

THE CODE OF OUR LORD THE EMPEROR JUSTINIAN.

SECOND EDITION.

BOOK IV.

TITLE I.

CONCERNING PROPERTY LOANED AND THE OATH.

1. *The Emperor Antoninus to Herculianus.*

A case which has been decided by the tender of an oath by either the adversary or the judge, with the consent of the parties, or if the oath has been remitted, cannot be revived under the pretext of perjury, unless a special exception is made by this law.

2. *The Emperor Alexander to Felix.*

The contempt of the obligation of an oath has a sufficient avenger in God. It has been decided that, where anyone has sworn by the Emperor, and has perjured himself in the moment of excitement, he will not be liable to any corporeal penalty, or for the crime of treason, according to the Constitutions of My Divine ancestors.

Given on the sixth of the *Kalends* of April, under the Consulate of Maximus, Consul for the second time, and Julianus, 224.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Sever a.*

In *bona fide* contracts, as well as in other cases, the decision must be made by the judge after proper investigation, by means of an oath in default of evidence.

Given on the tenth of the *Kalends* of September, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 226.

4. *The Same, and the Consuls, to Maxima.*

Even if a ward has tendered an oath to his guardian for the purpose of avoiding the action on guardianship, he is not forbidden to subsequently bring the same action.

Given during the *Kalends* of July, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

6. *The Same, and the Csesars, to Bessius.*

As you allege that the parties agreed that the question of descent and free birth should be decided by an oath, the Governor of the province, in accordance with the decree of the arbitrator, with reference to your agreement, shall decide in favor of the children of your maternal aunt.

Given on the fifth of the *Ides* of February, during the Consulate of Tiberian and Dio, 291.

7. *The Same, and the Czesars, to Eutygianus.*

Neither a son, nor anyone else, can, against the consent of the owner of the property, cause her any prejudice either by bringing suit, entering into an agreement, or tendering an oath. Wherefore, if your son has transacted any business with reference to your property, and you have not ratified what he has done, this will be of no disadvantage to you.

Given on the *Ides* of November, during the Consulate of the abovementioned Emperors, 293.

8. *The Same, and the Ctesars, to Alexander.*

Whether the oath has been tendered to or by the plaintiff, or has been remitted, an action *in factum* will lie in his favor; as is the case with one for the execution of a judgment.

Given on the twelfth of the *Kalends* of May, during the Consulate of the Caasars, 294.

9. *The Same, and the Csesars, to Martian.*

If the plaintiff has tendered the oath, and there is no evidence that he has done this for the purpose of annoyance, the defendant will be required by the court either to make payment, to be sworn, or to have recourse to the oath of the plaintiff.

Given on the fifth of the *Kalends* of May, during the above-mentioned Consulate, 299.

10. *The Same, and the Csesars, to Protogenes.*

In an action of deposit which has been brought with reference to property delivered without any written instrument, the oath can be tendered just as in other *bona fide* proceedings.

Given on the fifth of the *Kalends* of December, during the Consulate of the Csesars, 300.

11. *The Emperor Justinian to Demosthenes, Prsetorian Prefect.*

If anyone should tender the oath, and, before it was taken, should recall it (as, for instance, where he has obtained other evidence), We order that he shall not, under any circumstances, be permitted to have recourse to it a second time; for it is perfectly absurd for him to do so, when he thought that he could reject it, and then again have recourse to it when he found that his other evidence was worthless; and the judges shall not hear persons who attempt to commit such injustice.

If, however, anyone should tender the oath, and then wish to revoke it, he should be permitted to do so, and to produce other evidence if he so desires; provided, however, that this permission shall only be granted him until the case is decided. After final judgment has been rendered, from which no appeal has been taken, or where it has been confirmed after an appeal, We do not permit the oath to be recalled, and evidence to be introduced by anyone, lest the case having been begun again, after its termination another action may arise.

Given at Chalcedon, on the fifteenth of the *Kalends* of October, during the Consulate of Decius, 529.

12. *The Same to Demosthenes, Prsetorian Prefect.*

Generally speaking, everything relating to oaths tendered in litigation either by the judge or by the parties must be definitely settled; for it has already frequently happened that judges impose the oath by rendering a decision, and, as an appeal was not taken, because those who were ordered to be sworn died before this could be done, the evidence in the case was lost; for there is a great deal of difference between the oath of an heir and that of the person from whom he derived his right. Hence, compelled by necessity, and desiring to bring all possible aid to the production of evidence, We issue the following decree. Every oath tendered by either the judges or the parties, in the beginning of the suit, while it is being tried, or at the time when judgment is rendered, shall be taken in the presence of the same judge, without waiting for his final decision, or without apprehension of an appeal.

(1) Where the oath has been tendered by the parties, and approved by the judge, or has been tendered to either party by the judge himself, and he to whom it was tendered for some reason or other hesitates, or whether the party who tenders it does so, he to whom it is tendered shall be compelled to take it. If, however, he should refuse, the oath shall be considered as having been taken, and the case shall be decided without leaving any ground for appeal. For who will tolerate that anyone should have the benefit of an appeal from a decision which he himself was instrumental in having rendered?

(2) If, however, he to whom the oath was tendered either by his adversary, or by the judge, absolutely declines to take it, he shall have the right to refuse. But the judge, if he thinks that the oath ought, by all means, to be taken, can decide the case just as if the party who refused to be sworn had desired that he should do so; and he can examine the other points of the case or all of it, and it shall take its course without being interrupted by any obstacle. He, however,

who was not willing to take the oath which was tendered him,-whether he states his reasons for this, or whether he is not heard, shall be entitled to the benefit of an appeal; and if the judge who presides when the appeal was argued should decide that the oath was properly tendered, and was not lawfully refused, the case shall remain unaltered. If, however, he should hold that the oath was not legally tendered, but was properly refused, he will then be permitted to correct the opinion of the judge which was based, as it were, upon the oath being declined; and the party will in no way be prejudiced, or incur any unjust expense, and the course of the case from beginning to end shall not be interfered with, and shall be impartially weighed in the scales of justice.

(3) Whether the oath has been tendered or refused, the party who tendered it shall not be allowed the benefit of an appeal; as it would be too unjust that he who tendered the oath should be entitled to appeal merely for the reason that the judge granted his request.

(4) We prescribe these rules in this law for persons who are present, but those who are absent should not be neglected; hence, if the party to whom the oath was tendered is not present, the case should be conducted by an attorney, and it is necessary that the principal party should be granted a certain time to appear in court, in order that he may carry out what has been decided with reference to the oath; or if the judge should think it best, this can be done in the province where the aforesaid party lives, under the evidence of the plaintiff that the oath has either been tendered by him, or to him, or has been refused, so that the case may be definitely decided, no matter what course has been pursued.

Permission should also be given to the adverse party, either in his own proper person, or by his attorney, to be present when the formalities to be observed by the litigant to be sworn are complied with; or if he should prefer to do neither, and, on the other hand, it is established by documentary evidence that the oath was taken, tendered, or refused, it is the duty of the judge to determine by whom the expenses of a proceeding of this kind should be paid, whether by both parties or only by one of them. No obstacle should arise for the decision of cases in a proceeding of this kind, but the other points or questions of the case must be examined by the judge, and after the documents concerning the oath have been placed in his hands, he must return to this subject, and, having disposed of it, pass to other matters. All other regulations, which have herein been established with regard to parties who are present, must also be observed in the case of those who are absent.

(5) We decree that in every instance in which the oath is taken, the judicial rules having reference to the rank of a person must be obeyed, and the oath shall be taken either before the judge himself, or in the house of the party who is sworn, or upon the Holy Scriptures, or in the Churches.

(6) In like manner, We direct that the rules relating to the oath of calumny, or of the re-tender of the oath which have been provided by the laws introduced either by Ourselves or Our predecessors, shall remain in full force; for these have been promulgated, not with view to abrogating the ancient laws in any way, but that whatever may seem to be lacking to them may be supplied.

Given on the third of the *Kalends* of November, during the Consulate of Decius.

### 13. *The Same to John, Prsetorian Prefect.*

Where anyone demands a legacy or a trust as having been left to him, and this does not appear by the will, the oath should be tendered to him by the heir, and he should swear that the legacy or trust has been bequeathed to him; and if he should obtain what he demanded under the will, and it should afterwards become clear that nothing was left him, the question was raised by the ancient authorities whether what was established by the oath should stand, or whether the party should restore what he had received; or whether if, in fact, the legacy or the trust had been left to him, We should give the heir permission to deduct the Falcidian portion, where

there was ground for doing so.

The better opinion seems to Us to be that, in the first place, the legacy or the trust ought to be recovered from him, and that he should obtain no benefit from this act of perjury. If however, what he swore to was found to be true, the Falcidian fourth could be reserved if there was good reason for it, in order that no one might by Our laws be afforded an opportunity to obtain an infamous profit as the result of his own crime.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the Consulate of Lampadius and Orestes, 532.

## TITLE II.

### WHERE A CERTAIN THING IS DEMANDED.

#### 1. *The Emperors Severus and Antoninus to Modestinus.*

You do not ask what is just or customary when you request that you and your brother, who is your co-heir, shall be permitted to pay the debts of your father, not in proportion to your shares of the estate, but in accordance with the appraisal of the property left as preferred legacies; for it is a well-settled rule of law that the charges of an estate must be borne by the testamentary heirs in proportion to their hereditary shares, and not with reference to the benefit received. You, yourself, do not appear to be ignorant of this, as you have paid the creditors in proportion to your share of the estate in accordance with the rule of ancient law.

Given on the *Kalends* of July, during the Consulate of Chilo and Libo, 205.

#### 2. *The Emperor Antoninus to Hermogenes.*

Although Asclepiades lent your money in his own name, having stipulated, however, that it should be paid to himself, you can by an action of mandate compel him to assign to you the right of action to enable you to recover it.

Given on the seventh of the *Kalends* of May, during the Consulate of Messala and Sabinus, 215.

#### 3. *The Emperor Gordian to Sempronius.*

It has frequently been stated in rescripts that those who hold office in provinces cannot either themselves, or through persons substituted by them, lend money at interest during their terms of office.

Given on the eighth of the *Kalends* of September, during the Consulate of Gordian and Aviola, 240.

#### 4. *The Emperor Philip and the Caesar Philip, to Maximus.*

If you have lent the money of anyone who is absent at interest, in his own name, and he disapproves of the transaction, you can bring the action of mandate, and the Governor of the province, upon your application, will give you his assistance. Likewise, if he should perceive that the mandate has ceased to have effect, he will not, on this account, refuse you an equitable action against the debtor.

Given on the fifteenth of the *Kalends* of March, during the Consulate of Prassens and Albinus, 247.

#### 5. *The Emperors Diocletian and Maximian, and the Csesars, to Aristodemus and Proculus.*

If you did not accept the entire amount of the loan, or did not voluntarily bind yourself to your creditor by a stipulation, or you assumed the obligation by appearing as surety for the principal debtor, although the money may have been paid only to one person, you will have no reason to fear that the creditor can sue you for money which he lent to another, if you prove that it has not been counted out to you within the time prescribed by law. And you will have

still less cause for apprehension, if, instead of money, the transaction had reference to the delivery of oil, where there was no stipulation that it should be returned; and when a controversy arises on this point, he who has actually received the money will be liable; but it is clear that, in accordance with the terms of the instrument which refers to the delivery of the oil, nothing is due.

Given on the fifth of the *Nones* of May, during the above-mentioned Consulate, 293.

6. *The Same, and the Csesars, to Nicander.*

If a novation should be made with reference to a sum of money due for a certain amount of merchandise, and you stipulate that interest shall be paid by the person against whom you file your petition, even though the statement of the amount of the merchandise due may be false, still, as the substance of the obligation is not wanting, there is no reason why interest should not be claimed in compliance with the terms of the contract. If, however, it had been agreed without a stipulation that only the money which was borrowed should be paid with interest, the false instruments would be considered as not having been drawn up; for an agreement of this kind cannot alter the preceding obligation.

Given on the fifteenth of the *Kalends* of December, under the abovementioned Consulate, 293.

7. *The Same, and the Csesars, to Pactumeia.*

The origin of money which is loaned should not be considered, but only whether the person who made the contract counted it out to the one to whom it belonged, is required in obligations of this kind.

Given on the fifth of the *Nones* of October, under the above-mentioned Consulate, 293.

8. *The Same, and the Csesars, to Proculus.*

If, instead of the loan of money which you requested from your creditor, you received silver, beasts of burden, or any other kind of property appraised by mutual consent, and you gave him gold in pledge, although you may have promised by a stipulation to pay him interest above one per cent a month, still, only the principal which is mentioned in the agreement of the parties, and the legal rate of interest can be claimed. You cannot, however, obtain any benefit on the ground that the pledge which you gave is of inferior value, as you allege, in order to avoid payment of the full amount which you received.

9. *The Same, and the Caesars, to Alexander.*

As you state in your petition that, while in Gaul, you, together with Syntrophus, lent a certain weight of gold and a certain sum of money to someone to be paid at Rome, if you apply to a competent judge and he decides that there are two principal debtors under a stipulation, or that you are entitled to the action for the full amount, or that you can collect from the heirs of Syntrophus, he shall order the entire debt, or, on the other hand, what you alone have paid, to be refunded to you.

Given on the fifteenth of the *Kalends* of January, during the abovementioned Consulate, 293.

10. *The Same, and the Csesars, to Crispinus.*

Payment should not be opposed because the evidence of the indebtedness of several persons is contained in one and the same instrument; for if you have stipulated, and the other parties have agreed that, instead of the money which you have loaned, wine shall be given you, the change of mind of the others cannot annul the contract which has been legally made.

Given on the second of the *Nones* of February, during the abovementioned Consulate, 293.

11. *The Same, and the Csesars, to Maximian.*

A fire does not release a debtor from the payment of his obligation. Given on the second of the *Ides* of February, under the abovementioned Consulate, 293.

12. *The Same, and the Csesars, to Theophanius.*

If, together with lo, you have borrowed money in connection with' your common business, you will not be liable for the entire amount

of the debt, either on account of the property, or by reason of the formula used in the contract; and even though afterwards you may have paid the entire amount, you will have a right of action against lo for the recovery of your share of the debt before a competent judge. Given on the fifteenth of the *Kalends* of September, during the Consulate of the Caesars, 300.

13. *The Same, and the Cassars, to Pronto.*

He who has borrowed a sum of money will be liable to his creditor, even though it is to be used for the business of another, if the creditor, at the time when he lent it, did not have in view the person for the benefit of whose affairs it was obtained.

Given at Nicomedia, on the seventeenth of the *Kalends* of November, during the Consulate of the Caesars, 300.

14. *The Same, and the Cassars, to Hadrian.*

A creditor who lent money to others did not render you liable, unless you signed a written contract evidencing the loan.

Given during the Consulate of the above-mentioned Emperors, without any date.

15. *The Same, and the Cassars, to Charidemus.*

You ask for something which is plainly contrary to law, when you demand that creditors shall not proceed against you who borrowed the money, but against the heirs of the person to whom you lent it.

Given on the fifth of the *Kalends* of December, under the Consulate of the Caesars.

16. *The Emperors Honorius and Theodosius to Theodore, Praetorian Prefect.*

Anyone who lends money at interest to a judge shall, if he resides in his jurisdiction, be considered as the purchaser of the laws of the province; or, if anyone should corruptly pay someone who is his fellow-candidate for an office, he shall, along with the judge, be condemned to the penalty of exile.

Given on the seventeenth of the *Kalends* of November, during the Consulate of Bassus and Philip, 408.

17. *The Emperor Justinian to Menna, Praetorian Prefect.*

We have considered that the following provisions with reference to written instruments should be enacted for the common welfare; namely, that when anyone desires to borrow more than fifty pounds of gold, or to receive security for a debt, and the sum exceeds that above-mentioned, he is hereby notified that the instrument evidencing the debt shall not be recognized either by the debtor or the creditor, unless the said instrument contains the signature of three witnesses of established reputation. For if any written instrument executed in violation of this rule and calling for the payment of a sum in gold exceeding that above-mentioned is introduced, it shall, under no circumstances, be admitted by the judge.

This rule shall be applicable to future loans and payments of debts. Given at Constantinople, on the tenth of the *Kalends* of June, during the second Consulate of Our Lord Justinian, 528.

*Extract from Novel 73, Chapter I. Latin Text.*

By a new law, however, five witnesses are necessary, if the contract is in writing, and was made by a person who was illiterate, and who resided in the city, if the debt was for more than a pound of gold. When anyone desires to make a verbal contract, it is evident that he can do so either by making use of witnesses, or by taking the oath; and in case an action should be brought, the plaintiff must produce the witnesses, and can either be compelled to take the oath himself or to tender it, as the judge may determine.

The laws relating to contracts made in the country, which have been, up to this time, valid, are hereby confirmed.

### TITLE III.

#### CONCERNING SUFFRAGE.

1. *The Emperors Theodosius, Arcadius, and Honorius to Rufinus, Prastorian Prefect.*

If persons desiring to obtain what they seek have requested anyone to vote for them, and have bound themselves to give him something in return, they must keep their promises, and carry out what they voluntarily agreed to do. If they should, under any pretext, delay to do so, they shall be compelled to pay what is due.

(1) If any gold, silver, or other movable property should be given on this account, delivery alone will be sufficient, and the contract shall remain forever valid; for when the delivery of movable property is made, it is done with good faith, and for a consideration.

(2) If the contract includes the delivery of a rustic or urban estate, an instrument in writing should be drawn up showing that the property has been transferred to another, actual delivery should follow, and the instrument show that the transaction was complete; for otherwise the property cannot pass to the new owner, or the old one be divested of his title.

(3) If the person who has been asked to give his vote should seize the property agreed upon as compensation, his rashness and violence shall be restrained, and possession of the property shall be restored to its former owner, and he who did not hesitate to seize what he ought to have demanded shall be excluded from obtaining it by law.

Given at Constantinople, on the third of the *Nones* of March, during the Consulate of Arcadius, Consul for the third time, and Honorius, Consul for the second time, 394.

### TITLE IV.

#### CONCERNING THE PROHIBITED SEQUESTRATION OF MONEY.

1. *The Emperors Honorius and Theodosius to John, Praetorian Prefect.*

Whenever money is demanded by virtue of some contract, necessity for its sequestration does not exist; for it is necessary for the existence of the debt to be first proved, and then the debtor be compelled to make payment. It is required, not so much by the rule of law as by equity itself, that the creditor should produce the evidence of the debt, and, bringing suit for the money, establish the liability of the debtor.

Given at Ravenna, on the sixth of the *Ides* of July, during the Consulate of Honorius, Consul for the thirteenth time, and Theodosius, Consul for the tenth time, 422.

