

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

FIFTH COLLECTION.

TITLE I.

CONCERNING THE ALIENATION OF ECCLESIASTICAL LANDS, AND THEIR  
RELEASE WHEN PLEDGED.

FORTY-SIXTH NEW CONSTITUTION.

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

*PREFACE.*

We have devoted all Our attention to the laws, and We are daily exerting Ourselves for the welfare of Our subjects, by removing whatever is redundant and superfluous, and substituting therefor what is excellent and praiseworthy. For We have formerly often corrected the diffuseness of the laws, and, by restricting their application, introduced equity in subsequent times. We have very recently published a constitution having reference to all holy churches, monasteries, and other religious houses, forbidding them to make alienations of any immovable property; for We have seen that great confusion prevailed in consequence of this; that ecclesiastical possessions were, little by little, being acquired by strangers, without the payment of sufficient money, and without any urgent necessity existing for the sale of such property; and yet ten thousand frauds were constantly being committed against the laws already in force. Thus, by forbidding alienations, We render the means of committing fraud impossible.

It was only after this that the greater portion of the lands belonging to the Church became of any benefit to the owners, for no one dared to acquire them. Still, a matter difficult of solution has arisen, that is to say, ancient debts as well as others recently contracted, and, above all, fiscal claims, have imposed upon religious houses the necessity of selling their lands; they are forced to take this step because they have no personal property, and if their heads are unable to alienate their lands, they will have no means of discharging their obligations.

These conditions have already induced Us to give permission to churches to surrender their possessions in payment to their creditors, after observing the usual formalities. But as this power was not expressly granted by Our former Constitution, and when the creditor was not a private individual, but the Public Treasury and the Church had no money, and it was impossible for the former to accept real property in payment, We have deemed it advisable to make some concessions, and to a certain extent relaxing the strictness of the law, permit alienations of this kind to take place.

CHAPTER I.

Hence We order that if any of the holy churches or other religious houses should incur fiscal obligations, and not have the means to meet them, all the clergy including the Bishop of the City and the Metropolitan shall be assembled, and the matter shall be examined by them, and if there should not appear to be any other way to pay the debt, except by the alienation of immovable property, permission to do this may be obtained by virtue of a decree issued by the Governor of the province authorizing the disposal of real property sufficient to discharge the indebtedness; and those who acquire said property shall, themselves, become liable for the payment of the obligation, and shall satisfy the Treasury, which must give them a receipt for the same. In this way, they will have ample security, and need not entertain any apprehensions on account of the preceding law; the receipts of payments made to the Treasury shall be filed and recorded by the purchasers in the Bureau of Registry, if they desire to be fully released from all liability toward the holy churches for what they have paid in their behalf, in order that the taxes may be settled, and everything be done in accordance with Our law.

No one shall feign the existence of a fiscal debt for the purpose of obtaining the alienation of real property belonging to the Church; and, with a view to preventing all fraud of this kind, We desire that the decree of the Governor, who intervenes in this matter to establish the existence of such an obligation, shall state the time when it became due, the reason for it not having previously been paid in money, and why the necessity for such alienation exists; for in this way the truth will be absolutely established.

We desire all these formalities to take place in the presence of the Holy Gospels, and that the bishops, clerks, and all others concerned in the alienation shall remember that God will know what is being done by them, and if they are guilty of any deceit or fraud through desire of gain, they will, while living and dead, be punished in their souls.

#### CHAPTER II.

Where, however, a private individual is the creditor of the Church, he can receive immovable property by way of payment, a decree must always be rendered under such circumstances, and the property of the debtor shall be transferred to the creditor for the amount of his claim. But where the debt is due to the Treasury, and an alienation of immovable property is made, this shall be done in accordance with the previous rules, and no formality, nor any consideration for the public welfare shall be neglected.

#### CHAPTER III.

The present regulations shall not, however, be applicable to the Most Holy Principal Church of this Most Fortunate City, its territory, or the chapels subject to its authority; but the law already formulated with reference to ecclesiastical alienations shall remain in full force, so far as they are concerned. If, however, the Most Holy Principal Church has any monasteries under its jurisdiction, We also release them from the provisions of the present constitution, which We enact solely for the exterior provinces in which a scarcity of money exists, which prevents the holy churches from paying their debts in cash.

#### *EPILOGUE.*

As soon as Your Highness becomes acquainted with what We have just decreed, you will require these rules relating to the alienation of ecclesiastical property to be scrupulously observed.

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

#### TITLE II.

THE NAME OF THE EMPEROR SHALL BE PLACED AT THE HEAD OF ALL PUBLIC DOCUMENTS, AND THE DATE SHALL BE WRITTEN PLAINLY IN LATIN CHARACTERS.

#### FORTY-SEVENTH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Prsetorian Prefect, Twice Consul and Patrician.

#### *PREFACE.*

Documents and contracts in which the dates are given are the ones to which the greatest credit shall attach. The same rule applies to those in which the name of the Emperor appears. For the consuls, the indictions, and the dates mentioned in public documents indicate the time when they were executed, as well as the signification applicable to them. We have no intention of suppressing anything of this kind; but, on the other hand, We desire to make additions to it, so that the course of time may be designated more explicitly and perfectly therein. For whoever studies the events of past ages, and the ancient history of the government, will learn of JSneas the King of Troy, Prince of the Republic, from whom We are said to descend; and if he turns his attention to the second epoch, when the Roman name attained great lustre among

mankind, he will ascertain that Romulus and Numa founded the government and constructed the city, and that the latter regulated and adorned it with laws.

If he should consider the third epoch, namely, that of the Empire, he would read of the Great Caesar and the Pious Augustus, and would find that the government which now is so powerful was rendered immortal by the acts of these sovereigns. It would, however, be absurd for the name of the Emperor to be placed at the head of all contracts, judicial decisions, and, generally speaking, all of those in which any mention of the date is made.

Wherefore We order that all those officials employed in drawing up documents or decisions, no matter where this may be, and that the notaries who, in compliance with certain rules, draw up various instruments in this great city, or in other parts of the Empire, over which God has given Us the right to preside, shall begin as follows: "The year of the reign of the Most Holy and August Emperor," and, afterwards insert the name of the Consul for that year, and then the indiction, month, and day; in order that the date may be entirely preserved by the mention of the reigning sovereign and the order of the consulate, and the other formalities be observed, as is customary, and when this has been done no changes should be made.

(1) Where, however, the inhabitants of the East, or any other nations, are accustomed to state in their public documents the date of the foundation of their cities, We do not prohibit them from doing so, but We desire that the year of the reign shall first be written, and that (as We have already said) the name of the Consul, the indiction, the month and the day when the transaction took place, and was committed to writing shall follow, and that afterwards the year of the foundation of the city shall be inserted; for We do not abolish any of these former customs, but merely add the Imperial designation. From the date of the preceding indiction, documents shall be begun in the name of God, for instance: "The eleventh year of the reign of the Most Holy Emperor Justinian, the second year after the Consulate of that most illustrious man, Flavius Belisarius, on the .... day of the *Kalends* of ....."

Thus in all public documents, the year of the Empire, that of Our reign—so far as God may be pleased to prolong it—and, in the future, the names of succeeding Emperors, will be mentioned. This is perfectly clear, because at present the eleventh year of Our reign is written; but from the beginning of next April, the day upon which God invested Us with the government of the Empire, the twelfth year shall be stated; and so on, as long as God may permit Us to reign, so that this name may survive the laws, and the mention of the latter may remain immortal, while the commemoration of the Empire shall be introduced in all transactions for all time.

## CHAPTER II.

### DATES WRITTEN IN LATIN SHALL BE PLAIN AND LEGIBLE.

We also add that those who insert the date in judicial decisions, and who now use for that purpose ancient and uncertain characters, shall hereafter, in every judicial decision, be obliged to write after the ancient characters, others which are familiar to all, and can be easily read; and which will intelligibly indicate the date of the documents, and not embarrass those who wish to know it, and compel them to seek someone who is able to understand the characters which have been used.

When, however, the body of these documents which follows the date written in characters that cannot easily be deciphered is in the Greek language, the date shall be inserted in Greek letters underneath just as where all the document is in Latin, the date also shall be in that language. When letters which are easily read are employed in this way, their meaning will readily be intelligible, and all persons who are not absolutely ignorant of Latin will be able to understand them.

## EPILOGUE.

Your Highness will cause the regulations which We have been pleased to lay down in this Imperial Law to be published in this great city and in all the provinces subject thereto, in

order that no one may presume to reckon the time in a different manner, or to do anything else in violation of what We have recently decreed.

Given at Constantinople, on the *Kalends*, during the eleventh year of the reign of Justinian, ever Augustus, and the second year after the Consulate of Belisarius.

### TITLE III.

## CONCERNING THE OATH TAKEN BY A DYING PERSON AS TO WHAT HIS ESTATE CONSISTS OF.

### FORTY-EIGHTH NEW CONSTITUTION.

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

#### *PREFACE.*

We have always had the intention of preserving inviolate the dispositions of dying persons unless they were contrary to law, and opposed to the rules which it prescribes. We are informed that when a testator makes a will, by which, in disposing of his estate in favor of his heirs, he swears to what it is composed of, and some of the said heirs refuse to believe the declaration of the deceased (in which they are guilty of injustice, for when acting as heirs of the testator they thereby agree to what he does), and do not wish to confirm what he has stated under oath, and refuse to accept it, notwithstanding Our laws consider an heir and the person who has transferred the estate to him as a single person, as no one can oppose himself, or consider what he has sworn to as not true, he cannot deny his own statements.

#### CHAPTER I.

Therefore We order that if anyone should make a list of his property either with his own hand, or through the agency of someone else, but signed by him; or should mention in his will the amount of his estate whether some of his heirs are present and others absent, or whether all of them are present, We hereby forbid the said heirs to contradict the statement, and one to accuse the others of having concealed property which was not mentioned by the deceased. Where, however, the dying person has made oath that he has nothing more than he says he has, the heirs, whether they be children or strangers, must accept the statement. We do not wish them to hesitate, to abuse their co-heirs, or, in order to prove their allegations, to demand that the slaves of the deceased be tortured, or to take other measures and make other investigations of this kind, which will lead only to controversy; for if nothing more should be found among the property of the estate than what the testator declared under oath it was composed of, the conclusion will be reached that he desired this amount alone to go to his heirs.

(1) We desire that the declarations of the deceased as to his property shall be conclusive with reference to the heirs, who are desirous of ascertaining what the estate consists of, but it shall not be conclusive so far as creditors are concerned, because it has been prescribed by Our laws that whatever anyone may say or write for his own advantage will be of no benefit to him, nor will prejudice his creditors to any extent, and they shall be permitted to investigate everything in any way that they choose; but the heirs must remain content with the statements of the testator.

The penalty imposed upon the heirs shall be that any one of them who makes a contest on account of the property left to him cannot enjoy it at all, for he will be required to agree to all the dispositions of the testator, or not to accept any of them; and the result of this will be that he must consent to all that the deceased said, and contradict him in nothing if he wishes to enjoy his share of the estate.

These provisions shall be valid for all time hereafter, and be applicable not only to cases which have not yet been brought, but also to such as have been terminated by a judicial decision or compromised in an amicable manner.

## *EPILOGUE.*

Your Eminence, after having learned what it has pleased Us to enact by this Imperial law, will formally communicate it to all Our subjects by a special proclamation.

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

### TITLE IV.

CONCERNING THOSE WHO APPEAL; AND WHEN A COMPARISON OF THE HANDWRITING OF PERSONS CAN BE MADE, AND CONCERNING THE OATH TO BE TAKEN TO OBTAIN DELAY, AS WELL AS THE OATH OF CALUMNY.

#### FORTY-NINTH NEW CONSTITUTION.

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

### *PREFACE.*

Human affairs are changeable, and what can not remain the same will never be characterized by stability, and constantly introduces confusion into legislation, and perplexity into matters which seem to have been justly and permanently disposed of; and those things whose observance has been carefully provided for, for the most part, subject to the disturbing influence of various contingencies. For We remember that We recently corrected certain abuses which affected appeals in an evil and fraudulent manner, for the appellants were content merely to appeal, and furnish security to appear in court, and then after having taken the first steps against the other party, or having contradicted his allegations (for this is perfectly indifferent), they abandoned the case, so that the victory obtained by the other party was unavailable, as he could neither enjoy the advantage of the judgment, as execution was suspended by filing the appeal, and it could not be heard on account of the absence of the appellant.

(1) We have already provided for the correction of this abuse by allowing the appellant, whether he made the application in person or by an attorney, a year in which to proceed and obtain judgment, and not leave the matter in abeyance. If, after this time, he, through indulgence, by an order of court, or for any other good reason should cause further delay, and have the decision of the appeal prolonged for another year, We have decreed that when the litigation was not ended after this second postponement, the first decision in favor of the other party shall be affirmed.

(2) A great many litigants have applied to Us, alleging that after having notified appellants that they wish to have the case tried and disposed of, they have been unable to obtain a hearing from the magistrates on account of, for instance, a press of business. Others have alleged that violent storms or contrary winds have not permitted them to travel by sea to their provinces; and that they have been prevented by extreme poverty from making the journey by land; or, indeed, because, residing on an island, they could not travel in any other way than by sea, and that, for these reasons, they were not able to proceed with the case during the second year; others have stated as an excuse the severity of the weather, and others again have pleaded a dangerous illness. We have been justly influenced by all these excuses, and, without desiring to violate the present law, We intend as far as possible to come to the relief of those who are injured by such unfortunate occurrences.

### CHAPTER I.

A CASE TAKEN UP ON APPEAL SHALL BE TERMINATED AT THE END OF THE SECOND YEAR.

What then was there to do, unless enact another law which might afford relief? We direct that the provisions of the preceding law shall (as We have previously stated) in every respect, remain in force. If, however, through some inevitable accident, the litigant who took an

appeal does not appear when a certain day, which was final, has been assigned to hear it, and the expiration of the two years was approaching, We direct that the first decision shall, under certain circumstances, be confirmed; as was provided in Our former law, to which We now make certain additions. For as We have come to the relief of defendants on appeal, by granting them delay in opposition to those who, after having a time appointed for a hearing, are still unwilling to proceed with the case, or abandon it during the argument, We desire to modify to a slight extent the right which We have granted them while taking into consideration what is proper. For We direct that if the party who has obtained the first decision in his favor should, in case the appellant does not appear, wish this decision to be confirmed, not under any convenient pretext, or through lapse of time, but actually and definitely, let him give notice of his intention, and seek out the appellant, and whether he finds him or not, he can take measures in the meantime, and if all the two years but one month have expired, and it is decided that he is right, the first decision shall be affirmed; for if it is not founded in justice, judgment should be rendered against him, even though the appellant who appointed a fixed day for the case to be heard may not have appeared.

We add that whether the defendant gains or loses the case taken up on appeal, the appellant who did not appear, shall be liable for all the costs incurred since the appeal was taken; for if the defendant should gain the case, for the very reason that he is successful, it is only proper that his costs should be paid. If, on the contrary, he should lose it, and the appellant should gain it without having put in an appearance, it is still no more than right that he should pay the costs, as he did not appear; but he will enjoy the benefit of the decision on appeal, for which he should thank God and the present law, which treats him with justice and only makes him liable for the costs, for the payment of which his absence and not the said law is responsible. But where neither of the parties to the action, that is to say, the defendant or the appellant who has appointed the day for the hearing, appears, the first decision in favor of the defendant shall remain in full force.

