

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

SIXTH COLLECTION.

TITLE I.

THOSE TO WHOM THE PROPERTY OF MINORS HAS BEEN HYPOTHECATED, OR WHO ARE THEMSELVES INDEBTED TO MINORS, SHALL NOT HAVE THEM UNDER THEIR CONTROL. CURATORS SHALL UNDER NO CIRCUMSTANCES ACCEPT ASSIGNMENTS AGAINST THOSE WHOSE AFFAIRS THEY ARE ADMINISTERING, OR WITH WHOSE CURATORSHIP THEY ARE INVESTED. THESE PROVISIONS SHALL BE GENERALLY APPLICABLE TO EVERY SPECIES OF CURATORSHIP, AND TO ALL PERSONS TO WHOM THE LAWS GRANT CURATORS. CONCERNING THE ADMINISTRATION OF SUMS OF MONEY BELONGING TO THOSE WHOSE BUSINESS IS TRANSACTED BY CURATORS, AND UNDER WHAT CIRCUMSTANCES THEY SHOULD BE PLACED ON DEPOSIT OR LOANED, AND WHAT SHOULD BE DONE WITH THE INCOME FROM SAID SUMS OF MONEY.

SEVENTY-SECOND NEW CONSTITUTION.

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

PREFACE.

The legislator of a government should direct his attention everywhere, should see that everything is properly conducted, and that nothing is neglected. Documents affecting the rights of minors, or which relate to the care of their property, should be specially taken into consideration by those to whom permission has been given by God to enact laws; We mean by this him who is invested with sovereignty.

We have heard of many cases in which transfers have been made by curators against the interests of minors, where they had arrived at puberty, where they were under that age, and where they had not yet attained their majority; and the result of this was that the curators became the owners of their property, either by accepting claims against them, which perhaps were fraudulent; or by obtaining transfers of extremely fragile articles at a very low price, or by concealing receipts for the property of minors, and of negotiating transfers of objects under many and various pretexts. For what will a man who has once been guilty of dishonesty not contrive in order to appropriate the property of minors?

CHAPTER I.

WHO CANNOT BE EITHER THE GUARDIANS OR CURATORS OF MINORS OR YOUTHS.

We desire to correct all these things by means of the law, and especially to prevent anyone who has a claim against a minor or his property from obtaining the curatorship of the same, or accepting it, even if called to do so by law. For who is there who would not act in his own behalf if he had control of the minor, and was the actual custodian of the property of his adversary? Hence We order that if it is perfectly clear that he who is given charge of his property is indebted to the minor, he shall not be his curator, lest he may steal the evidence of an obligation, or destroy other proofs of claims belonging to the minor, and the care of the property of the latter be productive of loss. We provide for this by a most beneficial law, and decree that none of those persons to whom the property of the deceased, or of the minor himself, is known to be encumbered, shall be invested with the curatorship, or shall be authorized to administer it.

CHAPTER II.

A CURATOR SHALL BE ADDED TO A GUARDIAN WHEN THE LATTER HAS BECOME EITHER THE DEBTOR OR CREDITOR OF HIS WARD.

Where, however, anyone who is administering a curatorship subsequently becomes the creditor of a minor, for instance, through the acceptance of an estate to which the minor is indebted, or under some other circumstances of this kind, as he will no longer be considered faithful to the interests of the minor, or youth, so far as the curatorship is concerned, another guardian or curator shall be joined with him (which We have found that the laws in most cases prescribe), that he may see that nothing is done to prejudice either the youth, or his property, and that no injury is committed against either by him to whom he is indebted. The curator shall discharge this duty, and at the time of his appointment must swear to do so; and if he should disregard his oath, he will be liable to the penalty resulting from his treacherous conduct.

CHAPTER III.

NO ONE SHALL BE RELEASED FROM THE DUTIES OF GUARDIANSHIP OR CURATORSHIP UNDER THE PRETEXT OF A DEBT, UNLESS HE CAN PROVE IT.

In order that all men may not be afforded a pretext for their release from the duties of guardianship and curatorship, by merely stating that they are the debtors or creditors of minors, We decree that if anyone should allege that he has a claim against the minor or his property, or that the parents of the minor are indebted to him, he

must prove this before the magistrate who appointed him curator within the time granted for denial, and shall then be discharged; or, if he cannot prove it, he must swear on the Holy Gospels that he believes he is actually a creditor of the minor; and after he has done this, We are unwilling for him to be charged with either the guardianship or curatorship, or allowed to have anything to do with the property, in order that We may not give the minor an enemy instead of a curator.

CHAPTER IV.

WHERE A GUARDIAN OR CURATOR, WHO IS EITHER THE DEBTOR OR CREDITOR OF A MINOR, DOES NOT MENTION THIS IN THE BEGINNING.

Where anyone, in the beginning, conceals the fact that he is the creditor of a minor, and is appointed his curator, he is hereby notified that he will be deprived of every right of action, even though it be genuine, against the said minor, for the reason that he purposely attempted to evade the present law to his own advantage. And if anyone should conceal the fact that he is indebted to the minor, he also is notified that the penalty incurred by him will be that he shall not be permitted to avail himself of any credits, or other payments on his debt, which he may, perhaps, have fraudulently made during his administration.

CHAPTER V.

CURATORS SHALL NOT ACCEPT TRANSFERS OF ANY KIND CONTRARY TO THE INTERESTS OF MINORS.

If anyone who (as has already been stated) has been appointed a curator should afterwards attempt to obtain the property of the minor, and accept a transfer of the same to himself by donation, sale, or any other means; he is informed that such a transfer will be absolutely void, whether it has been made directly to himself, or through the intervention of a third party, and that it will be just as invalid as if it had never been made at all. For it is perfectly evident that if a curator attempts to acquire the property of the minor, he will be considered as only having done so for his own benefit, and for the destruction of his soul.

(1) This rule not only applies to curators, whom We forbid to accept transfers of property of this kind during their administration, but We also prohibit them from accepting them even

after its termination, lest the curator, remembering that he cannot acquire the property while he is administering the curatorship, may conceal the transaction which took place while he was in office; and, a short time after his curatorship has ended, produce the evidence of the transfer which he fraudulently caused to be made to himself, just as if he had received it when he was no longer curator, and thus deceitfully made arrangements for this purpose. For We decree that such a transfer shall be void, and that no right of action assigned against the interest of the person with whose affairs the curator has previously been charged can legally be made use of; that the transfer shall be regarded as not having taken place; and that the former minor shall have the benefit of the profit resulting from the right of action which has been assigned, even though this assignment may have been made for good and sufficient reasons.

We also forbid that the right of action shall revert to the person who has assigned it, as would be the case if nothing had been done contrary to law; but that this right shall be extinguished on account of the violation of Our Constitution, and the minor shall be entitled to the property for the recovery of which suit was brought. For, if We did not impose this penalty, it would be easy to commit fraud; as the curator, by returning the property transferred to him who made the assignment of the same, would receive it again through the medium of him who assigned it, and by a fraudulent act of this kind would evade the law.

We order that these provisions shall be applicable to all curators whom the laws entrust with the administration of the property of spendthrifts, or insane and demented persons, even though other provisions may have been enacted on this subject, and unforeseen cases may arise.

CHAPTER VI.

CONSIDERING THE CARE OF MONEY BELONGING TO WARDS OR MINORS.

But as We see that curators who have the fear of God before their eyes hesitate to accept the office (while many others are anxious to do so for the reason that they wickedly desire to convert the property of the minors to their own use, which is something greatly coveted by and acceptable to them), and as their duties are especially distasteful to them because of the necessity of collecting interest, We order that curators shall not be required by Our laws to lend the money of minors at interest, but that they shall carefully deposit it and see to its preservation. For it is more advantageous for minors to have their money kept safely than to run the risk of losing it through the desire for interest; or to subject the curator to liability if he uses the money in trade, or lends it at interest, and the debtor becomes insolvent. When, however, the curator desires to lend the money on his own responsibility, for instance, taking pledges or other security which is considered of undoubted value, he shall be granted the term of two months during which he will not be liable to account for interest, which the laws call a "postponement," but he is notified that a loan of this kind will be at his own risk.

CHAPTER VII.

If the income of him who is under curatorship is only sufficient for his maintenance, the curator shall spend the whole of it, and if it is more than sufficient for that purpose, he must deposit the surplus.

If the property of him who is under the control of the curator consists of movables, the curator will only be required to lend a sufficient amount to meet the expenses of the minor or his business, and must deposit the remainder. He will, however, be allowed to search for something that will return a certain income, which may be subject to moderate public taxes; and if he finds a suitable vendor, and the property is productive, We authorize him to purchase it for the minor; but he is notified that if he neglects to observe any of these provisions the sale will be at his own risk.

CHAPTER VIII.

Where, however, the property of the minor consists of money, and the interest of the same is barely enough to support him and his family, then We are necessarily impelled to authorize curators who have the fear of God before their eyes to manage this money just as if it belonged to them. For We desire that when a decree entrusting a curatorship to anyone is issued, the appointee shall swear on the Holy Gospels that he will use every means to promote the welfare of the minor; that he will not fail to render an account; that he will not violate the law; that he will furnish a bond to insure the honesty of the administration, and that he will always consider himself bound by the remembrance of his oath.

We enact the present law to provide for the security of those who have need of curators, and if We should subsequently think of any other salutary measure, We shall not hesitate to include it in this law, in order that We may act as a father to those who We think cannot assist themselves.

EPILOGUE.

Your Eminence will, by means of suitable edicts, communicate the matters which We have deemed advisable to include in this law to all persons throughout the provinces within your jurisdiction in order that no one may be ignorant of what has been decreed by Us for the benefit of Our subjects.

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

TITLE II.

CONCERNING THE SECURITY AND RELIABILITY OF INSTRUMENTS, AND IN THE FIRST PLACE CONCERNING DEPOSITS, LOANS, AND OTHER PRIVATE TRANSACTIONS WHICH TAKE PLACE EITHER WITH OR WITHOUT WITNESSES ; AND CONCERNING INSTRUMENTS PUBLICLY EXECUTED, AND THE COMPARISON OF THE HANDWRITING OF INSTRUMENTS EXECUTED BY ILLITERATE PERSONS, OR THOSE OF SLIGHT EDUCATION; CONCERNING VERBAL CONTRACTS AND THOSE IN WHICH AMOUNTS UP TO A POUND OF GOLD ARE INVOLVED; AND CONCERNING AGREEMENTS MADE IN THE FIELDS; CONCERNING THE APPLICATION OF THIS LAW TO DOCUMENTS AND CONTRACTS THAT ARE TO BECOME OPERATIVE AT SOME FUTURE TIME.

SEVENTY-THIRD NEW CONSTITUTION.

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

PREFACE.

We remember certain laws which We have enacted, which provide that the genuineness of documents shall be established by comparison of handwriting, and We are aware that certain Emperors, influenced by the constantly increasing fraudulent efforts of persons who are in the habit of altering documents, have forbidden such changes to be made. We are, however, of the opinion that forgers generally confine themselves to the imitation of writing, for the reason that forgery is nothing else but an imitation of the truth.

We have, during Our reign, discovered innumerable forgeries in many cases which have been brought to Our knowledge, one of which, that originated in Armenia, has been investigated in Our presence. In this instance an exchange was made, and the instrument evidencing it was decided to be forged, but as the witnesses who had been present when it was executed and had signed it were found, and acknowledged it, the document was held to be genuine; but this was an unusual occurrence, as the writing was decided to be false, and the answers of the true witnesses coincided with the truth, so that the document was only considered worthy of confidence on account of these statements which were, to some extent, held to be reliable. We

are, however, aware that the comparison of handwriting must be very carefully made, since age very often causes dissimilarity in handwriting, for that of a young man who is strong and robust does not resemble that of one who is old, whose hand trembles and who often writes with feebleness; and, indeed, We can say that the change of pen and ink removes entirely the resemblance of handwriting; nor can We find words to express how many new cases nature causes to arise which furnish Us occasion for the enactment of laws.

(1) Therefore as God rules the Empire of Heaven, in order that he may afford good solutions to perplexing questions, and interpret the laws in accordance with the variety of nature, We have thought it is proper to draw up this statute, and render it generally applicable to Our subjects, whom God has originally entrusted to Our care, and to whom he is always making additions, from time to time. And, as certain doubts have arisen with reference to deposits evidenced by written instruments, and We have ascertained that controversies have arisen in consequence, it becomes necessary for Us to provide for all these matters, and therefore We are going to begin with the contract of deposit.

CHAPTER I.

CONSIDERING THE SECURITY OF AND THE CONFIDENCE TO BE REPOSED IN WRITTEN INSTRUMENTS; AND, IN THE FIRST PLACE, CONCERNING DEPOSITS, AND IN WHAT WAY THEY CAN BE MADE WITH SAFETY.

Hence when anyone desires to make a deposit with safety, he will not confine himself solely to the written contract of him who receives the deposit (which is also legally required, for when anyone does not acknowledge the instrument to be in his handwriting, the matter becomes extremely complicated, and he who makes the denial will be compelled to furnish other writing; and when this appears to resemble that of the instrument in question, only partially, but not entirely, then the matter is inconclusive, so far as the writing is concerned), but the person who makes the deposit shall, as soon as possible, call witnesses who must be honorable and deserving of confidence, and not less than three in number, in order that he may not solely rely upon the written instrument, and his examination of the same, and to enable the judges to have the assistance of witnesses; for We admit testimony of this kind, where the witnesses state that he who made the instrument signed it in their presence and they acknowledged it. If We should find that there are less than three witnesses worthy of credit, We do not forbid the instrument from being declared genuine, as We do not enact this law for the purpose of abridging evidence, but with a view to rendering it more reliable.

