Armenia will include seven cities and the territory dependent upon the same.

(1) We order Second Armenia to be formed from what was previously called the First, and that its capital shall be Sebastea. The cities of which this province is composed are Sebastopol, which it already had; Commana, which belonged Polemoniac Pontus; Zela, which was taken from the Hellespont, and also Brisa. This province will therefore include five cities under the jurisdiction of a Governor whose authority shall not be diminished, and whose rank shall remain the same.

(2) In the next place, We form Third Armenia out of the territory of which the Second was composed, the capital of which is Melitena, a remarkable city situated in a fertile country possessing an agreeable climate, and not far distant from the river Euphrates. We have thought proper by the present law to give this province a magistrate of *spectabilis* rank, who shall be styled the Justinianian Count, to whom shall be allotted the salary of seven hundred *solidi*; seventy-two *solidi* shall be paid to his assessor, and three hundred and sixty to the members of his court; and, in addition, We grant him all the attributes attaching to an office of this kind. Those who are appointed members of this court shall perform the same duties as before, and shall be specially charged with the levy of taxes; and the Court shall bear the name of Comitian, and be invested with all the privileges which it previously enjoyed. In accordance with this arrangement, Third Armenia will include the six cities which belonged to Second Armenia; that is to say, Area, Arabissum, Ariarsathea, Comana (which is also

called Chrusa) and Cucusa, which makes the six cities which the province formerly had.

(3) We now constitute Fourth Armenia, which was not originally included in the province, but was composed of several nations with barbarous names, such as those of Trophsena, Anzethena, Ophena, Astesena, and Balabithena, which were governed by satraps (the name of this magistrate, however, is not Roman, and was not introduced by Our ancestors, but was borrowed from a foreign Empire). We establish in this province of Fourth Armenia a government which shall be entrusted to a civil magistrate, to whose jurisdiction We add the City of the Martyropolitani, and the fortified town of Cithariza. This government shall belong to the class of ordinary consular magistracies, and We decree that two of the magistrates having jurisdiction over the four provinces of Armenia, that is to say, the Proconsul, who will govern First Armenia, and the Count who will govern Third Armenia, shall be *spectabiles*; while the two others, who will be placed in charge of Second and Fourth Armenia, shall only possess the rank of ordinary magistrates.

In cases where the value of the property involved is less than five hundred *solidi*, We desire that appeals taken from these provinces, instead of being brought to this city, shall be sent to the nearest *spectabile* magistrate. Hence appeals taken in Second Armenia, of which Sebastea is the capital, shall be decided by the Proconsul of First Armenia; and those below the aforesaid value taken in Fourth Armenia shall be heard and determined by the Count of Third Armenia, who will fix his residence at Melitena.

CHAPTER II.

These matters having been in this way attended to by Us, We think it advisable that a man should be appointed for the government of First Armenia, who, on account of his rank and the eminence of his services towards Us, may be worthy of the office. Hence, as We are aware that the most magnificent Thomas has already exercised authority in Armenia, and besides is an excellent man who has always served Us faithfully, and is still in Our service, We intend to promote him to this office, and he shall not merely be charged with the government of First Armenia, but shall also execute in the other provinces the orders which We shall communicate to him in Our Imperial instructions, which will inform him of the way in which he should act with reference to their administration.

(1) We desire that, so far as ecclesiastical affairs are concerned, everything shall (as We have frequently stated) remain in its former condition, and that no change shall take place either in the law governing archbishops, or in that regulating ordinations. Ecclesiastics who have already been ordained shall, as formerly, retain the authority conferred by their ordination, and the former metropolitans shall retain theirs, for no innovation whatever shall be made in matters of this kind.

CHAPTER III.

We have already declared that the Count of Third Armenia is invested by Us not only with civil but with military jurisdiction. The soldiers stationed in that province must obey his orders, and he shall have the power to summon them in his own name, to make deductions from their pay, and to inflict punishment upon them when they act improperly; and he must not, under any circumstances, permit them to injure Our subjects.

When, however, the soldiers commit any illegal act, he must prosecute them like any other criminals, and he will have the same control over them as is conferred upon military commanders. We place under his jurisdiction all the military forces subject to the Counts of Isauria and Pacatian Phrygia and the Prsetors of Lycaonia, Pisidia, and Thrace; and, like them, he will have one court for the despatch of civil business, absolute authority over the army, and supreme jurisdiction over soldiers as well as all others, just as if he held but one office.

He must also take measures to prevent the perpetration of crimes in his province, and suppress those which come to his knowledge; he shall not be turned aside from his duty through the influence of any person in his province, whether he be a civilian, a soldier, or some one

attached to the Imperial domain; but We desire him to maintain Our subjects in a just and perpetual peace, and see that Our laws are not brought into contempt by the acts of any persons whomsoever.

EPILOGUE.

Your Excellency will see that what We have been pleased to decree with reference to the division of Armenia into four provinces, and especially that part of it relating to the Third—on account of which We have enacted the present law—is scrupulously observed. The various annual salaries which We have ordered to be paid to these magistrates shall be given to them, in accordance with the special instructions communicated to you.

TITLE XL.

NO ONE SHALL RETAIN THE LAND OF A FARMER GIVEN BY WAY OF SECURITY FOR A LOAN, NOR SHALL CREDITORS RECEIVE EXCESSIVE INTEREST FROM FARMERS.

THIRTY-SECOND NEW CONSTITUTION.

The Emperor Justinian to Agerochius, Most Illustrious Governor of Emimons in Thrace.

An evil greater than excessive impiety and avarice exists, which We consider necessary to remedy by a general law, that shall be applicable not only for the present, but for all time to come. For We have ascertained that certain persons in the province which you govern have not hesitated, when there was a scarcity of grain, to lend a small amount of seed to farmers, in order to obtain possession of their land, the consequence of which is that the majority of the unfortunate farmers have been obliged to take to flight; that many have perished from hunger; and that a horrible contagious disease, not less terrible than the invasion of the barbarians, has been added to their other misfortunes.

CHAPTER I.

Therefore We order that, where persons who have lent farmers any quantity of dried fruit, and have received from them security for their loans, they shall return said security without being able to retain the land of the debtors, under the pretext of such loans, whether the agreement was reduced to writing or not; that creditors shall only be authorized to take, by way of interest, the eighth part of a measure annually for each measure furnished, where dried fruit has been lent; or one *siliqua* a year for each *aureus*, where the loan is of money.

Moreover, creditors shall, in the future, be content with the said eighth part of a measure annually for every measure lent, or with one *siliqua* annually for every *aureus* lent, no matter what may be the amount of the loan. They shall be compelled to return everything which they have taken in pledge, whether it be land or other property of the debtor, for instance, cattle, sheep, or slaves.

This provision of the present law affords everyone an example of humanity and forbearance, and, at the same time, provides for the necessities of indigent debtors and the interests of creditors.

EPILOGUE.

Your Illustrious Highness will take measures to have this constitution carried into effect, and every creditor is hereby notified that if he dares to do anything contrary to its provisions, he will be deprived of the right to recover what he has loaned, and he who has sustained the injury shall be compensated, either by being released from liability, or by knowing that his creditor has lost his property.

Given at Constantinople, on the fifteenth of the *Kalends* of July, during the Consulate of Belisarius.

TITLE XII.

CONCERNING THOSE WHO MAKE LOANS TO FARMERS.

THIRTY-THIRD NEW CONSTITUTION.

The Emperor Justinian to Dominicus, Prastorian Prefect of Illyria.

We have promulgated a law for the purpose of suppressing the avarice of creditors, who, taking advantage of the prevailing distress, acquire the lands of unfortunate farmers, and seize all their property on account of the little grain which they have furnished them; and this law, at first published in all the provinces of Thrace, We now communicate to all those of Illyria. We order that a copy of it shall be attached to the present constitution, in order that not only private individuals may be certain that its provisions are applicable not only to them, but also to soldiers who rely upon their superior influence.