In addition to this, We ratify the provisions of all other laws having reference to delays, and other matters of this kind, for in enacting the present constitution, especially against litigants who, after having themselves appointed a certain day, do not appear, We do not repeal or change anything in former laws having reference to the postponement of appeals, all of which We confirm by this constitution.

(1) It is also advisable to determine whether appellees who have already obtained a decision affirming the prior judgment shall enjoy the benefit of it; for We do not intend to take any steps with reference to matters which have already been decided. If, however, there are cases on appeal which are still pending, and the term of two years has almost but not entirely expired, and the first decision has not been ratified by a judgment, such cases shall be decided as above set forth, and the defendants on appeal shall enjoy the benefit of them if they should be affirmed.

## CHAPTER II.

### COMPARISONS OF HANDWRITING SHALL ONLY BE MADE IN THE CASE OF PUBLIC DOCUMENTS, AND IN THE CASE OF PRIVATE INSTRUMENTS WHERE THE ADVERSE PARTY CAN USE THEM FOR HIS OWN ADVANTAGE.

We have decided that the following addition should be made to the present law. We have, sometime since, drawn up a constitution forbidding the comparison of handwriting in the case of private instruments, and only authorizing this to be done with public documents; but experience has convinced Us that this law should be amended, and, as this is the case, We are going to proceed in accordance with the custom observed by litigants. For it frequently happens that the plaintiff produces an instrument in someone's handwriting by which he can establish either the title to property, or the proof of his allegations; and the defendant produces other instruments written in the same hand, by means of which he desires to contradict what has been offered by his antagonist, and then the plaintiff avails himself of the law which, while authorizing the comparison of the handwriting of public documents, on the other hand,

prohibits that of private ones.

(1) We order that if anything of this kind should occur, and someone should desire an examination to be made of any documents presented by his adversary, this proceeding shall not be considered improper. For the plaintiff cannot discredit the document upon which he depends to establish his title, and which he has produced; and he should not prevent its comparison with one in other handwriting, even though the latter be that of a private individual. Nor should he contradict himself, and deny the statements which he has already made.

(2) Where, however, a document taken from the public archives is produced, for instance, a receipt issued by the Bureau of the Most Glorious Prefecture (for a question of this kind has been suggested), as an instrument of this description is based upon public evidence, We decree that it can be admitted in a comparison of handwriting. For, as We entertain hatred for the crime of forgery, We order that the experts charged with the comparison of the handwriting of public documents shall be sworn before any private instruments are placed in their hands for this purpose. Wherefore this law, as well as the present modification of the same, shall remain in full force, and the experts aforesaid shall by all means be sworn.

### CHAPTER III.

#### CONCERNING THE UNION OF THE OATH TAKEN TO OBTAIN DELAY WITH THE OATH OF CALUMNY.

Therefore in order to preserve honor among litigants, We direct that they should make oath at the beginning of the suit, that is to say, that the plaintiffs shall swear that they are not proceeding for the purpose of causing annoyance, and the defendants that they believe the plaintiffs to have been satisfied, and are not actuated with the desire of encouraging strife; and We render this law applicable to all persons, without any exception whatsoever.

We also add that if anyone should demand proof of the statements of the plaintiff, or the acknowledgment of any of his documents, instruments, or letters, he must first swear that this is not done for the sake of delay. For there are many persons who, on account of trifling injury (and this is especially the case where noble women are concerned, or the proof of documents is called for, or for some other reason), have recourse to this oath, so that it is frequently taken in one and the same transaction.

(1) Hence, in order to remedy this evil, and being unwilling that the oath should be exacted repeatedly in the same action, We order that both parties, the plaintiff, when he takes the oath of calumny, and the defendant, when he swears that he has ground to dispute the claim, shall add that during the entire course of the proceedings, no matter what evidence he may demand from his adversary, he will not do this to cause delay, but only in order to establish the truth, and when he thinks it is necessary that the said evidence should be produced by him.

Where either party takes this oath, his opponent can, by no means, exact another from him, even though proof may frequently be demanded ; but the testimony shall be given, and no one will be required to be sworn several times, and, generally speaking, an oath of this kind can only be taken once.

### *EPILOGUE.*

Your Highness will cause what has been enacted by Us and published by means of this Imperial law to be brought to the attention of all persons, by means of direct edicts, so that everyone may be aware of what We have decreed.

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

## TITLE V.

CONSTITUTION ADDRESSED TO BONUS, QU. ESTOR OF THE ARMY,  
PRESCRIBING BY WHOM APPEALS TAKEN FROM FIVE PROVINCES, NAMELY  
CARIA, CYPRUS, THE CYCLADES ISLANDS, MYRIA, AND SCYTHIA, SHALL BE  
HEARD AND DETERMINED.

### FIFTIETH NEW CONSTITUTION.

The Emperor Justinian to Bonus, Most Glorious Quaestor of the Army.

#### *PREFACE.*

We are aware that We have previously promulgated an Imperial Constitution by which We entrusted to Your Glory the five provinces of Caria, Cyprus, and the island surrounding them, Mysia, and Scythia, for the purpose of being subjected to your administration. In this constitution We add that appeals taken in these provinces instead of being brought, as heretofore, before Our Most Glorious Prefects, shall be brought before yourself. Many persons from Caria, Rhodes, and Cyprus have applied to Us, making complaint, and stating that they are frequently obliged during the winter to resort to Scythia and Mysia, where you reside, for the purpose of prosecuting appeals, many of which involve very small sums of money, and that they are compelled to cross wide seas, and regions infested with barbarians; and for this reason We have determined to address this law to Your Glory; so that any appeals taken from Scythia and Mysia, as they are in your vicinity, may be heard by you, but any from elsewhere, that is to say, from Caria, and the aforesaid islands, and Cyprus—provided they were formerly brought before Our Most Glorious Prefect and, by virtue of Our Imperial order were within the jurisdiction of the Prefectural magistracy—and you should be in this royal city, shall be brought before and decided by you and the Most Glorious Quaestor of Our Imperial Palace, in the Imperial Audience-Chamber, as the law regulating appeals directs.

(1) If, however, you should continue to reside in Scythia and Mysia, appeals from the three other provinces shall be heard by the magistrate who takes your place in this Fortunate City, and shall be disposed of by him and Our Most Glorious Quaestor, in their regular order, as We do not desire litigants to be subjected to inconvenience for too long a time; however, as We have enacted this law on their account, their cases shall be determined by the two magistrates whom We have just mentioned, the proceedings shall be conducted with greater diligence, and the decisions shall acquire still greater authority.

(2) But if you appoint a judge in the above-mentioned provinces, the magistrate who takes your place in this Fortunate City shall have cognizance of appeals taken from the decisions of the former, and shall determine them conjointly with the Most Glorious Prefect; for if a case taken up on appeal should be begun before you, while you are here (which is likely to occur), and afterwards you should change your residence on account of judicial expenses, this appeal shall be disposed of without delay by the magistrate who takes your place, in the same way as if you yourself had decided it. When, however, in the first place, the appeal is taken from any of the provinces, instead of being brought before the Most Glorious Prefects, or some other tribunal, We do not, in this instance, change the ancient practice in any respect.

#### *EPILOGUE.*

Your Glory will hasten to render effective the matters which We have decided upon, and promulgated by means of this Imperial law, which you will cause to be observed forever hereafter.

Given at Constantinople, on the fifteenth of the *Kalends* of September, during the eleventh year of Our Lord the Emperor Justinian, after the Consulate of Belisarius.



## TITLE VI.

WHERE PROSTITUTES FURNISH SURETIES, OR TAKE AN OATH TO CONTINUE TO PURSUE THEIR EVIL LIFE, THEY CAN VIOLATE THEIR CONTRACTS WITHOUT ANY RISK TO THEMSELVES.

### FIFTY-FIRST NEW CONSTITUTION.

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

#### *PREFACE.*

We know that We have already published a law prohibiting sureties from being required of women kept in houses of prostitution to insure their remaining and pursuing their infamous calling. This law does not afford any opportunity for repentance to persons who exact such security, but it even threatens them with severe punishment, and it also provides that the sureties shall not be responsible, and that there is no necessity for them to represent the women for whom they have become bound. But We have ascertained that, at the present time, a cruel and intolerable fraud has been committed against chastity, which is something greatly revered by Us; for, as We have forbidden sureties to be taken, a much more abominable method has been devised, and those who profit by the vile profession of prostitutes compel them to swear that they will never abandon their base and wicked life; and these wretched women, influenced in this way, think that they are acting honorably if they remain, and they keep their oaths to the destruction of their chastity, when they should be aware that such transgressions are more agreeable to God than the observance of such oaths. For if anyone has, at the instigation of another, sworn, for instance, to kill, to commit adultery, or to commit any other unlawful act, this oath need not be observed, as it is base and unlawful, and leads to perdition. Therefore, even though a woman may have taken such an oath, she shall be permitted to violate it, and to live chastely without danger of prosecution for perjury (if, indeed, the penalty applies to a case of this kind), for it is more acceptable to God that punishment should be inflicted upon him who required the oath to be taken.

#### CHAPTER I.

Wherefore We impose the penalty of ten pounds of gold upon anyone who presumes to exact and receive an oath of this kind, as soon as it is tendered. We order that this sum shall be collected by the Governor of the province, and given to the unfortunate woman to assist her in leading a virtuous life. Governors are hereby notified that if they should be negligent in this respect, they themselves will be required to pay it at the end of their administration; and that their heirs and successors, as well as their estates, will be liable for it, because they have neglected to perform a meritorious act.

(1) If, however, the Governor of the province should himself exact such an oath, he shall be compelled to pay the said fine of ten pounds of gold; and if there is a military magistrate in the province it shall be his duty to collect it, and, as We have already stated, it shall be given to the woman. But where there is no military magistrate, the money shall be collected by the metropolitan bishop of the province, who shall refer the case to Us, if it becomes necessary; or the matter shall be attended to by the superior magistrate of the adjoining province.

Anyone who commits an act of this kind in any place, whether he be a magistrate or a private individual, shall be punished as above stated, and shall pay the amount to the woman without which she cannot live in chastity, and she shall not be considered to have perjured herself.

#### *EPILOGUE.*

Your Highness will, by suitable proclamations, communicate to all persons what we have pleased to enact by the present law, in order that the subjects of Our Empire may be aware of Our zeal for the preservation of chastity.

Given on the *Kalends* of September, during the eleventh year of the reign of the Emperor Justinian, and the second year after the Consulate of Belisarius.

## TITLE VII.

PLEDGES SHALL NOT BE MADE FOR THE BENEFIT OF THIRD PERSONS.  
DONATIONS MADE BY PRINCES TO PRIVATE PERSONS DO NOT REQUIRE TO BE  
RECORDED, ANY MORE THAN DONATIONS BY PRIVATE PERSONS TO THE  
EMPERORS.

### FIFTY-SECOND NEW CONSTITUTION.

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

#### *PREFACE.*

Many laws formerly enacted, and especially those which have been promulgated by Us, have a horror of dishonorable pledges, and the odious seizures to which they have given rise; but We are not ignorant of the reasons for such abuses, and that, when prohibited by so many laws, they still take place in the Empire, with even more regularity than if the laws had made them necessary.

#### CHAPTER I.

##### CONCERNING PLEDGE.

On this account We order that, under no circumstances, shall a pledge be taken in Our Government, or in the markets (for We have learned that this is most frequently done there), nor in the country, nor in cities, nor in villages, nor be required of citizens, villagers, or farmers anywhere, or at any time whatsoever; but We direct that anyone who presumes to take from another gold or other property to indemnify himself for what is owing to him by a third party shall be compelled to return quadruple the amount to him who has suffered the wrong, and he shall be deprived of the right of action which he has against his true debtor. For it is not reasonable that one person should be a debtor, and the claim be collected from another; or that anyone should be molested on account of a third party, in the same manner as if a trespass or some similar injury had been perpetrated upon the latter; or that a person belonging to the same village should be maltreated, sustain injury, suffer violence, be subjected to malicious prosecution without any lawful cause, or be liable to a corporeal penalty because of someone else. Governors of provinces are hereby notified that if they do not prevent such abuses, or permit seizures of such pledged property to be made in the provinces within their jurisdiction, nothing will prevent them from being punished by Us.

#### CHAPTER II.

DONATIONS MADE BY PRIVATE PERSONS TO THE EMPEROR DO NOT REQUIRE  
TO BE RECORDED.

We have also deemed it proper to make the following addition to this law. As donations made by the government do not require to be recorded, but have sufficient force of themselves; so, also, those made by private persons to the Emperors (unless they are actually drawn up as public documents by notaries, bear the signatures of witnesses, and are executed with the other formalities required in the case of donations) do not need to be recorded, no matter what their value may be. For it is of no consequence that the government does not, so far as private individuals are concerned, enjoy the same advantages which it enables them to enjoy.

This inequality results from the innovation which the Constitution of Zeno, of pious memory, introduced, which provided that Imperial donations do not require to be recorded. But, as this law appears to Us to be imperfect, and We wish to amend it, We decree that the rule shall apply to both parties, that is to say, neither donations made by the Emperors to private individuals, nor those made by private persons to the Emperors, need to be recorded; so that justice, which is derived from equality, may be observed in cases of this kind.

## *EPILOGUE.*

Your Excellency will see that what is contained in this Our Imperial Constitution is formally communicated to all persons by means of the proper proclamations.

Given on the fifteenth of the *Kalends* of September, during the eleventh year of the reign of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

### TITLE VIII.

CONCERNING DEFENDANTS SUMMONED AND BROUGHT INTO COURT; AND CONCERNING THE DELAY OF TWENTY DAYS GRANTED TO THOSE NOTIFIED TO APPEAR; AND CONCERNING THOSE WHO FURNISH JURATORY SECURITY AND WHO DISAPPEAR BEFORE JOINDER OF ISSUE TAKES PLACE; AND CONCERNING HYPOTHECATIONS WHICH ARE STYLED EX-CASU, AND WHAT PERSONS HAVE THIS RIGHT, AND UNDER WHAT CIRCUMSTANCES THEY CAN AVAIL THEMSELVES OF IT. CONCERNING WIVES WHO ARE UNENDOWED, AND ARE ENTITLED TO A FOURTH OF THE ESTATES OF THEIR HUSBANDS, WHO, ON THE OTHER HAND, ARE ALSO ENTITLED TO A FOURTH OF THE ESTATES OF THEIR WIVES, WHEN EITHER OF THE SURVIVORS IS POOR.

### FIFTY-THIRD NEW CONSTITUTION.

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

### *PREFACE.*

Many persons have had recourse to Us, for the reason that they have been summoned by others, or taken into different provinces by virtue of an order issued by Us, or in obedience to judicial decrees, and by this have been caused much suffering; thus plaintiffs summon others, or exact security from them to appear within a certain time before a designated judge, while they themselves, remaining in the province, subject the former to great expense on account of the journeys which they are required to make.

### CHAPTER I.

#### CONCERNING DEFENDANTS WHO ARE SUMMONED FROM ONE PROVINCE TO ANOTHER.

Our compassion having been excited, We decree that when anything of this kind takes place, and the time appointed by the plaintiff for the execution of the bond, or the appearance has expired, and the defendant comes into court, but the plaintiff does not, and fails to appear within ten days after the arrival of the defendant in the province, the latter can then go before the judge and inform him of this fact, and be summarily discharged; and after the defendant has been sworn as to the amount of the expense which he has incurred on account of his journey and his residence in a strange place, judgment shall be rendered against the plaintiff who has brought suit to no purpose. And as it is not customary for citations to be served, or appearances to take place unless the plaintiffs produce sureties responsible up to a certain sum, by which they become bound to prosecute the case and obtain decisions in their favor, the said amount shall, by all means, be collected from them, and given to him who has been subjected to this unnecessary annoyance.