CHAPTER II.

IN WHAT WAY AN INSTRUMENT EVIDENCING A LOAN OR A DEPOSIT CAN BE DRAWN UP WITHOUT THE PRESENCE OF A NOTARY.

If anyone should draw up an instrument evidencing a loan or any other contract whatsoever, without desiring to have it become public, this instrument, as We have just stated with reference to a deposit, will not, of itself, be considered worthy of credit, unless it was executed in the presence of at least three witnesses, who attest its genuineness by their own signatures, or who prove that the instrument

was written in their presence, for it will become worthy of confidence in either of these instances; and if the examination of handwriting is not absolutely rejected, it will not be sufficient alone, and must be confirmed by the testimony of the witnesses.

CHAPTER III.

WHERE A DISCREPANCY EXISTS BETWEEN THE CONTENTS OF A WRITTEN INSTRUMENT AND THE STATEMENTS OF THE WITNESSES.

But if anything resembling what has taken place in Armenia should happen, and the comparison of handwriting should prove one thing, and the evidence of witnesses another, We have then thought that the sworn oral testimony is more trustworthy than the written

instrument by itself. Still, the wisdom and conscientiousness of the judge should, under such circumstances, induce him to decide in favor of what appears to be better entitled to credence, and We have come to the conclusion that the genuineness of documents should be established in this manner.

CHAPTER IV.

CONCERNING INSTRUMENTS EXECUTED WITHOUT SECURITY.

When, however, anyone who makes a deposit lends money, or contracts in any other way, is satisfied with the written instrument alone of the other party to the transaction, he is hereby notified that the said instrument, by itself, will not be worthy of any confidence whatever, unless, in accordance with Our law, its genuineness is confirmed by the presence of the witnesses before whom it was executed; or by the last resort in such a case, that is to say, by the sanction of an oath.

We do not, however, under such circumstances, declare the instrument to be void; and We only require these formalities to be observed for the reason that We are apprehensive of forgeries and imitations, and do not trust to mere written instruments. Nor do We desire by this rule to deprive persons of their confidence in others with whom they have contracted in this way, but We make this provision in order to avoid perfidy and artifice, as much as possible, and in every way that We can.

CHAPTER V.

HOW NOTARIES SHOULD DRAW UP INSTRUMENTS THAT WILL BE SECURE.

Whenever public documents are concerned, although the requisite number of notaries may be at hand, it must be stated in writing before the completion of said documents (as has already been set forth), that they were executed in the presence of witnesses.

CHAPTER VI.

CONCERNING THE COMPARISON OF NOTES.

Whenever judges find any notes inserted in documents, they must examine them, and attempt to read them. For We have learned that there are many documents which, for the reasons already mentioned, are proved with difficulty by comparison with other written instruments.

CHAPTER VII.

CONCERNING THE COMPARISON OF HANDWRITING.

But where all the witnesses are absent, or there is any reason to doubt the genuineness of their signatures, or if the notary who drew up the document is no longer living (that is if it was executed in public), or cannot himself appear as a witness, or is not in the city, then it will be absolutely necessary to subject the handwriting of those who have signed the document to comparison; and it is proper to do this as soon as possible (for We by no means forbid such comparisons), and proceed with extreme care, and if the judge should think that one should be made, he must first tender the following oath to the plaintiff, namely: "That none of his allegations have been prompted by malice; that he has not acted fraudulently in having a comparison of handwriting made; and that he will act in such a way that nothing whatever may remain concealed; and that no subterfuge of any description will, under any circumstances, be employed."

(1) Whenever documents are to be proved, and a notary is present, he shall give his evidence under oath, but if he himself did not draw up the document in question, but this was done by one of his clerks, the latter shall appear and testify, if he is willing, and it is possible for him to do so; and nothing shall excuse him from coming, unless it is, for instance, a severe illness, or some other unavoidable accident to which mankind is liable.

When a banker has an instrument of this kind, he himself shall be present, in order that three witnesses, and not one alone, may testify concerning it. But if no banker should be interested

in the document, and a notary has written it all himself, or caused this to be done, and signed it, and neither he nor his clerk is living, or cannot be present, then the notary shall swear to the fact that he drew up the said document, and there will be no ground for a comparison of handwriting. In this way documents will obtain credibility, and the oral testimony of the notary given under oath will be conclusive.

(2) If the notary should be dead, the document shall be proved by comparing its writing with that of others. But when the clerk who drew up the document is living, as well as the banker who is interested in it, they must appear if they are not absent, and the genuineness of the document shall be established by a comparison of notes and the statements of witnesses. Where, however, none of these persons are alive, then a comparison of handwriting should be made; still, this will not be sufficient for the purpose, as other specimens of the writing of the contracting parties and witnesses must be examined, so that the document may be proved not only by the comparison of the body of the same with those of others, but also with different specimens of the writing of the witnesses and contracting parties.

(3) But when the genuineness of documents cannot be established in any other way than by their comparison, the rule observed up to this time shall remain in force. He who offers a document for comparison shall be solemnly sworn, and in order that the greatest confidence may be assured, he who demands a comparison shall make oath that, as no other method is available, he has recourse to a comparison of instruments; and that he does not do this through malice, or with any intention of concealing the truth. The contracting parties can be released from all the formalities which We have just enumerated if, in the first place, both of them consented to have the instruments recorded, and have made them public by filing them in the Bureau of Registry, so as to prevent any suspicion of bad faith, corruption, or falsification from attaching thereto; for it is for the purpose of suppressing every kind of fraud that We promulgate the present law. Everything that We have previously ordered with reference to handwriting in private instruments shall remain in full force; and We also confirm what has been established with respect to illiterate persons, as this has already been subjected to a sufficient judicial examination.

CHAPTER VIII.

IN WHAT WAY PERSONS IGNORANT OF LETTERS CAN SAFELY MAKE CONTRACTS.

It is necessary, in the case of persons who are ignorant of letters, for witnesses, and by all means for notaries, to be present in those places where there are any; and it is indispensable that the witnesses should be known to the contracting parties, and that other persons should write for such as are entirely illiterate, or have very little education, or state that the instruments were drawn up in their presence, and that they were acquainted with said illiterate persons; and in this way the legality of such instruments shall be established and proved; for there ought not to be less than five witnesses present, including the person who drew up the instrument entirely, or merely affixed the signature as directed by the illiterate contracting party, who was unable to write. In this way nothing will be omitted to insure the validity of documents.

CHAPTER IX.

CONCERNING CONTRACTS ENTERED INTO WITHOUT WRITING.

We have made these provisions with reference to written instruments, but when anyone desires to make a contract without committing it to writing, it is clear that he must establish its genuineness either through witnesses, or by oath; and the plaintiff shall produce the witnesses, and the defendant take the oath, or tender it to the plaintiff, as the judge may decide.

But in order that nothing may be unprovided for, it is advisable to add to the law that these provisions need not be observed in a case of contracts involving property to the amount of only one pound of gold, but the agreement will be valid as entered into between the

contracting parties, in order that men may not be subjected to great expense where articles of trifling value are concerned.

We desire that all these rules shall be observed in cities, for in the country (where there is much simplicity, and comparatively few persons who know how to write are available as witnesses), whatever has been valid up to this time is hereby confirmed, and We have also made the same provision with reference to wills, to which We are accustomed to pay special attention. Hence this law shall only be valid so far as any instruments and contracts which may hereafter be entered into are concerned; for why should any disposition be made regarding what has already taken place?

The multitude of legal disputes which have arisen have necessitated the enactment of this law, which has been promulgated by Us to prevent men from daily contending with one another, and, by means of the legislative formalities, to remove every cause of altercation.

EPILOGUE.

Wherefore it is proper for Your Eminence, as soon as you receive this law, to communicate it to all persons both here and in the provinces ; and We have addressed it to the other Most Glorious Prefects in the West in Lybia, and in the North (We mean Illyria) so that what We have decreed for the purpose of preventing controversies among Our subjects will become known throughout the entire Empire.

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.

TITLE III.

IN WHAT WAY NATURAL CHILDREN MAY BECOME LEGITIMATED AND INDEPENDENT, IN ADDITION TO THE METHODS PRESCRIBED BY FORMER CONSTITUTIONS.

SEVENTY-FOURTH NEW CONSTITUTION.

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

PREFACE.

It has very properly been stated by Our predecessors, and above all by the most learned Julianus, that no law or decree of the Senate has ever been promulgated by the Roman government which, from the beginning, has been sufficient to provide for all cases; but that laws have need of much correction in order to be adapted to the inconstancy and perversities of Nature. Hence We have published various enactments concerning natural children upon whom legitimacy has been bestowed. But when We consider the character of each individual case, We find that there is always something lacking to what has already been provided, and We desire to supply this by means of the present law. For where anyone, induced by pure affection, has formed an union with a woman and has children by her, and after their birth, enters into a nuptial contract with her, and then begets legitimate children, those previously born do not continue to be illegitimate, but are included among those who are legitimate, for the reason that chance has caused them to be born such.

This law, however, has undergone an amendment, for certain persons claimed that when the second children, born after the dotal contract was executed, die, those born previously obtained no advantage through them; which difficulty We have removed by also giving the first children the right of legitimacy, even when the second are longer living; and (for the reason that this point also was ambiguous) We have added that even if no children were born after the dotal contract was entered into, those previously born should, nevertheless, be included among the legitimate offspring, because their father desired it.

(1) But another similar instance occurred; that is, where natural children were born of an union of this kind, and their father wished them to be legitimated in the manner introduced by Us, that is to say, by the execution of a nuptial contract, but, while he was deliberating on this subject the woman died, and the rule established by Our Constitution was not applicable, for she with whom the nuptial contract should be entered into was no longer living, and hence the natural children remained such, notwithstanding the wish of their father.

Another case of the same description arose among persons with whom We are not acquainted; for a certain man, having begotten children illegitimately, to whom he was deeply attached, desired to have them legitimated in accordance with law, but their mother did not bear a good reputation, and he did not think that she who had committed an injury upon herself was worthy of obtaining a lawful name, which statement is sufficient for the purpose.

This is another way in which children can be made to suffer; in the first instance, on account of the death of their mother, and in the second, because of her misconduct.

(2) A third instance has also come to Our knowledge. A father desired to render his children legitimate, and made arrangements to do what We have prescribed with reference to dowries; but the children, being aware that their mother might unexpectedly acquire certain property (through a certain rich relative, although she was not a lawful wife), were guilty of wicked and deceitful conduct, for they concealed their mother, so as to make it impossible for their father to legitimate them, and if their mother should die, that they might be able to enjoy the usufruct of her property, a privilege which the law grants to a father. We enact the present constitution for the purpose of preventing fraudulent acts of this kind.

CHAPTER I.

CONCERNING VARIOUS WAYS OF LEGITIMATING NATURAL CHILDREN, AND CONCERNING LEGITIMATION BY MARRIAGE OR WHERE MARRIAGE IS CONTRACTED WITH THE MOTHER OF NATURAL CHILDREN BY THEIR FATHER.

Where anyone has no legitimate children, but only natural ones, and desires to render them legitimate, and the mother of said children is dead; or if living, she has been guilty of bad behavior; or if she does not appear, or some law forbids the father from marrying her; We authorize him to confer upon his natural children the right of legitimacy in a new way which We now propose; provided he has no surviving lawful offspring. For as Our predecessors devised a certain method of bestowing upon freedmen the privilege of free birth, and of liberating them from their condition by giving them the right to wear gold rings, and restoring them to the condition of Nature, which, in the beginning, did not distinguish a slave from a freeman, but created the entire human race free, so We introduce a new method of legitimation, and a father is authorized to make use of it, just as he is entitled to do with reference to the different ways which We have prescribed, even though some other similar instance may arise, for the innovations of Nature are innumerable, as We have already stated.

Therefore a father who has no lawful issue shall be permitted to restore his children to a natural condition and original free birth, in order to render them legitimate for the future, and to have them under his control; for in the beginning (before there were any written laws), when Nature alone was supreme, and no distinction existed between a natural and a legitimate child, the progeny of Our first parents were legitimate as soon as they were born. And as, so far as children are concerned, Nature renders them all free, and because slavery was derived from warfare, so Nature has only produced legitimate offspring, and it is the tendency to concupiscence which has mingled natural offspring with them. Therefore as the origin of all children is attributable to certain passions, it is necessary for a remedy to be found for both classes; that is, for the condition of servitude introduced by Our predecessors, and for this condition which We have herein provided for.

CHAPTER II.
CONCERNING LEGITIMATION BY WILL.

Therefore if the mother of children is left in her former condition, and she actually appears to have been guilty of misconduct (for otherwise We do not permit this to be done in cases of this kind), and if any fraud has been practiced, or she is not living, or remains concealed, or anything else happens which may prevent her from appearing and entering into a nuptial contract, the father shall be permitted to provide for his children, and petition the Emperor for this purpose, giving the reasons why he desires to have them restored to their natural condition and original free birth, and become legitimated, so as to remain under his control, and in no respect differ from children lawfully begotten. Hence We desire that children shall enjoy a solace of this kind, and that they may not be able to defraud their father, and, by concealing their mother, reject the right of legitimacy.