Your Highness is notified that this law is applicable to the inhabitants of the provinces, to soldiers, and to all officials without any exception, and We address it to you in order to warn soldiers who may think that they are not bound to comply with it, that in case of its violation, they will be deprived of their offices, reduced to the condition of private citizens, and subjected to the penalties which We have prescribed by the preceding law.

TITLE XIII.

NO ONE WHO HAS LENT MONEY TO A FARMER SHALL RETAIN HIS LAND WHICH HAS BEEN GIVEN AS SECURITY, AND WHAT RATE OF INTEREST CREDITORS ARE ALLOWED TO RECEIVE FROM FARMERS.

THIRTY-FOURTH NEW CONSTITUTION.

The Same Emperor to Agerochius, Most Illustrious Governor of Emimons in Thrace.

We have considered it advisable to correct a most atrocious and inhuman abuse which is far worse than any act of impiety or avarice, and administer a remedy applicable to all persons, not only in this present time of necessity, but throughout all future ages; for it has come to Our ears that certain persons, in the province which you govern, being induced by avarice to take advantage of the public distress, and, having drawn up agreements bearing interest, by which they loaned a small amount of grain, have seized the lands of the debtors, and that, for this reason, some farmers have fled and concealed themselves, others have died of starvation, and pestilence, not less terrible than a barbarian invasion, has, in consequence of the failure of the crops, afflicted the people.

CHAPTER I.

Hence We order that all creditors of this kind, no matter what may be the value of the articles which they have loaned, or whether they consist of wheat, barley, or other grain, or dried fruits, shall hereafter be entitled to receive annual interest on such articles at the rate of the eighth part of a measure for each measure furnished, and must return to the farmers the lands which they have taken in pledge, without being, under any circumstances, permitted to hold them under the pretext of a loan at interest, whether the obligation has been committed to writing or not.

Where the creditor has lent money, the debtor shall not be required to pay him any more interest on the same than one *siliqua* annually for each *solidus*.

We extend to all Our subjects the benefit of this salutary law, which shall be observed in every respect now, as well as in the future. Thus, as We have just said, creditors who have lent wheat, barley, or other grain at interest, shall receive annually the eighth of a measure for each measure, or a *siliqua* for each *solidus* furnished, according to the nature of the article in question; and they shall return to their debtors the lands or other property such as cattle, sheep, and slaves, which they have taken by way of pledge.

This law shall apply to all Our subjects, for it is humane and just, it "relieves the poor, and

affords adequate compensation to creditors.

EPILOGUE.

Your Highness shall hasten to put this law into execution throughout the entire province subject to your government. Creditors are notified that if they should violate it in any way, they will lose the right to collect what they have lent; and debtors will have the consolation of knowing that they are discharged from liability for their obligations, and that their avaricious creditors have lost their property.

TITLE XIV.

CONCERNING THE ASSISTANTS OF THE QUAESTOR.

THIRTY-FIFTH NEW CONSTITUTION.

This Novel Does Not Exist in Greek, and I Have Copied Here the Epitome of the Same Which I Found in the Novels of Julian.

To the twenty-six assistants. You ask whether it is permissible to substitute for the officials called secretaries of the Quaestor experienced men whom the Quaestor may appoint temporarily, in the presence of the Holy Gospels. The persons substituted as aforesaid shall pay those whose places they occupy the sum of a hundred *solidi*; the officers of these three ranks, that is to say, those next in order to the employees of the Bureau of Memorials, and the two other Bureaus, even though they may not be included among the twenty-six assistants, shall have the same right to substitute others in their stead. Hence the assistants of the employees most closely connected with the Imperial Bureaus shall have the right to sell their employments, provided the amount received is not above a hundred *solidi*, and the substitute is approved by the Quaestor.

This Constitution expressly confers this privilege upon Theodosius, Epictetus, Quirillus, Sebastian, and Perigenes. If one of the twenty-six assistants should die, his heir shall, with the consent of the Quaestor, discharge the duties of his office, provided he pays a hundred *solidi*. All the children of the deceased, even though they may not be the heirs of their father, shall enjoy the same privilege.

Given during the Consulate of Belisarius.

TITLE XV.

CONCERNING THE SUCCESSORS OF THOSE WHO RESIDE IN AFRICA.

THIRTY-SIXTH NEW CONSTITUTION.

(1) Africans can, during the term of five years, recover any property of which they have been deprived in person, or which was taken from their fathers, mothers, grandparents, or their collateral relatives as far as the third degree, provided this is not barred by legal prescription.

(2) They shall be required to prove their parentage on both sides.

(3) All Africans are subject to the Roman laws.

TITLE XVI.

CONCERNING THE CHURCHES OF AFRICA.

THIRTY-SEVENTH NEW CONSTITUTION.

Rules concerning the Venerated Church, etc. The churches of Africa shall be entitled to the property of which they were deprived by the Arians, and shall recover it without being interfered with by anyone, but they must pay any public or private claims that may be due.

A heretic shall not confer the rite of baptism, or discharge the duties of a public office, and a catechumen shall not circumcise anyone. No heretic shall, under any circumstances, have a house of worship, or a place of prayer. The Carthaginian Church shall enjoy all the privileges

granted by the Code to other churches in general. Anyone who takes refuge in a Carthaginian church shall be immune from arrest, unless he has committed homicide, the rape of a virgin, or has been guilty of violence towards a Christian. No one shall take from the churches of Africa any objects which have been donated by persons in gratitude for their restoration to health. This rule shall be generally observed with reference to all churches.

TITLE XVII.

CONCERNING DECURIONS AND THEIR CHILDREN. THIRTY-EIGHTH NEW CONSTITUTION.

The Emperor Justinian to John, Praetorian Prefect of the East.

Those who governed the Empire before Us thought that it was necessary, as in the case of this Royal City, to appoint in every town a body of men of noble rank, and form them into a Senate or *Curia*, by means of which the public business could be regularly conducted. This arrangement proved to be eminently successful, and the order flourished to such an extent that there are many families of decurions, and on account of their large numbers, none of them found the duties of his office intolerable; for where an employment is divided among several persons, the burden is hardly felt by those who sustain it. But when the decurions began to withdraw from the *curia*, and found opportunities to be released from its requirements, the *curiae* were, under innumerable pretexts, reduced in importance; so if they still preserved any private property, that which was public and common property was greatly diminished, and there remained only a very small number of persons to perform the official duties, and the pecuniary resources of the latter were constantly lessened; the cities, in their turn, were subjected to loss; the duties of the *curia* were discharged by unprincipled men who were styled "avengers," and the *curia* being thus deprived of usefulness, the State, in consequence, became afflicted with abuses and all kinds of injustice.

(1) After having frequently and diligently considered this subject, We have thought it advisable to remedy it. And We do so with a degree of ardor proportionate to the skill displayed by the decurions in evading laws justly promulgated, and in defrauding the Treasury. For when they saw that they were legally compelled to preserve a fourth of their property for the benefit of the *curia*, they began to squander their fortunes to such an extent that they rendered themselves insolvent; and so far from leaving the *curia* that portion of their estates which was prescribed by law, they only left it their poverty. In order to deprive the *curia* of their personal services, they invented the most wicked expedient that could be imagined, for the decurions refrained from contracting legitimate marriages, and preferred to remain without children than to render themselves useful to their families and their *curias*.

Again, a law enacted by their agency has existed for a long time, which enabled them to dispose of their property gratuitously, without being obliged to obtain a decree for that purpose, and which provided that they could not sell their property except by virtue of a decree. Hence, in order to dispose of their property in this way, decurions were compelled to obtain a decree; but they could give it away as a donation without doing this, and in consequence, the estates of decurions were distributed among many persons, without their *curiae* receiving anything. Thus had anyone investigated this subject, he would have found the *curiae* of Our Empire entirely stripped of both men and property, or having very few members, and almost no property whatever.

(2) Therefore We formerly promulgated the constitutions by which We directed that sales, simple donations, and every act by which the immovable property of decurions was transferred should, in pursuance of a decree, be subject to the observance of certain formalities. Hence as decurions were accustomed to make donations under false pretenses, We forbade them by a second law to make any simple donations in favor of any person whomsoever, but We made an exception of those given in consideration of marriage; the reason for which was that these are not true donations, but a species of contracts entered into to secure maintenance for any children which may be born, which is a matter of special

interest to Us, especially where decurions are concerned.