If, however, the latter should swear that his expense was greater than the amount for which the plaintiff furnished security (although the sum which the laws call *taxatio* shall be prescribed by the judge), this can also be collected in addition, in order that persons may know that they cannot make a jest of the lives of others, but must select judges in the province of the latter, and proceed against their adversaries where they reside.

## CHAPTER II.

### CONCERNING THE BOND TO BE FURNISHED BY THOSE WHO SUMMON DEFENDANTS TO APPEAR OUTSIDE OF THEIR OWN PROVINCE.

We are aware that security usually is given in this place by plaintiffs to those against whom they bring suit, but, as this rule is evaded when they are called into other provinces, We order that if the judge or the Most Glorious Quaestor appointed by Our Imperial letters should direct anything of this kind to be done, no one can be summoned from another province before the plaintiff produces a surety in court to guarantee that, if he does not prosecute the case, or if, after having done so, he should be unsuccessful he will pay him the amount fixed by the judge in accordance with the distance which he is obliged to travel.

We decree that everything shall be done which We have prescribed with reference to the appearance of the defendant; the sum fixed by the court shall be collected from the sureties, and given to the defendant; the oath of the latter shall be taken to establish the amount of the costs; and if he swears that he has expended a larger sum than that mentioned in the bond he shall receive it, in order that Our legislation may seem to be perfect in every respect.

## CHAPTER III.

### THE TERM OF TWENTY DAYS SHALL BE GRANTED TO THE DEFENDANT AFTER SERVICE HAS BEEN MADE UPON HIM.

At present, persons make a practice of violating the beneficial rule established in ancient times of using the clemency of Our laws, by making it the ground of vexatious litigation, as formerly, a person notified to appear in court was allowed ten days for deliberation, in which he could examine the case, and perhaps settle the claim and be released from liability; and, after the said ten days, he could accept service by indorsing the summons and then give security in court. Certain persons, however, being aware that Our laws do not, after issue has been joined, permit the judge to be rejected and another to be demanded, act fraudulently in this matter, with the connivance of court officers; and as soon as a citation is granted they bring the defendant into court without filing a complaint, or any bond, and compel him to join issue and defend himself, although he is not informed of the facts; so that, when issue has once been joined, he can not be permitted either to reject the judge, or demand another, if the one appointed should be liable to suspicion. In this way plaintiffs accomplish whatever they wish, and after having craftily obtained control of the defendant, they do with him whatever they please.

(1) Therefore We order that when a summons is served upon anyone, the cause of action shall be specifically communicated to him; and that he shall, in accordance with the ancient legislation, not only be entitled to the term of ten days to put in his appearance, but this term shall be doubled, that is to say, it shall consist of twenty days; and if he chooses, he shall have the right to reject the judge and demand another, or acknowledge the debt, or be released by his adversary from the suit in an amicable way; and that he shall not, either for the sake of annoyance, or by fraud, be compelled to have his case heard by a judge who may be liable to suspicion, or otherwise unacceptable to him, or more frequently by one who entertains dislike to him; but the party who brings the action shall not be entitled to any delay in order to deliberate with reference to the joinder of issue for which the defendant appears.

(2) The complaint having been received, only personal security shall be furnished by the defendant; and, the fees having been paid in accordance with Our Constitution, the defendant shall sign the paper which is called the answer; he must state the time when the complaint was served upon him, in order that no fraud may be committed in this respect, and, when the trial begins, the judge shall ask the defendant to show whether the twenty days allowed for deliberation have elapsed, the defendant must tell the truth, which shall also be established by the date and the signature to the complaint, and if the defendant says that if the said term of twenty days has elapsed, the trial shall then proceed. The defendant shall, during this time, be permitted to file objections to the judge, and demand that another be appointed; or he can,

with the plaintiff, select another or even amicably agree to one; and, during this interval, the rights of the defendant shall not, in any way, be prejudiced, nor shall any execution be issued, or served by the officers of justice; and the defendant shall furnish a judicial bond which the judge will approve, and be entitled to twenty days for deliberation.

If these rules should not be observed, all the steps taken by the plaintiff will be void, even though the case may have already been begun; still, after joinder of issue, he will be permitted again to institute proceedings after the expiration of another twenty days, just as if joinder of issue had never taken place.

#### CHAPTER IV.

##### CONCERNING JURATORY SECURITY.

We do not permit a defendant, after having once rejected a judge and accepted another, to reject the second one. For while We protect the interests of the defendant, We are, by all means, opposed to adopting any measures against the plaintiff by countenancing further delay; but if the defendant should swear that he will come into court, and, before joinder of issue has taken place disappears from this great city, the plaintiff shall, even before joinder of issue, be permitted to go before the judge who has been appointed to hear the case, and notify him of the disappearance of the defendant. The aforesaid judge, if he is the Governor of the province, shall direct the defendant to be considered guilty of perjury, and, so to speak, to have accused himself of this offence by having become a fugitive. Where, however, the judge is not the Governor of the province, but was appointed by some magistrate, either by virtue of a pragmatic sanction, or an Imperial order, or even if he had been appointed by some other public official, the plaintiff can have recourse to the magistrate who made the appointment, in order that he may exercise his authority to compel the appearance of the defendant, lest the case of the plaintiff may be fruitless, as the judge cannot do anything, for the reason that joinder of issue has not yet taken place, and the defendant, who has treated the law as well as his oath with contempt, has left the plaintiff without any opportunity to obtain lawful relief.

(1) Therefore, to prevent the case from remaining in abeyance, because of the defendant remaining concealed and his appearance being delayed, the judge shall ascertain, as far as he is able, to what place the defendant is said to have gone, and shall fix a time for his appearance; and if he does not come within that time (provided the judge is convinced that the nonappearance of the defendant is not due to the act of the plaintiff), then he shall hear the case, and put the plaintiff in possession of the property of the defendant to the amount of the debt, as stated; and, when he has been placed in possession, he shall hold the said property as security for the claim, and if the defendant should afterwards appear, he can recover his property after having previously indemnified the plaintiff for all expenses incurred, and when the property has been returned to him, he must furnish a surety, and the case shall proceed.

#### CHAPTER V.

##### CONCERNING HYPOTHECATIONS CALLED EX-CASU MILITIARUM, AND WHAT PERSONS SHALL BE ENTITLED TO THIS RIGHT, AND WHEN THEY CAN EXERCISE IT.

It is extremely advisable to regulate what follows by means of a general law, on account of the doubt attaching to the questions involved. For it was at first uncertain whether offices could be subjected to hypothecation, or whether they were exempt, but this doubt was removed by a law, and it is now settled that some offices can either be sold or encumbered. We have examined the opinions entertained by Our ancestors on this subject, and have come to the conclusion that, in former times, offices could not be hypothecated, but that they were subject to certain claims which no longer exist. The Emperors, moved by compassion toward creditors who constantly applied to them for redress, by degrees granted them the right of hypothecation, when the offices were public, and they did not receive any other compensation except that derived from Imperial munificence.

(1) Hence We order that hypothecations which are designated *ex-easu* shall not indiscriminately be granted to all persons, unless a creditor has lent money for the purpose of purchasing the office; but where there are any children, or a surviving wife of the deceased, We give them preference over all the creditors, and by virtue of Our Imperial order We grant them the privilege of taking an hypothecation on the office of the deceased, not, however, as part of his estate, but as a concession of Imperial liberality. We establish this rule in order to furnish a deserved consolation to those who leave an estate, as well as to those who have none.

Where, however, the deceased left neither wife nor children, nor any creditor who lent him money to enable him to obtain his office, under such circumstances We grant other creditors the right; for We do not desire it to be said that We have done something that is not humane, and that We have enacted a law for any other purpose than to perform an act which is pious and acceptable to God. The privileges which have been bestowed upon the *Silentarii* shall remain in full force.

## CHAPTER VI.

### CONCERNING A POOR WOMAN WHO IS UNENDOWED.

As every law enacted by Us is based upon clemency, and We see that when men married to women who have brought no dowry die, the children alone are legally called to the succession of their father's estates, while their widows, even though they may remain in the condition of lawful wives, for the reason that they have not brought any dowry, and no ante-nuptial donation has been given them, can obtain nothing from the estates of their deceased husbands, and are compelled to live in the greatest poverty, We wish to provide for their maintenance by enabling them to succeed to them, and be called to share their estates conjointly with the children. But as We have already enacted a law which provides that when a husband divorces his wife, whom he married without any dowry, she shall receive the fourth of his estate, just as in the present instance, whether there are few or many children, the wife shall be entitled to the fourth of the property of the deceased, if, however, a husband has left a legacy to his wife and this legacy amounts to less than a fourth of his estate, this amount shall be made up out of the same. Hence, as We come to the relief of women who have not been endowed or divorced by their husbands, so We assist them where they have constantly lived with them, and We grant them the same privilege.

Again, everything that We have stated in the present law with reference to the fourth to which a poor woman is entitled shall equally apply to a husband, for like the former one, We make this law applicable to both.

(1) But if the woman has property of her own in the house of her husband, or situated elsewhere, she will have the right to retain said property, and it shall not, under any circumstances, be subject to hypothecation for the benefit of the creditors of her husband; unless he is the heir of his wife to the amount established by the present law.

(2) We enact these provisions as applicable in cases where either of the two married persons has not brought either a dowry or an antenuptial donation, and the survivor is poor, or the deceased was rich. For if the survivor has property elsewhere, it would be unjust when, having neither brought any dowry nor ante-nuptial donation, he or she should oppress the children by sharing the estate with them; and as another of Our laws provides that a wife who does not bring any dowry cannot, by means of an ante-nuptial donation, acquire any property from her husband, We desire that this rule shall continue to remain in force, establishing, however, an exception to it where a husband has bequeathed a legacy, or some other share of his estate to his wife; for We by no means wish to prevent this, in order that the laws may, in every respect, be consistent with one another, and that the poverty of one spouse may be compensated by the wealth of the other.

## *EPILOGUE.*

Your Highness will hasten to cause this law, which it has pleased Us to enact, to be observed and carried into effect by everyone; and this you will do by means of a general proclamation issued from your office, in order that what We have decreed may everywhere be obeyed.

Given on the tenth of the *Kalends* of October, during the eleventh year of the reign of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

### TITLE IX.

THE CONSTITUTION WHICH DECLARES THE ISSUE OF A SERF AND A FREE WOMAN TO BE FREE SHALL BE OF NO ADVANTAGE TO CHILDREN BORN BEFORE THE PROMULGATION OF THIS CONSTITUTION, BUT ONLY TO THOSE WHO ARE BORN SUBSEQUENTLY. RELIGIOUS HOUSES, WITH THE EXCEPTION OF THE PRINCIPAL CHURCH, SHALL NOT BE PERMITTED TO EXCHANGE IMMOVABLE ECCLESIASTICAL PROPERTY WITH ONE ANOTHER, EVEN WHEN AUTHORIZED TO DO SO BY A FORMER DECREE.

### FIFTY-FOURTH NEW CONSTITUTION.

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

### *PREFACE.*

Questions have been raised by certain persons who think that they have found some obscurity in one of Our Constitutions, where, in fact no obscurity exists; for, as We are deeply attached to freedom, this constitution, at variance with the ancient principle providing that children born of a serf and a free woman shall follow the condition of their father, establishes a contrary rule, and states that in order to determine the civil condition of a child, the condition of its mother should be taken into consideration. This beneficent law of Ours is unwilling that the child born of a free mother shall be a slave, as We stated in it that whether serfs were already married to free women when it was enacted, or whether they were united to them afterwards, the issue of such marriages would be free. Certain persons have ventured to interpret this so foolishly and in such a subtle manner as to hold that children born before the law was published, even though they were old at the time, are just as free as if they had been born after its enactment, and not long previously. They base this opinion upon the assumption that We certainly intended that where serfs were already married to free women, and children were born to them after the enactment of the present law, or even if they were not yet married, and contracted marriage subsequently, the children born afterwards would be free by virtue of the law.

### CHAPTER I.

A CHILD BORN OF A SERF AND A FREE WOMAN SHALL BE FREE.

Therefore, in order that no artifice may prevail, or any fraud be committed, and the use of subtle interpretations for the purpose of injuring possessors of property may no longer be allowed, We hereby decree that all children born of free mothers after the publication of this law shall be released from the condition of serf, and that the other ancient legislation on this subject shall remain in full force.

### CHAPTER II.

THE STEWARDS OF RELIGIOUS HOUSES ARE AUTHORIZED TO MAKE EXCHANGES OF PROPERTY BELONGING TO SAID HOUSES, WITH THE EXCEPTION OF THAT OF THE CHURCH OF CONSTANTINOPE.

We have recently drawn up a law for the purpose of remedying abuses relating to the alienation of ecclesiastical property, and We desire, where any public debt exists, to enable them to dispose of it, if they observe all the formalities prescribed by law. When, however, there is any private indebtedness, immovable property can be given by way of payment,

provided no law prohibiting alienations of this kind is violated by doing so; and We add that, where the case is urgent, and it is advantageous to religious houses to give or receive such property, one church may transfer it to another, or one hospital to another, or one house for the entertainment of travellers to another; for We authorize such an exchange to be made between one religious house and another founded for a different purpose, such as a church and an asylum for poor invalids, a monastery and another religious house, etc.

By the terms of the present law We grant authority to the heads of these monasteries to make exchanges of this kind, and We hereby establish the validity of such exchanges; thus the government shall not be the only one (as was provided by the former law) entitled to the privilege of exchanging immovable property with churches. Religious houses, dedicated to God, the common King of all mankind, can also do this, but the interposition of a decree as well as the taking of an oath shall be absolutely necessary; the reason for the exchange shall be investigated by the metropolitan bishop of the diocese, and if it is actually proved under oath that the exchange will be advantageous to both parties, it shall be confirmed and rendered valid, and there will be no need of a pragmatic sanction, or any special order for that purpose.

Those who make exchanges of this kind will have the judgment of Omnipotent God to fear, if any fraud for which they are responsible should be committed, or any collusion take place on their part, and they should consider the benefit of one of the parties rather than that of the other; for terrible maledictions in addition to those which We at present prescribe are denounced against persons guilty of offences of this kind, when the said stewards fail to comply with any of the requisite formalities, and are afterwards proved to have done this with evil intent, and where this is the case the transaction shall be void.

(1) We except the Holy Principal Church from the operation of this law, just as was done by the previous constitution; and We desire that it shall continue to be included in the former prohibition concerning alienations, as this has been considered to be proper by the ecclesiastical authorities having it under their control.

#### *EPILOGUE.*

Your Eminence will communicate these matters which have appeared to Us to be good and proper, and which are set forth in the present law, to all the provinces under your jurisdiction; in order that they may be formally promulgated by means of suitable proclamations.