This is one expedient which We have adopted for the benefit of those who have no lawful issue, as well as to provide for the excesses and perversities of Nature, thereby both granting relief to such as have no legitimate offspring, and correcting these eccentricities by this short and effective remedy.

(1) Where, however, a father who has only natural children does not apply to the Emperor on account of some fortuitous event, and, dying under one of the aforesaid circumstances, states in his will that he desires his children to be his lawful heirs, his wish shall be complied with; but his children must, nevertheless, present a petition to the Emperor after their father's death, stating everything that has taken place; and they shall also produce the will, under the terms of which they were appointed heirs; and they will then receive from the Emperor what their father desired them to obtain; so that what takes place shall, at one and the same time, be the gift of both their parent and their sovereign, that is to say, of Nature and law; and We establish this rule without the annulment of any former method of legitimation.

In cases in which these former methods are not available on account of the existence of legitimate children, and natural children are subsequently born, or where natural children are born in the first place, We add that the right of legitimacy shall, by no means, be acquired by them, unless this is done by virtue of Our Constitutions which have introduced the method of legitimation through dotal instruments.

CHAPTER III.
CONCERNING LEGITIMATION BY ADOPTION.

We are well aware that the form of adoption introduced in ancient times by Our Imperial predecessors, for the purpose of legitimating natural children, was not considered contrary to nature; but Our Father, of pious memory, has criticized it as such, in one of his constitutions, and We desire that what he decreed in this respect shall remain in full force, as he had the greatest regard for chastity, and it is not well for anything which has once properly been excluded to be restored in the administration of the Empire.

CHAPTER IV.
WHO CANNOT CONTRACT MARRIAGE WITHOUT THE EXECUTION OF DOTAL
INSTRUMENTS (JULIANUS NO. 243).

We think that the following provisions are preferable to what has previously been enacted on the subject, and have decided their adoption to be advisable, after much experience with many cases; and, indeed, the numerous and incessant lawsuits which have been brought to Our notice have induced Us to enact this law. For, as it has been set forth in ancient constitutions, and also established by Us, that marriages celebrated without dotal agreements and prompted by affection alone, are valid and durable, but as the country is already full of fraudulent contracts (for witnesses are constantly introduced who, incurring no risk, testify that a man has called a woman with whom he is living his wife, and that she has also alluded to him as

her husband, and by means of such statements marriages are presumed, which in reality have never taken place), it now becomes Our duty to provide for these cases in accordance with natural law. For We have learned, although We are lovers of chastity—a virtue which We recommend to Our subjects—that there is nothing more powerful than the passion of love, and that it is a part of perfect philosophy to restrain it, and to foresee and moderate the natural impetuosity of passion, in order that those who are subject to its influence may resist the importunities of those to whom they are attached, and not yield to their blandishments; and the legislators who have preceded Us have been so thoroughly acquainted with such affections of the mind that they have even prohibited donations to be made during the existence of marriage, for fear that, having been conquered by the overwhelming power of concupiscence, married persons may secretly and by degrees deprive themselves of their property. Hence We think that it is proper to regulate these matters by means of a chaste law.

(1) Therefore We forbid persons who are occupying high positions, no matter what they may be—and this applies to Ourselves, as well as to senators and persons of illustrious rank—to marry without any dotal contract. We also desire that a dowry and an ante-nuptial donation shall, by all means, be stipulated for, whenever marriages of persons of this description take place, as well as everything that is proper and becoming under such circumstances.

But so far as others who occupy places of less importance and discharge honorable duties, or are members of respectable professions are concerned, if they should desire to lawfully marry women without entering into ante-nuptial contracts, they shall not do so indiscriminately, without security, and without proof; but they must repair to some house of worship, and declare their intention to the defender of the Most Holy Church, who, in the presence of three or four most reverend ecclesiastics, must draw up a statement in which shall be set forth that, during a certain indiction, month, day of the month, and year of Our reign, under Such-and-Such a Consul, So-and-So and So-and-So appeared before him in such-and-such a place of worship, and were united with one another. If both the parties interested approve of this attestation, whether they both appear or only one, they shall subscribe the above-mentioned statement, along with the defender of the holy church, and the three other ecclesiastics, or more of the latter if it is desired, but never less than three.

(2) Where, however, the parties interested do not agree to this statement, the defender of the church shall, nevertheless, deposit it, bearing its aforesaid signature, among the archives of the most holy church (that is, where the sacred vessels are kept), in order that the proof of this transaction may be manifest to all, and the parties may not be considered as having been united by marital affection in any other way; and that the marriage may be established by documentary evidence; and when these formalities have been complied with, the marriage and the issue of the same shall be legitimate.

We do not, however, order that this rule shall be observed when no dotal contract or ante-nuptial donation is made, for We enact the present law for the reason that We consider a marriage which can be only proved by witnesses as suspicious.

(3) Anyone who is of abject condition, is the owner of little or no property, and is hardly able to obtain the necessaries of life, shall have permission to marry without making any contract. Nor do We investigate closely the marriages of farmers, or soldiers in military service whom the law styles *caligati* (that is to say, of low and obscure rank), who are ignorant of civil formalities for the reason that they are only occupied in agricultural pursuits, or devote themselves exclusively to the operations of war; and this is justly worthy of praise; for as persons of abject condition, soldiers in active service, and farmers, are authorized to contract marriage with one another without a written contract, so the children born of marriages of this kind are legitimate.

CHAPTER V.

WHERE ANYONE SWEARS UPON THE HOLY GOSPELS THAT HE WILL MAKE A WOMAN WHO IS IN HIS OWN HOUSE HIS WIFE.

Among the petitioners who frequently apply to Us We have heard the complaints of many women, who say that men who profess love for them take them into their houses, swearing upon the Holy Gospels or in the churches that they will eventually marry them; and that these men, after having lived with them for a long time, and had children by them, as soon as they are tired of them, drive them out of their houses without their children, hence We have deemed it proper to provide that if a woman can prove by lawful evidence that a man has taken her into his house with the promise of marrying her, and making her the mother of legitimate children, he shall not be permitted to eject her without observing the formalities of law; but, on the other hand, that she shall be his lawful wife, and his children shall also be legitimate; and if she has received no dowry, she shall enjoy the benefit of Our Constitution, and be entitled to the fourth of her husband's estate whether he discards her or dies before she does.

We make no distinction whether he expels her by serving notice of repudiation or not, for it is improbable that anyone who denies a marriage would serve notice of repudiation; but where the husband drives his wife away without any reason, this shall be a good ground for an accusation against him; and she can, under such circumstances, serve notice of repudiation upon him, and exact from him the fourth of his property, if she can prove that she has been his wife, even though, relying upon his oath, she may not have stipulated for a dowry. For when a woman is unable to furnish a dowry in the first place, what else can she do than to provide one for herself?

(1) The issue of such a union will be legitimate, even against the consent of the father. For he who has been instrumental in having the marriage take place, and has begotten children in order that the woman may become the mother of lawful offspring, cannot reject these children as being illegitimate; nor when, after the death of his wife, or her repudiation, he contracts another marriage, can he render only the issue of this marriage legitimate, and exclude that of the first one, of whom he is also the father, God having been the witness of the first, and the law of the second.

This constitution has been promulgated by Us to provide for the security of those who contract such marriages, and where any children are born of them, they shall have the protection of the laws enacted for the benefit of those who are legitimate.

CHAPTER VI.

WHO ARE LEGITIMATE CHILDREN, WHO ARE NATURAL CHILDREN, AND WHO BELONG TO NEITHER CLASS, THAT IS TO SAY, ARE THE ISSUE OF A PROHIBITED UNION.

If any violation of this law should take place, the issue of the marriage contracted under such circumstances will be natural children, and will be entitled to the shares of their father's estate which they have been granted by Us, whether by virtue of a will or in case of intestacy. Children, however, born of unions which are odious to Us, and which We have prohibited, shall not be called natural, nor be allowed to participate in Our clemency, and their parents shall be punished by knowing that their offspring cannot obtain anything on account of the indulgence of their wicked concupiscence.

EPILOGUE.

Your Highness will, by suitable proclamations, communicate to all persons the matters having reference to the relief of mankind and the assistance of Nature, which We have been pleased to include in this law; so that Our subjects may learn from it the way in which the affairs to which it relates should be conducted, and reflect upon Our foresight in this respect, for by its enactment We have made every provision for their welfare.

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

TITLE IV.

CONCERNING APPEALS TAKEN IN SICILY.

SEVENTY-FIFTH NEW CONSTITUTION.

The quaestor shall hear and determine appeals taken in Sicily, and shall confirm by decrees the defenders and municipal magistrates who may be elected in this part of Our dominions.

EPITOME OF THE SAME NOVEL, FROM JULIANUS. CONCERNING APPEALS TAKEN IN SICILY.

We order that appeals taken from the decisions of a Praetor, general, or any other magistrate in Sicily, shall be brought in this royal city before the quaestor; and We desire that the latter shall hear the causes of appeal, render the decision, and refer it to Us, in order that it may be affirmed. If any other civil matter should arise, such, for instance, as the confirmation of a defender, or the decree of a municipal magistrate of a Sicilian city, application must also be made to the quaestor, and the confirmation shall be made by him, for he is invested with Our full authority.

TITLE V.

THIS CONSTITUTION INTERPRETS A PREVIOUS ONE WHICH TREATS OF THOSE WHO ENTER MONASTERIES AND THEIR PROPERTY, AND FROM WHAT DATE THE AFORESAID CONSTITUTION SHALL BECOME OPERATIVE.

SEVENTY-SIXTH NEW CONSTITUTION.

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

PREFACE.

A case has arisen which We think justifies Us in making a suitable interpretation of a previous law, as well as an addition to its provisions; for We have learned that a woman having had a child by a lawful marriage desired to leave the world and retire to a monastery, and, by so doing, greatly benefit the nuns who were resident therein. But as a constitution enacted by Us states that persons of either sex, who betake themselves to monasteries, can dispose of their property as they please before entering them, but cannot do so afterwards, as they are no longer owners of said property, and as We have also ordered that persons of this kind, when they enter a monastic institution, shall devote their bodies, souls, and fortunes to these establishments, and when they leave them their property shall remain in the

monastery, and as Our preceding Constitution was promulgated a considerable time after the entrance of the said women into the monastery, she, fearing that opposition would be made to the transfer of her property to her son, asked that the legislation on this subject should be interpreted, and that this should be made clear by Our law, in order that, so far as her succession was concerned, neither she nor her son should sustain any injury on account of the enactment of the said constitution.

CHAPTER I.

Therefore We order that if anyone of either sex has lived in a monastery before the promulgation of Our preceding Constitution, or if he or she is living there at present, and has any children, he or she shall not be compelled to leave his or her fortune to the monastery, hence in this instance the woman can transmit it either wholly or in part to her son or daughter, or dispose of it otherwise as she pleases (for a subsequent law cannot injuriously affect those who have entered a monastery before its promulgation, or cause them to forfeit privileges which have previously been granted them) ; this constitution, however, is only designed for the purpose of interpreting the former one, without annulling any portion of it.

For it is not possible for anyone to be compelled to dispose of his property before entering a monastery; for if the woman entered the monastery before such a law was enacted, how could the legal order be inverted, and it be required of those who had previously entered a religious house to do things which were not yet known, and which have subsequently been changed by the publication of Our Constitution?

It is then proper to consider everything at the proper time, and only to examine whether what has been done after the law was passed is in accordance with its provisions; for when anything occurs before a law is enacted, it should neither be altered nor hypercritically examined, but should be preserved in its original form.

(1) Hence this law is promulgated for the useful interpretation of Our former Constitution, so that the latter may become operative after its adoption, and may only apply to such men and women as have entered the monastic life subsequent to its enactment. We do not captiously scrutinize what has taken place before its promulgation, as men and women who had previously entered monasteries, or were residing in them at the time, were permitted to dispose of their property in any way they chose, especially if they had living children.

EPILOGUE.

Your Eminence will, by means of suitable proclamations, hasten to formally communicate to all persons what We have pleased to enact by this Imperial law.

Given on the *Ides* of October, during the twelfth year of Our Lord the Emperor Justinian, and the Consulate of John.

TITLE VI.

MEN SHALL NOT COMMIT THE CRIME AGAINST NATURE, NOR SWEAR BY GOD'S HEAD, OR ANYTHING OF THIS KIND, NOR SHALL THEY BLASPHEME GOD.

SEVENTH-SEVENTH NEW CONSTITUTION.

The Emperor Justinian to the People of Constantinople.

PREFACE.

We think that it is clear to all men of good judgment that Our principal solicitude and prayer is, that those who have been entrusted to Us by God may live properly, and obtain Divine favor. And as God does not desire the perdition of men, but their conversion and salvation, and as He receives those who, having committed sin, have repented, We invite all Our subjects to fear God and invoke His clemency, for We know that all those who love the Lord and are deserving of His pity do this.

CHAPTER I.

Therefore, as certain persons, instigated by the devil, devote themselves to the most reprehensible vices, and commit crimes contrary to nature, We hereby enjoin them to fear God and the judgment to come, to avoid diabolical and illicit sensuality of this kind; in order that, through such acts, they may not incur the just anger of God, and bring about the destruction of cities along with their inhabitants; for We learn from the Holy Scriptures that both cities as well as men have perished because of wicked acts of this kind.