After having enacted this second law, and ascertained that many frauds were still being committed, We have promulgated the third, which authorizes the *curia* to succeed to three-twelfths of the estate of each decurion, whether the latter leaves or does not leave any children to take his place; and which does not permit anyone to bequeath less than that sum to his *curia*; to use any artifice for the purpose of fraud or to diminish the said three-twelfths in any way whatsoever; and whether the son of the deceased decurion is a member of the same, or whether he is not, the *curia* shall still be entitled to this amount.

(3) We did not even confine Ourselves to this, for We have in addition decreed that women shall be obliged to give a certain part of their property for their own appointment, so that, as We have previously stated, the *curia* shall not, for any reason whatsoever, have a fourth of the property of the decurion, which should be reserved for its benefit, diminished. We have also forbidden decurions to make many and excessive gifts, and We do not permit them to be released from the obligations of their *curia*, unless to enable them to accept offices of great importance, for instance, those of the patriciate, consulate, or civil or military prefecture; and as the law states that prefectures are offices involving the command of the army, where anyone is administering the affairs of a prefecture, whether he despatches civil business, or issues commands to soldiers, he is, by virtue of Our law, exempt from curial requirements, all other exceptions being annulled. We also directed that honorary distinctions, such, for instance, as those attached to the prefecture and the command of the army, shall not release those who obtained them from curial obligations.

These are the provisions which We formerly decreed, and now confirm, together with many others which it will be permissible to disregard. We wish, however, that the different pragmatic sanctions, by virtue of which We have released certain persons, by name, from curial duties, shall remain in force; and We also desire this law to become operative from the day of the eleventh indiction, recently expired, the time at which We first determined to enact it.

(4) But, as We have observed that there are some decurions who are so hostile to their own country that they prefer to convey their property to strangers, rather than to leave the fourth part of it to the *curia*, We have deemed it necessary by means of this law to increase this amount when decurions have left no children.

CHAPTER I.

Therefore, if after the promulgation of this law a decurion should not leave any issue either male or female, he shall be compelled to bequeath all his estate to the *curia* with the exception of one-fourth of the same, of which he can make any disposition which he may desire, as the *curia* will take the place of one or several children; that is to say, the entire city will, so far as he is concerned, represent the children and heirs of his good reputation and his immortal memory. When any decurion has no legitimate children, but only natural ones, he shall be permitted to appoint them as heirs, subject to the rights of the *curia*; and, under these circumstances, their appointment will be equivalent to a donation, without there being any necessity to have recourse to the ancient laws, and without the decurion being obliged, during his lifetime, to make a formal donation; but as soon as his natural children become members of the *curia*, and his heirs, they will be entitled to nine-twelfths of the estate of their father, in conformity to the distribution that he made among them. He will do still better if he leaves them his entire property. In every instance, however, he will be obliged to leave them nine-twelfths, and he is hereby notified that if he bequeaths them less, the amount lacking to make up this share will be supplied by the law.

The children will be required to discharge curial functions in order to give them a right to a share of their father's estate, and if some of them should be willing to do this, and others refuse, the share of the latter shall accrue to the former; and even when all the natural children are unwilling to perform curial duties, the *curia* will be entitled to nine-twelfths of the estate,

just as if there were no children.

CHAPTER II.

When a decurion is silent as to the disposition of his estate, and leaves no legitimate children, a fourth of it shall go to his heirs at law; and if he leaves any natural children, who are willing to perform curial functions, they shall be admitted to the succession, and nine-twelfths of their father's estate shall go to one or more among them who are willing to assume the obligations of the *curia*, whether all, or only a few, consent to discharge the duties of members of the same.

Where a decurion has had children by a female slave, and has emancipated them either during his lifetime or by his will, if he has offered them to the *curia*, or if they have manifested a desire to discharge curial functions, and have been admitted to do so, they shall be entitled to nine-twelfths of their father's estate, as We have just provided in the case of free natural children. For where a decurion dies either testate or intestate, We desire those of his children who become members of his *curia* to receive nine-twelfths of his estate, but if he should only manumit his children by a female slave, without offering them to the *curia*, and all of them, or one, or only a few, should be willing to discharge its duties, then nine-twelfths of his property shall go to the one or more of them who become members of the *curia*. But where none of the said natural children is willing to assume the curial obligations, or should not be offered by their father for this purpose, in this case, the *curia* shall be entitled to the nine-twelfths of the estate.

CHAPTER III.

But if a decurion should leave any legitimate children, then in order that the operation of the law may be perfect, and the *curia* derive the greatest benefit possible, it must be determined whether the children are males or females, or both were included, so far as the obligations to the *curia* are concerned. If the deceased left only male children, or male grandchildren by a predeceased son, he will be required at his death to divide nine-twelfths of his estate among all of them; and he can make this distribution in any way that he pleases, provided he does not violate the law having reference to inofficious testaments (cases of ingratitude being excepted). For We do not wish to repeal any laws enacted on this subject, but, on the other hand, We maintain them in their entirety, by directing that nine-twelfths of the paternal estate shall be divided among the children who are not ungrateful. In this way each one of them will discharge the curial duties of his father, who can then only dispose of three-twelfths of his estate for the benefit of a stranger.

CHAPTER IV.

Where only married women, who are the children of a decurion, and are the wives of other decurions of the same city exist, the testator will be permitted to divide all his estate among them or only nine-twelfths of the same as he pleases, always without violating the provisions of the law relating to intestate successions.

Where some of the daughters of a decurion are married to decurions, and others to men who do not occupy this position, the father will be required to leave nine-twelfths of his estate to those who are the wives of decurions, which shall be divided among them in the same way that he desired, and the remainder of his property shall go to those of his daughters who are not the wives of decurions, or to other heirs; the portion established by law always being preserved for the former.

When any of the daughters of the decurion are still unmarried, they shall be heirs to nine-twelfths of his estate conditionally, until they are actually married to decurions of the same town. If they refuse to marry decurions, or if their father requested them to do so and they do not consent, nine-twelfths of the estate shall go to the *curia* of the city, and three-twelfths shall be distributed among them all, as prescribed by law, after the amount of their dowries has been deducted.

CHAPTER V.

Where there are children of both sexes, the males shall be entitled to half of the estate of their father, and the females to the other half, but not in its entirety, as they will be obliged to share the fourth part of it with their brothers, who are members of the *curia*, provided one or more of them are not the wives of decurions; for, under these circumstances, if the decurions whom they have married are members of their father's *curia*, they will be released from the obligations of giving a fourth of their father's estate to the *curia*, as they, through the medium of their husbands, are considered liable to curial obligations as long as they live.

We have deemed it necessary to establish these regulations, not because We desire to deprive decurions of the liberty of disposing of their estates, but to the end that the *curias* of towns may not be exposed to a lack of these officials, or become impoverished by dishonorable means. We have learned that one of the methods of accomplishing this is for decurions to contract unlawful marriages with a view to having illegitimate children, and thus being enabled to leave their estates to strangers, thereby defrauding the *curia* out of the share to which it is entitled.

CHAPTER VI.

We have ascertained from experience that there are many persons who state, to the prejudice of the *curia*, that their mother belongs to the condition of Treasury employees, or to that of inspectors of highways, or to that of those entitled to wear purple, or is of some other

privileged status, seeking thereby to evade what is due to the *curia*. Hence We order that no artifice of this kind shall hereafter be practiced against the public interests. And We desire, by all means, that the children of women married to a decurion shall themselves belong to the curial condition, even though that of their mother may belong to any of the classes above mentioned. For there are comparatively few decurions in Our Empire, while there are innumerable Treasury officials, inspectors of highways, and magistrates decorated with the purple; and it is better to increase the number of decurions, which is very small in certain cities, than to add a multitude of officials to those who already exist. Hence, if certain persons alleging the condition of their mother should not attempt, or have already attempted to withdraw from the curial condition, after the tenth indiction which has recently expired, any orders emanating from Our court or elsewhere, which may have authorized this, shall be void, and such persons shall be reinstated as decurions. Where, however, anyone has been freed from curial obligations before the expiration of the tenth indiction, We desire that his release shall be permanent.