Given at Constantinople, on the fifteenth of the *Kalends* of September, during the eleventh year of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

#### TITLE X.

CONCERNING THE PROHIBITION OF FRAUDULENTLY EXCHANGING ECCLESIASTICAL PROPERTY FOR THAT OF THE EMPEROR, IN ORDER BY SO DOING TO TRANSFER IT TO OTHER PERSONS, FOR SUCH EXCHANGES SHALL ONLY BE MADE WITH THE IMPERIAL HOUSE. ALSO CONCERNING THE AUTHORITY GRANTED TO CHURCHES TO MAKE PERPETUAL EMPHYTEUTIC CONTRACTS WITH EACH OTHER, WHEN A DECREE HAS BEEN OBTAINED FOR THAT PURPOSE, THE PRINCIPAL CHURCH OF THIS CITY EXCEPTED, WITH THE UNDERSTANDING THAT THE EMPHYTEUSIS SHALL NOT BE TRANSFERRED TO A PRIVATE PERSON.

FIFTY-FIFTH NEW CONSTITUTION. The Emperor Justinian to Menna, Archbishop of Constantinople.

#### *PREFACE.*

We have already enacted a law prohibiting the alienation of ecclesiastical property, and which allows the most holy churches, as well as the Most Holy Principal Church of this Fortunate City, to make exchanges when the Empire desires to obtain anything from a religious house,



and We have subsequently promulgated another law by which We have excepted the Most Holy Principal Church, but authorized certain alienations which are set forth in the said law. But, for the reason that We have ascertained that certain persons have evaded what is provided in a chapter of Our first Constitution, which treats of exchanges made between the government and the most holy religious houses, and as the said persons ask Us to Ourselves acquire property from the Most Holy Church, in order to transfer it to them, and many with the intention of evading the Imperial Constitution aforesaid have presented petitions to Us for this purpose, We desire that whatever We have prescribed up to this time shall be valid, and that none of the transactions which have been made by Us with the Most Holy Church, or with others that have received anything from Us by virtue of such contracts, shall be abrogated.

#### CHAPTER I.

We decree that, hereafter, no person shall be permitted to do anything of this kind, but that only those exchanges shall be valid which have been made between the government and the Church; in order that the property transferred may always remain in possession of the Empire, and not be conveyed to any private individual, nor that the title to said property shall pass to such persons through the medium of the government. If anything of this kind should occur, We grant permission to the most reverend stewards to seize the property and restore it to the Most Holy Church, just as if no such transfer had been made to the government in the first place.

This law shall, from this day, remain forever in force, and all exchanges which (as We have stated) have been made through the medium of the government after the enactment of the first law shall be confirmed, for the reason that said transactions have already been perfected. Now, however, certain persons, taking advantage of these former examples for the purpose of annoying Us, and defrauding the Most Holy Principal Church of this Most Fortunate City, desire to obtain possession of property in this way, which We are unwilling should be done at any time. If, however, such an exchange should take place, it will be void, and the property in question shall be recovered by the Most Holy Principal Church, and held in perpetuity, and no prescription of long time can be pleaded against it.

#### CHAPTER II.

##### CHURCHES SHALL BE PERMITTED TO MAKE PERPETUAL EMPHYTEUTICAL CONTRACTS WITH ONE ANOTHER.

We hereby decree that all provisions enacted with reference to emphyteutical rights, so far as the Most Holy Principal Church or all other religious houses are concerned, shall remain in full force; but churches and religious houses, with the exception of the Most Holy Principal Church, shall be permitted to make perpetual emphyteutical contracts with one another, provided a decree authorizing this has been previously obtained, as We are not willing that this right should be enjoyed by a private individual.

#### *EPILOGUE.*

Therefore Your Holiness will observe these matters which have been ordered by Us, and communicate them to those who occupy Metropolitan Sees in Your jurisdiction, so that they may become familiar with what We have been pleased to enact, and will not venture to evade any provisions of these laws; for if they should either do this themselves, or permit others to do so, they will become liable to the judgment of Heaven, as well as to severe penalties.

Given at Constantinople, on the third of the *Nones* of November, during the eleventh year of the reign of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

## TITLE XI.

THE CONTRIBUTIONS ORDINARILY MADE BY MEMBERS OF THE CLERGY AT THEIR ORDINATION SHALL CONTINUE TO BE PAID IN THE PRINCIPAL CHURCH, BUT NOT IN OTHER CHURCHES.

### FIFTY-SIXTH NEW CONSTITUTION.

The Emperor Justinian to Menna, Archbishop of the Royal City of Constantinople.

#### *PREFACE.*

As We intend to make many additions to Our laws, We have thought it proper to address this constitution to Your Holiness. The clerks ordained by Your Reverence in the most holy churches (from which, however, the Most Holy Principal Church is excepted) are subjected to the most cruel exactions of all, for We have ascertained from frequent complaints made to Us on the subject that they are not permitted to receive their churches before they pay into them certain sums of money by way of contributions.

#### CHAPTER I.

Therefore We order that Your Holiness shall diligently inquire whether it is customary for those who are ordained in the Most Holy Principal Church to contribute in this manner, and if it is, they shall continue to do so, for We do not change anything where payments are made in this way in the Most Holy Principal Church. But, so far as all other churches are concerned, no ecclesiastic shall collect anything whatever from a member of the clergy under the pretext of admission fees. If an act of this kind should be committed, the culprit shall be expelled from the priesthood, and he whom he imposed upon shall obtain his place, for this shall be the reward of his avarice, and the defenders of the Most Holy Principal Church must obey what We have prescribed, under the penalty of ten pounds of gold, if they fail to comply with the provisions of this law, and they shall perform all their functions gratuitously, for We do not wish clerical services to be subject to sale, or be done for reward, but honorably and without compensation. In this way ecclesiastical duties, not being purchasable, will be more worthily discharged.

#### *EPILOGUE.*

Therefore Your Holiness, together with those who may subsequently occupy Pontifical Sees, will hasten to carry into effect the matters promulgated by Us in this law.

Given at Constantinople, on the third of the *Kalends* of November, during the eleventh year of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

## TITLE XII.

THE SALARIES OF ECCLESIASTICS WHO ABANDON THEIR CHARGES SHALL BE GIVEN TO THOSE WHO ARE SUBRO-GATED TO THEM. THE FORMER SHALL NOT BE REINSTATED EVEN IF THEY SO DESIRE, AND IF ANYONE WHO HAS BUILT A CHURCH, OR PAID THE SALARIES OF ECCLESIASTICS IN THE SERVICE OF ONE SHOULD WISH TO APPOINT OTHERS, HE CANNOT DO SO WITHOUT THE APPROVAL OF THE MOST HOLY PATRIARCH.

### FIFTY-SEVENTH NEW CONSTITUTION.

The Emperor Justinian to Menna, Most Holy Archbishop of this Royal City, and Universal Patriarch of Its Territory.

#### *PREFACE.*

Many members of the clergy who have been in the service of religious houses, or have been appointed by persons who have paid their salaries, frequently abandon the establishments to which they are attached for reasons known to them alone.

## CHAPTER I.

### CONCERNING ECCLESIASTICS WHO SHOULD BE SUBRO-GATED TO MEMBERS OP THE CLERGY WHO HAVE ABANDONED THEIR CHURCHES.

Hence, in order that there may be no interruption to religious service, We decree that other members of the clergy shall be subro-gated by the bishops to those who have deserted their charges, and shall be entitled to their salaries. For We do not wish that the revenues paid to the most holy churches by their founders for the maintenance of ecclesiastics, who have abandoned them, should, under any pretext whatever, be a source of profit to certain individuals; but the emoluments which were provided from the beginning shall always be given, and the holy ministrations of the church shall not be suspended on this account; nor shall the former incumbents be reinstated and those who have been substituted for them be expelled, after having been appointed by the Most Holy Patriarch or the provincial bishops. Those who have incurred this expense shall not be required to pay double, that is, pay the substitutes as well as those who desire to be reinstated, and if the latter should return they shall not be received. Their emoluments shall be given to those who have been appointed after their departure, nor shall any ecclesiastics already in the service of the church profit by their accession, and the salaries of the clerks as well as the expenses of the church shall be entirely furnished by the founders. The heirs and successors of the latter are hereby notified that if, after the promulgation of this law, they should perpetrate any fraud with reference to this matter, a certain portion of their property will be assigned to Our Imperial domain, to provide for the payment of the above-mentioned obligations.

## CHAPTER II.

### FOUNDERS OP CHURCHES SHALL NOT BE PERMITTED TO ACTUALLY APPOINT ECCLESIASTICS FOR SAID CHURCHES, BUT MERELY TO PRESENT THEM FOR APPOINTMENT.

We decree what follows for the honor and advantage of Your See. When anyone who has founded a church, or made provision for its expenses, desires to appoint ecclesiastics, he will have no assurance that those whom he, on his own authority, presents to Your Reverence for ordination, will be admitted, but Your Holiness must examine them, and those who, according to your opinion or that of him who occupies the Pontifical See, appear competent and worthy of the service of God, shall be ordained. In this way the holiness of God will not be profaned (which is recommended by the Holy Scriptures), but will remain intact, ineffable, and awe-inspiring, and everything relating to it will be treated with reverence and in a way acceptable to God.

## *EPILOGUE.*

We order Your Holiness to cause what it has pleased Us to insert in this Imperial law to be perpetually observed, you being well aware that We are not less solicitous for the welfare of the holy churches than for the salvation of your soul.

Given at Constantinople, on the *Nones* of November, during the eleventh year of Our Lord the Emperor Justinian, and the third after the Consulate of Belisarius.

## TITLE XIII.

### SACRED MYSTERIES SHALL NOT BE CELEBRATED IN PRIVATE HOUSES.

#### FIFTY-EIGHTH NEW CONSTITUTION.

The Emperor Justinian to Menna, Archbishop of the Royal City of Constantinople.

## *PREFACE.*

It has been provided by former laws that sacred mysteries shall, under no circumstances, be celebrated in private houses, but that the belief in and the worship of God shall be professed in public, in accordance with the custom which has been handed down to Us with regard to

the observance of religious ceremonies; and We, by this present law, do provide that what We wish shall be strictly complied with. For We forbid the inhabitants of this great city, as well as all others in Our Empire, to have any kind of chapels in their houses, or to celebrate sacred mysteries there, and to do nothing which may be opposed to Catholic and Apostolic tradition.

Where, however, any person desires to have an oratory in his residence without the celebration of the sacred mysteries, We hereby authorize him to do so. There is no objection to anyone having a private place for prayer, as in holy places, provided he abstains from doing anything else there. Where anyone wishes to invite members of the clergy to come for the purpose of conducting religious services, this can be done where they belong to the Most Holy Principal Church and the holy houses subject to its jurisdiction, if this is authorized and approved by the Most Holy Archbishop; and in the provinces any priests who are sent for this purpose must be approved by the bishop. No innovation is made by the present law with reference to any rights enjoyed by Your See, either here or in the provinces, so far as ordinations and government are concerned, and all its privileges shall be preserved now and for all time.

We order Your Glory to cause the law which We have enacted to be obeyed, and to communicate the same to all Our subjects by special letters, in order that it may be effective in every respect. We give the same order to the Most Glorious Prefect of this Fortunate City, and to the Most Holy Archbishop and Universal Patriarch, in order that these provisions may be forever observed by both the civil and ecclesiastical authority.

The owners of houses are hereby notified that if they do not obey these rules they will incur the anger of the Emperor, and that the buildings in which anything of this kind takes place will become public, and be confiscated to Our Imperial Treasury. Persons who have chapels in their houses are also notified that if, after the term of three months from the promulgation of this law has expired, they do not cease celebrating the sacred mysteries there, and comply with its provisions, they will be liable to the aforesaid penalty; but We wish them to act sincerely, and not with dissimulation, for We are greatly attached to the truth.

We command Your Highness to see that this law is executed, and to permit nothing to be done in violation of its provisions; and you are hereby notified that if, after any breach of the said law has been communicated to you, you or your successors do not immediately take measures to suppress it, you will be liable to a fine of fifty pounds of gold, and your subordinates will incur the same penalty, because they permitted a matter to which We attach much importance, that is to say, the unity of the Most Holy Church, to be interfered with, and allowed what has been publicly prohibited by Us to be secretly done, and suffered Our authority to be despised; and they will also run the risk of losing their offices, and, in addition to this, the house in which anything of this kind takes place shall become public property, and be confiscated to the Imperial Treasury.

#### *EPILOGUE.*

This law has been addressed by Us to the Most Holy Patriarch of this Fortunate City, in order that he may provide for its execution. We desire that it be rendered inviolate for all time, by both sacerdotal and judicial authority.

Given at Constantinople, on the third of the *Nones* of November, during the eleventh year of the reign of Our Lord the Emperor Justinian, after the Consulate of Belisarius.

#### TITLE XIV.

#### CONCERNING THE FUNERAL EXPENSES OF DECEASED PERSONS.

#### FIFTY-NINTH NEW CONSTITUTION.

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

## PREFACE.

It is necessary for each of the good works of which We are the author to be begun with the favor of God, or if corruption should find its way into the beneficial laws of Our predecessors, this must be remedied by Us, and they be placed in their former condition, in order that We may always endeavor, either by enactments or amendments, to participate in measures advantageous to the public welfare. Hence We think that matters connected with the funerals of deceased persons require correction, and that provision should be made for all 'contingencies so that no one shall be subjected to the double embar-rassment of losing his property, and, at the same time, of suffering personal injury. But as what Constantine, of pious memory, after due deliberation, decreed, and Anastasius, of pious memory, subsequently confirmed by making additions to the revenues set apart for funeral expenses, seemed about to fall into disuse, We are compelled to restore it, taking every precaution and proper means to do so, with a view to rendering it permanent. For Constantine, of pious memory, set apart nine hundred and eighty warehouses in the different quarters "of this Most Fortunate City for this purpose after having exempted them from taxes, the income from which was payable to the Most Holy Principal Church. Anastasius, of pious memory, not only increased the number of said warehouses by a hundred and fifty, but also, by two pragmatic sanctions, apportioned a certain revenue to be employed by the reverend stewards, to be paid to persons who conducted funeral ceremonies.

Many individuals, however, have applied to Us, stating that matters were not as they should be, and that funerals were not conducted gratuitously, but enormous sums of money were extorted; and it has been ascertained that much property has been taken from mourners against their consent, and that even those who were unable to do so were called upon to contribute; hence We have determined that all these abuses should be remedied.

## CHAPTER I.

Therefore, in the first place, as the number of warehouses originally set apart has been greatly diminished, We restore them all to the Most Holy Principal Church, addressing for this purpose a pragmatic sanction to the Urban Prefect; in order that he, along with his subordinates, may place eleven hundred warehouses at the disposal of the defenders and most holy stewards of the said church. Eight hundred of these warehouses shall be charged with furnishing pallbearers to the defenders, and the remaining three hundred with paying the stewards the revenues allotted to the Most Holy Church by Anastasius, of pious memory. No payment, however, small as it may be, can be exacted for conducting funerals, as the stewards have the revenue from three hundred warehouses for the purpose of paying the deans and other persons employed the monthly salary which is due to them; and the defenders have under their control the income of eight hundred warehouses to furnish pallbearers, and provide what is necessary for the funerals of deceased persons, in order that all the expenses of those who mourn their loss may be defrayed.

## CHAPTER II.

Therefore it is necessary for the aforesaid eleven hundred warehouses to be preserved for the use of the reverend stewards and defenders, without any diminution of their revenues, as well as to remain exempt from taxation; and if any accident should happen, or any change in their arrangement or destination should take place, this must be effected by the Most Glorious Prefect of this Fortunate City, in order that the stewards charged with the administration of property to defray the expenses of burial, having at their disposal the revenue of three hundred warehouses free of taxes, and the defenders, having control of eight hundred of these warehouses, the Most Holy Church may defray the funeral expenses of deceased persons.