(1) And as, in addition to those who commit these offences which We have mentioned, there are others who utter blasphemous words, and swear by the sacraments of God, and provoke Him to anger, We enjoin them to abstain from these and other impious speeches, and not swear by the head of God, or use other language of this kind. For if blasphemy when uttered against men is not left unpunished, there is much more reason that those who blaspheme God himself should be deserving of chastisement. Therefore We order all men to avoid such offences, to have the fear of God in their hearts, and to imitate the example of those who live in piety; for as crimes of this description cause famine, earthquake, and pestilence, it is on this

account, and in order that men may not lose their souls, that We admonish them to abstain from the perpetration of the illegal acts above mentioned. But if, after Our warning has been given, anyone should continue to commit these offences, he will in the first place render himself unworthy of the mercy of God, and will afterwards be subjected to the penalties imposed by the laws.

(2) We order the Most Glorious Prefect of this Royal City to arrest any persons who persist in committing the aforesaid crimes, after the publication of Our warning; in order that this city and the State may not be injured by the contempt of such persons and their impious acts, and inflict upon them the punishment of death. If, after the publication of this law, any magistrates should become aware of such offences, and not take measures to punish them, they shall be condemned by God. And even if the Most Glorious Prefect himself should find any persons doing anything of this kind, and not punish them in accordance with Our laws, he will, in the first place, be subjected to the judgment of God, and afterwards sustain the weight of Our indignation.

TITLE VII.

FREEDMEN SHALL NOT HEREAFTER REQUIRE A GOLD RING TO BE RESTORED TO THEIR ORIGINAL NATURAL CONDITION OF LIBERTY. CONCERNING THE EXECUTION OF DOTAL INSTRUMENTS WITH REFERENCE TO FREEDWOMEN.

SUCH A MARRIAGE AND THE CHILDREN BORN FROM IT SHALL BE LEGITIMATE, AND IF THE WIFE WAS ORIGINALLY A FEMALE SLAVE, SHE SHALL BECOME FREE WHEN THE DOTAL INSTRUMENT IS DRAWN UP, AND HER MARRIAGE SHALL BE LEGAL, AND THE ISSUE OF IT LEGITIMATE.

SEVENTY-EIGHTH NEW CONSTITUTION.

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

PREFACE.

Among the most extraordinary benefits which Almighty God has conferred upon Us We think should be classed the impulse We have to add to Our laws that the freedom of slaves (when they are released from their former condition by their masters) shall in every respect be pure, unqualified, and perfect; and for this reason We have already removed the stigma attaching to *dedititii*; have excluded the freedom of the Latins as imperfect; have shown repetitions to be superfluous; and We detest both the *Lex Junia* and the Larginian Decree of the Senate, as the latter was originally introduced to no purpose, and was afterwards very properly repealed.

We have desired that the mere bestowal of the right of Roman citizenship should confer freedom without considering either the reason for it, the place where it was granted, the age of the person enfranchised, or anything else whatever connected with the same. And as We always endeavor to improve the condition of Our subjects, We have thought it desirable to increase the most admirable enactments of Our predecessors by means of certain additions.

CHAPTER I.

CONCERNING THE RIGHT TO WEAR A GOLD RING GRANTED TO ALL FREEDMEN IN GENERAL.

Therefore We order that if anyone, when manumitting a male or female slave, should declare him or her to be a Roman citizen (and, indeed, he is not allowed to do otherwise), he is hereby notified that, in accordance with the terms of this law, the person who received freedom shall at once, and ever afterwards, have the right to wear a gold ring, and be classed as originally freeborn; that he shall not be required to petition the Emperor for this purpose, or to observe any other formality, but all these things will result from his grant of freedom; and this Our law shall become operative from the present day. We do not criticize any previous enactment on this subject, but ratify all preceding laws, and direct that they shall remain in force, and order

that the present provisions may hereafter be observed.

CHAPTER II.

CONCERNING THE REVERENCE AND RESPECT WHICH SHOULD BE MANIFESTED BY FREEDMEN TO THEIR PATRONS, ETC.

We add that this law does not in any way encroach upon the rights of patrons, but We preserve them with reference to all kinds of persons, unless he who conferred liberty upon his freedman also granted him these rights, either under the terms of a trust, or at the time when he manumitted him; for if he made such a concession in his favor, the freedman will, for this reason, be absolutely released from the claims of patronage. Those who deserve freedom will therefore enjoy all these privileges, but they will, even after the enactment of this Our Constitution, be compelled to show every mark of respect and reverence enjoined by Our laws upon him who has honored them in this manner.

Moreover, freedmen must not lay violent hands upon their patrons, or plot against them, or commit any act whatever to their injury; and if they do, they shall be restored to their former condition, and again be reduced to slavery, in accordance with the laws promulgated on this subject. For if We have absolutely permitted no one whomsoever, even though he may have been born free, to display ingratitude towards a donor, but in the laws which We formerly promulgated, as well as in those daily enacted by Us, have declared gifts bestowed under such circumstances to be void, why should We suffer an emancipator, who bears to his freedman almost the relation of a father, to be subjected to any ill treatment on his part, or to any rude or indecent abuse, or to suffer great loss? If, then, a patron should be able to prove by lawful evidence that either he or his children have been injured in this manner by his freedman, We restore the latter to his former condition, as soon as this has been established. For in this way We restrain all freedmen from indulging in the use of opprobrious names, or vilification, and maintain justice and equity everywhere; thereby accomplishing what is proper for a legislator to do, as well as what is acceptable to God, the freedman, and the former master. (1) Wherefore both freedmen and freeborn persons—whether the right to wear a gold ring was conferred upon them expressly when they were manumitted, or whether they have obtained this privilege in consequence of the enactment of this law—must conduct themselves just as if they were originally freeborn, and honor those who manumitted them as they ought to do, and not subsequently render themselves liable to be deprived of their liberty, as guilty of want of affection and gratitude, and condemned by law. For if they entertain sincere and unalloyed reverence and attachment for those who liberated them and their children from slavery, they will always remain freeborn, and will never again be reduced to their former condition.

CHAPTER III.

WHERE A PATRON DESIRES TO MARRY A FREEDWOMAN.

Where anyone invested with any dignity whatsoever desires to marry a freedwoman, and make her his lawful wife, he must draw up a marriage contract with her. We add this sole requirement after manumission, and any children previously born, as well as those born after the dotal contracts have been executed, will be free, freeborn, and proper heirs; they will be the successors of their father, and, by the demand of gold rings, they will be released from the condition of their birth; for We make no distinction between matrimonial unions of this kind and those of other freeborn persons. The freedom of the mother, in addition to the nuptial contract, will show that the offspring of the marriage is free, freeborn, and entitled to succeed to the estate of the father.

CHAPTER IV.

WHERE ANYONE HAS CHILDREN BY HIS FEMALE SLAVE.

Children born under such circumstances are so absolutely free that, where anyone has issue by a female slave, and desires to manumit her and enter into a dotal contract with her, the right of freedom, as well as that of proper heirs and children, will be conferred from the very moment

when the marriage contract has been executed. And it is not necessary for freedom expressly to be granted to the children, nor that they be manumitted, either with their mother, or afterwards, or previously, for We grant them their liberty solely by reason of the execution of the marriage contract. For what greater indication of the freedom of his children can a father exhibit than to show that his wife is free, and his lawful spouse, and that he has entered into a marriage contract with her?

If a soldier, when bequeathing a legacy to one of his slaves, is held to have given him his freedom by the sole fact of this bequest, how much more reason is there that a father who has made a nuptial contract should not also, by this act alone, have rendered his children free, and his lawful successors? For there is no one who will think that a man who has rendered the mother of his children legitimate would desire to exhibit such a conclusive proof of licentiousness as to leave the children whom he has had by her in servitude.

(1) We direct that these rules shall apply both to emancipators and to persons who receive their liberty, for if We do not preserve for emancipators the rights which they formerly enjoyed, We shall perhaps render men more reluctant to bestow it. We are using every effort to encourage and confirm grants of freedom, and the increase of such acts in Our Empire, for the desire of this has prompted Us to undertake great wars in Lybia, and in the West, the object of which has been the maintenance of the true religion of God and the liberty of Our subjects.

CHAPTER V.

REASON FOR THE ENACTMENT OF THIS CONSTITUTION.

In the enactment of this constitution We do not introduce anything new, but follow Our distinguished predecessors, the Emperors. For as Antoninus, surnamed Pius (from whom this title has descended to Our times), having been petitioned by each of his subjects, and afterwards by those designated strangers, to give them the right of citizenship by making them freeborn Romans, conferred this privilege upon all his subjects; and after Constantine, the Founder of this Most Holy City, Theodosius the Younger, also bestowed upon all his subjects the right of free birth, as he had been requested to do, so also, as the right to wear a gold ring, and restoration to the original condition of freedom which We formerly granted to everyone who requested it afforded occasion for injury and excessive formality, and, besides, since those who bestowed freedom required to be authorized to do so, We now grant it equally to all Our subjects, by the terms of this law. We restore to their original freeborn status all persons who are worthy of the privilege, not separately, indeed, but We render freeborn all those who, in the future, may deserve freedom from their masters, by conferring this great and universal benefit upon Our subjects.

EPILOGUE.

As soon as Your Highness is informed of this law, which We have been pleased to enact through love for Our subjects, you will publish it here and in the provinces, by means of special proclamations, in order that Our people may be aware of Our special regard for all their interests, and of the provision We make for their welfare.

This law shall be effective in every case which may hereafter arise, for We do not pay any attention to what has passed.

Given at Constantinople, on the fifteenth of the *Kalends* of February, during the fifteenth year of the reign of Our Emperor Justinian, and the Consulate of Ario.

TITLE VIII.

BEFORE WHOM THE CASES OF MONKS AND ASCETICS SHALL BE TRIED.

SEVENTY-NINTH NEW CONSTITUTION.

The Emperor Justinian to Menna, Archbishop of Constantinople, and Universal Patriarch.

PREFACE.

Being aware of an abuse which exists in this Royal City We have thought it proper to correct it by a general law, which We make applicable to this Most Fortunate City, as well as to all the provinces of Our Empire. Certain persons, desiring to corrupt the purity of the orthodox faith, bring suit before civil judges whenever they have any controversies with monks or hermits, and these judges despatch executive officers, who venture to penetrate into holy places, remove monks by force, annoy the inmates of monasteries, ascetics, and even nuns who have entirely withdrawn from the world; and, in consequence of this, great injury and confusion are caused in religious establishments.

CHAPTER I.

WHERE ANYONE ATTEMPTS TO SUMMON A MONK OR AN ECCLESIASTIC TO COURT.

Therefore We decree that when anyone is engaged in litigation with a venerated ecclesiastic, a holy virgin, or nun actually resident in a monastery, he must notify the reverend Bishop of the City. The ecclesiastic with whom he has the controversy shall be sent for, and must appear, and state his ground of defence, as decorously as possible, by means of an abbot, a responsal, or any other person whomsoever; and the bishop shall hear and examine the case with all due sacerdotal dignity, and absolutely without the assistance of civil judges, for the bishops of every city are qualified to decide honorably and sacerdotally, in accordance with Our laws and the rules of the Church, when legal proceedings are instituted against monks. For in this way those who think that they have good cause to proceed shall obtain justice, and the respect due to sacred things shall remain intact and inviolate.

CHAPTER II.

CONCERNING THE ENFORCEMENT AND OBSERVANCE OF THIS CONSTITUTION AND THE DETERMINATION OF THE LEGAL CONTROVERSIES IN WHICH MONKS ARE CONCERNED.

Litigation in which monks are involved shall be speedily disposed of. This law is of general application, and its enforcement shall be committed to the Most Glorious Prefects having jurisdiction in all dioceses, namely: those of Illyria, Italy, the entire West and those of both Romes, as well as by the Most Glorious Praetors of the People, and the magistrates of the provinces, with their subordinates; and it shall not be evaded in any way but must be observed unchanged for the honor of the most reverend monks.

As soon as Your Holiness is informed of its enactment, you will cause it to be obeyed in this Most Fortunate City and its environs, and, by means of suitable letters, will communicate it to the metropolitans of the cities (from whom you yourself have received ordination), and the latter will notify all the bishops subject to their jurisdiction; so that, by means of few notices, this law may be transmitted to every portion of Our dominions. We direct that all lawsuits in which monks are interested shall be quickly terminated, in order that their minds may not be occupied by the cares of litigation, but may be speedily freed from them, and they be enabled to resume their sacred duties.

CHAPTER III.

CONCERNING THOSE WHO VIOLATE THIS CONSTITUTION.

Those who do anything contrary to these provisions are hereby notified that when a judge has presumed to render such a decision, he shall be deprived of his office, as having been guilty of an insult to Divinity, and shall, with his subordinates, be fined ten pounds of gold, to be paid into Our Imperial Treasury; and if any executive officers should attempt to serve an illegal notice, they shall be prevented from doing so, shall be detained in the places called *decaneta*, be subjected to suitable punishment, and not be permitted hereafter to perform their official functions.

EPILOGUE.

This law shall be applicable where anyone has a case against a most reverend monk, virgin, or nun residing in any venerated monastery. We have already enacted laws concerning members of the clergy stating the manner in which they may be sued, and these We desire to remain valid and unaltered under all circumstances.

A copy of this constitution has been addressed to John, Illustrious Praetorian Prefect of the East, twice Consul and Patrician; and another to Basilides, Most Glorious Master of the Imperial Offices; and still another to Longinus, Most Glorious Urban Prefect.

Given at Constantinople, on the sixth of the *Ides* of March, during the fifteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.

TITLE IX.