EXCEPTION.

We, however, except from this Constitution Theodosius and his brothers and the sons of John whose surname is Xescon, although they were born of fathers who were decurions, and were placed in the class of officials of the Imperial Treasury before the tenth indiction, and We hereby annul everything that has been decreed with reference to their liberation. For We do not wish them to enjoy the benefit of this law, and desire that they remain decurions; that they discharge the functions of that office; and that they shall not profit by anything promulgated in their favor either from Our palace or elsewhere.

EPILOGUE.

Therefore Your Excellency will hasten to obey and cause to be executed the law which We have just enacted for the benefit of towns and *cwriss*, and anyone who presumes to violate this law shall incur a penalty of twenty pounds of gold.

Given at Constantinople, on the fifteenth of the *Kalends* of March, eleventh indiction, the seventh year after the Consulate of Basilius.

TITLE XVIII.

CONCERNING RESTITUTIONS, AND WOMEN WHO HAVE CHILDREN AFTER THE ELEVENTH MONTH FROM THE DEATH OF THEIR HUSBANDS.

THIRTY-NINTH NEW CONSTITUTION.

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

PREFACE.

The course and variety of human nature requires attention from time to time, and it cannot be properly maintained (although its first principles may be unchangeable) unless what specially interferes with it is removed, and it is allowed to proceed in tranquillity and peace in conformity to the law. Considerations of this kind have impelled Us to promulgate the present Constitution, for We are aware that, for a long time, doubts have existed as to the transfer of property left under a trust, and when the person charged with them has consented to the hypothecation of the property, the question arose whether he had been able to encumber what was liable to transfer, or only what was his own, a distinction being made between the words used by the deceased; as the case was held to be different when he directed the simple transfer of property acquired after the death of the trustee, from that where he had expressly provided that his entire estate, with the sole exception of the legitimate fourth, should be delivered.

Hence the rule was established that the private creditors of the trustee could bring suit to recover the property left in trust, and could employ several different means of obtaining possession where the parties were insolvent.

We have recently remedied this evil by the enactment of a law which forbids the alienation or encumbrance of property left under a trust, providing that it shall follow the fortunes of the trustee; that is to say, that it cannot legally come into the hands of anyone, but shall always pass to him to whom it ought to be delivered. This law, although somewhat ancient, and constantly observed in judicial proceedings, confirms what We have said in the beginning; still time has shown (as almost always happens) that it is susceptible of amendment, for both men and women who have been injured have applied to Us for relief.

Among other instances, where a husband was dead, his wife claimed both her dowry and a share of the ante-nuptial donation, to which she was entitled by his death; and, on the other hand, the husband's brother, basing his claim on the will of the common father, demanded the estate of the deceased, and seized the woman's dowry, giving a reason for this that his brother had squandered it, and that there was property forming part of the paternal estate in the possession of the widow, of which the common father had ordered delivery to be made to him, in case his brother did not leave any children. He persisted in claiming the entire estate, and demanded the execution of the law having reference to such cases; the woman, however, in her turn, very justly complained that it was inequitable that her brother should, by means of fraud, become possessed of all her dowry, and alleged that if she had happened to die first, her husband would have obtained the ownership of the property, in accordance with the marriage contract; and that it was not proper that, if her husband died without knowing what he was obliged to deliver, she should be responsible; and a decision was rendered upon this point which We believe to be just.

In another instance, a husband had recourse to Us, stating that the estate of his wife had been transferred by substitution to her children, and that she had directed a very small amount to be reserved for herself, and thus he ran great risk of having his own property rendered liable for the restitution of the dowry and the dotal profits agreed upon in the contract relating to the ante-nuptial donation, without his being permitted to retain any of it whatever.

We have very properly been moved by these complaints, and considered it more advisable to amend Our laws than to expose Our subjects to risk, above all where the marriage state is concerned, which no other condition more beneficial to mankind exists as it affords them the

sole means of procreation.

CHAPTER I.

WHERE A MAN APPOINTS ONE OF HIS CHILDREN OR A STRANGER HIS HEIR.

For the reasons above mentioned, We publish the present law, without changing any of the provisions which We have formerly adopted; and the only change We make is that when anyone hereafter delivers property which he is charged to transfer, he can reserve from said property the lawful share of his children, who, instead of the fourth (for- We have amended this rule, as We do not approve of such a small amount), shall have the third or half of the estate, dependent upon their number; but if this legitimate share is not sufficient to provide for the dowry or ante-nuptial donation of the children of the trustee, he shall be allowed to reserve from the remainder of the property subject to delivery under the trust whatever may be necessary (in accordance with the rank and position of the parties interested), in order to make up the amount of the dowry or ante-nuptial donation.

We decree that the property mentioned in the marriage contract shall, by all means, be exempt from transfer under the trust, and that any property which has been substituted can be alienated or hypothecated on account of the marriage. And in case either a husband or wife is charged to deliver the property under the trust, if it is the husband, he shall be permitted to reserve the ante-nuptial donation, or the one given in consideration of marriage, without being obliged to surrender it; and if the wife is the trustee, she can, in the same way, deduct her dowry; for We prefer what is to the advantage of all to the special interest of individuals. This is the privilege which We have granted in favor of the deduction of ante-nuptial donations. For if exceptions to general hypothecations existed before Our reign (which certainly was not so advantageous), why should We not authorize a measure which, in cases involving gain through marriage, is still more beneficial?

(1) Therefore, what We order shall in the future only be available, and applicable to the delivery of property which takes place after the enactment of this law, for We do not permit any wrong to be done; so that where a woman has a dowry of trifling value, and afterwards learns of the existence of this law, or where a man has made an antenuptial donation of a small amount, and either of them desires to increase what he or she has given for the purpose of evading the said law, and by this means to obtain what they wish from the property left under a trust, We forbid such a fraudulent practice, and decree that the acts of persons wishing to make such an increase shall be invalid so far as any diminution of the trust is concerned, and that Our law shall remain inviolate for the future. This is the first chapter of the present law.

CHAPTER II.

CONCERNING A WOMAN WHO HAS A CHILD AFTER THE ELEVENTH MONTH.

Three constitutions promulgated by Our predecessors with reference to women who marry a second time before the year of mourning has expired, prescribe penalties for an act of this kind. We have also recently enacted a law with some amendments, and have touched upon this matter briefly in a certain part of Our legislation, but a most disgraceful occurrence occasionally takes place, which We are unwilling shall continue to exist during Our reign, and We have very properly decided that it must be corrected. The following is an example of this evil. A woman who had not been chaste during the lifetime of her husband brought forth a child before her year of mourning had elapsed, and more than eleven months after his death; under these circumstances it is not possible to say that the child belonged to the deceased, for conception does not extend for so protracted a period. And as one of the penalties of premature marriage is that the wife shall immediately lose both the usufruct and the ownership of the ante-nuptial donation bestowed upon her by her husband, the children injured by this extraordinary delivery of their mother have a right to claim the ante-nuptial donation given to her, and can also demand that she obtain nothing from the estate of the husband, whose memory she has been so ready to disgrace.

The woman answered (but how can We quote her words without blushing?) that she did not deserve to forfeit the ante-nuptial donation ; that she was well acquainted with the laws regulating legitimate marriage; that she had never contracted any other marriage than the first one; and that the child whom she had brought forth was only the result of her natural inclination to concupiscence. As there is no doubt that this woman who had abandoned herself to debauchery merited penalties ten thousand times more severe, she shall not be exempted from those to which she rendered herself liable; hence (for We come to the relief of the children of the deceased husband), We desire her to be subjected to the loss of the ante-nuptial donation, as legally provided in such cases with reference to women who marry before the term of mourning has expired. For if this law does not

release women from responsibility when they contract legitimate marriages, for the reason that it causes a suspicion to arise that they have hastened to contract a second marriage because of having been unduly intimate with their second husbands during the lifetime of those now dead, why should We leave this woman unpunished, when, in the first instance, there is merely a conjecture, but in the second unquestioned proof exists, and the offence is established beyond doubt by this most abominable of all births?