### TITLE V.

#### CONCERNING THE RECOVERY OF A DEBT WHICH WAS PAID WITHOUT BEING DUE.

1. *The Emperor Antoninus to Mutianus.*

There is no doubt that money which has been paid through mistake, and not by virtue of a

judgment, can legally be recovered by a personal action. Therefore if you can prove that your father, whose heir you became, paid his creditor more than he owed him, you can recover the amount of the excess. You will, however, in vain demand the interest on this sum, as by the personal action only that amount can be recovered which was paid when it was not due.

Given on the third of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 223.

2. *The Same to Secundina.*

Where, without any arrangement having been made with reference to it, you have been delegated to promise the creditor of another money which you do not owe, you will have the right to bring a personal action against the person who delegated you.

Given on the fourteenth of the *Kalends* of January, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 293.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Pamphilus.*

As a sum of money which was not due, and which has been paid through ignorance can be recovered, an action on a written contract will be much more available for the recovery of money not owing, or an exception on the ground of bad faith can be pleaded against the plaintiff.

Given on the third of the *Nones* of April, at Byzantium, during the above-mentioned Consulate, 293.

4. *The Same, and the Cassars, to Heraclius.*

It is a positive rule of law that sums of money which are liable to increase through denial in litigation cannot be recovered, even if, when not due, they have been paid by someone ignorant of the fact. It is, however, established that there will not be ground for a personal action for recovery, if a bond for the payment of money not due has been given.

Given at Byzantium, on the fifth of the *Ides* of April, during the above-mentioned Consulate, 293.

5. *The Same, and the Csssars, to Attains.*

If, having been emancipated by your father, you did not succeed him within the time prescribed by praetorian law, it is certain that you, as the heir of your father, will have a right to recover by a personal action anything which you may have subsequently paid by mistake.

Given on the fourth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors, 293.

6. *The Same, and the Csesars, to Mnasea.*

When, through ignorance of fact, you have paid for another a sum of money which was not due, and this has been proved before the Governor of the province, he shall, on the demand of him who paid it, provide for its return to the person on account of whom it was advanced.

Given on the sixth of the *Ides* of August, during the above-mentioned Consulate, 293.

7. *The Same, and the Csesars, to Dionysia.*

It is an established rule of law that a trust or a legacy which, through an error of fact, was delivered when it was not due, can be recovered.

Given on the fifth of the *Ides* of September, during the abovementioned Consulate, 293.

8. *The Same, and the C&sars, to Zyparus.*

Where anyone has paid a false agent of his creditor, he has a right of recovery against the



latter, but not to a release from his obligation.

Given on the fifteenth of the *Kalends* of November, during the above-mentioned Consulate, 293.

9. *The Same, and the Csesars, to Gratiana.*

Anyone who knows that payment has been made of a sum which was not due cannot legally recover it. Where, however, property belonging to another has been sold without a mandate, and after it has been evicted either for this reason or for some other defect in the title, the owner indemnifies the purchaser, he cannot allege that the money was not due; as having proved by an act of this kind that he ratified the contract, he shows that what he paid was due.

Given at Nicomedia, on the fourth of the *Nones* of December, during the Consulate of the Csesars, 294.

10. *The Emperor Justinian to Julian, Prtetorian Prefect.*

Where anyone promises a slave, who is designated, or a certain sum of *solidi*, or any other property, and, by delivering either of these, he has the right to be released from his obligation, if he, through ignorance, should deliver both, a doubt arose which could be recovered by the laws, that is to say, whether he could recover the slave or the money, and whether the stipulator or the promisor had the power to make the selection of the property.

Ulpian grants the choice to the person who received both, to return whichever he wishes, and states that both Marcellus and Celsus agree with him. Papinianus, however, gives the right of selection to him who delivered both pieces of property, because, before delivering them, he had the right to deliver whichever he chose; and he quotes the great authority of Salvius Julianus, the interpreter of the Praetorian Edict, in support of his opinion. In deciding the question, We have adopted the view of Julianus and Papinianus that he who had the right to give either of the pieces of property was also entitled to choose which he should receive.

Given at Constantinople, on the *Kalends* of August, under the fifth Consulate of Lampadius and Orestes, 530.

11. *The Same to Julian, Prtetorian Prefect.*

A dispute arose among jurists with reference to the hesitation of those who have paid money while uncertain whether or not it was due, and whether they could recover that which they had paid while in doubt. In deciding this question, We decree that all those who have paid while uncertain whether or not they owed the money, or anything else which they gave, should not be denied the right of recovery, and that the presumption of a compromise should not be alleged against them, unless this was specifically established by the adverse party.

Given at Constantinople, on the *Kalends* of October, under the fifth Consulate of Lampadius and Orestes, 530.

## TITLE VI.

### CONCERNING THE ACTION FOR RECOVERY OF PROPERTY GIVEN FOR SOME CONSIDERATION.

1. *The Emperor Antoninus to Callisthenides.*

You state that a sum of money was received by you by way of dowry, under an agreement (as is customary when a marriage contract is entered into) ; and if some obstacle has arisen to prevent the marriage from being celebrated according to law, you can recover the said sum by a personal action, and the agreement which was made should be considered as if it had never been entered into.

Given on the sixth of the *Kalends* of August, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

## 2. *The Emperor Alexander to Asclepiades.*

If, as you state, your father gave your sister certain lands and other property which you have mentioned, under the condition that she should satisfy the creditors, and that, if the condition was not fulfilled, the donation should be void, and as she did not comply with the condition, it is not unjust that the action for recovery of the property donated should be granted you as the heir of your father.

Given on the fourteenth of the *Kalends* of December, during the Consulate of Albinus and Maximus, 228.

## 3. *The Emperors Valerian and Gallienus to Aurelius and Alexandra.*

A donation was made to you under the condition that neither of you should have the power to dispose of his or her share of the estate, and the result of this is, that neither of you can alienate the ownership of your share; and if the condition should not be observed, the donor, or his heir, will be entitled to an action to recover the property.

Given on the *Kalends* of April, during the Consulate of Valerian, Consul for the fourth time, and Gallienus, Consul for the third time, 258.

## 4. *The So/me, and the Caesar Valerian, to Emilia.*

If, having actually received a very small sum of money, you acknowledge the receipt of a much larger one, for the reason that your adversary promised you his influence, and as you allege that he did not keep his word, you can, by means of a personal action, be released from the obligation which you contracted, on the ground that you did not receive the expected influence in consideration of which you entered into the agreement.

Given on the *Kalends* of May, under the Consulate of ^milianus and Bassus, 260.

## 5. *The Emperors Diocletian and Maximian, and the Ciesars, to Martial.*

If you appointed a soldier your attorney for the transaction of your business, when this was forbidden by law, and on account of his appointment you paid him a sum of money, a competent judge will see that whatever you have disbursed on this account shall be refunded to you, without the case having been heard.

Given on the tenth of the *Kalends* of October, during the Consulate of the same Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

## 6. *The Same, and the Csesars, to Cyrio and Plotio.*

You say that your father presented a female slave to the person against whom you have instituted proceedings, and it makes a great

deal of difference whether he made the donation with the intention of giving or of manumitting the girl whom he believed to be a female slave; for when a gift has been perfected it cannot be revoked, and where the intention to do so did not exist, an action for recovery will lie.

Given on the second of the *Ides* of May, during the above-mentioned Consulate, 293.

## 7. *The Same, and the Csesars, to Gerontius.*

If you have given anything to the wife of a person whom you intended by this act of liberality to induce to travel with you, and you did not add any condition of recovery, the gift will remain unimpaired; as it is contrary to law for a perfect donation to be revoked by the indecision of the donor.

Given on the seventh of the *Kalends* of September, during the Consulate of the above-mentioned Emperors, 293.

8. *The Same, and the Csesars, to Flavian.*

A rule of law provides that there is ground for a personal action for recovery, when the condition attached to a donation not being impossible, it was not complied with by him who agreed to it; therefore when you gave your property to your betrothed as a token of your liberality, and imposed a certain condition, and she did not comply with it, although she could have done so, you will not be prevented from suing her heirs to recover what you gave her, if you should so desire.

Given on the third of the *Ides* of February, during the abovementioned Consulate, 293.

9. *The Same, and the Csesars, to Eibulus.*

If you, being free, have given something in order that your daughters may be manumitted, and proceedings are not instituted for this purpose, you will be entitled to an action for the recovery of what you gave.

If, however, a slave should donate something out of his *peculium*, to his master, he can have no right of action against him; but if he should appear before the Governor of the province, the latter will, taking into consideration the respect due to the master, exhort him who permitted himself to receive the money in consideration of granting freedom to the slave to abide by his agreement in favor of liberty.

Given on the third of the *Ides* of February, during the Consulate of the above-mentioned Emperors, 299.

10. *The Same, and the Csesars, to Canoniana.*

It is certain that you can, by no means, recover money which has been paid by you, if the condition on which it was dependent failed to take place, not through the fault of the person who received it, but because of some accident.

Given at Nicomedia, on the third of the *Nones* of December, during the Consulate of the Csesars, 300.

11. *The Same, and the Caesars, to Stratonica.*

It has been established that money paid to an advocate for his services should be refunded, if it is proved that he was to blame for not complying with his contract.

Given on the seventeenth of the *Kalends* of January, during the Consulate of the Csesars, 300.

TITLE VII.

CONCERNING THE ACTION FOR RECOVERY ON ACCOUNT OF A DISHONORABLE CONSIDERATION.

1. *The Emperors Antoninus to Ingemms.*

If suit is brought against you on your bond, and you have received no money, and your bond was furnished for an infamous consideration, and one which is prohibited, and this is proved in the presence of the judge having jurisdiction of the case, when this has been accomplished, you will be released from liability.

2. *The Same to Longinus.*

As you allege that you have transferred your house to your adversary for a dishonorable consideration, and one contrary to the principles of My reign, you will in vain ask that it be restored to you, for in a case of this kind the condition of the possessor is considered to be the better.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

3. *The Emperors Diocletian and Maximian to the Soldier Dizon.*

If it is established by indisputable evidence before a competent judge that you have paid a sum of money to the person of whom you complain, in order to avoid military service, you can recover it with his assistance; and he, being mindful of public censure, after the money has been refunded, will not suffer the crime of extortion to remain unpunished.

Given on the third of the *Kalends* of August, during the Consulate of the above-mentioned Emperors; the first, Consul for the fourth time, and the second, Consul for the third time, 290.

4. *The Same, and the Ceesars, to Rufinus.*

Where a dishonorable consideration is found to have been offered by both parties, although the contract may have been complied with, an action for recovery will be granted only for what was paid, and not for the interest on the same.

Given on the seventh of the *Ides* of January, during the above mentioned Consulate, 293.

5. *The Same, and the Csesars, to Bichoporus.*

Since you acknowledge that your wife led the life of a prostitute, you understand that your petition contains the confession that you

have acted as a pander, and therefore no ground will exist for the recovery of a sum of money paid for such an infamous consideration. For although baseness may have existed on both sides, and the money paid cannot be recovered, still, it is established by the authority of the law that actions based upon a stipulation entered into contrary to good morals should be refused.

Given on the *Ides* of May, during the Consulate of the Caesars, 294.

6. *The Same, and the Csesars, to Eutychia.*

It is settled that where money has been received by anyone to induce him to restore property which he had stolen, as he only is guilty of dishonorable conduct, he can be compelled to refund it by a personal action.

Given on the fifteenth of the *Kalends* of June, during the Consulate of the Caesars, 294.

7. *The Same, and the Csesars, to Zeno.*

It has been decided that he who receives money to induce him to restore cattle which he had driven away must not only refund the money which he acquired by his act, but also the cattle, even though they are said to have died, or to have perished by some accident, as in this case he will be found to be in default.

Given at Nicomedia, on the fifth of the *Kalends* of December, during the above-mentioned Consulate, 299.

TITLE VIII.

CONCERNING THE ACTION FOR THE RECOVERY OP STOLEN PROPERTY.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Hermogenes.*

The Governor of the province, being aware of the facts, shall be careful to declare in his decision that each party is liable for the entire amount in an action of theft; but where the action for the recovery of stolen money has been brought, and the judgment has been satisfied by one of the parties, the others are released.

Given on the *Kalends* of May, under the Consulate of the Caesars, 294.

2. *The Same, and the Csesars, to Aristenetus.*

It is a well-established rule of law that a sheep thief shall bear the loss of stolen property, if

this occurs before his offer to make restitution.

Given on the *Kalends* of May, under the Consulate of the Caesars, 294.

#### TITLE IX.

CONCERNING THE PERSONAL SUIT FOR RECOVERY UNDER THE LAW, WHERE THERE IS NO CONSIDERATION, OR WHERE THE CONSIDERATION IS UNJUST.

##### 1. *The Emperors Diocletian and Maximian, to Ulpian.*

Although debts cannot be collected before they are due, still, if you are a debtor to the Treasury on account of your administration as the captain of the first company of the *triararii*, and the Governor of the province finds that your property is exhausted to such an extent that payment of the debt can only be made by the employment of a single sum of money which is due to you, he shall notify your debtor, provided he is solvent, to discharge the debt before the time fixed for doing so, in order that what is due may be paid to the Treasury which, on account of the public requirements, should obtain the preference.

Given on the thirteenth of the *Kalends* of August, during the Consulate of the Caesars, 294.

##### 2. *The Same, and the Caesars, to Sculapius.*

No doubt exists as to the law which provides that where the instrument which established the payment of the debt is retained by the creditor, it will be of no advantage to him while it remains in his hands, and therefore it can be recovered by a personal action.

Given on the third of the *Nones* of April, during the Consulate of the Caesars, 300.

##### 3. *The Same, and the Caesars, to Galatia.*

A possessor in bad faith, who has been defeated in an action where the ownership of property is involved, can be compelled to surrender any existing crops belonging to the property by an action for their recovery, and can be sued in a personal action for those which have been consumed.

Given on the *Ides* of February, during the Consulate of the Caesars, 300.

##### 4. *The Same, and the Caesars, to Alexander.*

If the sum which you stated in writing you received as a loan has never been counted out to you, and the time prescribed by law within which you can bring suit has not yet transpired, you can ask the Governor that notice be served for the return of the obligation.

Given on the seventeenth of the *Kalends* of January, during the Consulate of the Caesars, 300.

#### TITLE X.

CONCERNING OBLIGATIONS AND ACTIONS.

##### 1. *The Emperor Gordian to Valeria.*

You state that a certain sum of money has been given by you to a person whom you mention, and in return for which he has assigned you a right of action against the debtor, for whom you paid the money; and, before you brought suit on this account, you allege that the creditor died without leaving an heir. Since this is the case, a praetorian action will lie in your favor.

Given on the fifth of the *Kalends* of May, during the Consulate of Atticus and Prsetextatus, 243.

##### 2. *The Emperors Valerian and Gallienus to Celsus.*

It has been frequently stated in rescripts that where claims have been given by way of dowry, although no delegation was previously made, nor any proceedings were subsequently instituted, a praetorian action should be granted the husband, just as in the case of someone

who had purchased a note.

Given on the fourteenth of the *Kalends* of February, during the Consulate of Secularus and Donatus, 255.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Rusticianus.*

It is extremely inequitable for tenants to be sued on account of the private indebtedness of their lessor, where they pay the rent in accordance with their contracts.

Given on the day before the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

4. *The Same, and the Csesars, to Licinia.*

It is no more than just for good faith to be taken into consideration in all contracts.

Given on the third of the *Nones* of October, during the Consulate of the above-mentioned Emperors, 287.

5. *The Same, and the Csesars, to Camerinus and Martian.*

As in the beginning everyone has free power to make or not to make contracts, so where an obligation has once been entered into neither party can, without the consent of his adversary, reject it. Wherefore you should understand that when you have once been bound by a voluntary agreement, you can, under no circumstances, repudiate it, without the consent of the other party whom you mention in your petition.

Given at Byzantium, on the *Nones* of April, under the above-mentioned Consulate, 290.

6. *The Same, and the Csesars, to Mauritius.*

If your debtor has given you in payment a claim which was due to him, and appointed you his attorney in the matter, demand the pledges which were specially or generally deposited to secure the debt. If, however, they are proved to have been sold by those to whom they were previously pledged, because of their having the preference, understand that you cannot demand them of the purchasers.

Given on the ninth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 293.

7. *The Same, and the Csesars, to Dionysius.*

If you have purchased a claim from a creditor, demand the pledges which the vendor could have obtained in the presence of the Governor of the province. For if you hold the property which was pledged for the debt of the said person and it is not paid, you are not forbidden by the Common Law to sell the pledges. When, however, those who possessed the pledges having a preferred lien upon them have purchased them from the creditors, or if they are protected by prescription based upon long time, understand that you will not have the power to sell the pledges.

Given on the third of the *Kalends* of January, during the abovementioned Consulate, 293.

8. *The Same, and the Csesars, to Grescentius.*

Where, for the purpose of making a donation to a person whom you state that you have loved with the affection of a father, you gave him a sum of money, and he, for the purpose of remunerating your liberality, asks you to accept another sum from his attorney, and before you receive it, he dies, you cannot recover what you have given, for the reason that the donation was perfected, nor can you demand from his attorney what his constituent directed to be given to you but was not yet delivered. If, however, you have lent the amount, but did not stipulate that it should be paid by someone who had been delegated on account of a novation, his heirs will be compelled to pay you.

Given on the thirteenth of the *Kalends* of February, during the Consulate of the Csesars, 294.

9. *The Same, and the Caesars, to Glyco.*

Debtors who deny that they owe anything should not be intimidated by armed force, but should be discharged from liability if the plaintiff does not prove his case, or if he should be barred by an exception; but if their indebtedness should be established, and judgment be rendered against them, it is settled that they must be compelled to make payment by the employment of all legal remedies.

Given on the *Ides* of February, during the Consulate of the Caesars, 294.

10. *The Same, and the Csesars, to Fufinus.*

The right of personal action against a debtor is not extinguished by the sale of the pledges, but what can be obtained by it shall be credited on the debt, and suit can be brought for the remainder.

Given on the third of the *Nones* of April, during the Consulate of the Caesars, 294.

11. *The Same, and the Csesars, to Paula.*

You deceived yourself when you thought you could collect from the owner of the land what you lent to his tenants on their own account, for the presence of his agents does not enable you to hold him liable.

Given on the eighth of the *Kalends* of August, during the Consulate of the Caesars, 294.

12. *The Same, and the Csesars, to Jovinus.*

The laws do not suffer children to be given up to the service of creditors because of debts due by their parents.

Given on the thirteenth of the *Kalends* of November, during the Consulate of the Csesars, 294.