As We have already stated, the said stewards shall, in addition to the revenue of the three hundred warehouses aforesaid, use for this purpose the property which they have petitioned Us to enable them to acquire, with this end in view. Therefore, for the reason that among the eleven hundred warehouses situated in this Fortunate City, there are many in a ruinous

condition, We direct that they shall immediately be repaired, in order that the entire number may remain undiminished, and without taxation; and that they shall continue to be divided between the stewards and the defenders, as We have just stated; so that there may be not less than eight hundred deans furnished to the defenders by eight hundred warehouses; and that, so far as the other three hundred warehouses allotted to the stewards are concerned, the latter shall be permitted to obtain from them three hundred deans or less, or to collect from all or some of the said three hundred warehouses an income in money which the said stewards have not obtained up to this time, and which We Ourselves have informed them they must expend in the funerals of deceased persons, distributing it in the same way as the income from other property, among the deans, hermits, canons, and acolytes, as We shall prescribe hereafter. For the said stewards, having informed Us that in the future it will be impossible to collect the same revenues as heretofore, We have very properly given them an increase of three hundred warehouses, in order that the revenues which have heretofore regularly been paid to those who conduct funerals may be available hereafter, that is to say, four hundred *solidi* shall be divided every month among the deans, acolytes, ascetics, and canons, in accordance with the custom observed up to this time; the deans shall be entitled to one hundred and eighty-two *solidi*, the ascetics to ninety-one *solidi*, the acolytes to ninety-one *solidi*, and the canons to thirty-five *solidi* a month, which sums shall be paid semi-annually to those who have been in the habit of receiving them.

### CHAPTER III.

The stewards shall be required to pay the share due to the most reverend ascetics, in accordance with the amount which We have just established through the agency of Eugene, Deacon, and Superior of the Hospital of Samson, of holy memory, which has been founded by Us; and through the agency of those who, after him, are the heads of similar houses already mentioned, for the reason that the ascetics employed at funerals are subject to the control of the temporal heads of these venerated establishments. Thus, as the stewards pay to the acolytes and most reverend canons the money to which they are entitled through the medium of those who at present exercise authority over them, and to whom their interests are committed, these officials shall distribute the money among the ascetics, canons, and acolytes subject to their authority. But if the stewards should be in default in paying the said officials, and if six months should have elapsed, and the second half year should have begun without anything having yet been paid, then the entire amount due shall, after the expiration of the first six months, be collected from them with interest at four per cent. The Most Holy Archbishop and Patriarch of the Principal Church of this city shall be charged with the execution of this provision.

### CHAPTER IV.

If, however, an entire year should elapse, and the stewards should not pay anything to the most reverend women, or to the aforesaid deans, the Most Holy Patriarch shall be permitted to collect from them not only the amount due with the interest previously mentioned, but also to compel them to pay whatever has been decreed; and (if he should wish to do so) to deprive them of the administration of the property, and force them to surrender it in good condition. The Most Blessed Archbishop and Universal Patriarch, to whose authority the members of the clergy and everything relating to the Principal Church are subject, shall exercise the greatest care with reference to all these matters.

(1) Where these things have once been accomplished, nothing shall be accepted by way of compensation for watching a corpse; and that everything may be plainly understood on this point, We direct that an *assistarium* shall be assigned gratuitously to every bier, which shall consist of ascetics or canons preceded by not less than eight women, who, chanting, shall precede the bier, and three acolytes, who shall be entitled to nothing whatever for their services. If, however, any of the heirs of the deceased should voluntarily, and without compulsion by anyone, desire to have two *assistaria*, or even more, he can employ them at his own expense; and in order that We may not leave this matter in doubt, We desire that those

who perform this duty shall consist of the same number of canons and acolytes which We have already prescribed, that is, that there shall not be less than eight ascetics or canons, and three acolytes in each *assisterium*.

#### CHAPTER V.

When the funeral ceremonies take place within the new walls of this Fortunate City, there shall be paid to the ascetics or canons, in excess of the number which ought to accompany the body gratuitously, the third part of a *solidus*, which they must not divide with the acolytes. Where three acolytes, in excess of the three who are required to give their services gratuitously, are employed, they shall remain content with three *siliquise*, and where there are six, they must be satisfied with six *siliquise*, and so on, according to the number.

It is certain that if the distance which the funeral procession is compelled to traverse is very long, and more pallbearers are necessary to carry the bier, then the *ossisterio*, which are in excess of the one gratuitously furnished will be entitled to something more by way of compensation for this increased labor.

This rule which We have just established is only applicable to funerals conducted within the space enclosed by the new walls and the Passage of Justinian, as, in this case, the distance will not be very great, and much time and trouble will not be required to reach the sepulchre. Where the funeral ceremonies are celebrated outside of the new walls of this Fortunate City, or in some other place beyond the Passage above referred to, half of a *solidus* shall be paid to the ascetics or canons, which they must not divide with the acolytes, and the latter in each *assisterium* shall receive four *siliquise*, to be divided among them (as We have already stated); but there must always be one *assisterium*, which, along with three acolytes, shall gratuitously follow the bier which has been furnished. This *assisterium*, composed of eight ascetics and three acolytes, shall, as previously mentioned, receive absolutely nothing for their services, nor shall they exact any compensation for tapers, or under any other pretext whatsoever.

#### CHAPTER VI.

We have established all these rules for persons who are not sufficiently liberal or ostentatious to demand the two large biers deposited in the venerated Hall of Vases; We mean the biers of Studius, of glorious memory, and of Stephen, of magnificent memory. If anyone should desire to have these, as several men are required to carry them and great care must be exercised when they are used, We do not include these biers with the ones already mentioned, and since those who desire to use them for the purpose of making a display must pay the pallbearers, ascetics, and canons a certain sum for their use, We decree that this shall not exceed ten *solidi* for the said two biers of Studius and Stephen. And so far as the gilded bier deposited in the Most Holy Church is concerned, a *solidus* shall be paid for each pallbearer, which makes four in all; and the ascetics, canons, and acolytes shall receive double the amount which We have previously allotted them. Again, the *assisterium*, or canons who precede the other biers gratuitously, shall be entitled to the same as the others, and the acolytes shall also receive twice the sum which We have already prescribed, when the bier used for the funeral ceremonies is one of the three that We have just mentioned; for if the defenders are compelled to furnish pallbearers and biers out of the revenues of the eight hundred warehouses which We have placed at their disposal, they shall not be required to incur other expenses, and the stewards shall not be obliged, on account of the revenue which has been allotted to them by Anastasius, of Divine memory, to pay out of the income from the three hundred warehouses set apart for their use any other persons than those employed in funerals, in accordance with the general rule which We have established. In this way nothing will remain unprovided for; those who desire burials to take place with moderate expense will enjoy the benefit of this arrangement; and others who are given to pomp and display will not be put to great expense, but will be liberal, and at the same time practice moderation.

## CHAPTER VII.

This is what We have decreed with reference to warehouses and their revenues, and funeral ceremonies, whether the latter are conducted gratuitously, or at the expense of the relatives of the deceased. We charge not only the Most Glorious Prefect of this City and his subordinates, but especially Your Highness and those subject to your jurisdiction, to see that the number of these warehouses is never diminished. We also impose a fine of fifty pounds of gold upon your office if any one of your attendants should fail to obey this rule, and double that sum upon those who may hereafter occupy your place; for We desire that the number of eleven hundred warehouses shall never be decreased, and that the division which We have established shall always be maintained. But if Your Highness, or your successor, should ascertain that the number of warehouses is not complete, you or he must take pains to make it so. The warehouses shall be free from all burdens of any kind, and shall not be interfered with either by Your Highness or by anyone else, in order that there may be no occasion to exact any contributions for the funeral expenses of anyone whomsoever, in contravention of what We have decreed. We make no distinction between deceased persons, whether they be rich or poor, unless, as We have already stated, one of the three biers with reference to which We have formulated appropriate regulations should be selected.

We desire that this Imperial pragmatic sanction shall be strictly observed, and that, in accordance with what We have prescribed, it shall remain unchanged and immortal, and be obeyed by all persons, as long as there are men upon the earth; that the name of Christian shall be great and praised among them, and its renown daily increased by the efforts of Divine Providence. The Most Holy Patriarch of this Most Fortunate City will himself, before all other persons, see that this law is observed; he will make use of his pontifical authority to prevent it from being violated; and will not permit this to be done by any person of sacerdotal or judicial condition; and We, as the representative of the government, fixing Our eyes upon God, pray that, as the Eternal Master of all rulers, He may vigilantly provide for the execution of this law. For the maintenance of pious institutions concerns the living as well as the dead, and, above all, involves the salvation of those entrusted with the cares of government; and it is also important that the efforts of preceding legislators should not be rendered void by the negligence of their successors.

And, just as We have decreed that the eleven hundred warehouses allotted to the service of the Principal Church shall be preserved intact in number, and free from all taxes, so We order that all other warehouses shall be liable to taxation, and that none of them shall be absolutely exempt from it, whether the said warehouse belongs to a religious church, a hospital, a hermitage, a monastery, or any such establishment whatsoever, or even to Our Imperial House, or to a great or wealthy man. We also desire that all warehouses shall be equally liable to the payment of taxes, and that none of them can exempt itself, or be released from liability from the share which it owes, so as to impose the entire burden of taxation upon a small number of warehouses, which are not able to sustain it.

### *EPILOGUE.*

Therefore after Your Highness has received your office and appointed the members of Your court, you will see that what it has pleased Us to enact by this Imperial pragmatic sanction is perpetually observed.

Given at Constantinople, on the third of the *Nones* of November, during the eleventh year of the reign of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

### TITLE XV.

NEITHER THE BODY OF THE DECEASED NOR HIS FUNERAL CEREMONIES  
SHALL SUFFER INJURY AT THE HANDS OF HIS CREDITORS. COUNCILLORS  
SHALL NOT TAKE COGNIZANCE OF CASES IN THE ABSENCE OF JUDGES.

### SIXTIETH NEW CONSTITUTION.



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

*PREFACE.*

Persons who make comparisons of different cases are not easily mistaken if they carefully examine the truth; for it is probable that those are in error who, in considering the multitude of laws promulgated by Us on every subject, do not take into consideration the necessity which compels Us to publish new enactments, with a view to providing for cases which have not been foreseen by laws already enforced, an instance of which has recently occurred. A certain man who alleged that he was the creditor of another, being aware that his debtor was about to die, collected a number of officials and several slaves, and with them invaded the chamber of the man who was at the point of death. The latter, being alarmed, began to cry out, until overcome by the violence of his sufferings, he gave up the ghost; and then the creditor, on his own responsibility, affixed his seals to the property of the deceased, although there was no magistrate present, and he did not observe any legal or civil formality; and not only did not retire, but was not ashamed to abuse the deceased, and at first insisted that no funeral should take place. Afterwards, when the funeral procession had begun to remove the corpse from the house, he refused to permit the bier to be carried in public, stating that this should not be done unless payment of his debt was made, or until a surety had been furnished, and that only under such circumstances would he allow the body of the deceased to be placed in the grave. While We have already laid down suitable rules with reference to a case of this kind, We still think it is necessary to remedy the abuse by means of a law of general application, in order to prevent such an act from being repeated, and always remaining without proper legislation.

CHAPTER I.

CONCERNING CREDITORS WHO THREATEN THEIR DECEASED DEBTORS (AFTER JULIANUS).

Therefore We decree that if anyone, while a person who he thinks is indebted to him is still living, should enter his house and annoy him or members of his family, for instance, his wife, his children, or any of the members of his household, and presume, on his own authority, to place his seals on the property of the person who is ill, without having previously obtained a decree, and observing the ordinary legal formalities, he shall, after the death of him who he alleges is indebted to him, be absolutely deprived of all rights of action against him, whether they are well founded or not; and an amount equal to that which he says is due to him shall be collected from him, and paid to the heirs of the deceased. He shall also suffer the loss of the third part of his property (a penalty which the philosophical Emperor Marcus inserted in his laws), and be branded with infamy; for he who does not blush to injure human nature deserves to be deprived of money, reputation, and everything else.

(1) If, after the death of a debtor, his creditor should interfere with the funeral ceremonies in such a way as to prevent them from taking place, a law which was promulgated by Our Father imposes a penalty upon him, but a still more severe one will be imposed upon him by Our laws, for We decree that he shall be subjected to the punishment that the present law inflicts upon creditors who abuse dying debtors in the manner which We have mentioned. The Most Glorious Prefect of this Fortunate City, who is charged with the suppression of crime, shall pay special attention to the prevention of what is treated of in this law, and the Most Glorious Praetorian Prefect, as well as the Most Glorious Master of the Imperial Offices, will see that it is enforced; for it is necessary that the right to prevent and punish wrongs against nature should be granted to all magistrates.

What We now order shall be applicable not only to this Most Fortunate City, but also to all the provinces, the government of which has been entrusted to Us by God from the beginning, or which He has added to Our Empire, or which he may subsequently add, as one of Our predecessors has already stated. All provincial magistrates, both military and civil, are charged with the execution of this law, and a fine of thirty pounds of gold shall be imposed

upon the magistrates of Constantinople and their offices, and one of five pounds of gold shall be imposed upon provincial judges, if they fail to perform their duties in this respect, or disregard any notices of the violation of this law either in this city, or in any of the provinces.

## CHAPTER II.

### NEITHER COUNCILLORS NOR ASSESSORS SHALL TAKE COGNIZANCE OF CASES IN THE ABSENCE OF MAGISTRATES.

We have decided that (in conformity with the Constitution of Leo, of pious memory, as well as with that which We Ourselves have promulgated) it is proper not to permit the councillors of judges to hear by themselves any cases brought before magistrates charged with judicial duties or before judges who have been appointed by Us. For it is much better and preferable for proceedings to be instituted before the proper officials themselves, in the presence of the parties interested, as the witnesses produced will be more influenced by fear; and the case will be tried with the same decorum as it would be before ordinary judges, who differ in no respect from councillors. But as the magistrates always appointed by Us may be occupied with the execution of Our orders, or with other matters, and not be able to hear cases themselves, it is absolutely necessary, under the circumstances, to enact a law applicable to existing conditions.

(1) Therefore We order that suits shall be brought before the magistrates themselves, who have either superior or inferior jurisdiction, and when this is once done, the action may proceed before councillors; but when final judgment is to be rendered, it cannot take place without the presence of the magistrates, and the latter, with the dignity befitting their office which We have for a long time charged them to display, and in the presence of the Holy Scriptures, shall hear the report of all the proceedings, and decide the case, and receive the appeals, without any delay, if anyone should appeal under circumstances permitted by the law. We desire that the judges of appeal shall, by all means, hear cases entirely by themselves, and that no one shall presume to do otherwise; for if anything of this kind should happen, the magistrates themselves will be liable to a penalty of twenty pounds of gold, and the councillors, who have ventured to hear the case alone, if they are advocates, shall be expelled from the association of advocates, and if they are not, shall be deprived of their offices (if they have any) and punished by a fine of ten pounds of gold. For those who treat with contempt the Constitution of Leo, of pious memory, in addition to the one which We have long since promulgated, as well as the present law, cannot expect to escape punishment for their wrongful act.