(1) Wherefore We decree that if a woman should bring forth a child before the term of her mourning has expired, so that there can be no doubt that it is not the issue of the first marriage, she shall, by all means, be deprived of the ante-nuptial donation (this applies both to the ownership and the usufruct of the same), and she shall also be subjected to all the other penalties, just as if she had contracted a legal marriage before the expiration of the year of mourning. For licentiousness should not enjoy more advantages than chastity, and the woman must be punished, and suffer the loss of the donation on account of her debauchery; and We establish this rule in order that women may not be induced to contract untimely marriages, or disgrace their former ones by still more wicked behavior.

EPILOGUE.

Your Highness will, by formal proclamation, communicate to all persons the matters which it has pleased Us to enact, and which are set forth in this law.

This constitution is addressed to John, Most Glorious Praetorian Prefect of the East, twice Consul and Patrician.

Given at Constantinople, on the *Kalends* of January, during the prefecture of Belisarius.

TITLE XIX.

THE CHURCH OF THE HOLY RESURRECTION CAN ALIENATE BUILDINGS BELONGING TO IT IN THE CITY IN WHICH IT IS SITUATED.

FORTIETH NEW CONSTITUTION.

The Same Emperor to Peter, Most Holy and Blessed Archbishop of Jerusalem.

PREFACE.

A law prohibiting the alienation of ecclesiastical property has already been promulgated by Us, which We desire to be observed and confirmed in every respect. But, as it is proper for Us to make provisions for all churches, We certainly should not neglect that of the Holy Resurrection, as well as of the place in which the Creator of the world allowed himself to suffer for the benefit of the human race. Therefore -We have considered it advisable to enact the present law, not for the purpose of repealing what We have formerly established, but in order to make a proper and necessary addition to what has already been adopted. For it is known to all persons that the Church of the Holy Resurrection receives and nourishes persons who resort to it from the entire world (of whom there is an immense number), and that enormous and incalculable expenses are incurred, to defray which its revenues are not sufficient, without a daily repetition of the miracles of Our Lord and Saviour Jesus Christ, who, with a very small quantity of bread, fed an innumerable concourse of persons. Hence it

is necessary to take measures to enable this church to obtain sufficient income to meet the expenses caused by the assemblage of such a vast multitude of believers.

(1) We have learned from Eusebius, at present priest and sacristan of the Most Holy Church of this city, who has just returned from Jerusalem, that he has greatly increased the income of that Most Holy Church by only employing means which are honorable and approved by God; and that he has been able, by the expenditure of three hundred and eighty pounds of gold, to obtain an income of thirty pounds of gold, more or less; to accomplish which he carefully collected money and induced the stewards of the holy church to borrow more; but that as now the creditors desire to be paid, he had devised another plan to satisfy them, and stated to Us that many persons attracted to Jerusalem through the desire of visiting the tomb of Our Lord wish to purchase buildings belonging to the Church with large sums of money, provided they were permitted to enjoy them without any risk, but that the authorities of the Church of the Holy Resurrection refuse to sell said buildings on account of their fear of the law which We promulgated with reference to the alienation of ecclesiastical property, although this would result in a great benefit to the Holy Church, and that there are persons who are willing to buy such property only for the term of fifty years.

This advantage is in fact much greater than can be expressed in words; for if, on the one hand, the Holy Church has been able, by the expenditure of three hundred and eighty pounds of gold to acquire property which yields thirty pounds of income, it will recover (which is something worthy of admiration) the original price of its investment in about thirteen years; and, on the other hand, the sale of the buildings referred to will only be for fifty years; and, besides, the property of the Church of the Resurrection consists of houses exposed to all manner of accidents, and may suddenly be destroyed by fire or some other casualty without leaving a trace of their former existence.

CHAPTER I.

These things have induced Us to enact the present law, which We have dedicated to God and the Church of the Resurrection, most holy of all churches, by which law We decree that former provisions relating to rural, ecclesiastical property (which We, under no circumstances, permit to be sold) shall continue to be observed, and We relax the rigor of this law only with reference to the alienation of the buildings above mentioned. For while We published the preceding constitution for the benefit of the Holy Churches, as We now perceive that it will be advantageous for the Church of the Holy Resurrection to alienate its property, We, by the present law, permit this to be done, giving it full permission and extending every security to both vendor and purchaser, presuming that the said buildings will subsequently revert to the church, and that those who buy them will, through their love of God, leave them to the church at the time of their death. Therefore the Holy Church will be permitted to dispose of the houses belonging to it, without having reason to fear the general law which forbids this kind of alienation, as it is subject to an exception which is more recent, and dispenses with the penalties imposed by the former constitution.

(1) The aforesaid church can, from this time forward, alienate its property, provided it will be to its advantage to do so; and all purchasers of the same, their heirs and successors, both now and hereafter, need have no apprehension of being deprived of the property, for the reason that by the present law they can make a purchase with confidence; for it is not just that they should suffer molestation on this account, or be liable to any accusation, damage or loss. Your Excellency undoubtedly may notify members of the venerable clergy that alienation of their buildings can be made, when you are satisfied that such an act will be advantageous; that the property sold is of comparatively trifling value; and what is to be obtained by the sale is better and more valuable. Thus the total amount of the purchase-money derived from sales made for fifty years will be available to pay what the creditors have advanced to enable the income which We have mentioned to be obtained. For if God, who is the Creator and Master of all mankind, has, in preference to other cities, granted to Jerusalem the privilege of His resurrection, We should, as far as possible, in imitation of God and His infinite miracles, give

to the church of this same city advantages over other cities, and cause it to enjoy the benefit of the present law, which We enact as a special favor to it, being, above all things, desirous of promoting its interests.

EPILOGUE.

As soon as this constitution is communicated by Us, it must be recorded in the Books of the Laws, and Your Holiness will publish it to all the inhabitants of Jerusalem. You must also promulgate the provisions which We have decreed for the benefit of the Holy Church of the Resurrection, venerated by the entire human race, provisions which We consecrate to God, whose extraordinary blessings conferred upon Us surpass those of Our predecessors.

This law is especially addressed to Peter, Most Holy and Blessed Archbishop of Jerusalem.

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

TITLE XX.

CONCERNING QUAESTORS, THAT IS TO SAY, PREFECTS OF THE ISLANDS.

FORTY-FIRST NEW CONSTITUTION.

This constitution creates a magnificent magistrate for the army with the title of Quaestor. For in ancient times there were two magistrates of this kind, of whom one remained near the sovereign, and the other was placed in command of the army. The present constitution fixes the amount of the salaries to which the Quaestor and his staff are entitled, and allows him a body of attendants resembling that of the Praetorian Prefect; namely, secretaries, custodians of acts, criers, recorders, torch-bearers, and all other officials of description. It also prescribes the manner in which the emoluments of soldiers who accompany the Quaestor to war, and of those who guard the frontiers, should be distributed. It subjects to his authority five provinces, that is to say Scythia, Mysia, Caria, all the Cyclades Islands, and all of Cyprus. It grants him the right to have a tribunal for the decision of cases, without anyone being permitted to evade his jurisdiction. It includes, in addition, a list of expenses.

This Constitution has been promulgated on the *Kalends* of June, during the twelfth indiction, after the Consulate of Belisarius.

TITLE XXI.

CONCERNING THE DEPOSITION OF ANTHIMIUS, SEVERUS, PETER, ZOARAS,
AND OTHERS.

FORTY-SECOND NEW CONSTITUTION.

In the Name of Our Lord Jesus Christ. The Emperor Caesar, Flavius, Justinian, Gothicus, Francicus, Germanicus, Anticus, Alanicus, Vandalicus, Africanus, Pious, Fortunate, Glorious, Victorious, Triumphant, Ever Augustus, to Mena, Most Holy and Blessed Archbishop and Universal Patriarch.

PREFACE.