*Extract from Novel 134, Chapter VII. Latin Text.*

Moreover, the creditor will lose his debt, and will be compelled to pay an equal amount to the child whom he has retained, or to his parents, and he will also be liable to corporeal penalties.

13. *The Same, and the Csesars, to Barsumius.*

You should compel the person to whom you have lent money to make payment by means of an adequate legal proceeding, for you have no right of action against traders who you alleged exhausted the funds of your debtor by the sale of merchandise to him.

Given on the eleventh of the *Kalends* of April, during the Consulate of the Caesars, 300.

14. *The Same, and the Csesars, to Hermodorus and Nicoma-chus.*

You have the choice either to sue the heirs of your debtor by a personal action, or to make use of the Servian Action against him who holds the pledges which were given to you, and which have been sold and delivered to him by the heirs, if he is not protected by prescription based upon long time; or you can bring both actions simultaneously.

Given at Nicomedia, on the fifth of the *Kalends* of December, during the Consulate of the Csesars, 300.

*Extract from, Novel 4, Chapter III. Latin Text.*

At present, however, under the new law, all trustees, mandators, and sureties must first be sued before having recourse to those in possession of the pledges.

## TITLE XL

### ACTIONS SHOULD BE BROUGHT BY HEIRS AND AGAINST HEIRS.

#### 1. *The Emperor Justinian to John, Prsetorian Prefect.*

In former times, stipulations, legacies, and other contracts to be executed after death were rejected, but We have permitted this to be done for the common welfare of mankind, as it appeared to be advisable that this rule, which was adopted in ancient times, should be amended by a more humane custom; for the old jurists did not allow actions to be brought by or against heirs in the case of stipulations or other agreements to be carried out after death. It seems to Us to be necessary to abolish this ancient abuse, and to annul this rule, so that suits and obligations can be brought and enforced by heirs and against heirs, in order that the accomplishment of the wishes of the contracting parties may not be frustrated, through the excessive subtlety of the legal terms employed.

Given at Constantinople, on the fifteenth of the *Kalends* of November, after the Consulate of Lampadius and Orestes, 531.

## TITLE XII.

### A WIFE CANNOT BE SUED ON ACCOUNT OF HER HUSBAND, OR A HUSBAND ON ACCOUNT OF HIS WIFE, OR A MOTHER ON ACCOUNT OF HER SON.

#### 1. *The Emperors Diocletian and Maximian, and the Csesars, to Asclepiodota.*

You will argue in vain with reference to the validity of contracts made by your husband, as it is sufficient for your protection that you made no contract in your own name to prevent your being sued on his account; for, under the terms of the Decree of the Senate, nothing can legally be collected from you, even if you have voluntarily offered yourself as his, surety.

Given on the day before the *Ides* of April, during the Consulate of Diocletian, Consul for the third time, and Maximian, 287.

#### 2. *The Same to Terentia.*

The laws forbid that women should be annoyed on account of the faults of their husbands. Hence the Imperial Accountant, where property has been seized by the Treasury and you can prove that it is yours, must obey the public law.

Given on the third of the *Nones* of September, during the Consulate of Diocletian and Maximian, 287.

#### 3. *The Same, and the Csesars, to Carpophorus.*

As you allege that you have not given the property in question to your daughter, by way of dowry, but for her support exclusive of the dowry, these lands are not subject to civil or municipal charges of a husband, any more than mothers can be rendered liable for debts due from their sons; as it is settled that a husband cannot be sued for an obligation contracted by his wife, unless he himself became surety for the same, since it is perfectly clear that no one can be liable for the contract of another.

Given on the third of the *Ides* of September, during the Consulate of the above-mentioned Emperors, 293.

#### 4. *The Same, and the Cassars, to Philotera.*

As you state that you have been sued on account of the indebtedness of your son for the reason that you have already appeared to

have paid a portion of the same, you have a perfect right to avail yourself of your means before the judge having jurisdiction of the case, so that he may prevent you from being compelled to pay the debts of another.



Given on the tenth of the *Kalends* of September, during the Consulate of Titian and Nepotian, 301.

*Extract from Novel 52, Chapter I. Latin Text.*

Anyone who attempts to make use of the property of one person to pay the debts of another, just as if it was pledged for that purpose, shall be compelled to repay fourfold its value, whatever that may be, to "the person who suffered the wrong, and shall lose his right of action to recover the debt for the payment of which he took the property.

### TITLE XIII.

A SON CANNOT BE SUED ON ACCOUNT OF HIS FATHER, OR A FATHER ON ACCOUNT OF HIS EMANCIPATED SON, OR A FREEDMAN ON ACCOUNT OF HIS PATRON, OR A SLAVE ON ACCOUNT OF HIS MASTER.

#### 1. *The Emperor Gordian to the Soldier Candidus.*

A father cannot be sued on account of the debt of his son who is his own master, where he did not become his surety; nor can he be sued for it when he is under his control, if he made the contract without his consent; nor will he be liable where, contrary to the terms of the Macedonian Decree of the Senate, a larger sum was lent than the value of the *peculium*. Wherefore, if your father has had money extorted from him by the creditor of your brother, for the payment of a debt for which he was not liable, he can recover it with the aid of the Governor of the province.

Given on the third of the *Nones* of October, during the Consulate of Pius and Pontianus, 239.

#### 2. *The Emperors Diocletian and Maximian to Neotherius and Eutolmiis.*

The Governor of the province must provide that you shall not, contrary to law, be annoyed by someone by whom your father, who you allege has emancipated you, has been called to assume a civil office.

Given on the eighth of the *Kalends* of February, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

#### 3. *The Same, and the Cissars, to Theogenes.*

Where a son has been appointed a decurion without the consent of his father, it has been very clearly provided by law that his father cannot be annoyed on his account.

Given on the tenth of the *Kalends* of May, during the Consulate of the Caesars, 294.

#### 4. *The Same, and the Ciesars, to Achiva.*

It is settled that a son cannot be sued in a personal action on account of the indebtedness of his father, or be liable for his municipal charges if his father is still living.

Given on the twelfth of the *Kalends* of March, under the Consulate of the Caesars, 300.

#### 5. *The Same, and the Ciesars, to Lampetim.*

Neither freedmen nor slaves can be sued on account of contracts made by their patrons and masters.

Given on the *Ides* of April, during the Consulate of the Caesars, 300.

*A New Constitution of Frederick.*

After a careful investigation and examination made by the bishops, abbots, dukes, and other officials of Our Sacred Palace, We grant the following privilege to all those who journey for the purpose of study, and especially to the professors of Divine and Imperial laws, namely: that they, as well as their messengers, shall remain secure in the places in which they reside.

For as they all do good, We think that they are worthy of Our praise and protection at all times, as the entire world is illuminated by their learning, and Our subjects are instructed by them to be obedient to God and Our ministers; and therefore, by means of this special favor, We desire to guard them against all injury. For who is there who would not pity those who, having become exiles through the love of learning, and from being wealthy have become poor, and exhaust their strength, and expose their lives to many dangers, and frequently suffer bodily injury from the vilest of mankind without a cause, which is hard to bear? Therefore We decree by this general law, which shall be valid for all time, that no one shall dare to presume to inflict injury upon students, or cause them any loss on account of the crime or indebtedness of another, in any province whatsoever (which We have ascertained is sometimes done in accordance with an improper custom).

Those who violate this Sacred Constitution, as well as the Governors of the places in which they live, and who neglect to punish them, are hereby notified that they shall be compelled to pay fourfold damages, be branded by the law with infamy, and be forever dismissed from their employments. If, however, anyone should desire to institute legal proceedings against such persons, because of any transaction, this shall be done at the option of the students, either before their master or professor or the bishop of the city, upon whom We have conferred this jurisdiction. Anyone who attempts to bring them before another judge, even if his claim should be perfectly just, shall lose his case.

We order that this law shall be inserted among the Imperial Constitutions under this Title: "A son shall not be sued on account of his father, etc."

Given during the month of November, 1158.

#### TITLE XIV.

##### WHETHER A SLAVE IS LIABLE FOR HIS OWN ACT AFTER HIS MANUMISSION.

###### 1. *The Emperors Severus and Antoninus to Juventian.*

Although you have made a contract with a slave who is to be free under a condition, you should know that after the condition upon which his liberty depends has been complied with, you will have no right of action against him for what he may have previously done.

Given on the fourth of the *Ides* of December, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

###### 2. *The Emperor Antoninus to Bexicus.*

No action will lie against you in favor of your creditors who lent you money while in slavery, especially as you state that no *peculium* was bequeathed to you.

Given on the third of the *Kalends* of September, during the Consulate of Laetus and Cerealis, 216.

###### 3. *The Emperor Alexander to Herod.*

Where money has been promised to you by your slave, in consideration of your manumitting him, and after you have done so you do not make any stipulation with him, you will be entitled to an action *in factum* against him.

Given on the *Ides* of September, during the Consulate of Alexander, 227.

###### 4. *The Emperor Gordian to Hiero.*

A slave who is said to have stolen a sum of money from your mother cannot be sued for an offence of this kind, although this may have been done at the time that she was in slavery, but having once obtained her freedom, she will be liable to an action of theft; for the injury follows the person.

Given on the *Ides* of September, during the Consulate of Pius and Pontianus, 239.

5. *The Same to Chrestus.*

If, as you allege, you cultivated your master's land before you were manumitted by him, and you were afterwards presented with your freedom, but were deprived of your *peculium*, any property which you may have previously contractd for, or have acquired by your own labor after your manumission, can by no means be taken from you.

Given on the sixteenth of the *Kalends* of December, during the Consulate of Arian and Pappus, 344.

6. *The Emperors Diocletian and Maximian, and the Csesars, to Felicianus.*

If those whom you mention in your petition are slaves, dispose of their cases at home, because no action at law can exist between masters and slaves. If, however, they were manumitted after committing

the offence, there is no legal rule which permits suit to be brought by their former masters for anything which had been done by them before they were enfranchised. But where they have committed any illegal act after their manumission, you must prove this before the Governor of the province, and you will obtain a decision in accordance with law.

Given on the second of the *Ides* of April, at Byzantium, during the Consulate of the above-mentioned Emperors, 287.

TITLE XV.

WHEN THE TREASURY, OR A PRIVATE INDIVIDUAL, CAN OR SHOULD SUE  
DEBTORS OR THEIR DEBTORS.

1. *The Emperors Severus and Antoninus to Valerian.*

The property of a guardian, who holds nothing belonging to his ward, cannot be seized on account of the debts of the latter.

Given on the eleventh of the *Kalends* of June, under the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Antoninus to Marcus.*

If, in the case of a judgment against Valens, which you state that you have obtained, nothing can be sold without having recourse to execution; his debtors, having been sued, will be compelled to make payment by the authority of the Governor of the province.

3. *The Emperor Gordian to Primanius.*

If those persons whom you allege are indebted to the debtors of the Treasury do not deny their liability, what you ask does not seem to be unjust, that is to say, that they be compelled to make payment by the Attorney of the Treasury. When, however, any question arises with reference to this, you yourself will perceive that it should not be permitted.

Given on the sixth of the *Kalends* of February, during the Consulate of Sabinus and Venustus, 241.

4. *The Emperors Diocletian and Maximian, and the Csesars, to Zosimus.*

It is a positive rule of law that suit cannot be brought by the Treasury against persons who are indebted to the debtors of the Treasury, unless it is clearly established that the latter are not solvent.

Given on the twelfth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors, 293.

5. *The Same, and the Csesars, to Nanida.*

When a claim has been given in satisfaction of a debt, the creditor cannot proceed against the debtors of the person who has made payment in this way, unless he assigns his rights of action; but he can legally avail himself of an equitable action in his own name.

Given on the *Kalends* of January, under the Consulate of the Caesars, 294.

TITLE XVI.

CONCERNING HEREDITARY ACTIONS.

1. *The Emperor Gordian to Hermerotiis.*

You should demand the money which you say was owing to you from your mother in proportion to the share to which you are entitled from her heirs, who are your co-heirs; but you will not be prevented from attempting to collect what is due to you out of the property encumbered for the debt.

Given on the eleventh of the *Kalends* of March, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

2. *The Emperor Decius to Telemacha.*

It has been decided that heirs are liable for hereditary charges in proportion to their shares of the estate, even where the said charges are those of the Treasury, unless property has been pledged or hypothecated, for then the possessor of the encumbered property should be sued.

Given on the fourteenth of the *Kalends* of November, during the Consulate of .ZEmilianus and Aquilinus, 250.

3. *The Emperors Diocletian and Maximian, and the Csesars, to Maxima.*

Sue the heir of your former husband for the restoration of your dowry, as you will in vain ask that a personal action be granted you against the debtors of the estate.

Given on the fourteenth of the *Kalends* of May, during the abovementioned Consulate, 293.

4. *The Same, and the Csesars, to Crispus.*

It is perfectly clear that payment of the debt cannot be deferred under the pretext that the debtor of the estate is under age, and therefore, as you state that you are his guardian, you should endeavor to have him satisfy his creditors.

Given on the tenth of the *Kalends* of December, under the Consulate of the above-mentioned Emperors, 293.

5. *The Same, and the Csesars, to Julius.*

As you ask in your petition that a debt shall be paid before the estate is entered upon, We order inquiry to be made whether it belongs to you, or not; for if it should be established that you have a right to the estate of your father-in-law, there is no doubt that the claim for the debt is extinguished by merger.

Given on the day before the *Nones* of March, during the Consulate of the Csesars, 294.

6. *The Same, and the Csssars, to Domnus.*

*If* the adult girl (whose guardianship you state that you have administered), and whose curator you now are, is the heir to a third

of her paternal uncle's estate, and has not been forbidden to acquire anything from it, she will be permitted to collect a debt from her coheirs in proportion to two-thirds of the estate, as the claim is not merged except with reference to the share to which she is entitled; for it is against the interest of your ward that you ask that the will be set aside, since the co-heirs bind

themselves for payment when they accept the estate. And if, after a division of the property has been made, it should be proved that they are not solvent, the Governor of the province will see that she sustains no loss.

Given on the *Kalends* of December, during the above-mentioned Consulate, 299.

7. *The Same, and the Ctesars, to Apolaustus.*

It is settled that the creditors of the estate are not entitled to a personal action against the legatee, as the Law of the Twelve Tables undoubtedly renders the heirs liable to such an action.

Given at Nicomedia, on the sixth of the *Ides* of December, during the Consulate of the Csesars, 300.

TITLE XVII.

FOR WHAT AN AMOUNT HEIRS CAN BE SUED ON ACCOUNT OF THE CRIMES OF DECEASED PERSONS.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Macedonus.*

It is an absolute rule of law that where anyone has been guilty of violence, extortion, or any other crime, and then dies after issue has been joined in the case, his heirs will be liable in full; otherwise they can only be sued for what has come into their hands, lest they may profit by the illegal act of another.

Given on the fifth of the *Kalends* of May, during the Consulate of the Csesars, 294.

TITLE XVIII.

CONCERNING THE SUM OF MONEY AGREED UPON.

1. *The Emperor Gordian to Felix.*

If you have consented to discharge someone else's debt, the action to recover the money which you have promised to pay can not only be brought against you, but also against your heirs, without limitation of time.

Given on the seventh of the *Kalends* of July, during the Consulate of the Csesars.

*Extract from Novel 115, Chapter VI. Latin Text.*

Where anyone agrees to pay a sum of money for himself or for some other person, or promises to do so, saying, "I will pay you,"

he will be liable for the amount which he agreed to pay. If, however, he should say, "You shall be paid by me, and by So-and-So and So-and-So," without the consent of the persons whom he mentioned, he will only be liable *pro rata* for the amount for which he obligated himself. But when making use of the impersonal verb, he says, "It shall be paid," he will not be responsible. If, however, he should say, "You shall be paid either by me, or by So-and-So," and he whom he mentioned does not consent, he alone will be liable in full.

2. *The Emperor Justinian to John, Pretoria/n Prefect.*

The *Actio receptitia*, which is founded on formal statements, having fallen into disuse, it seems to Us necessary to extend the application of the *Actio pecuniss constitutive*. Therefore, as this action for recovery was formerly only available where the property in question could be weighed, counted, or measured, and was not applicable to all cases, but, in certain instances, could only be brought during the term of a year; and as it was doubtful whether it was possible for it to be brought to collect a debt dependent upon a condition, or whose payment was fixed at a certain time, or whether it could be employed merely with reference to a sum unconditionally agreed upon; We direct, by this perfectly clear law, that all persons shall be

permitted to contract, not only for property which can be weighed, counted, or measured, but also for every other kind, whether it is movable or immovable, or can move itself, or is established by documents; and, in short, for everything which men can make the subject of a stipulation.

We also direct that the action, in every instance, shall not be limited to a year, but whether the person contracts for himself or someone else, it can be brought for the same period which is permitted in all personal actions, that is to say, during the term of thirty years; and that it shall be lawful to agree to pay the debt absolutely; or at a certain time; or under some condition; and that it shall have all the force of a stipulation, and still not be deprived in any respect of its natural privileges, but can be brought both by and against heirs, so that the State, in cases of this kind, may not need the aid of the *Actio receptitia*; but that this action for the recovery of money promised will, by Our Constitution, be sufficient in all respects, and be an inherent part of the same, and that the agreement may take the place of the obligation; while, on the other hand, by means of the ancient *Actio receptitia*, the debt could be collected, even if it was not due.

It is perfectly absurd and contrary to the practice of Our age, as well as opposed to just laws, to permit property which is not due to be recovered by the *Actio receptitia*, and to re-establish many suits which will authorize the collection of money which is not owing, and promises for payment to be alternately abrogated and renewed. In order that such a conflict of laws may not be productive of reproach, agreements can only be made for the payment of what is due, and everything relating to the *Actio receptitia* which has been inserted in the different books of legislators is hereby abolished; and the *Actio pecuniss constitute* shall include all cases which can become the subject of a stipulation.

(1) Let no one be surprised that every species of property which We have placed under the head of money can be exacted; for although in the books of the ancient jurists this action was only mentioned with reference to coin, still, not only could money be collected by means of it, but also all property which was susceptible of being weighed, counted, or measured, was included. It is possible for every kind of property to be converted into money; since if a certain house, or a certain field, or a certain slave, or anything else was mentioned in the agreement for payment, what difference is there between these possessions and money itself?

In order, however, to satisfy the subtle distinctions of persons who do not desire the sense but the empty sounds of names to be considered, everything shall be embraced in an action of this description, just as if the contract has been made for the payment of money itself; for the old jurisconsults included all kinds of property under the name of money, and this term is not only frequently met with in the treatises of legal authors, but also in other ancient jurisprudence.

(2) So far as the customs which money-brokers and other business men have constantly observed are concerned, they are hereby sanctioned, and shall remain in full force as observed up to this time.