CONCERNING QUAESTORS.

EIGHTIETH NEW CONSTITUTION.

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

PREFACE.

We constantly, with the aid of God, make every provision to preserve from injury the subjects whom He, in His clemency, has placed under Our care. Therefore We enact laws that will enable them to have absolute justice, and hasten to re-establish whatever may have fallen into desuetude. Moreover, We have found certain administrations entrusted with suppressing what is not honorable, and punishing offences of inferior importance, and these duties are discharged by the Praetors of the People in this Most Fortunate Capital, whose great experience in affairs has acquired for them the approval of all the inhabitants of this Our Royal City. The benefits resulting from their administration have induced Us to consider it as worthy of the law and judicial office to investigate any other matters which are in need of correction. We have found that the provinces are being deprived of their inhabitants by degrees; and that, on the other hand, this great city is becoming much more populous on account of the arrival of vast crowds of different kinds of men, and above all of farmers, who abandon their towns and crops to come here.

CHAPTER I.

CONCERNING THOSE WHO COME TO CONSTANTINOPLE.

These matters have induced Us to enact the present law, and to create an office which is, to a certain extent, an innovation, for We do not hesitate to make an allowance from the Public Treasury for the benefit of the person who will occupy it; to assign to him a sufficient number of officials; and to render him responsible for his negligence. We give this official the name of Quaestor, the one by which he was originally designated (We mean in former times), when they called those who perform such duties *Ereunades*. We desire those appointed to this office to be animated by the fear of God, of Us, and of the law, to seek out all persons who resort to this great city, no matter in what province they reside, or whether they be men, women, clerks, monks, nuns, advocates of foreign cities, or to whatever other civil status they may belong; and that the said magistrates shall ascertain who they are, and from what place, and for what reason they come here.

We also decree that if any of these persons are farmers, the Quaestor shall send them before the magistrates having jurisdiction over them, and the latter must threaten them, and promptly deliver them from the litigation on account of which they have visited this city, and send them back to their homes immediately after their cases have been properly disposed of.

CHAPTER II.
CONCERNING FARMERS.

If cultivators of the soil, who are under the control of masters and are useful to them, should come to this Royal City, the Quaestor shall cause their masters to speedily decide the cases on account of which they have come here, and send them back as soon as they have obtained justice. Where, however, the said cultivators of the soil are here on account of some controversy with their own master and conduct their case against him, and there is a multitude of them, the Quaestor shall immediately send the greater number back to their province, and only allow two or three to remain, who, in conformity with the rule relating to litigants, shall conduct the proceedings; and he shall urge the magistrate having charge of the case to dispose of it as quickly as possible, in order that the time of their stay may not be prolonged, for their presence here is superfluous, and the cessation of their agricultural duties is injurious to their masters.

CHAPTER III.

But if it is not a multitude of farmers, but other persons, or even individual litigants, who have brought suit against one another, who are sojourning in this city, the Quaestor shall not remain idle, but shall use every effort to prevail upon judges to hasten to release these persons from their contentions, and when freed from their lawsuits, send them back to live in their own towns and provinces. If, however, when the magistrate has appointed judges to hear a case or the masters of the said farmers have been appointed judges by Us, in order that the said litigants may have their cases decided, and the judges or masters defer doing this, and do not speedily release them from the litigation in which they are involved, then the Quaestor himself, who has been appointed by Us, shall call the litigants, or those who demand something from their masters before him, and examine whether their claims are meritorious or not, and quickly dispose of the matters on account of which they have repaired to this great city, and send them back to their country, and to the places from whence they came; nor shall any question of privilege or contest of jurisdiction be available under such circumstances.

CHAPTER IV.

But where any persons who are not involved in litigation have come to this city to obtain a livelihood, and improve their condition, or if, for the reason they have not sufficient property to enable them to accomplish what they desire, they should commit crime, the Quaestor shall examine their physical condition, and ascertain whether they are in good health and able to work; and if they are slaves, he shall learn to whom they belong, and shall, even if they are unwilling, cause them to be restored to their masters; but if they are free, he must return them to the cities or provinces in which they were born.

CHAPTER V.
CONCERNING STURDY BEGGARS.

When the persons in question belong to this neighborhood, and, being strong in body, do not lead a proper life, the Quaestor shall not permit them to be a burden to the community, but shall see that they are promptly turned over to the officials having charge of the public works, that is, to the directors of the bankers, of the posts, of the public gardens, or to other different bodies of trades or manufactures, in which they can at the same time work, be supported, and change an idle life for one that is preferable.

(1) If any such persons should refuse to work in the factories to which they are assigned, the Quaestor shall drive them out of this Royal City. We direct that this shall be done for the sake of being indulgent to them, in order that idleness may not induce them to commit illegal acts, and the laws not subject them to punishment, and that they may not render themselves liable to be brought before Our judges. Still, We order that persons of either sex, who are not sound in body, or are seriously ill, shall not be molested in Our city, but, on the other hand, that they shall be cared for in an humane manner.

Moreover, the Quaestor shall ask each one of those who resort to this city what reason has induced him to do so; so that, this being ascertained, he will be able to make a proper disposition of them, and that those who are lazy may not remain here, but, after having finished their business, they may return to their own provinces.

CHAPTER VI.

CONCERNING FEES.

If any inhabitant of this Royal City, or even a stranger, should accuse certain persons of having caused him loss and injury, by means of what are called *sportulss*, and he alleges that the said persons have in this way evaded Our laws, or have served notice on him without an order of court, the Quaestor shall diligently seek the individuals who have committed this offence, and, no matter what may be their rank or office, or to what employment they may have been assigned, he shall, at once, cause them to be arrested, and after they have been convicted by proper evidence, he shall subject them to the punishment prescribed by Our laws. No judge can interfere to protect them, and the Quaestor must use as much diligence in preventing those from being injured who have suffered injustice, by causing what has been taken from them illegally to be returned, as well as in collecting the fines prescribed by Our Constitution, and of seeing that they are paid, where We have decided that this should be done.

CHAPTER VII.

CONCERNING FORGERY.

In addition to this, when anyone brings a complaint of forgery, or what is called false writing, the Quaestor shall, under all circumstances, make an investigation; shall cause those who are accused of the crime to be arrested; and shall punish them in accordance with the evidence; for We authorize him to hear and determine such cases. But where anyone injured in this manner has, in conformity with the terms of the present law, applied to the Quaestor and not obtained justice, and he is, in consequence, compelled to accuse him to Us, or to the government, the Quaestor is hereby notified that he will personally be responsible for the property claimed by the injured party whom he neglected to treat with equity, and that he will, in addition, incur Our righteous indignation, because he had the presumption to disobey Our orders.

CHAPTER VIII.

CONCERNING THE SALARIES OF THE QUAESTOR AND HIS SUBORDINATES.

The official appointed to this office shall always take the greatest pains to avoid corruption, and see that the attendants of his court are not avaricious, and ready to accept disgraceful gifts; and he must take measures to see that they act honestly and liberally, and if he should find that in the discharge of their duties they have committed any unlawful act of this kind, he must punish them, and in this way exhibit his firmness and his integrity.

We allow ten pounds of gold to the Quaestor for his expenses; a hundred *solidi* to his counsellor; and three hundred and thirty *solidi*, by way of salaries, to his attendants. We order that a list of these different salaries shall be appended to the present law; and We desire that the Quaestor, his counsellor, and his officers, being satisfied with the allowance made to them by the Treasury, shall refrain from accepting anything else. In this way they will show their respect to God and to Us at the same time, by enjoying the advantages of Our foresight, discharging the duties of an administration of celestial origin, and deciding cases readily and in accordance with law.

CHAPTER IX.
CONCERNING MAGISTRATES AND GOVERNORS.

We grant authority to the Quaestor to resist magistrates when necessary, to report their acts to Us, and to do what he considers proper under the circumstances; in order that, not being accused of weakness or want of resolution, he may appear worthy of the judgment which We have formed concerning him. We also give him permission to despatch public letters to the governors of provinces, notifying them to compel persons who have come here without legal process to return to their own country where they have been sent away by him; or to enable the said persons to receive the lawful aid to which they are entitled.

Where, however, persons who have been relieved of litigation, and have returned to their province, again repair to this Most Fortunate City, the Quaestor shall inflict suitable punishment upon them, and forcibly send them back once more. In this way Our distant cities will remain inhabited, and the capital be relieved of the confusion now existing therein.

If the Quaestor should deem it advisable to station certain of his officers in that portion of the territory of this city, which is situated beyond the sea, in order to be informed of the movements of those who come from a distance, and to return to the provinces persons who are journeying thither, he can do so, having in view whatever is for the public welfare.

CHAPTER X.

We decree all these matters with the intention of benefiting Our subjects, and to prevent them from abandoning their provinces and coming here to ruin themselves and die, after having been deprived of their property, as well as forfeiting the right to be buried with their fathers; hence preceding legislators, and those who founded the government, carefully provided for this contingency. In those days measures were taken to prevent idleness; the magistrates kept accounts of all foreigners; and Our enactments on this subject are not new or thoughtlessly promulgated, but, on the other hand, they are of ancient origin; although it is true that sometimes, through culpable negligence, they were not enforced, and would have run the risk of being gradually forgotten and entirely destroyed if We, knowing them to be useful and advantageous, had not again introduced them into the government. For, as We wish the Quaestor to be incorruptible, and his subordinates to accept nothing beyond the salaries which We assign to them, We order that they shall be entirely exempt from pecuniary obligations; that they shall pay nothing for their commissions, their emoluments, or anything else, either to Our Imperial Palace or to the Court of Your Highness; and that they shall not, either now or in the future, contribute anything on account of any commissions or allowances of any kind, or for any emoluments allotted to them; but We desire that whatever is bestowed by Our liberality shall be given absolutely and without any restriction; for he who is appointed to this office should act in such a way as to benefit the entire community.

EPILOGUE.

Therefore, as soon as Your Highness is informed of what it has pleased Us to enact, you will hasten to carry it into effect, and will approve of Our foresight, because We have introduced a new office, and have constantly in view the welfare of Our subjects.

Given at Constantinople, on the seventh of the *Ides* of May, during the twelfth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.

TITLE X.

CONCERNING EMANCIPATION. A CONSTITUTION WHICH RELEASES FROM PATERNAL CONTROL A SON WHO IS INVESTED WITH OFFICE AND THE EPISCOPACY.

EIGHTY-FIRST NEW CONSTITUTION.

The Emperor Justinian to the Holy Senate of this Royal City.

PREFACE.

We constantly reflect upon what can contribute to the welfare and the adornment of the government which God has confided to Us. Therefore We have recently drawn up a law with reference to Our Most Glorious Patricians, which declares them to be free from paternal control when office is bestowed upon them; for We have no thought that it was becoming for those whom We raise to the dignity of Our Senators to be subjected to the authority of others. Moreover, if the act of emancipation was formerly accomplished by means of what were called legal actions, children were released from the ties of paternal control through abuse and blows, how much more reason is there for the most honorable offices bestowed by the government, the highest authority of all, to deliver them from such restrictions?

Having at present the most indulgent and favorable opinion of the Glorious Consuls, whose names always follow that of the Emperor, as well as for those who are only honored by consular commissions, and for magistrates who can release citizens from curial requirements, for instance, the prefect, and generals of the army (only having reference, however, to such magistrates as are in active service), We hereby decree that every similar charge or office obtained by any persons whomsoever, where such charge or office releases persons from obligations to the *curia*, shall also liberate those who are under the control of their fathers or grandfathers. For if We have provided that when a slave is worthy of an office, and his master is aware of the fact, or he is invested with any dignity whatsoever, he shall immediately be freed from the power of the latter, and be restored to the condition of free birth, would it not be unjust for a son who has rendered himself worthy of a position of this kind not also to be released from paternal authority?

CHAPTER I.

Therefore, in providing this most honorable law, We direct that when ordinary consuls are under paternal control, they shall become independent from the very moment in which their offices are conferred upon them; and that where persons who, while under the control of their fathers, are honored by the government by the bestowal of consular letters, these letters shall also be the means of rendering them free.

We desire that the same rule shall apply to Our Most Glorious Praetorian Prefects, whom We may appoint in all dioceses, as well as to those whom We may promote to the Prefecture of the two Roman Capitals, or to any other military magistracy whatsoever; for We consider it unworthy of Our laws and of Our age for a magistrate who has jurisdiction over such a large number of persons, and has so many officials under His command, not to be included in the number of those who enjoy complete independence.

(1) Generally speaking, however, as has already been stated, We decree that every office or magistracy which has authority to free anyone from curial obligations can also liberate those who are the recipients of public honors from the power of others, and make their fathers appear even more noble. Where persons honored with offices of this kind throughout the Empire are under the control of their fathers, and We do not release them from their authority, they should petition the Emperor for this purpose; and whether the said persons now enjoy the honors or dignities which We have previously enumerated, or whether this may take place hereafter, they shall acquire the right of independence; the father shall give a *peculium* to the son, and leave him to the exercise of his own judgment, and shall furnish him with means to creditably administer the public employment conferred upon him by the government, and

justify the opinion he entertains of him. By doing this the father will deserve great praise, and the distinction obtained by his son will be a source of rejoicing to him.

CHAPTER II.

PERSONS WHO ARE RELEASED FROM PATERNAL CONTROL BY REASON OF THEIR OFFICE SHALL RETAIN THEIR LEGAL RIGHTS UNIMPAIRED.