By means of the present law, We undertake to dispose of a matter which not infrequently arises in the administration of public affairs. Whenever an ecclesiastical sentence has deposed any persons unworthy of the priesthood, and unfit to preside over the Holy Sees of the Church (such for instance as Nestorius, Eutyches, Arius, Mace-donius, Eunomius, and others who are not inferior to them in iniquity) , the government has always sustained the act of the ecclesiastics. In this manner both divine and human regulations unite in making decisions of this kind equitable. We are aware that a similar decree was promulgated against Anthimius, who was deposed from the See of this Royal City by Agapetus, of glorious memory, Pontiff of the most Holy Church of Ancient Rome, for the reason that he, in violation of all the rules of propriety, as well as in contravention of the sacred canons, had taken possession of the See, he being condemned by a general sentence of the Holy Pontiff above mentioned, and

afterwards by the Sacred Synod of this city.

Another reason for this was, that Anthimius had renounced the true dogmas of the Church, and spread his own doctrines in many places; had rejected various forms of purification while pretending adherence to the four Holy Councils, that is to say, that of the three hundred and eight fathers held at Nicsea, that of the hundred and fifty who met in this Fortunate City, that of the two hundred assembled at Ephesus, and that of the six hundred and thirty venerable Fathers convoked at Chalcedon. He refused to accept the dogmas of the Church, and rejected Our clemency and the pardon We offered him for his own safety; he declined to abandon the impious doctrines whose authors were condemned by the Holy Councils, and he even thought it proper to treat with contempt those who had sentenced him. From the time when he accepted dogmas not recognized by the Holy Church, he never returned to those which were true, although We have afforded him an opportunity for doing so, and have exerted every effort for the salvation of his soul.

CHAPTER I.

For all these reasons, and taking into consideration the sentence of deposition issued against Anthimius by the Holy Synod, on the ground that, without being authorized by the sacred canons of the Church, he had taken possession of the sacred Sees of this Imperial City, as well as because he had renounced the true faith, We have enacted the present law against him. We hereby forbid him to reside in this Fortunate City or its jurisdiction, or in any other large city whatsoever, ordering him to remain quiet, and to seek the society of those whom he considers worthy of it, without having any communication with Our other subjects, or attempting to imbue them with his prohibited dogmas to their ultimate destruction.

(1) We also confirm the sentence passed by all the Patriarchal or Pontifical Sees (with the concurrence of the monks) which anathematized Severus, who, in disobedience of the sacred decrees of the Church, accepted the See of the Holy Church of Antioch, and by doing so threw everything into confusion, and caused a general and abominable war to break out among the Holy Churches. Our predecessors pronounced the same curse against those who promote dissensions, while propagating rules and blasphemies at variance with the true dogmas; and at the same time against any person who adopts the abominable error of the impious heresiarchs Nestorius and Eutyches. These doctrines, although they may be considered to some extent antagonistic to one another, were devised with the same end in view, and were promulgated for the same purpose, namely, to promote the adoption of the provisions of Arius and Apollinarius, both of which,

in like manner, lead to the perdition of the soul, and anyone who accepts either of them will be equally to blame, and will render himself equally guilty of crime, no matter to which of these sects he may adhere.

(2) Therefore Severus shall remain subject to the anathema which the general, patriarchal, pontifical, and monastic assemblies of Our Empire have justly fulminated against him; he shall be expelled from the City of Antioch, and ejected from the See which he occupied the more irregularly, as he seized it while his predecessor was still living and dwelling among the Holy Churches, and drove away the ecclesiastics appointed to take his place. As Severus did not pay any attention to the proceedings taken against him, but, even while under the general anathema of the Orthodox and Catholic Church, he distributed throughout Our Empire a great number of blasphemous and abominable books, We hereby prohibit all Our subjects from having any of the same in their possession. And as it is not permitted to have possession of or copy the books of Nestorius (Our predecessors have included in this prohibition the lectures and the writings of Porphyry against the Christians) so, in like manner, no Christian shall have in his possession either the lectures or the writings of Severus, which are considered profane and contrary to the doctrines of the Catholic Church, and their possessors shall be required to burn them, if they do not desire to expose themselves to great risks. We forbid the copying of the books of Severus by any writer, either on account of the beauty of his chirography or the rapidity of his execution, and everyone is notified that if he does this, the

penalty for the offence shall be the amputation of his hand, for We do not wish that the blasphemy contained in these books shall be transmitted to future ages.

(3) We forbid him to enter this Royal City, or its territory, or any other large town, and direct him to retire to some solitary place, to remain there in silence, and not attempt to corrupt others, or induce them to be guilty of blasphemy, or to continue to invent new theories contrary to the true dogmas, and by this means to constantly excite dissension among the Holy Churches.

CHAPTER II.

The Imperial Authority also confirms the anathema of Peter, Bishop of Apamea, who also was deposed at the same time as Severus, and for the same reason, and adopts as its own the decree issued against him. For anyone who has been placed under a general anathema shall remain subject thereto, and the sentence of the most holy ecclesiastics passed upon him is hereby ratified. We do not permit him to reside in this Royal City or its territory, or in any of the principal cities, but in one of those which has adopted his error, and which is situated at the greatest distance, and there he must live in retirement. For it is more beneficial that persons of this kind should remain concealed than be seen, as when they are unknown they only injure themselves; but when they publish their dogmas to the world, they give occasion for the perdition of many weak persons, which, under no circumstances, should take place among the Christian flock and the orthodox people of God, and is not permitted by Imperial authority.

CHAPTER III.

Zoaras having also been subjected to anathema by the judgment of the most reverend bishops (a very light penalty for such serious offences), whose decisions are always equitable, and having been denounced by them, he will be liable to the punishment which, as is well known, has been inflicted upon Anthimius, Severus, and Peter. Hence the government confirms this sentence, which places him in the number of persons who have been anathematized; denounces him as schismatic, and expels him from this Royal City and its territory, absolutely forbidding him to reside in other cities. As the result of this, Zoaras shall reside and meditate in company with other blasphemers, who have just been punished and condemned to exile. If, indeed, there is anything else included in the sentence of deposition and anathema rendered by the Most Holy Bishops against the persons aforesaid than what We decree, We give it increased force, extend its time, and ratify it by Our Imperial Constitution, just as if it had emanated from the government itself.

If any of those against whom this constitution has been enacted should oppose it, he is hereby notified that he will be liable both to the penalties prescribed by the Imperial laws, and to punishment of even greater severity.

(1) We forbid all persons to attempt to destroy the Catholic Church of God (either by means of the doctrine of the Nestorian heresy, through the foolish doctrine of Eutyches, or the blasphemy of Severus—which embraces rules similar to theirs—or the tenets of others who follow them), to excite sedition among the most holy churches, or enter into any discussion concerning the true faith; but We direct them to keep silence on these subjects, and not call others together with a view to their conversion, or receive them if they come to them voluntarily; or presume to baptize them in their sect, or to defile the Holy Communion by administering it to others; or to explain forbidden doctrines either in this Imperial City or elsewhere; and if anyone should be guilty of such conduct he shall run the risk of punishment.

(2) We forbid all Our subjects to entertain persons who have been anathematized; the latter shall be expelled from cities where they have caused trouble, and all persons are notified that under Our Divine Constitution houses where heresy has been preached shall be taken away from the owners of the same, and adjudged to the Holy Churches. And also where fields are used for this purpose, they shall also be taken, it being entirely just that the Holy Churches should acquire property which is used for the destruction of souls.

(3) We establish these provisions for the common tranquillity of the Holy Churches, in compliance with the dogmas of the Holy Fathers, in order that the entire priesthood may hereafter suffer no disturbance. By the establishment of tranquillity, Our government will hereafter remain undisturbed, and We shall enjoy the peace which Our Lord Jesus Christ, Member of the Holy Trinity, and only Son of God, grants those who are considered worthy to adore and glorify Him.

EPILOGUE.

Your Holiness will observe this law, and will communicate it by means of special letters to the most Holy Metropolitans subject to his authority, who, in their turn, shall take measures to communicate it to the most Holy Churches under their jurisdiction, in order that everyone may be familiar with the sacerdotal decrees ratified by the government.