Given on the tenth of the *Kalends* of March, after the fifth Consulate of Lampadius and Orestes, 531.

### 3. *The Same to John, Prsetorian Prefect.*

It is necessary that the Epistle of the Divine Hadrian, which treats of the division of liability between mandators and trustees, should also apply to those who have conjointly agreed to pay money for others; as the rule of equity ought, by no means, to exclude different forms of the same action.

Given on the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XIX.  
CONCERNING PROOFS.

1. *The Emperors Severus and Antoninus to Faustinus.*

As a creditor who demands money, which he says he has loaned, is compelled to prove his claim, so, also, a debtor who alleges that he has discharged his obligations must furnish evidence of the fact.

Given on the day before the *Kalends* of July, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

2. *The Emperor Antoninus to Aulizanus.*

Institute proceedings in accordance with law to recover the land which you say is yours, for the party in possession is not required to prove that it belongs to him; and if you do not prove your claim, the ownership of the same will remain with him.

Given on the fifteenth of the *Kalends* of December, during the Consulate of Laetus and Cerealis, 216.

3. *The Emperor Alexander to Lsena and Lupus.*

You should not be sued for a debt of the colleague of your grandfather, if you can prove that the said colleague was solvent at the time when he withdrew from office.

Given on the fifth of the *Kalends* of January, during the Consulate of Pompeianus and Pelignus, 232.

4. *The Same to Vitus.*

The ownership of property must not only be established by the bill of sale, but also by all other lawful evidence.

Given on the *Kalends* of November, during the Consulate of Alexander, Consul for the third time, and Dio, 230.

5. *The Emperor Philip, and the Csesar Philip, to Sertorius.*

Private papers, that is to say, instruments executed in the presence of witnesses, or notes, if they are not supported by other testimony, are not alone sufficient as evidence.

Given on the seventh of the *Ides* of April, during the Consulate of Philip and Titian, 246.

6. *The Same, and the C&sars, to Romulus.*

It has been frequently stated in rescripts that accounts of a deceased person found among his effects will not alone be sufficient to prove that a sum of money was due to him.

The rule of law is the same where the deceased stated in his last will that he was entitled to a sum of money, or certain other property.

Given on the *Ides* of March, during the Consulate of Philip and Titian, 246.

*Extract from Novel 48, Chapter I. Latin Text.*

This rule is especially applicable where the testator was not sworn; otherwise the heirs will be required to comply with his will, or be prevented from enjoying the legacies bequeathed to them, but no loss shall result to the creditors on this account.

7. *The Emperor Gallienus to Sabinus.*

A pernicious example is offered where faith is given to a private memorandum; for anyone can, by a note of his own, constitute another his debtor. Therefore, neither the Treasury, nor any other person whosoever should introduce private memoranda as evidence of a debt.

Given on the third of the *Nones* of March, during the Consulate of Gallienus, Consul for the seventh time, and Sabinillus, 267.

8. *The Emperors Diocletian and Maximian, and the Caesars, to Publicius and Optatus.*

You apprehend in vain that proof will be required from the defendant in the case.

Given the thirteenth of the *Kalends* of ... during the Consulate of Bassus and Quintian, 289.

9. *The Same, and the Cassars, to Marciana.*

As you allege that you are less than twenty-five years old, you should appear before the Governor of the province and prove your age.

Given on the *Ides* of April, during the Consulate of the abovementioned Emperors, 293.

10. *The Same, and the C&sars, to Isidor.*

Neither the circumstances attending your birth (even though you can prove that you are freeborn), nor the offices which you allege you have held, are sufficient evidence that your daughter was born free; for there is nothing which prevents you from being freeborn, and her from being a slave.

Given on the eighteenth of the *Kalends* of May, during the abovementioned Consulate, 293.

11. *The Same, and the C&ssars, to Antonia.*

If you are confident that you can show that the heir appointed by your paternal aunt is not entitled to the estate, on account of some defect in the will, or for any other reason, you can institute proceedings with reference to the estate before the Governor of the province.

Given on the fifth of the *Kalends* of May, at Heraclea, during the Consulate of the Caesars, 294.

12. *The Same, and the C&sesars, to Chronia.*

Nothing is accomplished by means of written instruments, as they are merely evidence of what has been done, and you must establish, by such evidence as you can produce, that the purchase was made by your father, and that he was placed in possession of the property, and paid the price of the same.

Given on the fifth of the *Nones* of October, during the Consulate of the Caesars, 299.

13. *The Same, and the C&sesars, to Justin.*

Blood relationship is not established by letters, but by the evidence of birth, or the ceremony of adoption; and where for the purpose of dividing an estate an arbiter is demanded by a female slave, against an absent person, whom she alleges is her brother, this does not affect the truth of the matter. Therefore, if you are confident that you can prove that you have sent a letter to the said female slave, as your sister, or if it is shown that an arbiter was demanded for her, as for a co-heir, in a case in partition, the question of brotherhood cannot be disposed of in this way.

Given on the *Kalends* of December, during the above-mentioned Consulate, 299.

14. *The Same, and the C&sesars, to Munitiamts.*

It is not by mere assertions, nor by a false statement (even though both parties may agree to it), but by conception during lawful marriage, or by the formalities of adoption, that persons can legally be shown to be the sons of their alleged father. Hence, if you are confident that you can establish that the party against whom you have filed your petition is the son of someone else, prove either by yourself or by an attorney that his statement is false.



Given on the *Kalends* of December, during the Consulate of the above-mentioned Emperors, 299.

15. *The Same, and the Csesars, to Antony.*

The violence of him who contends that he is the master will in no way avail in placing the burden of proof of his freedom upon the slave. Therefore, when you acknowledge that you have fled from the house of Severus, and assert that you were in the first place detained by him unjustly and by force, inquiry should be made whether you are in possession of your freedom without having been guilty of fraud; for in this way it will be determined which of you should sustain the burden of proof.

Given on the sixth of the *Kalends* of January, during the abovementioned Consulate, 299.

16. *The Same Emperors and Cassars to Philippa and Sebastiana.*

If you are in possession of lands which your emancipated brothers have brought suit to recover, alleging that they were given to them by your common father, the necessity of proving this rests upon them. If they had possession of the said lands on the ground that they had been given to them by your father, and you, having been appointed the co-heirs of your father, demand that they prove that your claim is without foundation, in a controversy of this kind the parties will be compelled to show upon what their title to ownership is based.

Given on the tenth of the *Kalends* of February, during the abovementioned Consulate, 299.

17. *The Same, and the Csesars, to Paulina.*

In order to prove that you are freeborn, it is necessary for you to show that your mother had obtained her freedom, and that you were born afterwards; for the fact that no question was raised as to the condition of your brothers will not, in any way, contribute to your defence.

Given on the fifth of the *Ides* of February, during the Consulate of the above-mentioned Emperors, 299.

18. *The Same Emperors and Csesars to Violantilla.* You asserted in your petition that the person whom you mentioned caused to be inserted, without your knowledge, that you had given him the land in question; and if what you have stated is true, the said land cannot belong to him by the title of a donation. Wherefore, having gone before a competent judge, you must prove that your adversary, against your consent, contrived to have inserted in the will that you had transferred this land to him, so that, in accordance with the terms of Our Rescript, you can obtain a decision in your favor.

19. *The Same Emperors and Csesars to Menander.*

A dilatory exception shall be pleaded in the beginning of an action, and the plaintiff must afterwards establish the proof of his allegations.

Given at Nicomedia, on the thirteenth of the *Kalends* of April, during the Consulate of the Csesars, 300.

*Extract from Novel 90, Chapter IV. Latin Text.*

A litigant who has produced witnesses once, twice, or three times, and has discussed their evidence, or has heard it discussed by his adversary, and, by this means, learned what has been testified to, shall not have permission to call new witnesses, even under Our order. If, however, he has not done this, he should be allowed to produce witnesses a fourth time, after having been sworn that he did not suppress or dictate any of the evidence, and that none of his advocates, or anyone acting in his behalf, has done so; and that he has not, either through fraud, evil intent, or artifice, demanded that a fourth production of witnesses be made.

20. *The Same, and the Csesars, to Phromina.*

If Eutychia, after having suppressed a document evidencing her purchase, demands her freedom from the condition of slavery in which she is, as the burden of proof rests upon the claimant, if her suppression of the document is detected, it will be of no advantage to her; for if she is claimed as a slave, it will not be necessary to furnish evidence of her purchase, but it will be sufficient to prove the theft of the bill of sale.

Given at Nicomedia, on the fourth of the *Nones* of December, during the Consulate of the Caesars, 300.

21. *The Same, and the Csesars, to Crispins.*

Those who steal documents belonging to others, upon which the proof of ownership depends, can under no circumstances make use of them; as they would be of no advantage to one who is not mentioned in them, but only to him who is designated therein. Therefore, as it is not forbidden to offer other evidence, establish by legal means that the ownership of the lands in dispute belongs to you; for he who claims property from a purchaser, alleging that it was bought with his money, is not allowed to prove it. If a fact of this kind should be established, it will, nevertheless, contribute nothing to the validity of his claim.

Given on the sixth of the *Ides* of December, during the Consulate of the Caesars, 303.

22. *The Same, and the Csesars, to Agatkoclea.*

It is not sufficient proof of the servitude of Glyco to show that his mother and his brother have been slaves, for the connivance of freeborn persons cannot prejudice their relatives; nor is one of several slaves born of the same mother prohibited from obtaining his freedom.

Given on the ninth of the *Kalends* of January, during the Consulate of the Csesars.

23. *The Same, and the Csesars, to Menelaus.*

A plaintiff who alleges that he cannot establish his claim does not compel the defendant to prove the contrary; for, in accordance with the nature of things, the denial of a fact is no evidence.

Given on the eighth of the *Kalends* of January, during the Consulate of the Csesars, 304.

24. *The Emperors Valens, Gratian, and Valentinian to Antony, Praetorian Prefect.*

We order all those who allege that papers produced in court are not genuine shall be detained as forgers, and prosecuted for that crime, unless they prove that their assertions are true.

Given on the day before the *Ides* of January, during the Consulate of Valens, Consul for the fifth time, and Valentinian, 606.

25. *The Emperors Gratian, Valentinian, and Theodosius to Florus, Prsstorian Prefect.*

All accusers are hereby notified that they cannot bring a criminal charge for anything which has been established by reliable witnesses; or clearly proved by documentary evidence; or shown to be true by undoubted testimony clearer than light.

TITLE XX.

CONCERNING WITNESSES.

1. *The Emperor Alexander to Carpus.*

If a controversy arises with reference to your being freeborn, defend your case by documentary evidence and arguments if you can do so; for witnesses alone are not sufficient to establish proof of free birth.

Given on the tenth of the *Kalends* of May, during the Consulate of Maximus, Consul for the

second time, and Valerianus, 224.

2. *The Emperors Valerianus and Gallienus to Rosa.*

The testimony of members of a household is also rejected by the Civil Law.

Given on the third of the *Kalends* of September, under the Consulate of Valerian, Consul for the third time, and Gallienus, Consul for the second time, 256.

3. *The Emperors Carus, Carinus, and Numerian to Valerianus.*

It is certain that a case which is only proved by witnesses, and is not supported by any other lawful evidence, is of no force or effect.

Given on the *Kalends* of December, during the Consulate of Carus and Carinus, 283.

4. *The Emperors Diocletian and Maximian to Candidus.*

In order to ascertain the truth, witnesses must be produced who hold in greater esteem the faith due to justice than the favor and power of those entitled to the same.

Given on the fifth of the *Kalends* of May, during the Consulate of Maximian, Consul for the second time, and Aquilinus, 280.

5. *The Same, and the Csesars, to Tertullus.*

Fathers and children cannot be permitted to give evidence against one another, even if they are willing to do so.

Given at Nicomedia, on the fourth of the *Nones* of December, during the Consulate of the Csesars, 294.

6. *The Same, and the Csesars, to Diogenes and Ingenua.*

The demand which you make, namely, that the adverse party shall be compelled to produce the persons by whom the business was transacted, is entirely too strong. Therefore, understand that you yourself should introduce your own evidence in the case, and that your adversaries cannot be obliged to furnish testimony against themselves.

Given on the sixth of the *Kalends* of May, during the Consulate of the Csesars, 294.

7. *The Same, and the Csesars, to Derulonus.*

There is no doubt that a slave cannot be subjected to torture for or against his master, but he can be put to the question for some act of his own.

Given at Nicomedia, on the *Kalends* of November, under the Consulate of the Csesars, 294.

8. *The Emperor Constantine to Julian, Governor.*

We have already directed that witnesses should testify after having been sworn, and that the preference should be given to those of honorable reputation.

(1) In like manner, We have ordered that no judge shall in any case readily accept the testimony of only one witness; and now We plainly order that the evidence of only one witness shall not be taken, even though he should be distinguished by senatorial rank.

Given on the eighth of the *Kalends* of September, during the Consulate of Optatus and Paulinus, 334.

9. *The Emperors Valens, Gratian, and Valentinian to Gracchus, Urban Prefect.*

The laws deprive everyone of the power to testify in his own case.

Given on the fifth of the *Kalends* of December, during the Consulate of Valens, Consul for the fifth time, and Valentinian Junior, 376.

10. *The Emperors Honorius and Theodosius to Csecilianus, Urban Prefect.*

Witnesses called to give evidence in the cases of others must be free, if they are not said to be implicated in the crime, and confidence in their knowledge shall be required of them; and the judge, in the production of the necessary persons, that is to say, of good witnesses, must not fail to direct that their proper expenses be paid by the accuser, or by the others by whom they were summoned, when they come to court.

The same rule applies when witnesses are produced by either side in a pecuniary case.

Given at Ravenna, on the twelfth of the *Kalends* of February, during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the fourth time, 409.

*Extract from Novel 90, Chapter VI. Latin Text.*

If a witness, when introduced, is said to be a slave, and he desires to testify, but alleges that he is free, the question of his status must first be determined, and if it should appear after investigation that he is a slave, his evidence shall be rejected. Where, however, he says that he is a freedman, he must produce the document of his manumission before he testifies, unless he is willing to make oath that the evidence is elsewhere; and, if this is done, his testimony should be taken down, and if he does not produce the instrument showing his manumission, it shall be rejected. But if the witness is declared to be unacceptable on account of a criminal action pending between the parties, he shall not be heard before the said action has been decided. But when he is considered as prejudiced on account of some pecuniary litigation in which he is involved, or for some other reason, his evidence shall be taken, and the questions of this kind which arise shall be reserved for argument.

11. *The Same to Georgia.*

We forbid freedmen, under a penalty, from giving unlawful and dishonorable testimony against their patrons, and as they must not voluntarily dare to give such testimony, so, if summoned as witnesses, they cannot be compelled to appear in court for that purpose.

Given at Ravenna, on the fourth of the *Ides* of August, during the Consulate of Marinius and Asclepiodotus, 243.

12. *The Emperor Zeno to Arcadius, Prsstorian Prefect.*

We order that no one who has appeared before any judge (even though he may not be under his jurisdiction) for the purpose of giving testimony, can claim exemption on the ground of being in the army, or plead any other exception for the purpose of evading the action of the judge, which is demanded either by dishonorable evidence, or the nature of the case; but that all those who testify in civil actions shall, as it were, be deprived of their privileges of offering an exception in court, and having been stripped of its protection, shall be brought privately before the judge, in order that they may not apprehend that what they may say may offend his ears.

All magistrates (as has frequently been stated) without being prevented by any exception, are authorized to punish witnesses whose testimony seems to be either tainted with falsehood or fraud, in accordance with the nature of the offence.

Given on the twelfth of the *Kalends* of June, during the Consulate of Decius and Longinus, 486.

13. *The Emperor Justinian to Menna, Prsetorian Prefect.*

If anyone should have made use of witnesses, and the same ones are introduced against him in another action, he shall not be permitted to exclude them, unless he can show that enmity has subsequently arisen between him and them, on account of which the laws direct that witnesses shall be rejected; and under such circumstances he should not be deprived of the power to contradict their testimony by means of their own statements. If, however, he should show by

undoubted evidence that they have been corrupted either by the gift or the promise of money, We order that he shall have the right to prosecute them.

Given on the seventh of the *Kalends* of June, during the second Consulate of Our Lord Justinian, 528.

14. *The Same, to Menna, Prsetorian Prefect.*

With a view to curtailing as much as possible the ease with which witnesses are obtained, by means of whom many violations of the truth are perpetrated, We order all those who state that they have contracted debts in writing shall not be heard, if they say that they have paid all, or a portion of the indebtedness, without having obtained a written discharge of the same; and if they attempt to produce witnesses of low character, or who perhaps have been bought, to prove a payment of this kind, no attention shall be paid to them, unless five respectable witnesses, who are citizens of the highest reputation, and were present at the payment of the money, state under oath that the debt was paid in their presence; so that everyone may know that it has been decided that persons cannot make payment of a debt either wholly or in part, unless they have the fact committed to writing, or can prove it by the above-mentioned oral testimony. It is, however, but reasonable to except from the provisions of the present law those who have already paid a debt, or a portion of the same. But when payment has been evidenced by a written instrument, and it has been destroyed by accident, as that of fire, shipwreck, or some other mis- -fortune, then those who have sustained the loss shall be permitted to show the cause, and prove the payment by witnesses, and in this way avoid the consequences of the loss by establishing the destruction of the instrument.

Given on the *Kalends* of June, during the Second Consulate of Our Lord Justinian, 528.

*Extract from Novel 90, Chapter II. Latin Text.*

Witnesses shall be summoned as in the case of wills, and not appear by accident as mere passersby. The same rule will apply if, being called after payment was made, they heard the acknowledgment of the creditor that the money due to him had been received.

15. *The Same to Julian, Prsetorian Prefect.*

If anyone, in accordance with Our laws, in a pecuniary case desires to call witnesses who are unwilling, and they voluntarily consent to give security that they will be present, this can be done. If, however, they refuse to do so, We order that they shall not be imprisoned, but they shall be bound by oath to appear; for if those who have produced them think that their testimony should be believed, when they are sworn in the case, they should have still more faith that the presence of the witnesses will be secured by their oath.

But, as witnesses should not, under such circumstances, be compelled to leave their homes and submit to inconvenience for the benefit of others, We order that judges shall not compel them to be present for more than fifteen days after they have been summoned, and that they shall provide that the case in which the witnesses appear to be necessary shall be heard within that time, and when one of the parties to the suit is absent, and, after having been notified by the bailiffs, has refused to appear, absolute permission is granted to judges to take the evidence of his witnesses as well as that of those of the other party who is present.

Moreover, the said term of fifteen days having expired, the witnesses shall be permitted by the judge to leave, and he shall have no authority to recall them after they have once departed. We also order that if the judge was to blame for not having the testimony given, he shall be forced to indemnify the injured party out of his own property for any damage which he may have sustained.