The Most Glorious Count of Our Imperial Domain shall be charged with the execution of this law, and shall collect the fine and turn it over to the Treasury, whenever any violation occurs; for he is well aware that he will be liable to the Treasury for the said fine out of his own property if he does not take measures for the observance of this constitution.

(2) What We have decreed has reference to magistrates whose duty it is to see to the execution of Our orders, and they have a good excuse not to hear cases by themselves. But so far as other magistrates are concerned, who, having no regular employment, hear cases by virtue of Our orders, whether in this Most Fortunate City or in others, if they should be guilty of anything of this kind, We impose still more severe penalties upon them, when they do what We have forbidden, and those who are subject to their authority as councillors take cognizance of cases; for unless proceedings are conducted before these magistrates from the beginning to the end of the action, and they hear it conjointly with their councillors, We threaten them with the loss of office and a penalty of twenty pounds of gold, and their councillors shall be expelled from the city in which they have violated Our law, and be disgraced in other respects.

## *EPILOGUE.*

Therefore Your Eminence will communicate to all persons the matters which We have been pleased to enact by this Imperial law, and you will do this by the publication of formal edicts

throughout the provinces, in the usual manner, in order that no one may be ignorant of what We have ordered. The Most Glorious Urban Prefect is charged with said publication in this Most Fortunate City.

Given at Constantinople, on the *Kalends* of December, during the eleventh year of the reign of Our Lord the Emperor Justinian, and the second after the Consulate of Belisarius.

#### TITLE XVI.

IMMOVABLE PROPERTY OF WHICH ANTE-NUPTIAL DONATIONS ARE COMPOSED SHALL NEITHER BE HYPOTHECATED NOR ALIENATED IN ANY WAY BY THE HUSBAND EVEN WITH THE CONSENT OF HIS WIFE, UNLESS HE HAS SUFFICIENT PROPERTY TO AFTERWARDS SATISFY HER CLAIM; AND THE SAME RULE SHALL ALSO APPLY TO DOWRIES.

#### SIXTY-FIRST NEW CONSTITUTION.

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

#### *PREFACE.*

A pitiable case having been brought to Our notice, We, having corrected it in the proper manner, desire to remedy abuses of this kind by means of a general law, as We are accustomed to do.

#### CHAPTER I.

IMMOVABLE PROPERTY COMPOSING AN ANTE-NUPTIAL DONATION CAN UNDER NO CIRCUMSTANCES BE EITHER HYPOTHECATED OR ALIENATED.

We order that if anyone should agree to give an ante-nuptial donation, or one in consideration of marriage (for We have decided that the latter name is preferable), whether he does this himself, or someone else agrees to give it, for instance, the father, the mother, other relatives, or even strangers, and the said donation consists of immovable property, We expressly prohibit the husband from either encumbering it, or disposing of it in any way whatever thereafter, for it is not proper to alienate anything which has been once bound by the ties of nuptial generosity; and the wife, if she should happen to obtain this advantage, and the property was not found in the possession of her husband because it had been alienated or hypothecated to a third party, who perhaps was a powerful person, would find it difficult, or perhaps entirely impossible to recover it, and she would be reduced to the necessity of bringing an action for that purpose, when she should be protected by the law itself.

(1) Wherefore, this constitution shall be observed; and anyone who hereafter makes a contract of this description is hereby notified that whether he purchases the property, or has it encumbered to himself, he will reap no benefit whatever from doing so; and whatever has been reduced to writing or agreed upon verbally shall be considered as not having taken place, in order that the advantage to which the wife was entitled may not be interfered with. For those judges who, after the dissolution of the marriage, formerly granted to wives an action *in rem* to recover the immovable property of which an ante-nuptial donation was composed, do not appear to Us to have acted unreasonably, as We consider this practice to be praiseworthy, but hereafter judges must not longer observe it. We do not wish creditors to make use of crafty methods to induce wives to consent for immovable property composing ante-nuptial donations to be hypothecated to them, and thus to be deprived of their rights; for the consent of the wife either to hypothecation, sale, or alienation of such property shall be of no benefit whatever to the person who obtains it; and as We have stated with regard to women becoming sureties, it is necessary for its validity that, after the lapse of two years, a new declaration in writing, confirmatory of the first, be made by her, and then the transaction which has already taken place shall be ratified.

(2) If the wife should consent to the encumbrance of the property, as in the case where she

becomes surety, she shall be entirely exempt from all liability, unless (as We have just stated) she gives her consent a second time. For deception is often practiced to obtain consent in the first place, and a wife readily deceived by the representations of her husband may be negligent of her own rights, while after some time has elapsed, she can reflect upon the matter, and perhaps become more cautious.

(3) Still, We do not make this statement without any reservation, for We do not subject the wife to the risk of losing the immovable property of which the donation is composed, on account of her second consent; provided her husband has other property out of which it is possible for her to be indemnified for either the personal or real property of which the ante-nuptial donation is composed, and which is in the hands of a third party by virtue of some alienation or encumbrance; but, on the other hand, if there is no other in his hands, We do not permit the wife to sustain any loss; for even though she may consent a second time, or several times, to the hypothecation of the property of the ante-nuptial donation, her right to it shall still remain secure, and the alienation will not be valid; unless, We repeat, there is sufficient property remaining in the hands of the husband to make up the amount of the ante-nuptial donation.

We establish this rule not only for the purpose of protecting the interests of wives, but even more to safeguard the rights of husbands, as, in a great number of instances, the property composing the ante-nuptial donation is set apart for the benefit of the common children, and reverts to the husband, thus becoming part of his estate; and in this way the law is advantageous to both husband and wife. The rule is still more applicable to dowries, where any property belonging to them is either alienated or hypothecated; but provisions relating to dowries have already been sufficiently described and explained.

(4) Nor do We, in any respect, neglect the rights of third parties who make such contracts; for as We desire the alienation of property to which wives are entitled to be held not to have taken place, or to have been committed to writing, so We also desire the transfer of the property of husbands, when obtained by anyone through alienation or hypothecation, to be considered void.

We preserve the rights of women unimpaired, so far as the immovable property composing ante-nuptial donations and the other property of their husbands is concerned; and the privileges which We have already granted shall remain in full force, even in the case of the woman herself if she should institute legal proceedings, for We have never previously granted any privileges of this kind to anyone else, nor do We at present do so.

#### *EPILOGUE.*

Your Eminence will communicate to all persons the matters which it has pleased Us to insert in this Imperial law, by availing yourself of edicts published in the customary manner, in order that no one may be ignorant of what has been ordered by Us; and the Most Glorious Urban Prefect will see that this is done in this Most Fortunate City.

#### TITLE XVII.

##### CONCERNING CONSULTATIONS.

##### SIXTY-SECOND NEW CONSTITUTION.

Concerning the Order of Senators (as inscribed in certain books) or concerning consultations (according to the new manuscripts of Contius) or as Antonius Augustinus, in his work on the Florentine Code, states concerning Senators.

The Epitome of this novel has been partly taken from that of Halo-ander, and partly from that of Julianus collected by Antonius Contius, for in scrimgerus nothing exists but the title.

This novel was published in the Latin language, the opinion of Julianus and Haloander being that it had no preface.

This constitution orders that appeals for consultations shall not only be argued before magistrates, but before all the senators, to enable the entire Senate to hear and determine the matter, even though each senator may keep silent, and not openly give his opinion; for consent is held to be indicated by silence. Therefore senators will hear cases on appeal in the presence of the Holy Gospels, and the decision of that body shall be referred to the Emperor, in order to be confirmed by Imperial sanction.

(1) The Senate shall meet in the hippodrome.

(2) The Urban Prefect shall take precedence of all other officers, that is to say, he shall be seated before them. After the Prefect, the other Patricians shall take their places, and the Consuls, and those who are decorated with the Consular insignia, shall be seated in accordance with the Consular rank and prerogatives, in such a way that the ordinary Consuls will be placed before the honorary ones. Next after them shall be seated the Prefects, the Generals of the army, and Illustrious persons, all of whom shall have the right to give their opinions in the Senate. Those magistrates who, on account of the offices which they occupy, are honored with the rank of senator, shall be seated with them; even after they have retired from office. Illustrious men shall be permitted to receive the commissions of patrician, although they may not have formerly been either Consuls or Prefects. The modification of the rule on this point shall not only be applicable to the future, but also to the past.

(3) It is certain that senators shall be required to give the third part of their fees upon their accession to office, and all other contributions which it has been customary to give in consideration of any promotion whatever shall remain without alteration.

Those who violate the present constitution shall be punished with a fine of fifty pounds of gold, and this penalty shall not only be imposed upon the actual violators of it, but also upon those who permit this to be done.

Given at Constantinople, after the second Consulate of Belisarius, and following the edition of Haloander, during the month of January, the second year after the Consulate of Belisarius.

#### TITLE XVIII.

#### CONCERNING NOTICE OF A NEW WORK WHICH OBSTRUCTS THE VIEW OF THE SEA.

#### SIXTY-THIRD NEW CONSTITUTION.

The Emperor Justinian to Longinus, Prefect of This City.

#### *PREFACE.*

We think that it is just to forbid and correct an abuse which has been introduced into this Royal City, and relates to the construction of edifices. The Constitution of Zeno, of pious memory, provides that houses shall be separated from each other by a certain space, and We also have ordered something of this kind. The result of this is, that in this Royal City a rule has been established prohibiting anything that may obstruct the view of the sea from being erected at a distance of a hundred feet from it, which is extremely acceptable to all. This rule, however, is evaded by means of a very ingenious expedient. Certain persons, leaving a space of a hundred feet or more, erect buildings without any other purpose than to use them as a kind of screen, and when, on their own authority, they have shut off the view of the sea, as they no longer violate the law which provides that the distance of a hundred feet shall be observed, they build without any interference; and, having obtained what they desire, they demolish the first building which they have fraudulently erected, and thus having evaded the law, they construct other houses for occupancy. We desire that nothing of this kind shall take place in the future.

#### CHAPTER I.

But if anyone should wish to plan and execute a fraudulent act of this kind, he shall not do so

merely as a pretext, but if he has made a beginning, he must actually construct the entire edifice, at the prescribed distance (that is to say a hundred feet) just as if it was really necessary and indispensable to him; and he shall not build walls merely for the annoyance of his neighbor, and for the purpose of deceiving him, and depriving him of the view of the sea. For as We naturally entertain a dislike for those who appropriate the property of others by force, and think that they deserve punishment, We are also of the opinion that anyone who attempts to deprive another of a view of the sea does not exhibit less malice; therefore, if persons are bold enough to rob others of property of little value, thereby incurring the penalty of quadruple damages through the *actio vi bonorum raptorum* brought against them, why should it not be necessary for anyone who forcibly deprives his neighbor of the view of the sea to be liable to even a more severe penalty? Hence We decree that such a person shall be liable to a fine of ten pounds of gold, to be paid into the Treasury of the theatres (which is under the supervision of Your Highness), in order that a wicked neighbor may not escape and make a jest of the law, as not being subject to its provisions.

#### EPILOGUE.

Therefore Your Highness will hasten to cause to be executed in this Most Fortunate City the matters which it has pleased Us to promulgate by means of this Imperial law, and see that the latter is hereafter always obeyed; as the penalty of ten pounds of gold which it provides shall be imposed not only upon those who violate it, but also upon the officials who permit this to be done.

Given at Constantinople, on the seventh of the *Ides* of March, during the eleventh year of the reign of Our Lord the Emperor Justinian, and the Consulate of John.

#### TITLE XIX.

#### CONCERNING THE GARDENERS OF THE CITY OF CONSTANTINOPLE.

#### SIXTY-FOURTH NEW CONSTITUTION.

Interpreted by Antonius Contius.

The Same Emperor to Longinus, Most Glorious Prefect of This Fortunate Royal City.

#### PREFACE.

Many accusations have for a long time been brought before Us from every quarter against the gardeners of this Fortunate City, and its environs, and no one seems to be free from their malice. What they are accused of is as follows.

#### CHAPTER I.

It is said that the appraisers of values (or experts) belonging to the Association of Gardeners are frequently guilty of grave irregularities. For when the owner of a garden transfers it to a gardener in consideration of the payment of rent, the value of nothing more than the plants and vegetables existing therein is estimated, and this is always done for the benefit of the gardener or lessee. At the expiration of the lease, however, when the garden is returned, the said appraisers make a very careful appraisal of what it contains, so that they increase its actual value six times and often much more, for example, when it contains plants and vegetables which are worth fifty *aurei*, they estimate their value at three hundred, and sometimes above that sum. They frequently do not confine themselves to this exaggeration of value, but, alleging that the lessee has manured the land and that it is greatly improved thereby, they raise its value as much as they can, and they also increase it by the estimation of the value of plants and trees—although when the lessee obtained the gardens from the owners no such expense was taken into consideration—even if the gardener stated generally in the lease that he would keep up the number of growing trees, and plant new ones; and if the same appraiser should, a short time afterwards, be employed in estimating the value of the same property, he will be guilty of such dishonesty that if the unfortunate owner is not careful, when his property is returned to him and he has leased it to another gardener, the latter will

subject him to a loss of a third or a fourth of the appraisement, and he will thus be exposed to the cupidity of the new gardener, and run the risk of losing the ownership of his garden, and of being deprived of what belongs to him.

He is also subject to a still greater injustice, for if, after this, the owner increases the second gardener's rent, the latter, at the termination of his lease, will make the entire amount larger, just as if this was the result of his own exertions, while, in fact, the land was not augmented in value through his care, because in the beginning the appraisement was made too low by reason of the imprudence and negligence of the proprietor. This abuse appears to Us to be characterized by surpassing malice and audacity, and We desire that it be repressed by Your Excellency, who will observe this Our law, and see that gardeners return the gardens in the same condition in which they received them.

Whenever a garden contains plants and vegetables, an estimate should be made of their value, and one should also be made of the same when it is returned; and the gardener shall only be entitled to the actual excess over and above the first appraisement. But where there are no plants or vegetables, and the gardener receives the land absolutely without any crop, whether any manure has been placed upon it or not, it should be returned in the same condition, and, both when it is leased and given up, the lessee shall return it just as he received it, without the owner of the same being subjected to any loss.

The appraisement shall not be made by gardeners alone, but by officials called *summarii*, who are experts in matters of this kind, and who shall give their opinion upon the Holy Gospels. For We do not wish owners to be deprived of their possessions on account of the malice and greed of lessees.

Therefore you will explain these things to the gardeners when called together, and will not permit any fraud to be committed against the owners, but see that the latter are, under all circumstances, kept free from damage and loss. For We wish the reciprocal relations of owners and gardeners to be the same, for which reason We have established absolute equality in these matters, in order that neither party may sustain any injury.

## CHAPTER II.

When anyone rents land which is thorny and neglected, and cultivates it, he shall be rewarded for his labor, and receive the true value of the vegetables which may be found there at his departure; and he must terminate his lease without any controversy, and without any display of avarice or deceit on his part.

We desire that, by means of this Imperial pragmatic sanction—the execution of which is entrusted to Your Excellency—we may, in the future, remain without annoyance from complaints of this description, and that such cares may not distract Our attention from other things connected with the government of the Empire. For there is no part of the administration of either great or small importance which does not demand Our attention; We perceive everything with Our mind and Our eyes, and We do not desire anything to remain neglected, confused, or ambiguous.