Divine Subscription. May God the Holy and Religious Father preserve you for many years.

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

TITLE XXII.

CONCERNING THE WAREHOUSES OR SHOPS OF THE CITY OF CONSTANTINOPLE, OF WHICH ELEVEN HUNDRED ARE SET APART FOR THE PURPOSE OF DEFRAYING THE EXPENSES OF FUNERALS CONDUCTED IN THE PRINCIPAL HOLY CHURCH, ALL THE OTHERS, NO MATTER TO WHOM THEY BELONG, SHALL ONLY BE SUBJECT TO ORDINARY CHARGES.

FORTY-THIRD NEW CONSTITUTION.

In the Name of Our Lord Jesus Christ Our God. The Emperor Csesar, Flavius, Justinian, Alemanicus, Gothicus, Francicus, German-icus, Anticus, Alanicus, Vandalicus, Africanus, Pious, Fortunate, Glorious, Victor, Triumpher, and Ever to be Honored Augustus, to Longinus, Urban Prefect.

PREFACE.

Our subjects are Our constant care, whether they are alive or dead; hence We have provided by laws relating to funeral ceremonies that the obsequies of deceased persons shall not be too expensive for their relatives. And as Constantine, of Divine memory, the founder of this Our City, and the Most Pious Prince Anastasius, prescribed the number of pallbearers or deans, and fixed at eleven hundred the number of shops to be set apart to provide for this expense, and forbade this number ever to be increased, We, desiring that the number of pallbearers to be selected from each quarter shall be preserved, according to the regulations of Anastasius, of Divine memory, direct that what has previously been established shall remain in full force.

But for the reason that the inhabitants of the said quarters of this city, who, above all others, are the objects of Our solicitude, have applied to Us, stating that they are reduced to extreme necessity; and because the Principal Church is entitled to the income of eleven hundred shops, which has been voluntarily granted to it free of all taxes, for the purpose of defraying the expenses of the people of the city, and that, as the result of this transfer to the Holy Church, the said shops have been released from all other impositions; and that, while these shops are not the only ones destined for the sale of different kinds of merchandise which are exempt from public contribution, but there are many others which also enjoy this privilege, for instance, those set apart for other holy churches for the maintenance of places of entertainment for travellers, and for monasteries, and other religious foundations; which, at first taken away from heretics, have subsequently come into the possession of ecclesiastics of the orthodox faith and of royal houses, magistrates, senators, distinguished men, or officers of the Imperial Bedchamber, are also exempt from taxation; and that the proprietors of these shops, taking advantage of this privilege, cause loss to the government; and hence there are so many exemptions from taxation that there are very few people who pay any taxes, and the result is that where formerly assessments were increased threefold and fourfold, they are now

increased tenfold; although the Divine Prince Anastasius only included in his list of exemptions the eleven hundred shops set apart to defray the funeral expenses incurred by the Holy Church, We have considered it advisable to communicate these complaints to Our nobles, and above all to the Archbishop of this Most Fortunate City, in order that they may assemble for the purpose of ascertaining what property is exempt from taxation, and inform Us on the subject.

We have been pleased to address this law, by which We confirm the rules promulgated by the Most Pious Prince, Anastasius, to you.

CHAPTER I.

Hence We order that the eleven hundred shops charged with defraying the funeral expenses incurred by the Holy Principal Church, as well as to provide it with deans or pallbearers shall, by all means, be maintained intact and free from any other burden; and that no other church but this shall be entitled to demand any deans, whether the said church belongs to heretics or not. What We have already determined shall also be valid, namely, that eight hundred shops shall be set apart to provide pallbearers for the service of the Principal Church, and that three hundred shall pay their share in money, the disposal of which has already been made by Our pragmatic sanction. Any shops which may be destroyed shall be rebuilt in the manner prescribed by the orders of Anastasius of pious memory. The said eleven hundred shops devoted to the service of the Principal Holy Church shall continue to be free and exempt from every species of taxation; nor shall they, or the quarters which furnish them, be compelled to pay tribute, suffer any loss, or recognize any other authority.

(1) The other shops of the fourteen quarters of this city, whether they belong to some holy church, to houses destined for the entertainment of travellers, to monasteries, orphan-asylums, hospitals, or any other establishments of this kind, such as those of magistrates performing public functions of trifling importance, to senators, to nobles of high rank, to Imperial Chamberlains, and to officers enrolled in the army; all these shops, We declare, shall, through the prefects of their quarter, pay the taxes imposed upon them, and shall discharge all other duties which it is proper for each one to assume in its own quarter. No one can, in order to be released, plead any privileges or offer any other excuse, for We do not permit charges imposed upon some to be a burden upon others, nor tolerate the harshness of proposing to frequently increase contributions (which We are informed is done) more than fourfold, fivefold, and even tenfold, especially when We are so diligently exerting Ourselves to prevent anyone from being subjected to new impositions. By a new imposition is meant not only one which is created for the first time, but an addition to one that has already been established. All persons should be treated alike; and this Imperial Pragmatic Sanction (which it is permitted to style a law) shall be of general application, so that everyone may know in what way he may be free from annoyance. For each citizen will the more readily bear his burdens, if he perceives that no one else is exempt except the eleven hundred shops set apart for the provision of funeral expenses in the Holy Principal Church, a regulation which is common and advantageous to all men.

(2) But if anyone should attempt to give an excuse in order to release himself from the payment of contributions, or to prevent them from being collected from his tenants or clients; or to escape liability for the performance of any military, civil, ecclesiastical, or any other contribution, he shall be absolutely deprived of the ownership of his shop, the title to which shall vest in the entire quarter. Under these circumstances, persons will be more careful, and will not attempt to do what is prohibited.

Moreover, if the contributions are equally divided, the amount which each one is obliged to furnish will be very small, and its collection will involve but little trouble, and this will be accomplished more easily as it will be paid by several persons. And, indeed, is it not exceedingly absurd for men who labor with their own hands, and women who nurse the children of others in order to obtain the necessaries of life, alone to have been oppressed with high taxes up to the present time, especially when they belong to the poorest class of society?

This abuse is of infinite extent, nor can it be limited in any way.

(3) We prohibit all these things, and promulgate this Imperial Pragmatic Sanction, threatening all of Our subjects with the penalty of losing their property, if, when residing in certain quarters, they interfere with the collection of ordinary taxes which have been established from the beginning, or attempt to convert them into private revenues. Everyone shall have the right to enjoy any income to which he is entitled, but must see that his shops or warehouses pay the ordinary contributions imposed upon them. For as every private individual should have an eye to his own interest, there is much more reason for Us to come to the relief of this Great and Royal City, which is tottering and almost ready to fall, since We can only provide for the public welfare by releasing persons from burdens to which they should not be subjected, and which, up to the present time, they have been compelled to bear.

EPILOGUE.

Your Excellency, as well as the subordinates attached to Your office, shall, now and hereafter, cause the provisions of this law, which it has pleased Us to enact, to be carried into effect.

TITLE XXIII.

CONCERNING NOTARIES WHO ARE REQUIRED TO PLACE PROTOCOLS AT THE BEGINNING OF PUBLIC DOCUMENTS.

FORTY-FOURTH NEW CONSTITUTION.

The Emperor Justinian to John, Praetorian Prefect, Twice Consul and Patrician.

PREFACE.

We have recently learned of a controversy which has given occasion to the enactment of this law. An instrument, of which a woman was said to be the author, but which was not written in her own hand (for she could not write), but had been copied by a notary, who had added the woman's signature to it. The instrument also indicated that witnesses had been present. Doubt, however, arose as to the credit which should be given to it, the woman declaring that she had not consented to certain clauses included therein; and the judge having jurisdiction of the case attempted to ascertain the truth by means of the notary, who, having been called into court, answered that he recognized the handwriting, but was ignorant of what the parties agreed to, because the document had been dictated to one of his clerks, and he had not been present when it was completed. Then the clerk, having been summoned, appeared in court, and also stated that he had not written the instrument in the first place, but had only been present at its execution, and that he to whom it had been dictated could not be found; hence the judge being unable to ascertain the truth by means of witnesses, the whole matter was left in uncertainty, which has induced Us to make an investigation, and publish a decree for the regulation of similar cases.