We provide by this law that the same results shall not be accomplished which are effected by emancipation, but We confer a certain privilege with reference to the exercise of such powers. For We do not wish him who becomes his own master to lose any of his lawful rights, but that he shall always belong to his own family, and be entitled to the legal share of his father's estate which can be claimed by children, and also, that the rights of nature shall be preserved. The children of fathers who have been invested with office shall come under the control of the latter after the death of their grandfather, just as if their fathers had become their own masters by the death of their fathers, and not in accordance with the present law. And it is only proper that officials should, after the death of their own fathers, have their children subjected to their authority, in order that they may not forfeit any of the privileges conferred by the Government, and because it is just that the benefits bestowed upon men by God, or the Emperor-who comes immediately after him-should remain unaltered, and free from every kind of artifice or restriction.

CHAPTER III.

A SON SHALL BE RELEASED FROM PATERNAL CONTROL BY THE BISHOP.

It is clear that no one is ignorant that bishops become their own masters by the mere fact of their consecration; for how can the spiritual fathers of all persons be under the control of others? Hence it is expedient that they should enjoy an honor of this kind, as well as the benefit of this Our legislation.

EPILOGUE.

Therefore, O Venerable Fathers, We desire that the provisions which We have enacted for the promotion of your reverence and dignity shall forever shine in Our Republic, as an example of the generosity which We have manifested towards Our Senators, Consuls, and Bishops.

Given at Constantinople, on the fifteenth of the *Kalends* of April, during the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.

TITLE XI.

CONCERNING JUDGES, AND THE FACT THAT NO ONE CAN BE SELECTED A JUDGE WHEN AN OATH IS TAKEN TO ABIDE BY HIS DECISION. JUDGES SHALL RECEIVE ALL APPEALS AND THEY SHALL NOT STOP IN THE MIDST OF THE TRIAL OF A CASE IN OBEDIENCE TO A PRAGMATIC SANCTION DIRECTING THEM HOW TO DECIDE.

EIGHTY-SECOND NEW CONSTITUTION.

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

PREFACE.

A law was enacted by Zeno, of pious memory, with reference to magistrates, which introduced many alterations in subsequent times; but this law has almost entirely fallen into disuse, for those who were appointed ordinary judges are all dead, and most of the decisions rendered by them on points of law are no longer cited, as they have not sufficient merit to deserve preservation, and this having been ascertained, practice has produced other rules.

Therefore We, being aware that the entire order of judges is in confusion, have deemed it necessary, by means of this law, to determine how proper procedure may be restored. For We

have not considered it necessary to preserve the names of certain judges, and especially of those who are ignorant of law, and without any experience in the trial of cases. Assessors are present with Our magistrates for the purpose of explaining the laws, and assisting them in their duties, for the reason that many of these magistrates are often absent on account of their being required to preside in Our court, and their presence is supplied by the assessors. But when judges do not hold other offices, and have no duties to discharge in Our court, and are unable to distinguish what is equitable, they dishonor the judicial office; and would it not be extremely injurious to the government not to entrust the disposal of litigation to those who themselves ought to know what to do, but permit them to seek for others from whom they may be able to learn what they themselves should be familiar with in rendering judgment? These things have, with good reason, induced Us to enact the present law, as We consider the interests of Our subjects, and desire that legal controversies in which they are interested should readily be heard, and ended without delay.

CHAPTER I.

CONCERNING JUDGES SELECTED BY JUSTINIAN.

Hence We have absolutely done away with the ancient order established by the Constitution of Zeno, of pious memory, which was applicable to certain judges in every Praetorian jurisdiction. We have determined to choose for the judicial office persons of good repute, who shall have jurisdiction of all cases, and, with this end in view, We hereby appoint as judges Anatolius, a distinguished man, who for a long time has practiced as an advocate, and who is now one of the Advocates of the Treasury; Flavianus, who is also an advocate of the Treasury; Alexander, Stephen, and Menna, most eloquent advocates and ordinary judges of your tribunal; and another Alexander, whom We have known as an ordinary judge attached to the court of the Most Glorious Praetor and Master of the Imperial Offices, and two other advocates of your bar, Victor and Theodore of Quizicum. These are the judges whom We have selected from among the advocates.

(1) But as it is proper that the Superior Judges should be exalted in rank through their experience in numerous cases, and by long exercise of important magisterial duties, We have noted among the Most Glorious Patricians, Plato, who long occupied the office of Urban Prefect, and has been appointed to this prefecture for a second term; and also the Most Glorious Victor, who has been Governor of Great Greece, as well as of the noble city of Alexandria, has discharged the duties of the Urban Prefecture of the city, and is thoroughly learned in the law; and Foca, already numbered among Our judges, a man worthy of all praise, who knows how to control himself, and, in addition to this, is well versed in the law. With these We also include the Most Magnificent Marcellus, whose observation of the rules of justice and attachment to Us has excited Our admiration; for We know that these are the qualities of a magistrate which are demanded by almost all who apply to Us, and that he makes use of the services of a counsellor of renown to enable him to decide cases in conformity with the laws; that is, the eminent Appio, Advocate of the Treasury, who bears an excellent reputation not only among others, but also with Us.

CHAPTER II.

ONLY JUDGES APPOINTED BY THIS LAW SHALL BE PERMITTED TO DELEGATE CASES.

We desire judges appointed by Us to take rank after Our own magistrates, and We shall delegate to them such matters as We may think proper. If, however, one of Our judges should desire to delegate cases, he must assign them to the ordinary judges, but to no one else; unless he has submitted certain special points to his councillors for consideration, and then he shall render a decision with reference to the entire matter.

CHAPTER III.

CONCERNING THE ORDER AND THE TIME IN WHICH JUDGES SHALL SIT.

Ordinary judges shall sit continually, they shall hold court in the Royal Basilica and in the various halls where they at present preside, they shall hear cases in the morning, in the middle of the day, and in the evening, and shall take cognizance not only of matters which may be brought before them subsequent to the enactment of this law, but also of any other proceedings instituted under former rules, before other magistrates, and with which We have now entrusted them with jurisdiction.

CHAPTER IV.

CONCERNING APPEALS.

It must be observed that where appeals are taken from decisions rendered by ordinary judges, or by the Most Eminent Magistrates, and the hearing of said appeals is delegated by Us in accordance with the value of the property involved, or in conformity to the usual practice, this assignment shall be to other magistrates, under the rules laid down by the Imperial Constitution. But where any of Our Most Glorious Magistrates delegate cases for decision to the judges whom We have just mentioned, appeals from said cases shall be returned to them, and be disposed of by them in their prescribed order.

CHAPTER V.

CONCERNING THE JURISDICTION OF ORDINARY JUDGES.

All ordinary judges shall hear and determine cases by annotation, where the value of the property involved does not exceed three hundred *solidi*. Thus actions will be more promptly decided, and litigants will be freed from circuitous jurisdiction and protracted delay. It is, however, evident that although these judges may hear cases by annotation, they must still render written decisions which will set forth their opinions, appeals from which will be forbidden to no one, unless a party may desire to appeal for the third time in succession, or has been judged contumacious; for under these circumstances he cannot proceed.

CHAPTER VI.

PARTIES SHALL BE ENTITLED TO THE TERM OF TWO MONTHS IN WHICH TO FILE AN APPEAL, BUT AFTER THE LAPSE OF THAT TIME NO CORRECTION OF A DECISION CAN BE MADE.

We desire that in this great city, appeals from ordinary judges shall be taken within two months, which term is final, and after it has expired, what the laws call the correction of a decision can no longer be made.

CHAPTER VII.

THE SCHEDULE OF FEES INTRODUCED BY THE LAW OF JUSTINIAN SHALL BE PRESERVED.

No one shall venture to disobey what We have decreed with reference to the fees and costs of litigation, but all magistrates must remain content with what is given them; and in case they violate the law, they will have reason to apprehend the punishment prescribed by Our Imperial Constitutions.

(1) There are certain officers whose number, dependent upon the nature of their employment, has remained fixed up to the present time. Thus, each judge is entitled to two clerks, and two bailiffs, and no larger number can be assigned to him. These officers should be wealthy and persons of good reputation, in order that they may not be tempted to commit crime, or act dishonorably for the purpose of gain. In the selection of executive officers attendants, and clerks employed by judges, the latter shall be held strictly responsible, and if they commit any offence the magistrate will be liable, and must indemnify persons who have been subjected to any injury on their part. When a judge ascertains that some illicit act has been committed by

one of his officers, he shall expel him from his court, and appoint another for whom he will be equally responsible, as We have previously stated.

CHAPTER VIII.

ANOTHER JUDGE SHALL BE APPOINTED BY THE EMPEROR TO TAKE THE PLACE OF ONE WHO HAS BEEN REMOVED.

Where any one of the most glorious or most eloquent judges has been removed from office for any cause or reason whatsoever, his place shall not be supplied by anyone but the Emperor, by whom he will be charged with the hearing of cases.

CHAPTER IX.

ORDINARY JUDGES SHALL BE ENTITLED TO TWO AUREI AT THE BEGINNING OF A CASE AND TWO AT THE END.

On account of the work performed without compensation by Our ordinary judges, We decree that in every case tried before them— even if they have been appointed to hear it by the Emperor—they shall receive two *aurei* from each party to the suit at its beginning, and also two at its end. We, however, desire (as Our predecessors also provided) that they shall be satisfied with this amount, and We preserve in their entirety the rights granted to certain persons concerning the diminution of the expense of litigation; for what We now decree only applies to cases where the amount involved exceeds the value of a hundred *aurei*. For We do not intend that judges shall collect anything in cases where the amount is less than this; for if they should receive compensation in actions where very little is at stake, success would result in considerable loss to the victorious party.

We do not, however, limit Ourselves to this, but We also provide for these magistrates out of Our own Treasury, hence We assign to each ordinary judge two pounds of gold, which he shall receive from the office of Your Highness; and We wish him to remain satisfied with this sum and not allow justice to be purchased, but absolutely to despise money. On this account We have preferred to remunerate them out of the Treasury, so that each judge, being content with Our liberality towards him, and with the four *aurei* which he will receive for every case, may keep his hands pure towards God, Ourselves, and the Law, always bearing in mind the rules prescribed by former legislators on this subject.

CHAPTER X.

THE JUDGE MUST EXAMINE THE BILLS OF COSTS.

Judges must, by all means, examine the bills of costs. And, for the reason that this regulation has been very properly established by Zeno, of pious memory, We have not disdained to include it in this Our present law. Hence, what has been decreed by this Emperor shall remain in full force, and We only add that if the judge should tender to the successful party the oath having reference to the costs, that is to say the amount that he has expended on account of the lawsuit (which the laws call *taxatio*), he to whom the oath is tendered shall take it, and the judge shall not be authorized to fix a smaller sum than that which was sworn to, or to exhibit more indulgence than the law prescribes under such circumstances. If, however, a judge should conclude that the costs ought to be taxed in accordance with the nature of the suit, he must state this in his decision.

All other matters relating to appeals, as well as to the rejection of judges, where the contents of appeals have not been filed promptly and as required, but this has taken place after twenty days have elapsed, and anything else that We have decreed with reference to this subject shall, as We have previously stated, remain in full force.

CHAPTER XI.

ARBITERS SHALL BE CHOSEN BY COMMON CONSENT AND NOT UNDER OATH.

Numerous questions are addressed to Us by persons who have selected judges absolutely

ignorant of the law, and wholly destitute of experience, and the said persons swear without the slightest hesitation that they are content with the arbiters whom they have agreed upon, while no one else has the slightest confidence in them, and they finally take the oath to abide by their decision, although the arbiters whom they have chosen are neither acquainted with what is just, nor understand how to decide it. And as such persons, after they find that they have been injured, desire their cases to be heard a second time, thereby being unmindful of what they swore to, this matter seems to Us worthy of correction.

(1) And because that We have learned from experience that this is not an advisable course to pursue, We decree that hereafter no arbiter shall be appointed and decide any case, by virtue of the oath taken by the parties to the action to abide by his decision, in order to prevent men from being compelled to perjure themselves on account of the ignorance of their judges; but those who choose an arbiter or arbiters shall do so with a penalty, so that the parties may be responsible to one another, and be obliged either to accept the award, or pay a fine, if one of them should wish to appeal; for then the one who is dissatisfied with the judgment will be authorized to appear before another court.

Those of Our judges to whom an appeal is taken under such circumstances shall begin proceedings by exacting the penalty, which they shall collect from those who have rendered themselves liable, and pay it over to the persons entitled to it. If the litigants who chose arbiters should not observe this rule, do not stipulate for the payment of any penalty, and consider the surety of the oath as sufficient, they are notified that as they have designedly acted in this way, the penalty of perjury shall be inflicted upon them by God. Where, however, they suffer from the ignorance of their arbiter, their oath will in no wise prejudice them, for, in this instance, We do not wish the penalty for perjury to be inflicted upon anyone, nor do We permit litigants to be any longer injured by the ignorance of arbiters through the respect due to an oath.

Everything which has been provided by ancient legislation, and all that We Ourselves have enacted concerning judges appointed by common consent, or with reference to arbiters, without the oath of the parties being necessary, shall remain in full force, and shall by no means be repealed by this Our law.

CHAPTER XII.

CONCERNING APPEALS AND THE REQUIREMENT IMPOSED UPON MAGISTRATES TO RECEIVE THEM.

We order Our judges, by all means, to receive appeals. No one shall be authorized to reject an appeal, with the exception of Your Eminence, to whom from the beginning this privilege is conceded, Your tribunal being a court of last resort.