Given on the twelfth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

*Extract from Novel 90, Chapter II. Latin Text.*

When anyone has been wrongfully injured by another, or has sustained damage in some other way, or suffered a loss at his hands, and wishes to produce witnesses in court and publish their testimony, his adversary shall be notified by the judge, and the latter shall hear the evidence in his presence. If, however, he should refuse to appear, the judge can hear the witnesses even in his absence, and their testimony will have as much weight as if it had been taken in his presence; nor can he oppose this on the ground that evidence was introduced by only one of the parties to the suit.

16. *The Same to Julian, Prsstorian Prefect.*

Where witnesses were produced before judges appointed for the purpose of compromise, it was doubted whether the party who called them could make use of their testimony in court, or whether he should not be heard. In consequence of this, We order that where anything has been decided with reference to a compromise in cases of this kind, it shall stand; but if nothing has been agreed upon, and the witnesses are living, he against whom they have testified, and who refuses to accept their evidence, shall be permitted to have them called a second time, and this shall not be opposed on the ground that they have already given their testimony. If, however, he should refuse to accept it, it shall be received as already given, but he can contradict it by all the legal means which he is entitled to use. But when all the witnesses are dead, he will then be required to accept any of their evidence which has been committed to writing. If, however, some of them should be dead, and some living, the said litigant will, so far as the testimony of those who are living is concerned, have a right to accept their statements, or have the witnesses recalled. With reference to such as are dead, their evidence should not be rejected; but he can, as We have previously stated, avail himself of every legal resource to contradict the witnesses and their testimony.

Given on the sixth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 531.

#### TITLE XXI.

CONCERNING THE CONFIDENCE TO BE REPOSED IN WRITTEN INSTRUMENTS,  
AND THEIR LOSS, AND WHEN RECEIPTS AND COUNTER-RECEIPTS SHOULD BE  
GIVEN, AND CONCERNING WHAT THINGS CAN BE DONE WITHOUT THEIR  
BEING COMMITTED TO WRITING.

1. *The Emperor Antoninus to Marchia.*

If you prove that your debtors owe you money for some reason or other, after you have applied to the Governor of the province, he will compel them to make payment, nor will a loss of the written evidence of the debt prejudice your rights, if it should clearly appear by competent evidence that the parties in question are indebted to you.

Given on the fifth of the *Ides* of September, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Mabilianus.*

If you should make use of a written document on account of which another person has already been accused and convicted of forgery, and it should appear that he from whom you demand money is ready to accuse you of the same offence, and take the risk of the penalty imposed by the Cornelian Law, even though the person who was convicted has not appealed from the sentence, you, who have not yet been accused of crime, cannot take an appeal.

Given on the third of the *Kalends* of October, during the Consulate' of Maximus, Consul for the second time, and ^Elianus, 224.

### 3. *The Same to Jelianus.*

If your adversary has stated to the Governor of the province that he will not make use of the document which he produced, as he doubts whether it is genuine or not, you should not be apprehensive that the matter will again be brought up on account of the document, which it appears from his own statement was not genuine.

Given on the third of the *Nones* of December, during the Consulate of Maximus, Consul for the second time, and Jelianus, 224.

### 4. *The Emperor Gordian to Martian.*

If, on account of the loss of your papers, you are unable to prove that the money was paid to the public collector, an examination of the accounts of the Treasury will establish the truth of the allegation.

Given on the second of the *Ides* of February, during the Consulate of Gordian and Aviola, 240.

### 5. *The Same to the Soldiers Priscus and Marcus.*

Where the evidences of a debt have been consumed by fire, while it is unjust for debtors to refuse payment of the sums which they owe, still, too ready belief should not always be accorded to persons who complain of such an accident. Therefore, you should understand that where the instruments are missing, you ought to prove the truth of the statement in your petition by other evidence.

Given on the third of the *Kalends* of June, during the Consulate of Sabinus, Consul for the second time, and Venustus, 241.

### 6. *The Emperors Diocletian and Maximian, and the Csesars, to Lucidus.*

It is a well-established rule of law that where the certificate of your birth is lost, your civil condition is not affected thereby.

Given at Nicomedia, on the thirteenth of the *Kalends* of February, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

### 7. *The Same, and the Csesars, to Zinima.*

If you have been honorably discharged from the army, even though, as you allege, the papers showing this fact have been lost, still, if the truth can be established by other clear evidence, there is no doubt that you will be entitled to enjoy the privileges of veterans.

Given on the fifteenth of the *Kalends* of June, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

### 8. *The Same, and the Csesars, to Alexander.*

If it should be proved that the land in question belongs to you, the judge will provide that no prejudice shall result to your ownership through any act of the usufructuary growing out of the loss of your muniments of title.

Given on the fifteenth of the *Kalends* of March, during the Consulate of Diocletian, Consul for the second time, and Maximian, 287.

### 9. *The Same, and the Csesars, to Aristenetus.*

Partition of property, when legally made, shall not be considered void for the reason that no instruments have been drawn up with reference to it.

Given on the seventh of the *Kalends* of July, during the Consulate of the above-mentioned Emperors.

10. *The Same, and the Csesars, to Victorinus.*

As a sale when lawfully concluded remains valid even if no documents evidencing it have been executed, so it has been decided that where any have been executed and subsequently lost, the validity of the sale will not be affected.

Given on the eighth of the *Kalends* of November, during the abovementioned Consulate.

11. *The Same, and the Csesars, to Theagena.*

Emancipation having taken place although the documents are no longer in existence, still, if it can be proved either by reliable witnesses or by unquestionable documentary evidence that the emancipation actually occurred, the truth cannot be affected by the loss of the papers.

Given on the third of the *Ides* of November, during the abovementioned Consulate.

12. *The Same, and the Csesars, to Dionysia.*

Where you have been placed in possession of a tract of land by means of a donation, you are none the less entitled to it because no written instrument is said to have been executed for the purpose of conveying the title.

Given at Nicomedia, on the *Ides* of December, under the abovementioned Consulate.

13. *The Same, and the Csesars, to Leontius.*

The statement that documents have been lost, made in the presence of persons who are ignorant of the fact, is of no benefit for the establishment of the truth.

Given at Nicomedia, on the sixteenth of the *Kalends* of January, during the above-mentioned Consulate.

14. *The Same, and the Csesars, to Severus, Count of the Spains.*

Different documents which conflict with one another, and are produced by one and the same person, can have no effect whatever.

Given on the fourth of the *Kalends* of May, during the Consulate of the Caesars.

15. *The Emperor Constantine to the People.*

In the administration of justice, documentary evidence has the same force as the depositions of witnesses.

Given at Rome, during the *Kalends* of August, during the Consulate of Gallicanus and Bassus, 317.

16. *The Emperor Justinian to Menna, Prsstorian Prefect.*

We order that contracts of sale, exchange, or donation, registry of which is not necessary, gifts of earnest money, or those made for any other reason which are required to be in writing, and also such as relate to compromise, shall not have any force unless evidenced by written documents and confirmed by the signature of those who execute them; and if they have been drawn up by a notary, they must be completed by him, and finally acknowledged by the parties interested, so that, where these formalities have not been complied with, no one will be permitted to claim any right for himself growing out of a contract or compromise based upon a written memorandum (even though it be signed by one or both the parties), whether it has not yet been carried out, or is complete; in order that in transactions of this kind it cannot be said that the vendor was required to sell the property at a certain price; or that the contract of sale was perfected; or that the purchaser should be compelled to make payment.

We decree that this rule shall apply to instruments of this description, not only where they have already been reduced to writing, but also where they have not yet been completed; unless where a compromise has been made, or a judgment rendered, under which circumstances they



cannot be revoked.

Only those documents are excepted from this rule which have already been drawn up and published, for We do not include these in the present law, but permit them to be subject to those formerly enacted. We also add that, hereafter, where earnest money has been given for the purpose of making a sale of any kind of property whatsoever, whether the contract is in writing or not, even though it may not have been expressly stated what disposition must be made of the earnest money in case the contract was not carried out, he who promised to sell the property, and then refuses to do so, shall be compelled to pay double the amount of the deposit; and he who agreed to purchase it, and refuses to do so, shall lose the sum which was given, and shall be denied the right to recover it.

*17. The Same to Menna, Praetorian Prefect.*

We order that judges, either in this Renowned City or in the provinces, in accordance with what We have already decreed, where witnesses reside in other places, may (if they think proper to do so) send the litigants or their attorneys there, in order that the depositions of the witnesses may be taken in the presence of one or the other of the parties to the suit, and returned to them.

We also wish these rules to be observed in the case of those who, where documents have been introduced, demand that they be proved; so that if they ask for it, they may be permitted to have testimony taken elsewhere. If the judge should find this request to be just, he can issue a decree to that effect, so that afterwards, whether the document is proved or not, the matter may be sent back to the former judge.

Given on the eighth of the *Ides* of April, during the Consulate of Decius, 529.

*Extract from Novel 90, Chapter V. Latin Text.*

This proceeding may be demanded either before a judge or the defender of a city, and can take place from one province to another, or from one city to another, or from a city to a province; but the rule is only applicable to civil actions, for in criminal cases witnesses must be produced in court and subjected to torture, if the case requires it.

*18. The Same to Demosthenes, Praetorian Prefect.*

Where several persons have received receipts for rent or interest, and when any doubt arises with reference to them, the rights of their creditors become uncertain when the parties deny that they have these receipts; as where serfs dispute the ownership of their master, and unjustly claim their own freedom, or debtors, desiring to plead temporary prescription against their creditors, make similar denials. With a view to disposing of this difficulty, We order that if, in the above-mentioned cases or in any other private ones resembling them, anyone who gives a receipt should desire to have a copy with the signature of the person who received it, he will be entitled to do so, or to receive a counter-receipt; so that, if permission is granted him, he who obtained the receipt will be obliged to give a counter-receipt in return; and if the creditor neglects to do this, the rights of the person who did not receive the counter-receipt will not be prejudiced; for it is contrary to the rules of equity that what has been introduced for the benefit of anyone should redound to his injury.

Given on the twelfth of the *Kalends* of October, during the fifth Consulate of Decius.

*19. The Same to Julian, Praetorian Prefect.*

It is clear that the comparison of notes and other instruments, which are not publicly executed, very frequently gives occasion to accusations of forgery, both in lawsuits and in contracts. Therefore, We order that no comparison of private papers shall be made, unless they bear the signature of three witnesses, and that, before they are accepted, either all three of them, or at least two, must acknowledge the genuineness of their signatures before a comparison of the

instruments takes place, as only under such circumstances is a comparison of handwriting allowed; for, otherwise, We forbid such a comparison to be made, even though someone may produce a written instrument against himself; except where a comparison is necessary in the case of instruments originating in court, or in public documents, or in papers of the kind which We have mentioned.

We do not allow any comparison to be made, unless it has previously been stated under oath by the persons who are to make it that they do so without being induced by the hope of gain, or by enmity, or by favor.

We order that this rule shall be observed in all the Imperial bureaus as well as in the tribunal of the eminent prefecture; in that of the commander of the army; and in those of all other judges who have been appointed in Our dominions. These provisions shall be complied with hereafter, for to annul any comparisons which have already been made would not be without danger.

Given on the thirteenth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

*Extract from Novel 49, Chapter II. Latin Text.*

You very properly ask that an examination of the instruments which your adversary produces and makes use of be permitted; and any document which is produced in the Public Archives is also subject to public evidence of this kind.

*Extract from Novel 73, Chapters VIII, and IX. Latin Text.*

If, however, the contract was made in a city, and was for more than one pound of gold, it must, by all means, be proved by comparison of handwriting, for it alone is not sufficient evidence.

20. *The Same to Julian, Prætorian Prefect.*

When anyone introduces a written instrument or some other paper, and proves its genuineness, and afterwards the person against whom the said paper or instrument was produced attempts to show that it was forged, in order that doubt may no longer exist as to whether he who introduced the paper can be compelled to again establish its genuineness, or whether the former evidence was sufficient, We order that when such a case occurs, he who asks that the paper be produced a second time must first make oath that he thinks he can prove that it is forged, to enable a petition of this kind to be considered. But what course must be pursued if he should make a demand of this kind, being well aware that the document was lost or burned, or had been destroyed in some other way, and he pretended to require its production, knowing the difficulty of doing this? After the plaintiff or the claimant has been sworn, and the accusation brought before a competent judge, the necessity will then be imposed upon the person who introduced the document in question to introduce it again in court, in order that the accusation of forgery may be investigated. If, however, he should say that it is not possible for him to produce the paper, because he has been deprived of it by accident, he must then swear that he has not the said paper in his possession; that he has not given it to anyone; that it is not held by another with his consent; and that he has not been guilty of fraud to prevent its appearance, but, as the said document has actually been lost without his fault, its production by him is impossible.

If he takes an oath of this kind he shall be excused from the necessity of producing the paper, but if he refuses to take it, then the instrument shall be considered forged, and of no effect, so far as the party against whom it was produced is concerned, but shall be absolutely void. We do not, however, desire to subject to further punishment persons who, under such circumstances, refuse to be sworn, as there are many who, influenced by too great reverence, are not even willing to swear to something which is true.

We grant the same opportunity to the other party until the action has been decided in court, for if it has already been terminated, and has not been suspended by appeal, it cannot be expected to be revived by means of the usual procedure; as it is sufficiently hard to authorize a complaint of this kind, lest cases may be protracted indefinitely, and matters which have already been settled by this means, may again be opened, and the opposite of what We have intended occur.

Given on the tenth of the *Kalends* of March, during the Consulate of Lampadius and Orestes, 530.

#### TITLE XXII.

##### WHAT HAS ACTUALLY BEEN DONE HAS MORE FORCE THAN WHAT HAS BEEN SIMULATED AND EXPRESSED IN WORDS.

###### 1. *The Emperors Valerian and Gallienus to Rufinus.*

In contracts, the truth of the matter should rather be considered than what is stated in writing.

###### 2. *The Emperors Diocletian and Maximian, and the Csesars, to Soterus.*

Fictitious instruments, as, for instance, those which state that not the husband, but the wife, made the purchase, cannot alter the truth; hence the question of fact should be examined by the judge or the Governor of the province.

Given on the tenth of the *Kalends* of May, during the Consulate of the Csesars.

###### 3. *The Same, and the Csesars, to Maxima.*

Where the purchase of a pledge has been made, not what was written, but what was done should be considered.

Given on the *Kalends* of May, during the Consulate of the Csesars.

###### 4. *The Same, and the Csesars, to Decius.*

If anyone should cause it to be stated in writing that what he himself did was done by another, the act is of greater force than the document.

Given on the eighth of the *Kalends* of December, during the Consulate of the Caesars.

###### 5. *The Same, and the Csesars, to Victor.*

If you should sign a false contract of sale, under the impression that it was a lease you had directed to be drawn up for you, and which the other party did not sign, but you did in good faith, there is no doubt that neither contract is valid, as in both instances consent was lacking.

Given on the thirteenth of the *Kalends* of January, during the Consulate of the Caesars.

#### TITLE XXIII.

##### CONCERNING LOANS FOR USE.

###### 1. *The Emperors Diocletian and Maximian to Sciola.*

Those things which are destroyed by the exertions of superior force cannot be at the risk of the persons to whom the property was lent for use; but as you state that he to whom you lent an ox proposed to assume the risk of future damage and loss through a threatened incursion of the enemy, the Governor of the province shall compel him to carry out his agreement, if you can prove that he promised to indemnify you.

Given on the sixth of the *Kalends* of June, during the Consulate of the same Emperors.

###### 2. *The Same to Aulizanus.*

As good faith requires the restitution of a female slave by the person who received her for

temporary service, the result will be that your father-in-law must show before the Governor of the province why the female slave was delivered to him, in order that the party against whom you have filed your petition may be forced to comply with his contract.

Given on the day before the *Nones* of November, during the Consulate of the same Emperors.

3. *The Same to Soteria.*

With reference to the restoration of the property, which you gave to your husband to be encumbered in his behalf, you can, after the debt has been paid, bring the action of loan even against his heirs.

Given on the third of the *Ides* of April, during the Consulate of the same Emperors.

4. *The Same, and the Ctesars, to Faustina.*

The return of a loan cannot properly be refused under the pretext of a debt.

Given on the twelfth of the *Kalends* of December, during the same Consulate.

TITLE XXIV.

CONCERNING THE ACTION OF PLEDGE.

1. *The Emperor Alexander to Demetrius.*

What has been obtained by the labor of the female slave, or from the rent of the house which you state is held in pledge, will disclose the amount of the indebtedness.

Given on the *Kalends* of October, during the Consulate of Antoninus, Consul for the fourth time, and Alexander, 223.

2. *The Same to Victorinus.*

A creditor who holds land in pledge is required to diminish the amount of the debt by the value of the crops which he has collected, or should have collected; and if he injures the land, he will on this account be liable to the action of pledge.

Given on the sixth of the *Ides* of December, during the Consulate of Antoninus, Consul for the fourth time, and Alexander, 223.

3. *The Same to Hermius and Maximilla.*

The contract to which you refer, under whose terms, if the money due should not be paid within a certain time, permission is granted to sell the land pledged or hypothecated, does not deprive the debtor of the right to bring the action on pledge against his creditor.

Given on the twelfth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Jelianus, 224.

4. *The Same to Dioscorida.*

If the creditor, without his fault, has lost the silver given him in pledge, he is not required to make it good. If, however, he should be found guilty of negligence, even though it may not be clearly proved that he lost the silver, judgment shall be rendered against him for the amount of the interest of the debtor.

Given on the thirteenth of the *Kalends* of May, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

5. *The Same to Trophina.*

Whatever happens accidentally and cannot be provided against, as, for instance, an attack by robbers, does not furnish ground for a guarantee in a *bona fide* action, and therefore a creditor is not compelled to be responsible for property which has been lost in this way; nor will he be barred from bringing suit to recover the debt, unless it was agreed upon between the

contracting parties that loss of the pledges would release the debtor.

Given on the *Ides* of April, during the Consulate of Fuscus and Dexter, 226.

6. *The Emperor Gordian to Julian.*

A creditor, who has received lands and houses in pledge or by way of hypothecation, is required to deduct from the amount of the indebtedness the damage he caused by cutting down trees, or demolishing buildings; and if through fraud or negligence he has rendered the property mentioned less valuable, he will be liable on this ground in the action on pledge, and will be required to restore everything to the condition in which it was at the time when the obligation was contracted.

A creditor, however, is not forbidden to demand any necessary expenses incurred by him with reference to the property pledged. .