You will impose a fine of five pounds of gold upon any person who may hereafter commit an act of this kind, or allow it to be committed.

Given at Constantinople, during the Consulate of John.

## TITLE XX.

LANDS, HOUSES, OR VINEYARDS WHICH HAVE BEEN LEFT TO THE MOST HOLY CHURCH OF MYSIA FOR THE REDEMPTION OF CAPTIVES OR THE MAINTENANCE OF THE POOR MAY BE ALIENATED IN ACCORDANCE WITH THE DISTINCTION SET FORTH IN THIS LAW.

SIXTY-FIFTH NEW CONSTITUTION.

This Novel, with the exception of the title, is entirely lacking in Scrimgerus. It was first written in Latin. The Greek Epitome is in Haloander, the Latin in Julianus.

*PREFACE.*

We are aware that We have formerly promulgated a law upon this subject. But this constitution is local, and has been enacted with reference to the Church of Mysia. It orders that if anyone should give or bequeath any immovable property to this church, the revenue from which is certain, and should add that it shall be applied to the relief of the poor (and Haloander adds also to the redemption of captives), the said legacy, inheritance, or donation shall, under no circumstances, be alienated.

Where, however, the income from it is uncertain, and the building or vineyard which has been left is quite a distance from the city in which the church to which the said legacy or donation was made is situated, it shall then be permissible to sell the property. If the house or the land should be either within the city, or outside its walls, and the testator desired it to be sold and the purchase-money used for the redemption of captives, or the support of the poor, then the sale can take place in accordance with his will. Such a disposition is perfectly valid. If anyone, after having been sued, should not appear, he shall be condemned as having a bad case, where he has first been summoned, brought into court, and lawfully called, and does not obey the notice.

Published during the month of April, during the fourteenth year of the reign of Justinian, and the Consulate of John.

TITLE XXI.

NEW CONSTITUTIONS SHALL BECOME OPERATIVE TWO MONTHS AFTER THEY HAVE BEEN RECORDED. INDULGENCE IS SHOWN TO TESTATORS WHO HAVE NOT LITERALLY COMPLIED WITH THE PROVISIONS OF CONSTITUTIONS RELATING TO WILLS, WHERE THEY HAVE LEFT LESS THAN A FOURTH OF THEIR ESTATES TO THEIR CHILDREN, AND HAVE NOT AFFIXED THEIR SIGNATURES, OR MENTIONED THE NAME OF THE HEIR.

SIXTY-SIXTH NEW CONSTITUTION.

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

*PREFACE.*

Events which constantly occur afford Us the occasion of enacting laws, for many additions have been made by Us to the Constitutions which We have drawn up with reference to successions, (for instance, "it is necessary for a testator to write the name of the heir with his own hand; of how many twelfths the Falcidian portion must consist which parents leave to their children, where they are three, four or more in number"), and many wills run the risk of being considered void if their provisions are not complied with. But as statutes, although enacted, are not known in the provinces, or, perhaps, have not yet been published in this city, or communicated to anyone, We have deemed it necessary to correct this by means of a brief law.

CHAPTER I.

Therefore We decree that Our Constitutions relating to wills shall become operative from the date of their publication. We also decree that they shall be applicable in the provinces from the moment that they have been promulgated by the metropolitan, or immediately afterwards, in order that (as has previously been stated) men who make wills may not appear to have acted in disobedience to the law. And in order that this may be more clear, We hereby order that where a law of this kind is drawn up on this subject, it shall become operative everywhere within two months after having been recorded, either in this Most Fortunate City, or in the provinces, as this term is sufficient to make it known to all persons after it has been placed



upon record, so that the notaries may become familiar with its contents, and that Our subjects, being informed of its provisions, may comply with them. In this way no one will have any good reason for not obeying Our law. We do not wish the wills of deceased persons to be disregarded, and, indeed, We use every effort to cause them to be observed. For why should We blame those who are ignorant of the enactment of Our Constitution, where testators have died only a short time after the law was made, and when, as yet, its existence was not known to them, and for this reason they did not write the names of their heirs with their own hands, or left only three, instead of four-twelfths of their estates to their children; and whether a law has or has not yet been enacted, but has not yet been published, is it not on this account justly ignored?

(1) Therefore, although up to this time an ancient constitution existed, which was included in the Code of Constitutions bearing Our name, and provides that the name of the heir shall be written in the hand of the testator himself, still many persons have made wills in violation of this provision simply because they were not aware of it. Information of these omissions has, hitherto, frequently been communicated to Us, but We have always been indulgent to those who were at fault, as it happened that the laws which were violated had not yet been published. We have issued Imperial pragmatic sanctions with reference to this matter, granting those who ask for it proper relief.

And in order to be no longer annoyed, and compelled every day to promulgate pragmatic sanctions on this subject, We hereby decree (as already stated) that the ancient law included in the Justinianian Code shall become operative in this city from the date of its record, and in the provinces from the time it was despatched to, and published in, each capital or other city. For, Our Code having been sent to every part of the Empire, after the expiration of a considerable time its contents cannot legally be ignored.

(2) We desire that the other Novel which is included among the number of the constitutions issued after the Code, and which sets forth what should be left to children, shall take effect in this Most Fortunate City, and in the provinces, two months after it has been recorded, as We have already stated. We have made two uniform copies of this Novel, one of which is written in Greek, on account of the large number of persons to which this language is familiar; and the other is in Latin, which is better adapted to the proceedings of the government; and the said law is dated on the *Kalends* of March, but was not recorded at that time, but was, on the *Kalends* of April, addressed to Solomon, Most Glorious Praetorian Prefect of Africa.

(3) For the reason that the copy written in Greek was not immediately published, and was not addressed in this city to its Most Glorious Praetorian Prefects, or recorded by them until the month of May, We direct that the legislation which it introduces with reference to the share to be left children by will may be observed in this city after the *Kalends* of May, to which time We add two months; and in the provinces, We also add two months more from the date of its publication, after it has been recorded.

If it has not yet been despatched to all the provinces, this shall be done immediately, together with the other constitutions which have not yet been sent, and those which, with the aid of God, We may hereafter promulgate, in order that Our Constitutions may now and hereafter become known in all metropolitan cities. As soon as the Governors of provinces receive them, they must despatch them to all cities within their jurisdiction, so that, for the future, no one may have an opportunity to allege ignorance of their existence.

(4) Therefore wills previously executed shall be entitled to just indulgence; the testamentary dispositions of deceased persons shall be carried out as they desire them to be, even though they have recently been made, and testators did not, in accordance with the provisions of the present law, write the names of their heirs with their own hands, or did not mention them in the presence of witnesses, or did not leave more than three-twelfths of their estates to their children. For (as We have previously stated) We do not desire the testamentary dispositions of deceased persons to be disregarded, but We absolutely confirm them; so that if wills have been executed shortly after the enactment of the law, and when it was not yet promulgated,

even though surviving testators may have made no change in them, they shall still be valid, just like those which have been executed in the beginning in compliance with already existing laws; and they shall have full effect, and shall not be contested on the ground that the testators did not change them during their lifetime. For We are not Our own masters, and have not always time to make a final disposition of our property, for frequently men are attacked by death, and are deprived of the power of testation. Wherefore We think that testamentary dispositions which have been regularly made in the first place, and not subsequently changed, should not be rewritten, or considered void, but that the wishes of testators should always be considered valid, and remain unaltered; as, indeed, it would be absurd for what had been properly done in the first place to be afterwards changed,' when a new law had not yet been published.

(5) Therefore, in short, it may be said that (where anything of this kind happens) the children shall receive the three-twelfths left to them by the wills of their fathers, whether this has been done before or after the enactment of the law, but previous to its communication to the magistrate. If it was added in the will that the lawful share due to the children was left to them in accordance with the laws then in force, the children shall take it in conformity to the ancient laws; so that if anything should be lacking to the three-twelfths to which they are entitled, this shall be supplied in compliance with the said law, but they shall not obtain four-twelfths of the estate, for the law providing for this was, at that time, not yet known.

#### *EPILOGUE.*

Therefore Your Eminence will, by means of suitable proclamations, communicate the matters which it has pleased Us to enact by means of this law to all the inhabitants of this great city and its suburbs; in order that what We have authorized for the public welfare may become clear to everyone.

Given at Constantinople, on the *Kalends* of March, during the eleventh year of the reign of Justinian, and the Consulate of John.

#### TITLE XXII.

NO ONE SHALL BUILD HOUSES OF WORSHIP WITHOUT THE CONSENT OF THE BISHOP. ANYONE WHO DOES SO MUST FIRST PROVIDE SUFFICIENT REVENUE FOR THE MAINTENANCE AND REPAIR OF THE CHURCH WHICH HE BUILDS. BISHOPS SHALL NOT ABANDON THEIR CHURCHES. CONCERNING THE ALIENATION OF IMMOVABLE ECCLESIASTICAL PROPERTY.

#### SIXTY-SEVENTH NEW CONSTITUTION.

The Same Emperor Justinian to Menna, Most Holy and Blessed Archbishop of Constantinople, and Patriarch of Its Entire Jurisdiction.

#### *PREFACE.*

Although We have included matters having reference to the most holy churches in numerous laws, We still have need of another to dispose of difficulties which have arisen, and provide for emergencies. For many persons build churches in order to perpetuate their names, and not with a view to utility, and they do not take care to furnish sufficient means for their expenses, their lights, and the maintenance of those charged with Divine service, but after the churches are constructed they leave them to be either destroyed, or entirely deprived of the ministrations of the clergy.

#### CHAPTER I.

Therefore We order, before all things, that no one shall be allowed to build a monastery, a church, or an oratory, before the bishop of the diocese has previously offered prayer on the site, erected a cross, conducted a public procession, and consecrated the ground with the knowledge of all persons. For there are many individuals who, while pretending to build houses of worship, contribute to the weakness of others, and become not the founders of

orthodox churches, but of dens for the practice of unlawful religious rites.

## CHAPTER II.

### PERSONS WHO BUILD CHURCHES MUST PREVIOUSLY PROVIDE THE REVENUES FOR THEIR MAINTENANCE, THEIR CONSECRATION, AND THEIR PRESERVATION.

We decree that no new church shall hereafter be constructed before having recourse to the bishop, and determining the amount requisite for lighting, for the holy service, and for keeping the building in good condition, as well as for the maintenance of those who have charge of it; and if the amount given appears to be sufficient, the preliminary donation shall be made, and the church erected. Where, however, the person desiring to do this does not offer sufficient funds for the purpose, and wishes to be styled the founder of the church, and has the ambition to accomplish something of this kind (for there are many churches in this Royal City as well as in the provinces which, instead of being properly maintained, run the risk of being ruined by age, or which are of very small dimensions, and badly provided for owing to the negligence of the clergy assigned to them), the proposed founder shall, with the consent of the bishop and the orthodox clergy, be permitted to rebuild one of these churches, which shall bear his name as the founder of a religious house; but nothing shall be expended by him out of his own property by way of endowment, as the revenues already set apart for this purpose shall continue to be paid by those who previously furnished them.

## CHAPTER III.

### CONCERNING THE BISHOPS WHO DO NOT RESIDE IN THEIR OWN CHURCHES. AFTER THE EPITOME OF JULIANUS.

In accordance with the law already enacted by Us, We decree that bishops shall stay in their churches; shall not abandon them; shall not sojourn for a long time in this city, and compel stewards to send them the money for their expenses, and the Holy Church to furnish it; and this the bishops themselves shall not tolerate. Hence We order that the law already promulgated by Us shall continue to remain in full force. For if a bishop should absent himself from his church for a longer period than that which is prescribed, his expenses shall not be sent to him from the provinces, but the money shall be used for pious purposes, and for the benefit of the Most Holy Church. Thus a bishop who may come to this city will not be supported by his church; and if he remains absent for too long a time, what We have previously decreed with reference to this matter shall be observed.

## CHAPTER IV.

### CONCERNING THE ALIENATION OF IMMOVABLE ECCLESIASTICAL PROPERTY.

As We have already provided that if anyone should make an alienation of immovable ecclesiastical property in the provinces, this must be done after a decree has been issued, which should take place in the presence of both the bishop of the city and the clergy of his diocese, as well as in that of the metropolitan bishop; and, moreover, We direct that if the Most Holy Metropolitan Bishop should sell any immovable ecclesiastical property, even where the most holy stewards of his church consent to the sale, two bishops selected by the metropolitan from the synod under his jurisdiction shall be present at the time, and in addition to this, all the formalities previously prescribed shall be strictly observed.

The metropolitan bishop and his synod shall then be considered to have made the sale, and as he, by his presence, confers sufficient power upon the prelate under his jurisdiction, so the representation of the synod by the two bishops aforesaid shall be held to have confirmed the sale made by the metropolitan, which sale shall, in this way, be witnessed by the synod.

## *EPILOGUE.*

Your Holiness will, by means of suitable letters, cause this Our law to be communicated to the other Most Holy Patriarchs and metropolitans under Your jurisdiction, who must, in their

turn, notify the bishops subject to their authority, so that no one may be unaware of what has been decreed by Us.

Given at Constantinople, on the *Kalends* of May, during the twelfth year of Our Lord the Emperor Justinian, and the Consulate of John.

#### TITLE XXIII.

THE CONSTITUTION OF THE MOST HOLY EMPEROR CONCERNING THE SUCCESSION TO PROPERTY OBTAINED BY MARRIAGE, WHICH TREATS OF WHAT ARE CALLED APEDLE, THAT IS TO SAY, THE ESTATES OF DECEASED CHILDREN. IT SHALL BECOME OPERATIVE IN CASES WHICH MAY ARISE AFTER ITS PROMULGATION, BUT THE CONSTITUTION OF LEO SHALL BE APPLICABLE TO THOSE WHICH HAVE ALREADY OCCURRED.

#### SIXTY-EIGHTH NEW CONSTITUTION.

Interpreted by Antonius Contius.

#### *PREFACE.*

We are aware that a Constitution of Leo, of pious memory, has been enacted with reference to persons who contract second marriages, whether they be men or women, by whose provisions the nuptial property of the first marriage is carefully preserved for the issue of the same, and stipulates that the parent shall only be entitled to the usufruct of it; but the said constitution, while reserving the ownership of the property for the children, directs that if all the children or grandchildren should die without leaving any survivor, through whom the parent who has married a second time may be deprived of said property, then the ownership of it shall be reunited with the usufruct of which the parent already has the enjoyment.

#### CHAPTER I.

We have recently amended this constitution by enacting other provisions, being desirous that the heirs of deceased children or grandchildren, whether they be relatives or strangers, shall receive some benefit from their appointment, and acquire, by the right of ownership, whatever would be obtained by the surviving parents because of the death of the children, in accordance with the terms of the agreement where there are no survivors; but that the residue shall go to the heirs of the deceased children or grandchildren, without any change being made by Us with reference to the usufruct.

(1) We wish this constitution to take effect now and for all time, except Where the children have died before it was promulgated. For when the property obtained by marriage has, through the death of the children, entirely come into the hands of the parent who has married a second time, and this occurred before the law was enacted by Us, the latter will have no force, and will only become operative in cases to which the Constitution of Leo is applicable. Hence parents who have married a second time will, under such circumstances, solely be entitled to what they would have acquired by the death of their children or grandchildren; but if any property should have passed into the hands of a third party, they can recover it under the law which applies to owners. Thus, by briefly recapitulating these laws, We resolve any doubts to which they may have given rise, in order that We may no longer be annoyed with such matters; and, returning to the subject by a general law, We dispose of all difficulties; desiring the legislation which preceded that introduced by Us to remain applicable to such preceding cases as are entitled to its benefit.