CHAPTER XIII.

CONCERNING DIFFERENT LETTERS ADDRESSED TO JUDGES.

Every judge or magistrate invested with judicial authority shall observe the laws, and render judgment in conformity to them; even if, in the meantime, he should have received an order, an Imperial notice, or a pragmatic sanction from Us directing him to decide in a different manner, for We desire that what Our laws prescribe shall be observed. Where a case is taken up on appeal, the judge shall receive it and shall, by all means, entertain the appeal, and shall not be excused from deciding it in any instance where the parties have the right to appeal, but he must come to the relief of all. In this way he who finds himself injured by a decision can have it corrected either by the appellate judges, or by Ourselves, if the appeal is referred to Us.

CHAPTER XIV.

CONCERNING REFERENCES.

If the judges who hear a case should think any point to be ambiguous, We grant them

permission to communicate it to Us, and consult Us and in this way be informed of whatever is necessary, and be enabled to explain what should be done, so that just and reasonable decisions may be rendered by them.

EPILOGUE.

Therefore Your Eminence will publish here in the Imperial Basilica, and in the other parts of Our Royal City, the provisions which it has pleased Us to enact for the welfare of Our subjects, in order that they may become known to all persons, and that they may learn that We are using every effort to be useful to them, as well as to treat them with equity.

Given during the Consulate of Ario.

TITLE XII.

MEMBERS OF THE CLERGY SHALL FIRST BE SUED BEFORE THEIR OWN
BISHOPS AND AFTERWARDS BEFORE CIVIL JUDGES.

EIGHTY-THIRD NEW CONSTITUTION.

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

PREFACE.

Having enacted many Imperial Laws concerning bishops and other orders of the clergy, as well as with reference to different members of the priesthood, and having lately published a constitution by which We have provided that monks shall be sued only before the bishops under whose supervision their monasteries are placed, We have requested Menna, Archbishop of this Most Fortunate City, and Universal Patriarch, to grant the following privilege to the most reverend members of the clergy; namely, that if any person should bring an action for money against one of them, he must first apply to the archbishop having jurisdiction over the ecclesiastic, who shall direct the latter to appear before him, and a verbal decision shall be rendered; and when this has been done, the said ecclesiastic shall not be subjected to further annoyance or be brought before a civil tribunal, or be obliged to desist from the performance of his ministerial duties; but the case shall be determined without any expense, and a written decision shall not be rendered, unless the litigants desire and demand it, and the parties shall be released from the necessity of making arguments.

(1) When, however, on account of the nature of the case or for any other reason, it is not possible for the bishop to decide it, then permission shall be granted to appear before the civil judges, and all the privileges which the Imperial Constitutions confer upon the most reverend members of the clergy shall be maintained, the case shall be heard, an examination made, and judgment rendered. In this way the case will become familiar to the illustrious judges who can decide it quickly and magnanimously, with due regard for Our Constitutions and laws; and, under these circumstances, there will be no reason for members of the clergy not to manifest the respect which they owe to their superiors, for they must appease God and observe sacerdotal propriety; nor shall they be detained before the tribunals by their controversies, or subjected to the annoyances which litigants are usually compelled to undergo.

(2) Where, however, ecclesiastics are sued in criminal cases, or even in civil ones, this shall be done before competent judges, and in the provinces either before their Governors or magistrates. The proceedings shall not be protracted for a period longer than two months after they have been begun, for We desire them to be concluded as rapidly as possible. It is perfectly clear that if the Governor of the province should find the defendant guilty, and decide that he ought to be punished, the ecclesiastic must first be stripped of his sacerdotal office by the bishop, and then be placed in the hands of the law.

CHAPTER I.

When an offence committed by an ecclesiastic requires sacerdotal castigation and fine, the bishop shall take cognizance of it without the assistance of the illustrious provincial judges, as We do not desire civil magistrates to hear cases of this kind under any circumstances, for they must be tried ecclesiastically, and the souls of the delinquents punished by means of an ecclesiastical fine, in accordance with the sacred and divine rules which even Our laws have not disdained to follow. Where, however, any actions have already been begun, they shall be tried according to the preceding practice, and be promptly disposed of. All the provisions which We have heretofore enacted, whether with reference to the most holy churches, or the bishops, clergy, or monks, shall remain in full force.

EPILOGUE.

Therefore Your Eminence will, by means of suitable proclamations, communicate to all persons the matters that We have seen fit to include in this Imperial law, which shall be perpetually observed.

Given at Constantinople, on the fifteenth of the *Kalends* of April, during the reign of Our Lord the Emperor Justinian, and the Consulate of Apio.

TITLE XIII.

CONCERNING FULL AND HALF BROTHERS.

EIGHTY-FOURTH NEW CONSTITUTION.

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

PREFACE.

Nature, everywhere inclined to the production of numerous innovations (this prelude has often been employed in legislation, but will be constantly repeated until the points to which it gives rise are finally settled), has induced Us to enact many laws. The ancient authorities deriving their opinions from the ancient law have discussed direct and collateral successions, which opinions have come down to Us; We have corrected a great many of these, and at present a question of the same kind has been proposed to Us for solution.

(1) A certain man married a wife and had children by her, and she having died, he married another, by whom children were also born to him, who were related on the father's side, but not on the mother's; then the man contracted a third marriage, by which he also had issue, and, after his death, his widow married a second husband by whom she had children, who, instead of being related by blood on the father's side, were only related through the mother to those born to the first husband; and it happened that after the death of the mother, a brother born of the third marriage died childless, and intestate, leaving several brothers, some of whom were related on the father's side, others on the mother's side, and others again on both sides. This is, to some extent, a new case produced by Nature. We shall, under such circumstances, be permitted to provide for others, which may originate through different marriages, either by the death of the husband or that of the wife, or as the result of some other legal separation. The question to be solved is, whether all the brothers who are related on the father's or mother's, or on both sides, should be called to the succession of the deceased brother.

CHAPTER I.

Therefore, after having examined all the ancient laws which We have compiled, as well as those which We Ourselves have enacted on this subject, We have not found that this question was raised; hence it is proper to settle it by means of a law, and to consider which one of the brothers was related to the deceased by the rights of cognation, which We have, in certain instances, assimilated to legal rights, for the reason that others were joined to him by these same legal ties; and formerly, when some brothers were related to the deceased through the

father, and others through the mother, and still others were assisted both by Nature and by law because they were the issue of the same fathers and the same mothers, and the mark of full brothers shown upon them from every side; a brother of this kind desired to release from litigation persons entertaining a doubt as to the law, he made a will, and having thus manifested his wishes, those whom he appointed his heirs would be called to the inheritance. But as in this instance, the brother in question either was unwilling or unable to do this (for innumerable anxieties and sudden deaths are the common lot of mankind), the present law will settle the point.

(1) It therefore provides that brothers related on the side of both father and mother are more entitled to the succession of the deceased than those who are related on the side of only one of their parents; and the singular variety of the operations of Nature does not permit Us to hesitate, but We consider this conclusion to be just, and decree that it shall prevail; as it gives the preference to full brothers, and does not suffer others, whose title is inferior, to be placed on the same footing with them.

(2) Many reasons have impelled Us to adopt this opinion. In the first place, one of Our laws provides that if a son should die without leaving any children, and any maternal property should be included in his estate, which was not acquired by his father through a nuptial contract or in any other way, the brothers who are the issue of the same marriage shall be called to the inheritance; and after them, others born of a preceding marriage; and next, the father; which shows that Our legislation has, for a long time, approved of such a disposition. For if, during the life of the father, the brothers related through both their parents take precedence of their father, and children who are the issue of another marriage, the result is that, although the father may no longer be living, but only the brothers survive, those who are related on both sides will be preferred to the brothers who are only related to the deceased through a single parent. Hence it is proper that what has long since been settled with reference to maternal property, or that derived from a nuptial contract and which was not acquired by the father, should remain in force, and be observed, even with respect to the other property of the deceased, and this has been decreed by Us.

Therefore in this instance the law shall not be altered, and, as in the case stated, there are three marriages, the unusual condition originating in Nature will offer no impediment, even if anyone should suggest that there were only two marriages, and that some of the brothers were related on the mother's side, and others related on both sides; or where the objection was made that there were more than three marriages. This constitution shall be applicable to all cases of this kind where there are several kinds of brothers; and We decree that those who are related to the deceased on both sides shall exclude those who are only related to him on one.

CHAPTER II.

Where, however, this is not the case, but another arises where a brother, when dying, leaves brothers only on his mother's, or on his father's side, in this instance, the question must be decided by former laws which have treated of their successions. This law is not only applicable to this case, which has given rise to the question, but also to all others which may occur hereafter. Where, however, there are other cases which have already been disposed of either by a judicial decision or a compromise, they shall be finally terminated, and the relief granted by this constitution will be of no advantage to them.

EPILOGUE.

Your Eminence will, by means of suitable letters, hasten to communicate to all persons the matters which We have seen fit to include in this Imperial Constitution, and see that they are observed for all time.

Given at Constantinople, on the fifteenth of the *Kalends* of June, during the fifteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.

TITLE XIV.
CONCERNING ARMS.
EIGHTY-FIFTH NEW CONSTITUTION.

The Emperor Justinian to Basilides, Most Glorious Master of the Imperial Offices.

PREFACE.

Always invoking the aid of Omnipotent God and Our Saviour Jesus Christ, We exert every effort to preserve from all injury and calumny the subjects whose government God has entrusted to Us, and to prohibit the wars which men privately conduct against one another; for, by means of these wars, they cause much reciprocal suffering and are exposed to the double penalty of mutual injury, as well as of undergoing the punishment prescribed by the laws.

CHAPTER I.

Therefore, desiring to prevent men from killing each other, We have thought it proper to decree that no private person shall engage in the manufacture of weapons, and that only those shall be authorized to do so who are employed in the public arsenals, or are called armorers ; and also that manufacturers of arms should not sell them to any private individual.

Nor do We permit any persons who, styled *deputati*, are enrolled in the army for the purpose of caring for the arms and are paid out of the Treasury, to manufacture or sell them to anyone whomsoever; but We desire that they shall only have charge of the arms of soldiers, in accordance with the duties assigned to them. If, however, they should manufacture any new weapons, these shall be taken from them, and either deposited in Our Imperial arsenal or in the armory.

CHAPTER II.

We also desire that those who are called *battistarii*, and whom We have stationed in different cities, and authorized to manufacture weapons, shall only repair and place in good condition those belonging to the government, which are deposited in the public arsenals of each town. Where any workmen have manufactured arms they must surrender them to the *baMistarii*, to be placed with those belonging to the public, but they must by no means sell them to anyone else. The *bal-listarii* shall, at the risk of the municipal magistrates of the cities to whom they are subject, observe what We have decreed, and the responsibility for this, as well as for the preservation of the public arsenals, shall attach to these magistrates; and where any of the workmen called *deputati*, or armorers, have been detected in selling weapons, the local magistrates shall subject them to punishment; shall deprive the purchasers of these weapons without refunding the price paid for them; and shall claim them for the benefit of the public.

CHAPTER III.

Therefore, God directing Our thoughts, We decree by the present law that no private individual, or anyone else whosoever shall, in any province or city of Our Empire, have the right to make or sell arms, or deal in them in any way, but only such as are authorized to manufacture them can do so, and deposit them in Our armory.

We order that this rule shall be obeyed by Your Highness, as well as by those who may succeed you in office, and We appoint five of the chief chartularies subject to your authority in the Bureau of Armorers, who are skillful and of good repute, who shall be charged on their own responsibility to seek men who are manufacturing arms in this Most Fortunate City, and in the other towns of Our Empire, in order to prevent private persons, or anyone else whomsoever, from doing so, with the exception of workmen employed by the armory; and in order that, if they should find, anywhere in any place, private individuals who are rash enough to make any weapons, they may seize them and deposit them in the Arsenal of the Treasury. But if among private workmen the said chartularies should discover any persons who are

thoroughly skilled in their trade, they shall employ them in the manufacture of arms, if the workmen are willing, and shall inscribe their names upon the list of armorers, and notify Us of this fact, in order that the said workmen may be assigned by an Imperial Rescript to the Public Arsenal, for the purpose of manufacturing arms, and receive remuneration from the Treasury. If the aforesaid persons scrupulously comply with what We have ordered, private individuals residing in towns, or peasants who are living in the country, will not be permitted to make use of arms against one another, thereby endangering their lives; men will cease to commit homicide; work on public buildings will not be suspended; and the fear of death will no longer compel the cultivators of the soil to resort to flight.

(1) Therefore those selected from the above-mentioned Bureau of Armorers, who are directed by Your Highness to prevent private persons from making weapons, shall be sworn by the local magistrates, their subordinates, the defenders of towns, and decurions, that they will allow nothing which We have forbidden to take place in the future, and that they will comply with the provisions of the present law, for the said magistrates will be liable to a pecuniary penalty, as well as a corporeal one, if they should violate it.

We order that, if the judge of the great City of Alexandria should fail to observe these provisions, he shall be liable to a fine of twenty pounds of gold, and shall be deprived of his office. His court shall also incur a similar penalty, as well as be subjected to capital punishment. So far as the magistrates of other provinces are concerned, they, together with their courts, shall incur a fine of ten pounds of gold and the loss of their offices. The defenders of municipal magistrates of cities shall pay a fine of three pounds of gold, and run the risk of being put to death if, after having learned of violations of this law; they permit them to remain concealed instead of punishing them, or notifying magistrates who can do so.