Given on the thirteenth of the *Kalends* of August, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

7. *The Emperor Philip, and the Cassar Philip, to Saturninus.* If neither blame nor negligence can be imputed to a creditor, he' will not be responsible for the loss of pledges; but if such a loss is simulated, and, as you allege, the pledges are still in the possession of the adverse party, you can institute proceedings against him.

Given on the eighth of the *Kalends* of March, during the Consulate of Praesens and Albinus, 247.

8. *The Emperors Diocletian and Maximian, and the C&sars, to Georgius.*

There is no doubt that the pledge continues to be part of the property of the debtor, and hence if it is destroyed he must bear the loss. Therefore, as you state that the articles pledged were placed in warehouses, the result will be that, according to the general law that pledges are at the risk of the debtor (if the said warehouses are such as are ordinarily publicly used by others for the deposit of property), you will undoubtedly be entitled to a personal action to recover the entire debt.

Given at Milan, on the sixth of the *Nones* of May, during the Consulate of the above-mentioned Emperors.

9. *The Same, and the Csesars, to Apollodora.*

Neither creditors nor their successors can protect themselves by prescription based upon long time against debtors who demand property which has been pledged, after having paid the debt in full, or after having tendered, sealed up, and deposited the money for the creditors who refused to receive it. Therefore, understand that if you can show that this is the origin of the possession of the property by your adversary, you can recover it.

Moreover, in order that the creditor may be able to protect himself from the demand for the pledge, you will be required to prove the indebtedness; or if you hold the property pledged and claim it, he will be required to do the same thing; and the release of the pledge will not be difficult for you to obtain, either by payment of the money, or by tendering and formally depositing it.

Given on the *Nones* of May, during the Consulate of the Csesars.

10. *The Same Emperors and Caesars to Ammianus.*

The nature of the action on pledge shows that the property which has been encumbered should be returned as soon as the debt has been paid. In accordance with this rule, if you have pledged certain slaves, you can avail yourself of the same action; as the creditor cannot, at his will, appropriate the property of the debtor without an agreement to that effect, or an order of the Governor authorizing it to be done.

Given on the fifth of the *Kalends* of January, during the Consulate of the Caesars.

11. *The Same Emperors and Csesars to Heriscus.*

An account having been taken of the profits obtained by the creditor from property which has been pledged to him, and credited upon the debt, and the balance having been paid, or (if it was the credi-

tor's fault that this was not done), the amount due having been tendered, sealed up, and deposited, the pledges given as security shall be restored to the debtor, against whom prescription based upon long time can not be pleaded.

Given on the twelfth of the *Kalends* of December, during the Consulate of the Csesars.

TITLE XXV.

CONCERNING THE ACTIO INSTITORIA AND THE ACTIO EXERCITORIA.

1. *The Emperor Antoninus to Hermes.*

Your slave, by receiving a sum of money which had been loaned, renders you liable to the *Actio institoria*, when you have appointed him to discharge some duty, or conduct some business, and it is proved that permission was given by you for him to do this. The action, however, will not lie if it should be proved that the money was employed for the benefit of your property; but you will be compelled to make payment by means of the proceeding available for this purpose.

Given on the eighth of the *Kalends* of September, during the Consulate of the two Aspers, 213.

2. *The Emperor Alexander to Callistus.*

Although masters are only liable to the amount of the *peculium* of their slaves, in contracts made by the latter, still, there is no doubt that a master can be sued for the entire amount where the money has been employed for the benefit of his property, or the contract was made by the slave as agent, in an affair which he was appointed to transact.

Given on the third of the *Kalends* of May, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Same to Martia.*

The *Actio institoria* will lie in your favor against the person by whom, as you allege, a slave has been appointed to take charge of his counting-house, if you can prove that the money was deposited with the said slave, and not returned, in the course of the business with which he was entrusted.

Given on the *Nones* of May, under the Consulate of Agricola and Clementinus, 331.

4. *The Emperors Diocletian and Maximian, and the Csesars, to Antigona.*

If a woman should be appointed to command a ship, she will be liable in an *Actio exercitoria* for the contracts of him who appointed her, just as in the case of an *Actio institoria*.

Given on the thirteenth of the *Kalends* of November, during the Consulate of the Csesars.

5. *The Same Emperors and Csesars to Gaius.*

If you are sure you can prove that Domitian directed Demetri-anus to borrow a certain sum of money from you, you can bring suit against Domitian before a competent judge in the same way as in an *Actio institoria*.

Given on the fourth of the *Kalends* of November, during the Consulate of the Caesars.

6. *The Same Emperors and Csesars to Onesima.*

He who conforms to the will of the master when he makes a contract with his slave can legally hold the former responsible for the entire amount by an action resembling the *Actio institoria*.

Given on the fourteenth of the *Kalends* of December, during the Consulate of the Csesars.

TITLE XXVI.

WHEN BUSINESS IS SAID TO HAVE BEEN TRANSACTED WITH ONE WHO IS UNDER THE CONTROL OF ANOTHER, OR WITH REFERENCE TO PECULIUM; OR WHERE SOMETHING HAS BEEN DONE BY THE ORDER OF ANOTHER; OR WHERE ANYTHING IS EMPLOYED FOR THE BENEFIT OF THE PROPERTY OF THE PERSON IN CONTROL.

1. *The Emperors Severus and Antoninus to Mlius.*

When a son under paternal control is appointed a guardian or curator, the action on guardianship, or of voluntary agency, or *De peculia*, or for money employed for the benefit of the property of another, should be brought against the father. Where a son is created a decurion with the consent of his father, and is afterwards appointed a guardian by magistrates, his father will be compelled to pay the entire debt, as this liability is understood to be incurred in the same way as that of other municipal charges.

Given on the seventh of the *Ides* of November, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

2. *The Same to Annius.*

It has been declared by the interpretation of the Perpetual Edict that where a contract having reference to property has been made with a son under paternal control, either with the consent of the latter, or with that of him to whose authority he was subject, whether the money was to be employed for the benefit of his own *peculium* or for the benefit of the property of his father, and he should reject his father's estate, an action can only be brought against him for the amount that he is able to pay.

Given on the eighth of the *Kalends* of December, during the Consulate of Dexter, Consul for the second time, and Priscus, 197.

3. *The Emperor Antoninus to Artemon.*

If you lend money to the slave of Prisca, without his mistress directing this to be done, or ordering it, or consenting to it, still, if the amount was legally expended for the benefit of the property of his mistress, suit can be brought against her on that ground, and you can obtain what appears to be due to you in accordance with the forms of law.

Given on the third of the *Kalends* of July, during the Consulate of Lsetus and Cerealis, 216.

4. *The Same to Lucius.*

If you have obtained a loan of money under a contract of your father, and by his order, and you reject his estate, you will have no reason to apprehend that you will be sued by his creditors.

Given on the fifth of the *Kalends* of January, during the Consulate of Messala and Sabinus, 215.

5. *The Emperor Alexander to Asclepiades.*

Nothing prevents sons under paternal control, who are over twenty-five years of age, and have become sureties for others, from being liable in a proper action brought against them. If, however, suit is brought against you only to the amount of your *peculium*, avail yourself of all the defences to which you are entitled.

Given on the sixth of the *Ides* of December, during the Consulate of Maximus, Consul for the second time, and ^lianus, 224.

6. *The Emperors Valerian and Gallienus, and the Cassar Valerian, to Matronus.*

If your slave, having borrowed a sum of money without your permission, grants his creditor a right of habitation, in lieu of interest, your adversary can, on no legal ground, claim this privilege for himself, as the act of the slave did not render you liable; and, having entered upon your property, you will be protected against his violence by the authority of a competent judge.

Given on the twelfth of the *Kalends* of July, during the Consulate of ^milianus and Bassus, 260.

7. *The Emperors Diocletian and Maximian, and the Cassars, to Crescens.*

There is no doubt that anyone who has lent a sum of money to a slave belonging to another will, during the lifetime of the slave and within a year after his death, be entitled to bring the action *De peculio* against the master of the said slave; or if the sum was employed for the benefit of the property of the said master, to bring a praetorian action against him even a year after the death of the slave. Therefore, if the money has been employed for the benefit of the master's property, you can sue his heirs for the amount expended for that purpose. If, however, you are unable to prove that this is the case, the result will be that, if the slave is still living, you can sue his master in the action *De peculia*; or if he is dead, or has been sold or manumitted, and the year has not expired, you can bring this action against the person having him in possession.

(1) Where, however, you made a contract with a freeman who transacted the business of the person whom you mentioned in your petition, and chose him as your debtor; understand that you have no right of action against his principal, unless the money was employed for the benefit of the property of the latter, or he ratified the contract.

Given at Byzantium, on the *Nones* of April, under the Consulate of the above-mentioned Emperors.

8. *The Same Emperors and Czesars to Diogenes.*

If you have acted as the mandator of your son, or a contract was made with him by your order while he was under your control, understand that you are liable for both principal and interest, and will be compelled to pay them, in order that the property pledged may be released. If, however, you became surety for the money lent, it is a well-established rule of law that you will be responsible under this obligation.

Given on the third of the *Kalends* of May, during the Consulate of the Caesars.

9. *The Same Emperors and Csesars to Isidor.*

If you became a debtor under a contract which had not an unlawful loan for its object, or if you became surety for your father, you will legally be liable for the indebtedness, whether you are under the control of your father, or whether, by his death, you have become independent. If you are the heir of your father, you will be liable in full; otherwise, for as much as you are able to pay in accordance with the terms of the Edict. If, however, you have become your own master by emancipation, you should understand that you are equally liable.

Given at Byzantium, on the sixth of the *Ides* of April, under the Consulate of the Csesars.

10. *The Same, and the Csesars, to Diogenes and Aphrodisius.*

When slaves, having the free administration of their *peculium*, sell mares with their colts, which form part of said *peculium*, their master will not have the power to rescind the contract. If, however, the said slaves, not having the free administration of their *peculium*, should sell



property belonging to their master, without his knowledge, they cannot transfer to another the ownership which they do not possess, nor can they deliver lawful possession to purchasers who are aware of their servile condition. Hence, it is clearly not unreasonable that such purchasers cannot be benefited by prescription based upon long time; and therefore, having purchased movable property from a slave, they will also be liable in an action for theft.

Given on the fifth of the *Nones* of October, during the Consulate of the Csesars.

11. *The Same, and the Csesars, to Attains.*

Where anyone makes a contract with a female slave (whom it is established by law cannot legally be bound) against her master for the amount to which her *peculium* has been increased during the lifetime of the said slave, there is no doubt that an action should be granted within the available year after her death.

Given on the day before the *Kalends* of December, during the Consulate of the Csesars.

12. *The Same Emperors and Csesars to Victor.*

It has been established by the Perpetual Edict that a master cannot be bound by his slave, and that an action should be granted the creditors of the latter only to the extent of his *peculium*, after having deducted the amount which he naturally owes to his master; or, if it should be proved that any of the money was employed for the benefit of the master's property, an action can be granted them on this ground.

Given on the thirteenth of the *Kalends* of February, during the Consulate of the Casars.

13. *The Emperors Honorius and Theodosius to John, Prsetorian Prefect.*

It is clear that masters are liable under the Prsetorian action which is designated *Quod jussu*, if they direct their slaves or agents to count out a certain sum of money. Hence We order, by this law, which shall have the force of an Edict and be perpetual, that where anyone lends money to a slave, a serf, a tenant, an agent, or a steward, the masters or cultivators of the land will not be liable; and it is not proper that friendly letters, by which men frequently recommend a person who is absent, should cause money which was not asked for to be expended for the benefit of land, as a master cannot legally be liable unless money was especially furnished at his request.

We desire that any creditors who, without the order of the master and without having received sureties for that purpose, advance money to persons of this kind, shall lose what they have lent. Where, however, an agent, a slave, or the superintendent of land should be found not to owe any to his master on account of the property of which he had administered, We grant permission to a creditor to avail himself of a prsetorian action with reference to the *peculium*.

Given at Ravenna, on the fifth of the *Ides* of July, during the Consulate of Honorius, Consul for the tenth time, and Theodosius, Consul for the sixth time, 415.

## TITLE XXVII.

### BY MEANS OF WHAT PERSONS PROPERTY CAN BE ACQUIRED BY US.

1. *The Emperors Diocletian and Maximian to Marcella.*

It is an undoubted rule of law that, with the exception of possession, nothing can be acquired for us by a free person who is not subject to the authority of another. Therefore, if an agent should make a contract, not in his own name, but in that of the person whose business he is transacting, by which, under certain circumstances, he reserves the right to demand the return of the property sold, and a stipulation is attached to the contract, no obligation is acquired by the master. Where, however, property has been delivered to slaves, it is acquired for their master.

Given on the *Kalends* of July, during the Consulate of the same Emperors.

## 2. *The Emperor Justinian to Julian, Prsetorian Prefect.*

Whenever a sum of money is counted out by one free person in the name of another, the right to a personal action will be acquired by him in whose name the money is lent by this act of counting it, but the right of hypothecation or pledge of property given to an agent will not be acquired by the principal parties to the contract; and for the purpose of disposing of this difference, We order that the right to the personal action, as well as that to the hypothecary action shall, by operation of law and without any assignment, vest in the principal party to the contract. For if the agent is required by law to assign his right of action to his principal, why should the assignment of this action appear to be superfluous in the beginning, and will not the principal party to the contract in the case of pledge or hypothecation in like manner acquire for himself the hypothecary action, the pledge, or the right to retain the same?

Given on the *Kalends* of November, during the fifth Consulate of Lampadius and Orestes, 530.

## 3. *The Same to Julian, Prsetorian Prefect.*

When two or more persons own a slave in common, and one of them orders him to make a stipulation for something in his name, for example for ten *aurei*, or for some other property, and the said slave mentions, not the name of the one who gives the order, but that of another of his masters, and stipulates in the name of the latter, the question arose among the ancient authorities, who would be entitled to the action, or the profit growing out of this transaction, he who gave the order, or the one whom the slave mentioned, or both? As all these opinions were, after much discussion, adopted by a large number of authorities, the better opinion seems to Us to be that of those who held that the stipulation should be considered as made by the person who ordered it to be done, and who asserts that he alone was entitled to the acquisition, rather than the views of the others which are stated on this point. For no indulgence should be shown to the wickedness of slaves, so that they, after treating the orders of their masters with contempt, may be permitted to enter into stipulations according to their own wishes, and thereby transfer to another master, who perhaps had corrupted them, the profit to which someone else was entitled. Nor ought it to be tolerated that an impious slave may think no obedience should be paid to his master, who had given him the order, and that he was at liberty to confer an unexpected benefit upon another who, perhaps, had no knowledge of the transaction; for it was repeatedly stated by the ancients that the order of a master did not differ from an appointment, and ought to be obeyed when a slave was ordered by one of his masters to make a stipulation, without stating in whose name it should be done; for in this instance, the one who gave the order would be the only one to obtain the benefit. Where, however, he mentioned the name of another of his masters, the acquisition will be solely to his advantage, for it is much more important than his order.

Given on the fifteenth of the *Kalends* of December, during the fifth Consulate of Lampadius and Orestes, 530.

## TITLE XXVIII.

### CONCERNING THE MACEDONIAN DECREE OF THE SENATE.

#### 1. *The Emperor Mlius Pertinax to Atilius.*

If you can prove that for good reasons you believed the statements of a son under paternal control, to whom you lent money, and who stated that he was the head of a household, he shall be refused an exception.

Given on the tenth of the *Kalends* of April, during the Consulate of Falco and Clarus, 194.

#### 2. *The Emperors Severus and Antoninus to Sophia.*

Whether Zenodorus, who was generally considered to be his own master, contracted with the

consent of his father, or received a sum of money to be employed in matters with which the latter was charged, and afterwards, having become independent by means of a novation, or in some other manner, he assumed liability for the debt, it is reasonable that the Decree of the Senate should not be applicable.

Given on the fifth of the *Kalends* of March, during the Consulate of Saturninus and Gallus, 199.

### 3. *The Same to Macrinus.*

Where a son, subject to the authority of his father, having purchased something, promised to pay the price of the same with interest to the vendor, there is no doubt that the Decree of the Senate by which a son under paternal control is forbidden to pay any interest will not apply; for the origin of the obligation rather than the title of the action should be taken into consideration.

Given on the *Ides* of March, during the Consulate of Saturninus and Gallus, 199.

### 4. *The Same to Cyrilla.*

If you lent money to a son under paternal control with the permission of his father, the authority of the Decree of the Senate cannot be invoked. Hence the recovery of the pledge which formed part

of the property of the father will not be refused, especially where the son becomes his heir, provided no other creditor appears whose rights are preferable to yours under the terms of a contract, or in point of time.

Given on the twelfth of the *Kalends* of May, during the Consulate of Fabian and Mutian, 202.

### 5. *The Emperor Alexander to Musa.*

The authority of the Macedonian Decree of the Senate does not prevent a demand being made for money which was lent to a son under paternal control, for the purpose of prosecuting his studies, or in order to meet the necessary expenses of an embassy, which paternal affection would not have refused him. The action *De peculia* growing out of the contract of the son will lie, even after his death, against his father, where the time of the available year does not prevent it from being brought. If, indeed, the money is proved to have been loaned, by order of the father, it will not be necessary to inquire to what use it was put, but the action can be brought against the father without limitation of time, even after the death of the son.

Given on the day before the *Kalends* of May, during the Consulate of Agricola and Clementinus, 231.

### 6. *The Emperor Philip and the Cassar Philip to Theopompus.*

If your son, while under your control, should borrow money in violation to the Macedonian Decree of the Senate, the action *De peculio* can, under no circumstances, be legally brought against you on this account. Although the Decree of the Senate only mentions a son under paternal control, its provisions extend to grandsons and great-grandsons.

Given on the sixth of the *Nones* of March, during the Consulate of Philip and Titian, 246.

### 7. *The Emperor Justinian to Julian, Praetorian Prefect.*

If a son under paternal control should borrow money without the order, mandate, or consent of his father, and the latter should afterwards ratify the contract, We, with a view of disposing of the doubts entertained by the ancient jurists on this subject, do hereby order that, just as if the said son under paternal control had, in the beginning, borrowed the money with the consent or under the direction of his father, he shall be absolutely liable; so that even if his father afterwards ratifies his contract, it will still be valid, as it would be unjust to reject the paternal consent. For the ratification of the father is not unlike his mandate given in the first place, or

his consent; as, in accordance with Our new law, every ratification has a retroactive effect, and confirms everything which was done from the beginning.

These rules are applicable to the transactions of private persons.