CHAPTER I.

We also deem it proper to come to the relief of Our subjects, and enact a law for the general welfare of all, by which it is proposed to compel notaries by all means to be present at the execution of legal instruments, and, unless this is done, such instruments shall not be considered complete, in order that the said notaries may be familiar with, and take part in the transaction, and when they are interrogated by judges, may be aware of what has taken place, and give proper replies, especially where the parties to the instrument are ignorant of letters, under which circumstances it is very easy for them to deny what actually happened.

(1) Therefore, with a view to preventing such occurrences, We have drawn up the present law, and desire it to be explicitly observed by notaries both in this Most Fortunate City and in the provinces; and they are hereby notified that if one of these should violate it in any respect, he will certainly be deprived of his office; and the person who is directed by him to see to the execution of the document, and was present, shall be substituted for him, and shall hereafter exercise the functions of the office, just as his superior did in the first place, by way of

punishment for having neglected to discharge his duty, and for not having acted in compliance with the wishes of the parties interested. We impose this penalty upon notaries, in order that such officials may become more just and circumspect, and may not, for the sake of their own pleasure and convenience, cause annoyance to others.

(2) Therefore, if a notary should prove himself to be unworthy of holding his office, he shall be deprived of it, and his place shall be taken by another; but the chief of the body of notaries shall not be prejudiced in any way (even if he himself is not a notary), nor shall he be deprived of any emoluments, as the punishment shall be strictly confined to him who failed to perform his duty, and who shall lose his place; for the offences of notaries do not affect the rights of their official superiors.

(3) Notaries shall not excuse themselves from being present at the execution of instruments by alleging as a pretext illness or their occupation with other affairs, for if anything of this kind should occur, they will be permitted to call the contracting parties before them, and have the business attended to, as such cases rarely happen; and it is not proper for private business to prevent public officials from attending to matters of general importance, as there is nothing so absolutely certain among men that it cannot (even though it may be perfectly just) still give rise to some doubt. The fees of notaries shall not be diminished on account of this law, as they have many opportunities to draw up contracts, and, besides, it is much better to do a few things carefully than many in a negligent manner.

(4) Therefore, in order that this law may not appear to notaries to be too severe, We, being aware of the failings of human nature, have provided reasonable rules for them, and on account of the probability of doubt arising under such circumstances, do hereby grant them permission to appoint substitutes (a matter which shall formally be published by the Illustrious Master of the Census of this Most Fortunate City), and We authorize the said substitutes to be present at the execution of the instruments aforesaid; but no other notary shall either be appointed in the beginning, or be present at the transaction, except the one indicated, and his substitute, who is duly authorized and designated for this purpose.

If this law should be violated and someone else be appointed, the notary who has been duly empowered by Us in the first place shall be liable to the penalty; but the instruments shall not be rendered void, because of their usefulness to the contracting parties.

We desire that, for the future, notaries shall, through the fear of punishment, obey this law and strictly observe everything which has been prescribed by Us.

CHAPTER II.

NOTARIES SHALL WRITE THE INSTRUMENT UPON THE SAME SHEET WHICH CONTAINS THE PROTOCOL, THE DATE, AND THE NAME OF THE CONSUL.

We also add to the present law that notaries shall not draw up instruments on any other sheet than the one (called the protocol) which bears at the head the title of Our Most Glorious Count of the Imperial Largesses, and the date of the execution of the document, and whatever else it is customary to write there, and notaries must not abridge the protocol, but leave it as it was inserted; for We are aware that many forgeries have been, and are now being committed in instruments of this kind, and that some of the latter have protocols which do not belong to them, but to other documents, the result of which is to render them void; hence the whole of the instrument must be written on the same sheet, as We have previously stated.

Therefore, whatever has been decreed by Us with reference to the nature of such documents, and the abridgement or substitution of protocols, We desire to be observed only in this Most Fortunate City, where there is always a multitude of contracting parties, and a great supply of blank paper, and it is easy to be present and have transactions conducted in a legal way, and not afford any opportunity for the commission of forgery, for which crime those will render themselves liable who presume to act in any other way except that prescribed by law.

EPILOGUE.

Your Highness will hasten to carry into effect the rules which it has pleased Us to promulgate by means of this law.

Given at Constantinople, on the nineteenth of the *Kalends* of September, during the second year after the Consulate of Belisarius.

TITLE XXIV.

NEITHER JEWS, SAMARITANS, NOR HERETICS SHALL BE RELEASED FROM CURIAL OBLIGATIONS ON ACCOUNT OF THEIR RELIGION, BUT THEY SHALL PERFORM CURIAL FUNCTIONS WITHOUT ENJOYING CURIAL PRIVILEGES, AND THOSE WHO ARE LIABLE TO THESE OBLIGATIONS SHALL BE PERMITTED TO GIVE TESTIMONY AGAINST ORTHODOX CHRISTIANS AS WELL AS IN FAVOR OF THE ORTHODOX GOVERNMENT.

FORTY-FIFTH NEW CONSTITUTION.

The Emperor Justinian to John, Praetorian Prefect, Twice Consul and Patrician.

PREFACE.

Your Highness has informed Us that Jews, Samaritans, Montan-ists, and other men deserving of contempt, for whom the light of the immaculate faith has never shone, who remain in darkness and have never experienced in their minds the benefit of the true sacraments, are included among decurions; and because We hold heretics in horror, they think, for this reason, that they are exempt from curial obligations, and refuse to perform the duties incumbent upon them. We, however, are surprised that one of your wisdom and shrewdness should have accepted their excuses, and did not at once hasten to punish them, for if certain individuals think that, because of some extreme absurdity, they are entitled to the enjoyment of certain privileges which We have reserved only for persons of the highest distinction, who is there among Our subjects who will not hereafter manifest extreme insolence and folly? Wherefore, let such men continue to perform curial as well as official duties, as was formerly decreed, whether they complain or not; and no religion or civil condition shall render them exempt (for nothing is mentioned on this point in either the ancient or modern law), but they shall not enjoy the honor attaching to the office of decurion, or the privileges granted to persons of this kind, for instance, freedom from corporeal punishment, exemption from removal to other provinces, and numerous others.

But where anything is stated with reference to decurions which does not confer any privilege, it shall also apply to these, and they shall be liable to personal and pecuniary charges, and no law shall exempt them therefrom; they shall enjoy no honors, but must remain in the baseness of their condition to which they are devoted.

These are the provisions which We have enacted on this subject.

CHAPTER I.

You have also mentioned another matter which is worthy of inquiry. We have forbidden heretics to testify whenever orthodox persons are engaged in litigation with one another, and We have permitted them by Our Constitution, whenever they have any legal controversies with one another, or either the plaintiff or the defendant is an heretic, he can testify, because they are litigants; and they can give testimony for an orthodox person against a heretic, but not against one who is orthodox; and, in conclusion, We have prescribed that the evidence of such persons is not admissible when orthodox believers are engaged in legal disputes with one another.

You have stated to Us that when orthodox persons desire to be released from curial obligations, the testimony of their relatives and others familiar with their condition may be received. As the law rejects the evidence of heretics when offered against orthodox Christians,

the judges hesitate to permit it under such circumstances. We, however, think that this apprehension is unfounded, for as such persons are permitted to testify in behalf of orthodox believers (for the law does not forbid them to do this), then, where decurions desire to be released from their public obligations, and call heretics to testify in their behalf, why should not this be permitted? In this instance the orthodox government which God has especially entrusted to Our administration is one of the litigants, those, however, who give evidence for the government, in reality testify for orthodox persons. Our conclusion is just, it is consistent with the orthodox faith, and is based upon the hatred which We entertain for all heresies.

EPILOGUE.

As soon as Your Highness is informed of Our wishes, being aware of what is beneficial to Our government, and, above all, remembering that We have been careful to prescribe by the present constitution what is advantageous to the public welfare, will see that it is observed.

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