#### *EPILOGUE.*

Your Excellency will take measures to have this law communicated to all persons by means of suitable proclamations and notices.

Given on the eighth of the *Kalends* of June, during the twelfth year of the reign of Justinian, and the Consulate of John.

## TITLE XXIV.

ALL PERSONS SHALL OBEY THE PROVINCIAL JUDGES IN BOTH CRIMINAL AND PECUNIARY CASES, AND PROCEEDINGS SHALL BE CONDUCTED BEFORE THEM WITHOUT ANY EXCEPTION BASED UPON PRIVILEGE, AND PROVINCIALS SHALL NOT BE SUED HERE UNLESS THIS IS AUTHORIZED BY AN IMPERIAL PRAGMATIC SANCTION.

## SIXTY-NINTH NEW CONSTITUTION.

The Emperor Justinian to the People of Constantinople.

### *PREFACE.*

One of the most perfect of all human virtues is that which dispenses equity, and is designated justice, for no other virtue, when accompanied with this, is worthy of the name; therefore We do not praise fortitude, which is not united with justice, and although the Roman language calls virtue courage in battle, if justice is excluded from it, it becomes a vice, and is productive of no good.

As we have ascertained that justice is treated with contempt in Our provinces, We have deemed it necessary to re-establish it in a proper condition, by means of a law which will be acceptable to God. For very many persons availing themselves either of Imperial letters, special privileges, pragmatic sanctions, or orders issued by magistrates, employ their time causing annoyance, and while continuing to dwell in the provinces, make a pretense of instituting litigation elsewhere. How can any man, no matter where he may suffer damage or lose part of his property, conduct a lawsuit involving boundaries, possession, hypothecation of his land, or on any other right whatsoever, in a strange place, and produce evidence to substantiate his allegations? Persons who do this only exert their power; they think that they act without injustice; they believe that they are invested with some kind of perpetual authority; and they do not take into account the thousand or ten thousand examples in which We see robust children born to feeble and impotent parents, and those who are rich spring from others who are indigent; and, in almost all ages, We have seen weak children born to powerful parents, and poor ones derive their origin from those who are wealthy. The injustice of parents is thus punished in their offspring, and those who commit crime do not reflect that, in making use of their authority for this purpose, they prejudice their posterity, for the power which they enjoy is not always transmitted to their descendants.

### CHAPTER I.

After having considered all these matters, We have thought it necessary to enact the present law; and We hereby order all magistrates subject to Our authority in the provinces, and who are distributed throughout the Empire, which looks upon both the rising and the setting sun, and extends from north to south, to see that each person is tried in the province where he has committed a crime, or is a defendant in a civil or criminal action having reference to the boundaries or the ownership of land, the possession or hypothecation of property, or any other matter whatsoever (for provisions have been made in an inconsistent and irregular manner on this subject by preceding legislators, which We have already taken into consideration) in order that no one may attempt to conduct litigation outside of his province.

(1) Whether the question at issue relates to a serious or a trifling offence, or involves merely the validity of a contract, the citations as well as the petition, when there is need of one, shall be issued and filed in the province, and the trial of the case shall also take place there, to render the production of evidence more easy, no matter whether the illegal act is of great or little moment; for when the defendant has no good ground for defence in cases of small importance, he tries to transfer the proceedings to another province, in order to answer the petition of the plaintiff there, and have the latter summoned, who, being absent, and perhaps out of the province, cannot conveniently appear, either on account of the power of his adversary, or because of his own infirmities. And, indeed, is there anything more oppressive

than for a private individual who is injured by the theft of an ox, a horse, or some other beast of burden, or an animal forming part of a flock, or (to descend to small things) of a domestic fowl, to be compelled to plead, not in the place where the theft was perpetrated, but in another province where proof of his allegations will be required of him, and he must adopt the alternative either of being subjected to much greater expense than the value of the property which was taken from him amounts to, or be reduced to poverty ? A multitude of such persons complain to Us every day, and We are frequently annoyed in this manner on account of matters which are insignificant by crowds of unfortunates of both sexes who, called from their homes, come to this Most Fortunate City, many of whom are greatly afflicted and reduced to beggary, and some of whom die here.

## CHAPTER II.

### CONCERNING DEFENDANTS WHO APPEAR.

Therefore, where both the plaintiff and defendant reside in the same province, the case shall not be transferred to another nor to this Fortunate City by virtue of any pragmatic sanction or order, but shall be decided in the said province. Where one of the parties is present and the other absent, and the one who is present has suffered damage from one of the household of the former, he who has committed the injustice (whether he be a curator, a lessee, or some other person representing the absent party) shall, by all means, be sued; and shall be permitted to notify the absent party, and be granted time to do so, in proportion to the distance from the province, and in accordance with the general law formerly enacted with reference to continuances.

(1) Where, however, the absent party is in a neighboring province, distant only one or two days' journey, the term of four months shall be granted him, and six months if he is farther away; and if he is in Palestine, in Egypt, or in any other distant province, the term of eight months will be sufficient. When he is in one of the Western or Northern provinces, or in Lybia, he shall then be entitled to nine months, in accordance with the provisions of former legislators; so that if he has confidence in the person who notifies him, he can entrust him with the conduct of the defence. If, however, he should not have confidence in him, he can employ someone else to accept service, and execute any judgment which may be rendered, when the case is either of great or small importance, and no appeal is taken.

Where the agent or lessee has given notice to the absent owner, and the latter permits the prescribed time to elapse without doing anything, then the said agent or lessee upon whom service was made will have the right to defend the case, as the representative of the absent party, and the judge shall compel him to appear before his tribunal, even involuntarily; he must hear the case in his presence, and render judgment against him if he seems to deserve it; and, if there is ground for doing so, he shall also condemn the absent party who, despite his notification, was not willing to attend to the matter in the province. If the said agent or lessee is wealthy, his property will be subject to execution; but if it is not sufficient to satisfy the judgment, the remainder shall be paid by taking the property of the absent person in execution at the instance of him who has obtained judgment in his favor.

## CHAPTER III.

### CONCERNING DEFENDANTS WHO ARE ABSENT.

When, however, he who is directed to represent the principal party in the action, or who is compelled to appear for him, does not do so, he shall be duly called, and if he fails to answer, the absent party shall be condemned under the rule styled peremptory, that is to say, applicable to one who has abandoned the case, for he who is contumacious is considered to be absent. If, on the other hand, the defendant should appear, or should send anyone to represent him, and the plaintiff does not come, then the defendant shall be discharged, and the court shall compel the false accuser to pay all the expenses incurred. In this way men will become more reasonable, they will cease to commit crime, and they will no longer think that the power of wealth can prevail over justice.

(1) We are well aware that what We decree may perhaps be insufficient perfectly to remedy the abuse which We have endeavored to correct, as judges are accustomed to favor powerful persons rather than those who come from the provinces to have their cases heard. Still, We know that many instances of injustice can be prevented by similar legislation, and that it will provide remedies for much that We are not able to effect. For We do not appoint magistrates to office without compelling them to take oath to judge all men with equity, and to keep themselves pure from corruption. And I do not think that after this constitution any further legislation will be necessary, if magistrates decide with justice and with due regard to the law and their oath.

#### CHAPTER IV.

##### CONCERNING THE ABOLITION OF THE PRESCRIPTION OF THE PLACE.

No person who avails himself of any special privilege, of his power, or of a pragmatic sanction, shall be authorized to remove anyone who has committed violence from the jurisdiction of the judges of his province, unless he has previously obtained from Us an Imperial pragmatic sanction based on the public welfare, and which states that the defendant shall be notified to appear here, or, at least, that the plaintiff shall not notify him under the law, as when an appeal is involved; although We have, to a great extent, made provision for such matters by appointing many superior judges in the provinces, in order that when cases are not of much importance, appeals may be brought before them rather than in this great city.

(1) In enacting this law, We shall render it still more just by not permitting anyone to avail himself of any privilege against it, even though the privilege may have been granted to one of the most holy churches, to a sacred hospital, or other religious establishments, or even to one of the Imperial houses, to the Imperial domain, or to special sacred rites, which deservedly occupy the first place after the honor due to what belongs to the Most High; or to a judge, or other person in authority, or to anyone subject to Our orders. Everyone must obey this law and subject himself to the approval of justice; he shall honor and observe it in every respect, and not only consider it individually, but also with reference to his posterity; remembering that almost nothing remains stable in Nature, which is always inconstant, and introduces many changes which are neither easy to foresee, nor possible to provide for; and that only God, and after him the Emperor, is able to exercise control over these things.

(2) If, however, anyone should make use of any Imperial authority, whether contained in pragmatic sanctions or communicated in other ways, permitting him to take his case before another magistrate, it shall be entirely void; judges will render themselves liable to a severe penalty if they receive it, and do not only think of what has been done but also of what ought to be done; for if, after the enactment of this law, a pragmatic sanction authorizing the transfer of a case should be obtained by one of Our subjects, or be employed by any person to whom We may have previously granted it, and among whom We include (as has already been stated) churches, holy monasteries, religious houses, the sacred rites of private persons, and the Imperial patrimony, it shall be absolutely void. This law shall be applicable everywhere, and provides expressly for the future as well as for the past.

(3) Therefore you, Our subjects, the government of whom God has entrusted to Our ancestors and to Us, are hereby informed that We are enacting this legislation in order to render you secure in every respect, and that you may hereafter not longer be fatigued by long journeys, or weep on account of the oppression of the great, or apply to Us to correct abuses; but that each of you, seeing that a penalty is immediately imposed for any loss or injury which you may sustain, may praise the Great and Good God who has induced Us to enact such a just and beneficial law. This penalty shall be imposed upon those who violate it, and judges who suffer this to be done shall lose their offices, and be fined ten pounds of gold.

#### *EPILOGUE.*

Therefore, as soon as Our Most Glorious Imperial Praetorian Prefects appointed throughout the extent of the entire Roman Empire receive notice of this law, they will publish it in all the

departments of their government, that is in Italy, Libya, the Islands, the East, and Illyria; in order that all persons may know how greatly We have their interests at heart. We dedicate this law to God who has inspired Us to accomplish such great things, and who will recompense Us for having enacted this constitution for the security of Our subjects. It shall also be communicated to Our citizens of Constantinople.

Given at Constantinople, on the *Kalends* of June, during the twelfth year of the reign of Justinian, and the Consulate of John.

#### TITLE XXV.

THE ORDINARY URBAN PREFECTURES AND THE TWO PRAETORIAN PREFECTURES AT PRESENT IN EXISTENCE SHALL HAVE AUTHORITY TO GRANT RELEASES FROM CURIAL REQUIREMENTS, BUT HONORARY PREFECTURES SHALL NOT POSSESS THIS POWER.

#### SEVENTIETH NEW CONSTITUTION.

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

#### *PREFACE.*

Many legislative provisions which were formerly enforced are at present neglected, and not readily observed by the government, nor are they any longer considered laws, or regarded as forming any part of legislation. We are aware that there was formerly a species of prefecture which was designated honorary, and was conferred by commissions granted by the government, which was so called because it only bestowed honor upon those to whom it was given, and did not release them from curial obligations unless they actually discharged official duties; and, so far as the most glorious generals of the army are concerned, We know that none of them is released from the requirements of the curial condition unless he performs the functions of his office (the laws state that the command of soldiers is a prefecture, and that the simple commissions granted to officers only confer rank, without releasing them from liability), thus with regard to the prefectures, in order that anyone may be released from his condition, it is necessary for him to be appointed to actively exercise the duties of his office.

#### CHAPTER I.

Therefore We renew the law relating to this subject, and decree that whenever it seems proper for the government to honor a de-curion, and enable him to be released from the obligations of his status, and it grants him a commission of administration, it prepares him to occupy the Urban Prefecture of either Ancient or Modern Rome, or one of the Praetorian Tribunals of the East or West, as well as Lybia and Illyria, all of which God has subjected to Our dominion; and that by this means he may enjoy freedom, as those who are raised to such eminence have a right to ride in chariots, hear the proclamations of public criers, occupy the chairs of judges, and in this way be released from the requirements of their order.

When, however, the government only wishes them to be invested with the dignity of the office, commissions to this effect shall be issued and given to them; and the Imperial generosity shall only cause the person who is thus distinguished to be regarded as a member of the great *curia*, but not released from the duties of the provincial one, nor have his name erased from the tablet; but he shall continue in his former condition, and only enjoy the honor of the position, and must render thanks to God as well as to the government which has caused him to be promoted to a post of greater tranquillity and distinction. This shall be considered an act of Imperial munificence which does not affect the rights of the public, deprive the decurion of his condition, or release him from the duties to which he is accustomed ; and he who is worthy of it shall receive this honor as an addition to that of his former status, and will be entitled to greater eminence, but will only take precedence of other decurions.



## EPILOGUE.

Your Highness will hasten to cause what We have been pleased to enact to be observed, being aware that We do not diminish the privileges of decurions, but, on the other hand, render the office more honorable; in order that the cities may learn from your proclamations what the government has decreed.

Given at Constantinople, on the *Kalends* of July, during the twelfth year of the reign of Justinian, and the Consulate of John.

## TITLE XXVI.

ILLUSTRIOUS PERSONS AND THOSE WHO ARE OF HIGH RANK MUST UNDER ALL CIRCUMSTANCES BE REPRESENTED BY ATTORNEYS IN PECUNIARY CASES, AND IN THOSE RELATING TO CRIMINAL INJURY. THOSE WHO ARE KNOWN AS CLARISSIMI SHALL BE PERMITTED TO APPEAR IN PECUNIARY CASES EITHER IN THEIR OWN PROPER PERSON OR BY ATTORNEYS.

## SEVENTY-FIRST NEW CONSTITUTION.

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

## PREFACE.

Certain laws enacted with reference to the honor attaching to offices are excellent in their way; still, as their application, instead of increasing the distinction of officials, is injurious to them, We deem it proper to correct this by means of a brief law.

Some constitutions forbid persons of the rank of *clarissimi* to personally appear in court, and order them to do so by an attorney. This provision was enacted in ancient times to maintain the honor of persons of eminence; but We see that many individuals who have been invested with the rank of *clarissimi*, for instance, counts, tribunes, and other dignitaries of this kind, are men of very moderate means, and that their resources are far from being sufficient to employ attorneys and meet the expenses incurred by doing so.

## CHAPTER I.

Therefore We order that the following provisions shall be observed with reference to the most magnificent persons of illustrious rank, namely: that they shall, by all means, have pecuniary cases in which they are interested as well as others relating to criminal injuries tried by their attorneys, in accordance with the privilege previously conferred upon them. We decree this in order that they may not be compelled to be seated with the magistrates, when the latter decide their cases, or to stand before them as litigants, which would be equally improper; for then either litigants who are persons of rank will sustain injury, or judicial dignity will not be maintained. But, with the exception of the most magnificent *illustres*, We desire that all those who wish to do so can either appoint attorneys, or conduct their own cases in person, without molestation or rendering themselves liable to any loss or penalty.

## EPILOGUE.

Your Eminence will, in the customary manner, communicate to all persons the matters which We have seen proper to enact by this Imperial law.

Given at Constantinople, on the day before the *Nones* of June, during the twelfth year of the reign of Our Lord the Emperor Justinian, and the Consulate of John.