(1) Where, however, a son under paternal control, who is a soldier, borrows money without either the mandate, consent, approbation, or ratification of his father, the contract must stand; and it

makes no difference for what purpose the money was borrowed, or how it was expended, as, according to several principles of law, soldiers are considered to resemble men who are their own masters, and a soldier is always presumed not to have borrowed and expended any money except for some purpose connected with his military service. Given on the twelfth of the *Kalends* of August, during the fifth Consulate of Lampadius and Orestes, 530.

#### TITLE XXIX.

##### CONCERNING THE VELLEIAN DECREE OF THE SENATE.

###### 1. *The Emperor Antoninus to Lucilla.*

Relief is granted by the Decree of the Senate to women who become liable, or assume the obligations of others, when the contracting parties are not aware of the fact. If, however, having voluntarily assumed the obligation, they should pay money in behalf of others when they are not liable, they will have no right of recovery.

Given on the *Nones* of December, during the Consulate of Gentian and Bassus, 212.

###### 2. *The Same to Nepotiana.*

You have in vain attempted to avail yourself of the exception authorized by the Decree of the Senate, enacted for the benefit of women who become sureties for others, as you yourself are the principal debtor; for the exception of the Decree of the Senate is only granted to a woman where she herself owes nothing as principal, but has become surety to a creditor for another debtor. If, however, she should obligate herself to the creditor of another person, or permit herself to be delegated for his debtor, she will not be entitled to the benefit of this Decree of the Senate.

Given on the third of the *Ides* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

###### 3. *The Same to Servatus.*

If you yourself borrowed a sum of money, and your mother, in violation of the Decree of the Senate, became your surety, she can defend herself by means of an exception.

Given on the third of the *Ides* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

###### 4. *The Emperor Alexander to Alexandra.*

The Decree of the Senate applies when a woman has assumed an obligation incurred by another, or when she becomes surety for him; or where someone has borrowed money, and she herself is the principal debtor in the beginning. This occurs whenever her own property is encumbered for the obligations of others. If, however, you, being at the time more than twenty-five years of age, sold your land and paid the purchase-money for the benefit of your husband, the aid of the Decree of the Senate cannot be invoked.

Given on the sixth of the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

### 5. *The Same to Popilia.*

If your property has been pledged by your husband without your consent, it will not, legally, be encumbered. Where, however, you have agreed to the obligation, and the creditor was aware of the fact, you can avail yourself of the aid of the Decree of the Senate. But if you permitted your husband to encumber your property, as if it was his own, with the intention of deceiving the creditor, relief cannot be granted you under the Decree of the Senate, which was enacted to protect the weakness, and not the duplicity of women.

Given on the fifteenth of the *Kalends* of July, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

### 6. *The Same to Torquatus.*

When a mother, while transacting the business of her daughters, gives security to their guardians by furnishing a surety, or delivering pledges, as she is considered, to a certain extent, as having attended to their affairs, neither she nor the surety furnished by her can take advantage of the Decree of the Senate, nor will she derive any benefit from the fact that her own property was pledged.

(1) When the guardian desires to excuse himself, and the mother interposes to prevent it, and promises him indemnity, she will by no means be prevented from availing herself of the aid of the Decree of the Senate.

(2) If, however, she should demand a guardian, and voluntarily assume responsibility for the guardianship, the authority of the law will prevent her from becoming liable.

Given on the sixth of the *Ides* of October, during the Consulate of Modestus and Probus, 229.

### 7. *The Emperor Gordian to Vivian.*

Where a creditor has knowingly received from a husband, as security for his own debt, land which belonged to his wife, even with her consent, he cannot, by selling the land, deprive the woman of ownership, on account of the protection afforded by the Decree of the Senate; and it would not be necessary for you, when you claim the property, to pay the price to the purchaser, if you have become your mother's heir.

Given on the twelfth of the *Kalends* of October, during the Consulate of Pius and Pontianus, 239.

### 8. *The Same to Tripho.*

If children of both sexes, who have been emancipated, jointly assume a debt of their father, although the daughters are exempted from the obligations of men by the exception of the Velleian Decree of the Senate, the sons will, nevertheless, be liable to the extent to which they have bound themselves; and there is no doubt that the daughters having thus been exempted, the father can be sued for the same amount for which he would have been responsible if his daughters had not become bound for him. The pledges given by the father will undoubtedly be encumbered if they were received for the last obligation. If, however, they were obtained on account of the first obligation, they will only be liable in proportion to the amount returned to the father by the *Actio restitutoria*.

Given on the *Nones* of October, during the Consulate of Pius and Pontianus, 239.

### 9. *The Same to Proculus.*

Although a woman can make payment in behalf of another, still, if she should do so by virtue of an obligation which is not valid under the Decree of the Senate, and she is ignorant that she was entitled to the benefit of the Decree, she will have a right to recover the money.

Given on the *Nones* of July, under the Consulate of Gordian and Aviola, 240.

10. *The Emperor Philip and the Csesar Philip to Triphona.*

If your adversary entered into a business transaction with you but not with your husband, you can, under the pretext that an obligation of this kind is void, refuse to pay the balance of the rent which you agreed that you contracted for. If the owner leased the land, not to you but to your husband, and accepted you as surety for him, you can also defend yourself by pleading the benefit of the Decree of the Senate, which was enacted with reference to women becoming sureties.

Given on the eighteenth of the *Kalends* of September, during the Consulate of Peregrinus and Jiiimilianus, 245.

11. *The Same to Eborā.*

It is a well-established rule of law that, while marriage exists, the right of hypothecation or pledge can be granted to the husband.

Given on the eighth of the *Kalends* of October, during the Consulate of Peregrinus and J^milianus, 245.

12. *The Emperors Valerian and Gallienus to Sepiduta.*

If, desiring to endow your daughter, you have encumbered your property to your son-in-law, you are mistaken if you think that you can invoke the aid of the Decree of the Senate, for persons learned in the law have held that a case of this kind is not entitled to that privilege.

Given on the ninth of the *Kalends* of March, during the Consulate of Tuscus and Bassus, 339.

13. *The Emperors Diocletian and Maximian to Condiana.*

If money has actually been lent to you at interest by your creditor, whether it is alleged that the entire amount, or only a portion

of the same, has been employed for the benefit of your husband, you cannot avail yourself of the Decree of the Senate, even though your creditor may not have been ignorant of the cause of the contract.

Given on the third of the *Kalends* of September, during the Consulate of the same Emperors.

14. *The Same Emperors and Csesars to Basilissa.*

A woman cannot become surety in violation of the terms of the Velleian Decree of the Senate, and the law permits her sureties to avail themselves of the same exception. Therefore if your mother should not become the heir of her husband, she will be sufficiently protected by the remedy of the exception authorized by the Decree of the Senate.

Given at Byzantium, on the eighth of the *Kalends* of April, under the Consulate of the Caesars.

15. *The Same, and the Csesars, to Agripimis.*

If a woman, desiring to become surety for her husband contrary to the provisions of the Decree of the Senate, asks you to bind yourself for her as mandator, and suit is brought against you, you can defend yourself by means of the exception originating from this contract, and you will be released from liability.

Given on the eighteenth of the *Kalends* of June, during the Consulate of the Cassars.

16. *The Same, and the Csesars, to Rufinus.*

When a woman assumes the obligation of another, and relief is granted her by means of the exception of the Velleian Decree of the Senate, the action to establish him in his rights against his former debtors shall be granted the creditor.

Given on the seventeenth of the *Kalends* of February, during the Consulate of the Caesars.

17. *The Same, and the Cassars, to Alexander and Others.*

If your father borrowed money from Callistratus, and an instrument was drawn up which makes it appear that his wife had borrowed it, it is not necessary to have recourse to the exception granted by the Decree of the Senate, as the actual truth, rather than a fictitious transaction, will protect the woman.

Given on the third of the *Ides* of March, during the Consulate of the Caesars.

18. *The Same, and the Csesars, to Zopicus.*

Relief is granted to women who have assumed the obligations of others, whether they are old or of recent date, unless the creditor has, in some way or other, been deceived by the woman; for it has been established that the exception of the Decree of the Senate will not be applicable when a reply on the ground of fraud is filed.

Given at Antioch, on the fifth of the *Ides* of November, under the Consulate of the Cajsars.

19. *The Same, and the Cassars, to Faustina,.*

It is provided by the Perpetual Edict that the Decree of the Senate enacted with reference to the suretyship of women applies to such obligations as women have assumed in the first place, through the fraudulent acts of creditors; and if a creditor who intended to make a contract with another party should afterwards choose a woman, you can be defended by an exception against persons attempting to enforce their claims in accordance to what you allege.

Given at Nicomedia, on the eighteenth of the *Kalends* of January, during the Consulate of the Caesars.

20. *The Same, and the Czesars, to Theodotian.* There is no doubt that the heirs of a woman can also make use of the exception granted by the Decree of the Senate against her creditors.

Given on the ninth of the *Kalends* of January, during the Consulate of the Caesars.

21. *The Emperor Anastasius to Celer, Master of the Offices.*

We order that women shall be permitted to voluntarily renounce the rights of hypothecation to which they are entitled on account of one or several contracts, or one of certain persons or things; and whatever is done in this manner shall, by Our authority, remain firm and irrevocable, so that if a renunciation of this kind is made for only one contract, as has been stated, or for several, or where the woman has given her consent with reference to one or several persons or things, which have been, or are to be made use of, this renunciation shall be confined to such persons or things as have been, or shall be agreed to, and not to any other contracts to which women have not given, or may not give their consent, and that permission shall be granted to oppose anyone making a contrary claim.

We decree by this carefully considered law that its provisions shall be applicable to all future contracts, matters, and controversies which have not been settled by compromise or final judgment, or disposed of in any other lawful manner.

Given on the *Kalends* of April, during the Consulate of Anatolius and Agapitus.

*Extract from Novel 61, Chapter I. Latin Text.*

Where a marriage-gift has been given by me or by anyone else for my benefit, and the property is immovable, I can neither alienate nor encumber it. Therefore, in a contract of this description, the consent of the woman is of no avail to prevent the action *in rem*, by which, after the marriage has been dissolved, she is entitled to recover property given her at the time of the betrothal, unless she has given consent a second time, when the term of two years has elapsed, and her husband has other property out of which her claim can be satisfied.

Leaving these two cases out of consideration, the rights of the woman cannot be prejudiced, no matter how often she gives her consent; and if the husband makes such an alienation, he will be liable with reference to his other property, since, so far as the woman is concerned, transactions of this kind are considered not to have been either entered into or written.

(1) There is much more reason for these provisions to apply to dowries, in order to prevent any movable property which composes them from being alienated or encumbered; for all the privileges granted in favor of dowries continue to exist in full force, whether the woman herself institutes proceedings, or someone else does so in her name.

*22. The Emperor Justinian to Julian, Praetorian Prefect.*

If a woman who has arrived at her majority subsequently furnishes security, or a bond, a pledge, or a surety should be given by her, We decree that the ancient inconsistencies in the law shall be abolished, and that, if within the term of two years to be computed after the first security has been furnished, she has given either a bond, a pledge or a surety in the same matter, her rights shall not be prejudiced, because, as the result of her weakness, she has for a second time exposed herself to loss.

If, however, she should do this after the lapse of two years, she herself shall be to blame, if, having been able to meditate frequently, and avoid what she had done, she did not do so, but voluntarily confirmed it; as, on account of the length of the time, she should be considered as not having bound herself for the obligation of another, but to have acted in her own behalf, and to have rendered herself liable under the second bond for the amount contained therein, as well as legally to have given the pledge or the surety.

*Extract from Novel 134, Chapter VIII. Latin Text.*

When a woman has given her consent to a written instrument evidencing a debt of her own husband, or has signed the same, and encumbered her individual property for herself, We order that an agreement of this kind shall be absolutely void, whether she did this only once or several times with reference to the same transaction, and whether the debt is a private or a public one; and that it shall be considered to have been neither agreed to, nor written, unless it is clearly proved that the money was expended for the benefit of the woman herself.

*23. The Same to Julian, Praetorian Prefect.*

For the purpose of removing the subtleties and difficulties of ancient jurisprudence, and desiring to abolish superfluous distinctions, We order that where a woman has offered herself as surety, and has received anything in the beginning or afterwards, in consideration of so doing, she shall, under all circumstances, be liable, and cannot invoke the aid of the Velleian Decree of the Senate, whether she has incurred liability with or without an instrument in writing. If, indeed, she should state in the instrument itself that she had received something, and, on this account, had furnished security, and it should be ascertained that the said instrument had been publicly executed and attested by three witnesses, it must, by all means, be believed that she did receive money or other property, and she cannot have recourse to the privilege of the Velleian Decree of the Senate.

When, however, she became surety without any bond, or if the instrument was not drawn up in this manner, then, if the stipulator can show that she received either money or property, and in consideration of the same rendered herself liable, she shall be excluded from the relief of the Decree of the Senate. But if this should not be proved by him, the woman will then be entitled to relief, and the ancient right of action will be preserved in favor of the creditor against the person for whom the woman became surety.

(1) If anyone should give money or other property to a woman who was not qualified to become a surety, in order that she might obligate herself for him, she who actually received the said money or property shall not be permitted to have recourse to the authority of the



Decree of the Senate, and the creditor is hereby authorized to proceed against her to collect whatever he can, and to sue the old debtor for the remainder, that is, for a part of the debt if he was able to collect something from the woman; or for the entire amount of it if she was in absolute want.

(2) In order that women may not wrongfully become sureties for others, We order that they cannot obligate themselves for any contract of this kind, unless by an instrument publicly executed and signed by three witnesses; for then they will only be bound where they comply with all the formalities provided by the ancient laws, or introduced by Imperial authority, which have reference to security furnished by women.

If, however, women should agree to become sureties in violation of this law, any document designed for this purpose, or any unwritten obligation shall be considered void, and as never drawn up or executed ; so that the aid of the Decree of the Senate may not be invoked, but the woman shall be absolutely released from all liability, just as if no transaction of this kind had ever taken place.

*24. The Same to Julian, Prsetorian Prefect.*

With a view to disposing of the doubts of the ancients, We decree that, if anyone should impose as a condition for the manumission of his slave that a woman should render herself liable for a certain sum of money, if the slave obtained his freedom, whether she bound herself as principal, or did so in behalf of the slave, We order that she shall without question legally be bound, and that the Velleian Decree of the Senate shall not apply to such a case; for it is sufficiently hard, and contrary to the principles of benevolence, for the owner of the slave, having placed confidence in the woman who either personally guaranteed the debt, or promised to pay it if the slave did not, to give the slave his freedom and lose him, and not to receive what he was entitled to for his manumission.

*25. The Same to the People of the City of Constantinople and of All the Provinces.*

We decree, in general, that where anyone, either male or female, who is over the age of twenty-five years, has promised a dowry or bound himself or herself to give one for the benefit of any person whomsoever with whom a marriage can be legally contracted, they shall, by all means, be compelled to comply with their contract; for it ought not to be tolerated that, on account of some accidental circumstances, the women should not be endowed, and for this reason perhaps be rejected by her husband, and the marriage be dissolved; as We are well aware that the ancient lawgivers often softened the rigor of the rule in favor of dowries, and with good reason We promulgate this law. For, if anyone should voluntarily display liberality in the beginning, either he or she should fulfill his or her promises, so that what was by consent committed to writing in the first place, or was merely the subject of a verbal promise, may be afterwards complied with, even against the will of the parties, all the authority of the Velleian Decree of the Senate becoming inoperative in a case of this kind.

TITLE XXX.

CONCERNING MONEY WHICH IS NOT COUNTED OUT.

*1. The Emperors Severus and Antoninus to Hilarius.*

If the sum of money was not counted out to you, and you allege that for this reason you have executed a bond for the payment of something which you did not receive, and you can prove that a pledge was given, you can bring an action *in rem*; for proceedings dependent upon the delivery of a pledge, where the money was not paid over, cannot be instituted, unless the genuineness of the debt is established. For the same reason, the truth must be shown, if your adversary should institute proceedings while you are in possession of the pledge.

Given on the *Kalends* of September, during the Consulate of Later-anus and Rufinus.

## *2. The Emperor Antoninus to Maturius.*

If it is proved before the judge having cognizance of the case that you have received a smaller sum of money than you have given security to pay, he shall order you not to pay any more than you have received, together with the interest agreed upon in the stipulation.

## *3. The Same to Demetrius.*

When suit is brought against you on your note, although an hypothecation may have been given, and you plead an exception on the ground of fraud, or because the money was not counted out to you, the plaintiff will be compelled to prove that it was paid, and if he does not do so, you will be released from liability.

## *4. The Same to Bassanus.*

As you acknowledge the genuineness of your obligation, and have even paid a part of the debt or the interest, you understand that it is too late for you to make complaint that the money was not counted out to you.

### *Extract from Novel 18, Chapter Vill. Latin Text.*

When anyone denies his own writing on account of which suit was brought against him, as well as that the money was counted out to him, and loses his case, judgment shall be rendered against him for double damages, unless, the oath having been tendered him, he confesses judgment; for then he will not be punished, except by being compelled to pay the expenses incurred by the amount of proof which should be fixed by the oath of the plaintiff. If, however, after denying that the money was counted, he admits that he received it, the entire sum should, by all means, be collected, and he should not have credit for what he alleges he has already paid. But, on the other hand, if the plaintiff should deny his own handwriting produced by the defendant, the same penalty and oath should be imposed; and the same penalty should be inflicted upon a curator, if he raises any question as to an instrument in his own handwriting connected with the trust of which he has charge.

## *5. The Emperor Alexander to Haustianus.*

If you have any legal defence against the claims of your adversary, you can make use of them; but you should not be ignorant of the fact that the exception on the ground of money not having been counted out will apply whenever suit is brought for a loan. When the amount is stated in the note, which is the evidence of the obligation, inquiry is not made whether it was counted out at the time when security was furnished, but whether there was a good consideration for the debt.

## *6. The Same to Justin.*

You are wrong if you think that you are protected by an exception on the ground that the money was not counted out, when, as you acknowledge, you substituted yourself as the debtor of the person who was originally liable.

## *7. The Same to Julian and Ammianus.*

If, when expecting to receive a loan, you gave security to your adversary for money which was not counted out, you can recover your obligation by means of a personal action, even if the plaintiff should not bring suit, or, if he does, you can avail yourself of an exception on the ground that the money was not counted.

## *8. The Same to Maternus.*

When the person who signed the note dies within the time prescribed by law, without having filed any complaint, his heir will be entitled to the remaining time to proceed either against the creditor or his heir. If, however, he instituted proceedings before his death, an exception on the ground that money was not counted out will lie, without limitation of time, either for or

against his heir. But when he permitted the prescribed time to elapse without having filed any complaint, the heir of the debtor, even if he is a minor, will be compelled to pay the debt.