CHAPTER IV.

But in order that what has been forbidden by Us to private persons and all others may become clear, We have taken pains to enumerate in this law the different kinds of weapons whose manufacture is forbidden. Therefore We prohibit private individuals from either

making or buying bows, arrows, double-edged swords, ordinary swords, weapons usually called hunting knives, those styled *zabes*, breast-plates, javelins, lances and spears of every shape whatever, arms called by the Isaurians *monocopia*, others called *sitennes*, or missiles, shields, and helmets; for We do not permit anything of this kind to be manufactured, except by those who are appointed for that purpose in Our arsenals, and only small knives which no one uses in fighting shall be allowed to be made and sold by private persons.

Your Highness will publish this general law in this Royal City, as well as in the other cities of Our Empire, in order that all persons, being aware of the provisions which We have been pleased to enact, may observe them.

CHAPTER V.

We notify the chartularies who have been appointed from the aforesaid Bureau of Armorers personally to see that this law is obeyed, for their negligence will not only expose them to pecuniary penalties, but they will also be subjected to corporeal punishment, as well as be deprived of their offices; for We shall not permit them to longer remain in the Bureau of Armorers, but will appoint others in their stead.

EPILOGUE.

Your Highness, and those who may hereafter succeed you, will hasten to cause what it has pleased Us to enact by the present law to be carried into execution; for unless you take measures for the observance of what is so advantageous to the public welfare, you will have reason to fear the effects of Our indignation.

TITLE XV.

THE DIFFERENT JUDGES SHALL BE COMPELLED BY THE BISHOPS TO HEAR THE ALLEGATIONS OF THOSE WHO APPLY TO THEM, AND WHEN ANY SUSPICION OF A JUDGE IS ENTERTAINED THE BISHOP OF THE CITY SHALL HEAR THE CASE WITH HIM; AND CONCERNING OTHER PRECAUTIONS WHICH THE BISHOP MUST BY ALL MEANS TAKE.

EIGHTY-SIXTH NEW CONSTITUTION.

Edict of the Emperor Justinian.

PREFACE.

God having placed Us over the Empire of the Romans, We are exceedingly desirous to govern the subjects whom He has entrusted to Our care as well as We can; and so to act that they may be delivered from all difficulties, injuries, and anxieties, as well as to prevent them from being compelled to leave their country, and suffer inconvenience in foreign lands on account of litigation.

CHAPTER I.

Hence We have deemed it advisable to address the present edict to all Our subjects, and to make it clear to the inhabitants of all cities and villages. We decree that when any private person has a controversy, with another, either with reference to a pecuniary claim or to the deprivation or seizure of movable or immovable property, or of such which can move itself, or where a criminal matter is involved, the said private person must first apply to the illustrious Governor of the province, and ask him to examine the matter in dispute, in accordance with Our laws, and see that both parties obtain justice; but if, after having applied to the Governor, he should not obtain justice, We direct that he can then have recourse to his most holy bishop, who must instruct the illustrious judge of the province to hear the complainant, and dispose of his case in conformity to Our laws, and not reduce him to the necessity of travelling to a great distance from his country.

If, however, after the Most Holy Archbishop has notified the judge to decide the case of the litigants equitably, and he does not proceed or does not treat the litigants with justice, We order the most holy bishop to give letters in Our name to the party who has been treated with injustice, which letters must state that the judge whose duty it is to hear the plaintiff and decide between him and the defendant in the case has neglected to do so. Being then informed of this failure of justice, We will impose a penalty upon the provincial judge who, having been applied to by the plaintiff, and notified to proceed with the case by the Most Holy Archbishop, did not dispose of the matter in controversy.

CHAPTER II.

If, however, any of Our subjects should entertain any suspicions with reference to the judge, We order the Most Holy Archbishop to hear the case with him, so that both of them may, by means of an amicable agreement, resolve any doubts which have arisen, whether this be done by annotation or conditionally; provided the parties are treated with equity, and the decision is based upon justice and law, and Our subjects are not compelled, for any reason of this kind, to depart from their own countries.

CHAPTER III.

Where any private individual, thinking that he has a right of action against someone else, does not apply to the illustrious judge of the province, or appear before the Most Holy Archbishop of the city, but comes here without letters from the archbishop, he is hereby notified that he will be liable to the same punishment to which the judge would be subjected if, after having been applied to by him, he had not taken measures to render justice.

We have considered it Our duty to make these provisions for the welfare of the inhabitants of towns and villages, in order to prevent private individuals from leaving their provinces to endure hardships in foreign lands, as well as lose their property. For We appoint judges gratuitously, and order them to take an oath, so that they may, in accordance with Our laws, dispense justice to everyone who applies to them for this purpose.

CHAPTER IV.

Where, however, any one of Our subjects sustains injury at the hands of the Governor of the province, We order him to have recourse to the most holy bishop of the city, and the latter to decide between the said illustrious Governor of the province and the person who is alleged to have been injured by him. If the most holy bishop should legally and justly decide against the judge, the latter must, by all means, satisfy the litigant who has complained of him. But if the judge should refuse to do this, and the controversy should be referred to Us, and We should find that the judge, after having been regularly and legally notified by the most holy bishop, did not comply with the decision rendered against him, We direct that he shall be punished with death, because while it was his duty to relieve the oppressed, he himself is found to have been guilty of oppression.

CHAPTER V.

We decree that the court, which is under the control of the Governor and the executive officers of his jurisdiction, shall permit litigants to depart without accepting from them anything more than is provided by Our laws. If they do not observe this rule, We order them to be subjected to punishment.

CHAPTER VI.

If, however, We should ascertain that any most holy bishop has, through favor to someone, failed to render justice, We direct that the prescribed castigation should be inflicted upon him; in order that bishops actuated by the fear of God may use every effort to decide justly, and prevent men who do not obtain justice from leaving their cities and provinces, and repairing to other places.

CHAPTER VII.

In cities where there are no judges, We order those who have cases to apply to the defender, and We direct him to decide between them; but when the parties litigant desire the defender to hear a case along with the most holy bishop, We decree that this shall be done.

CHAPTER VIII.

We forbid monks, clerks, and bishops to come to this city without letters from their most holy patriarch. If, however, they should do so, they are notified that they will render themselves unworthy of remaining in their order.

CHAPTER IX.

Where the subordinate of a magistrate or a prefect, no matter what his rank may be, accepts fees in excess of those prescribed by

Our Imperial Constitution, We order that the judge of the province shall, in accordance with Our law by all means, be responsible, and that he shall inflict punishment upon the person who has presumed to do this. If the judge himself should not punish him, We grant permission to the most holy bishop of every city to notify Us of what has occurred, and inform Us of the office or dignity of the person who has been disobedient; in order that We may render the judge responsible for contemptuously permitting Our orders to be disobeyed, and that We may take measures to punish him.

TITLE XVI.
CONCERNING DONATIONS MORTIS CAUSA MADE BY DECURIONS.
EIGHTY-SEVENTH NEW CONSTITUTION.

Interpreted by Antonius Contius.

PREFACE.

We desire, by all means, that the frauds of decurions shall not in any way result in loss to the government, and that their schemes shall be frustrated by law. For We have ascertained that, after having deprived decurions of the power to make donations, and forbidden them to give possession of movable property, or to leave by will more than three-twelfths of their estates, and directed them to preserve nine-twelfths of the same for their *curias*, they are constantly committing fraud in violation of law.

We, being aware that the ancient legislators entertained a doubt whether a donation *mortis causa* was really a gift or a legacy, some of them considering it to be one thing, and some another, have adopted the general opinion of the most eminent jurists by deciding without hesitation that such a donation is a legacy, and has no need of being recorded, and that the donor is at liberty to restrict it in any way that he chooses, and even to renounce his right of revocation, and insert in a donation *mortis causa* whatever he may think proper—a rule laid down by Julianus, which We Ourselves have inserted in the Thirty-ninth Book of Our Digest, for We have condensed in a small compass whatever it has pleased the ancients and Ourselves to formulate. Therefore decurions, knowing this, have attempted to make donations *mortis causa*, and to insert therein the clause having reference to the power of revocation; and thus have given to their donations another object more in conformity with their purposes, in order to render their donations irrevocable, and in this way diminish their estates.

CHAPTER I.

But while We have already provided by law that decurions shall be deprived of every means of diminishing the nine-twelfths of their estates through bequeathing them by will, or alienating them by making donations, still, in order that We may be able more effectively to prevent the commission of fraud, We now decree that none of them shall be permitted to alienate anything whatever by a donation *mortis causa*; and We only authorize them to bestow property as an antenuptial donation for the benefit of their own children, or to grant it by way of dowry, as provided by Our Constitution, or to give it to their daughters on the occasion of their marriage, for it is certain that they cannot otherwise dispose of their immovable property; but, on the contrary, such property must always remain in their possession, and be liable to curial obligations, and they are only permitted to sell it, and this must be done in accordance with the terms of Our New Constitution.

Other donations *mortis causa* shall, however, retain all their force, and men who are not decurions can make them in favor of any persons whom they may select, and are authorized to impose any conditions, and revoke the donation (if they should desire to do so), for everything concerning the conditions imposed upon a donation *mortis causa* shall be complied with, and all such donations shall remain firm and stable, as We have decreed in the first place, and now ratify by law; for at present We only interpret them, and confirm them with reference to all other persons, with the sole exception of decurions, as has already been stated; and We are induced to make this provision on account of Our solicitude for and interest in the welfare of the Empire.

EPILOGUE.

Your Glory will take pains to cause the rules which We have been pleased to enact and which are set forth in this law to be observed, and you must be the first to provide for what is beneficial to the government.

TITLE XVII.

CONCERNING DEPOSITS, NOTICES TO TENANTS, AND THE SUSPENSION OF THE PUBLIC DISTRIBUTION OF PROVISIONS.

EIGHTY-EIGHTH NEW CONSTITUTION.

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

PREFACE.

We have recently heard and determined a lawsuit (for We sit most frequently in public in the Empire) with reference to which a question arose which We immediately disposed of, and having learned that numerous points of the same description are constantly presenting themselves, We have deemed it proper to provide for them by means of a common and general law.

CHAPTER I.

If anyone should receive from another gold or any other property deposited on certain conditions, and these conditions are afterwards complied with, the depositary will be compelled to return the gold or other property entrusted to him; and no one not interested in the deposit shall have the right to seize the property or prevent its restitution; and while many other privileges have, in cases of deposit, been granted by preceding legislators, as well as by Ourselves, anyone who opposes the return of the deposit shall no longer be permitted to annoy the owner of the property, as he who has possession is the one to be sued, and obtain justice and the benefit of the law; and the third party, who opposes restitution, shall not be allowed to subject to serious loss him who was notified not to return the deposit, for the latter will not be obliged to request the depositor to defend the case, or be responsible for the result, nor can he conduct it conjointly with the depositor; and if the depositary should do anything of this kind (for We do not entirely limit Ourselves to prohibiting such offences, as Our duty is rather to inspire transgressors with just apprehension), and the property or money deposited should be lost, and this loss should be proved, or the third party referred to should cause any other accidental damage whatsoever, he will be liable for it; and he will, besides, through the mere fact of his opposition to the restitution of the deposit, be compelled to pay interest at the rate of four per cent on the money deposited, whether the deposit consists of gold or other property.

We establish this rule in order that the fear of being punished for their perversity may prevent men from committing wrong in cases of deposit.

CHAPTER II.

CONCERNING THOSE WHO OPPOSE THE PUBLIC DISTRIBUTION OF PROVISIONS OR THE PAYMENT OF RENT.

We have taken legal steps to provide for everything having reference to mandates. For We see that it frequently happens, and especially in this Royal City, that certain persons wishing to interfere with the public distribution of provisions seize the tickets issued for this purpose in the hands of the Prefect of Subsistence, and thus those who are only supported in this manner are deprived of the necessaries of life.

But an abuse more grave and embarrassing still exists, for many persons owning houses in this Most Fortunate City, who do not live in them, but expect to receive rent for the same, are annoyed by notices given their tenants directing them not to pay it. The tenants comply with these notices, but some of them, through poverty, use the money composing their rent to purchase food; and others, for the reason that they are exiles from this great city, fail to send the rent upon which their landlords are, perhaps, wholly dependent for their subsistence, which same thing takes place in the public distribution of provisions, as We have already stated.

(1) We grant no one permission to serve notices of this kind, and if any person should commit such an act, his perversity shall not go unpunished; for he is informed that he will be responsible for the cessation of the distribution of bread, or the payment of rent, from the very moment when he notified the tenants or the distributors of provisions, or from the time that the said distribution was suspended, for We do not wish any of these things to occur. If anyone should give notice that such distributions or payments must not take place, We order that he shall be liable for any loss sustained by the owner of the property, as well as for interest at the rate of four per cent on the money or articles, on account of which the loss resulted.

No one can prohibit the distribution of provisions, the payment of rent, or the return of deposits, for it is not easy for every person to furnish a surety, and it is provided by Our laws that no interdiction shall be valid unless security is furnished at the time of the notice.

Therefore We desire that the present law shall be observed from this day and for all time, to promote the security of Our subjects, and that it may be an eternal source of support to the government, which We have constantly had in mind during its formulation and enactment.

EPILOGUE.

Your Eminence will hasten to carry into effect, and have perpetually observed, what We have been pleased to promulgate by means of this Imperial Law.