9. *The Emperors Diocletian and Maximian to Zoilus.*

As it is settled that no one can be forced to pay a larger sum than that which he received, if, a stipulation having been entered into, the creditor should not pay over the amount agreed upon, it is established that an exception *in factum* should be granted, provided the time during which a complaint of this kind can be made has not yet expired; or if the creditor, within the prescribed time, should comply with what was legally required of him, the ruler or Governor of the province, having been applied to, will not permit more to be collected from you as principal than you received.

10. *The Same to Mezantius.*

The statement of a person who contends that his debt was paid is not excluded by lapse of time. Nor can it be alleged against him that the right to make use of the exception on the ground that the money was not counted out, not having been taken advantage of within the prescribed time, is extinguished; as a great difference exists between one who states a fact and undertakes to establish it by evidence, and one who denies that the money was paid over, of which no proof is possible according to natural reasons; hence it becomes necessary for the plaintiff to establish the truth of his allegations.

11. *The Same to Eutythianus.*

If you have promised to pay to Palladius a certain sum of money by way of compromise, you cannot defend yourself by an exception on the ground that the money was not counted out.

12. *The Same to Severianus.*

The exception on the ground that the money was not paid will lie in favor of a mandator or a surety, just as in the case of a principal debtor.

13. *The Emperor Justin to Theodore, Prsetorian Prefect.*

Generally speaking, We decree that where security was given in writing for the payment of any sums of money whatsoever, on account of some preceding consideration, and where the promisor has explicitly stated what it was, he shall not be allowed to exact proof of the same from the stipulator, as he must acquiesce in his own admission; unless on the other hand he can, by clear evidence obtained from the instrument itself, show that the transaction was of a different character than that provided for therein; as We think that it is highly improper for anyone, in the same transaction, to dispute and resist with his own testimony what he has already openly acknowledged.

14. *The Emperor Justinian to Menna, Praetorian Prefect.*

In written contracts by which money or any other property is either counted out or given to a person or his successor, who stated in writing that he has received the said money or other property, he cannot within five years plead the exception on the ground that the money was not counted out to him, as was formerly the rule; but he can only do so within the term of two continuous years, and, if this period has elapsed, no complaint based on the assertion that the money was not counted out can be interposed.

Those persons, however, who for some reasons especially set forth in the law are entitled to relief even after the said term of five years has elapsed, will hereafter have a right to enjoy the same privilege, even though the term of two years has been established instead of the former one of five.

(1) But as litigants may attempt to plead an exception of this kind against receipts or written instruments relating to the deposit of property or money, We have considered it to be just to abolish the power to do this in certain cases, and in others to limit it to a very short time.

Therefore, We decree that an exception on the ground that the money was not counted out cannot, under any circumstances, be pleaded against an instrument showing that certain property or a sum of money was deposited; or against receipts given for public contributions (whether they were made out in acknowledgment of the entire amount or for only a portion of the same), as well as against other receipts drawn up after the completion of dotal instruments, in which it is stated that the dowry has been entirely, or only partly paid.

(2) With respect to other receipts made out by a creditor with reference to private debts, showing that a part on the principal or interest of the same has been paid; and that while settlement of the principal has been made, the contract for the payment of interest still remained in his hands, or promising the future return of the instrument evidencing the loan; or if a receipt relating to any other kind of a contract has been given in which the payment of money or the delivery of certain articles has been stated in writing, and setting forth that the money has been paid, or the other property has been delivered either wholly or in part; the exception on the ground of money not having been counted out can only be pleaded within thirty days to be computed after the delivery of the receipt, so that, when they have elapsed, the said receipt shall be accepted by the judges as valid under all circumstances, nor shall the person who produced it be permitted (after the lapse of the above-mentioned thirty days), to state that the money has not been paid, or the other property delivered.

(3) The rule should be always observed that an oath cannot be tendered in cases where it is not allowed to plead an exception on the ground that the money was not counted out, either in the first place, or after the prescribed time has elapsed.

(4) He in whose favor an exception of this kind will lie shall be permitted, during the time above-mentioned in which the exception can be interposed, to state in writing his complaint based on the claim that the money was not counted out, or the property delivered by him who was alleged in the written document to have done so.

Or, if the party in question should happen to be absent from the place in which the contract was made, he can state his case in this Fair City before any ordinary judge, and in the provinces before the illustrious Governor of the same, or the defenders of the district; and in this manner obtain for himself the right to plead an exception without limitation of time.

If, however, he who was said in the instrument to have counted out the money, or to have delivered the property, conducts any administration either in this Fair City, or in the provinces, so that it may appear to be difficult to notify him, We grant permission to the person who desires to avail himself of the exception above-mentioned to go before any other judges either in this Fair City or in the provinces, and by means of them notify him against whom he desires to plead an exception of this kind that a complaint has been filed by him on the ground that the money was not paid over.

When there is no other civil or military official in the provinces, or for some reason it is difficult for him who opposes the above-mentioned complaint to appear and perform the acts provided for, We grant him permission to notify his creditor of the exception by means of the most reverend bishop and, in this manner, to interrupt the time prescribed by law. It is certain that these provisions with reference to an exception also apply to cases where the dowry has been counted out.

Given at Constantinople, on the *Kalends* of July, under the second Consulate of Our Lord Justinian.

*Extract from Novel 100, Chapter I. Latin Text.*

It is necessary for this complaint to be made in writing, and if anyone appears to resist it in court, the woman, or by all means the person who has promised the dowry, must be notified.

15. *The Same to Menna^ Prietorian Prefect.*

If the party, in whose favor the exception on the ground of money not having been counted out can be pleaded, fails to avail himself of the privilege, if he is present or absent, his creditors (whether they themselves are sued as having possession of his property, for the purpose of collecting the debts of the person entitled to this exception, either on the ground of dowry, or for any other reason; or whether they have brought suit against others in possession of the property) can, during the hearing of the case, interpose the exception against their adversary for the reason that the money was not counted out; nor will they be prevented from doing so because the principal debtor never availed himself of it. Therefore, in order that no prejudice may result to the principal debtor or to his surety, if the party who opposes the exception should be defeated, they can, afterwards, if they should be sued, protect themselves by the same exception within the time prescribed by law.

16. *The Same to John, Praetorian Prefect.*

It is an undoubted rule of law that the exception on the ground of money not having been counted out is applicable to all claims, either for the agreement for the payment of interest, or to other obligations in which mention is made of an oath. For what difference is there in an exception of this kind, whether the oath was or was not taken with reference to agreements for the payment of interest, or other written instruments against which an exception of this kind can be pleaded?

TITLE XXXI.

CONCERNING SET-OFF.

1. *The Emperor Antoninus to Dianensus.*

The Senate decreed, and it has frequently been stated in rescripts, that there is ground for set-off in fiscal cases, where the same administration both owes and asserts the claim. This rule should be implicitly observed, in order to avoid confusion in different offices. Where, however, anything is proved to be due to you from the administration which you have mentioned, you shall immediately receive it.

2. *The Same to Asclepiada.*

As where something remains due on account of a judgment which has been paid, it cannot be recovered, so for the same reason it cannot be admitted to set-off. No one, however, doubts that anyone who is sued to enforce a judgment can demand a set-off of the money due to him from the other party.

3. *The Emperor Alexander to Capita.*

The judge having jurisdiction of the case shall order that what you allege is due to you from the government shall be set-off against the amount that you admit you are indebted to it, provided your indebtedness is not on account, or because of taxes, or money due for grain or oil belonging to the State, or tribute, or provisions; or you are not a debtor of the official having charge of the expenses of the government; or by reason of trusts for the benefit of a municipality.

4. *The Same to Lucian.*

If it is established that when two persons owe one another, set-off will take place by operation of law, instead of payment from the

time at which both parties began to be mutually indebted, so far as the amount of the two obligations agree; and interest will only be due for the excess of the indebtedness owing to one of them, where his claim has not been satisfied.

5. *The Same to Honorata.*

If it should be established that you are entitled to a trust out of the property of the person to whom you say you are indebted for a smaller sum, the equity of set-off excludes the computation of interest ; provided you prove that the claim which is due to you is larger than that which you owe.

6. *The Same to Pollidens.*

The documents by which it is provided that you have received what you deny has been delivered to you cannot bind you in opposition to the truth, and you may properly demand the justice of a set-off; for it is not equitable that you should be compelled to pay what it is established that you owe, before your demand for money lent has been answered; and you have still more ground to recover the property which you allege has been appropriated by your wife on account of divorce.

Given on the fifth of the *Kalends* of December, during the Consulate of Alexander, Consul for the third time, and Dio.

7. *The Same to Euzosius.*

Where the price of property sold is due to the vendor, the law of set-off will apply, for purchasers are not forbidden to oppose the set-off of the price, even against the Treasury.

8. *The Emperor Gordian to Emeritus.*

If your stepfather has become your debtor on account of crops taken from your land, and he brings suit against you for what has been left to you by your mother, judgment shall be rendered in favor of him who has the largest claim, and you will not unreasonably demand a set-off.

9. *The Same to Eumenides.*

Set-off cannot take place except with reference to what is due from the party against whom the action was brought.

10. *The Emperors Diocletian and Maximian to Nicander.*

As you allege that the land which was sold to you as free was, before the purchase, encumbered by a lien, and you have paid a certain sum to release it, if you should be sued for a debt before the Governor of the province, you can set off the amount which you paid, although it was not due.

11. *The Same to Julian and Paulus.*

If, having been compelled to do so by a magistrate, you appointed guardians for minors, and paid in their behalf a certain sum of money

due on account of a charge of the Chief Centurion of the Triarii, you are mistaken if you think that, if you should be sued by them, you cannot claim a set-off; no matter whether the sum which has been collected from you is as much as the guardians were liable for to their wards, or whether it is proved that you paid a larger sum on their account.

12. *The Same to Cornelmnus.*

If you have availed yourself of a set-off with reference to a debt, and pay the remainder, you can bring suit to recover your pledges, if you tender the amount and your creditors refuse to accept it, and, having sealed it up, you deposit it.

13. *The Same, and the Csesars, to Bassus.*

If you agreed with Mutian in writing that he should, by way of set-off, pay what you owed as public taxes, and that afterwards you would not demand what he owed you, and you yourself

should pay the taxes referred to, you cannot recover the amount as not having been due, but you will have the right to collect the debt to which you were previously entitled.

14. *The Emperor Justinian to John, Prsetorian Prefect.*

We decree that set-offs shall take place by operation of law in all lawsuits, without making any distinction between real or personal actions.

(1) Hence We order that set-offs can be pleaded where the amount to be set off is clear, and not involved in doubt, but is susceptible of being easily determined; for it would be very unjust if, when the matter had been decided after many and various contests, the other party, who almost lost his case, could plead a set-off against a certain and unquestionable debt, and the hope of a judgment be excluded by subterfuges admitting of delay. Therefore judges must be careful not to admit set-offs too readily, or accept them with too much indulgence, but to adhere strictly to the rule; and if they find that they demand minute and protracted examination, they must reserve them for another decision; so that the present suit, which has almost entirely been disposed of, may be determined by a final judgment, with the exception of the action of deposit, in which, in accordance with the rule which We have already formulated, We have decided that there is no ground for set-off.

(2) The right of set-off is not granted to persons who are wrongfully in the possession of property belonging to others.

TITLE XXXII.

CONCERNING INTEREST.

1. *The Emperor Antoninus Pius to Evocatus.*

Where, after investigation, the agreement to pay interest is proved to have been legally made, even though it was not reduced to writing, it will still be due under the law.

2. *The Emperors Severus and Antoninus to Lucius.*

When the purchaser, to whom the possession of property has been delivered, does not tender the price to the vendor, even if he has placed the money on deposit, sealed up, he will be required by the rule of equity to pay interest.

3. *The Same to Julian.*

Although interest on money lent cannot be claimed without a stipulation to that effect having been made, still if it has been paid in accordance with the terms of an informal agreement, it cannot be recovered as not due, nor be credited upon the principal.

4. *The Same to Honorius.*

It has been established, and it is reasonable that interest can be demanded where a pledge is retained, even though no stipulation may have been entered into, as pledges are liable for interest even under an informal agreement. This rule, however, does not apply to the case in which you are interested, for at the time of the contract it was agreed that a smaller rate of interest should be demanded, but afterwards, where the debtor promised to pay a higher one, the retention of the pledge could not be considered legal, as, at the time when the instruments were drawn up, it was not agreed that the pledge should be subject to this increase.

5. *The Same, and the Csesars, to Sabinus and Others.*

The exception based on an agreement is available against the creditor who demands a higher rate of interest under the terms of a stipulation, if it is proved that for some years he received interest at a lower rate; and, in accordance with this rule, your case can be defended against the municipal officials who bring suit on the note, if you can prove that the maternal aunt of your wards has always paid interest at five per cent, although she may have agreed to a higher rate.

6. *The Emperor Antoninus to Antieneus.*

If you have, in the presence of witnesses, tendered to your creditor the money due to her with the interest on the same, to secure the payment of which you gave her pledges, and, she having declined to accept it, you deposited the money sealed up, you will not be compelled to pay interest from the time when you made the tender. If, however, your creditor should be absent, you must tender the money in the presence of the Governor of the province.

7. *The Same to Aristeus.*

A creditor should prove his claim by the instruments evidencing the debt, and also show that he has stipulated for interest, if he can do so; for even if the interest has been voluntarily paid, this does not establish an obligation.

8. *The Same to Theophorus.*

Although when Bassa borrowed a sum of money she promised to pay interest at a certain rate to Menophanes, and if she failed to pay it within a certain time, she agreed to pay a higher rate (but one that was legal) ; still, if the creditor, after the time prescribed by the note, receives the same interest as formerly, and does not demand that interest at a higher rate be paid to him, and it can be proved by this that he did not refuse interest at the lower rate, it must be computed at the rate at which the creditor continued to collect it.

9. *The Same to Probus.*

It was not your fault that you did not pay interest at the lower rate within the prescribed time, because the sons of the creditor were unwilling to receive it through their guardians; and if you can prove in court that this was done, interest at a higher rate will not be required of you for the time during which it appears that you were not to blame. If, however, you have deposited the principal, you will not be compelled to pay interest from the time when it appears that this was done.

10. *The Same to Donatus.*

Where the interest paid at different times amounts to double the principal, this will be of no advantage to the debtor; for it is only when the interest at the time of payment amounts to more than the principal that it cannot be collected.

11. *The Same to PopUius.*

When a creditor, who declines to receive money in payment of a debt to which he is legally entitled, collects the crops of lands which have been hypothecated to him, he diminishes the principal to the extent of the value of the said crops.

12. *The Emperor Alexander to Tyrannus.*

The excess value of wheat or barley, above what has been lent, must be surrendered even under an agreement without consideration.

13. *The Same to Eustachia.*

It is certain that an account must be taken of the interest in *bona, fide* actions as well as in those based on voluntary agency. If, however, the case has been terminated by a decision which awarded a smaller sum than that which was due, and interest was not added, and no appeal was taken, what has been decided cannot be revoked; nor can interest for the time which has elapsed after the case was decided be demanded under any law, unless this was provided for by the judgment.

14. *The Same to Aurelius.*

If your wife lent a sum of money with the understanding that she should live in the house of her debtor instead of paying interest, and she did so, as was agreed upon, and having leased



the house, she did not collect the rent, the question cannot be raised that she could have collected more rent than the legal rate of interest amounted to. For although the house could have been leased for more than the principal, the contract for interest was not, for that reason, unlawful, but the house seemed to have been rented for less than it was worth.

15. *The Emperor Gordian to Claudius.*

You state that your wife borrowed the sum of a thousand *aurei* under the condition that if she did not pay it within a certain time she would pay fourfold the amount which she had borrowed; but the rule of law does not permit the condition of a contract of this kind to provide for the payment of a penalty in excess of the amount of legal interest.

16. *The Same to Sulpitius.*

As you say that you have received not grain, but money to be repaid with interest, under the condition that a certain amount of wheat should be delivered, instead of money, and that in case the grain was not delivered on the day agreed upon, you contend that you will be compelled to deliver an additional number of measures of grain, in fraud of the lawful amount of interest, you can avail yourself of any proper defence against this dishonest demand.

*Extract from Novel 34, Chapter I. Latin Text.*

Moreover, anyone who lends a farmer grain or money under the condition that he will receive for every measure the eighth part of a measure, or for every *solidus* one *siliqua*, as interest, must, by all means, return the land or anything else which he has received by way of pledge. If he should collect anything more than what is above stated he shall absolutely lose his claim.

17. *The Emperor Philip to Euxena.*

If your mother encumbered her land to her creditor under the condition that he could gather the crops instead of receiving interest; this agreement cannot be rescinded under the pretext that the value of the crops obtained amounted to more than the interest, because of the uncertainty what the value of the crops would be.

18. *The Same to Castor.*

In order to dispose of the differences of the ancient law, it has been decided after careful deliberation that interest which was not due can be recovered, even if it was not paid before the principal, and on this account could not be credited upon it, but was paid after the creditor had received the principal.

19. *The Same to Hyrenia.*

After issue has been joined, tender the principal of the debt with the legal interest to your creditors, and if they refuse to accept the money, deposit it sealed up in some public place, in order to avoid the payment of legal interest. In this instance, a public place must be understood to be either a sacred temple, or one in which a competent judge, after having been applied to, may decide that the money shall be deposited. When this has been accomplished, the debtor shall be released from liability, and the right of the creditor to the pledges abolished; as the Servian Action plainly states that pledges cannot be held if the money has been paid, or the creditor is to blame for this not having been done.

This rule should also be observed in the transportation of money, for a praetorian action will lie in favor of the creditor for its collection, not against the debtor (unless he has received it), but against the depositary.

20. *The Same to JElus.*

Relief is granted to mandators and trustees by the Sacred Constitutions, which forbid interest to be collected on money lent beyond a certain rate, and you can avail yourself of them if you are sued either as mandators or trustees.

21. *The Same to Chresimus.*

If you agreed to pay interest and gave a pledge as security, and the money was counted out to you, and either afterwards, or before making payment, you did not indicate on what part of the debt you wished credit to be given, your creditor will have the right to credit the payment which you made upon the interest.

22. *The Same to Carinus.*

When pledges have been delivered, interest which could not have been collected without stipulations can be retained under the agreement; but as you state that there was no contract of this kind made, but that only a certain sum was agreed to be paid as a penalty, you perceive that, by the rule of law, nothing more can be collected, and that you will be compelled to surrender the pledges.

23. *The Same to Jason.*

Where oil, or any other products of the soil are lent, the uncertainty of their value allows an increase of interest to be added to the quantity.

24. *The Same to Glaucia.*

If your mother is of legal age, and has transacted your business, as she was obliged to use all proper diligence, she can be compelled to pay interest on your money which she is proved to have had charge of.

25. *The Emperor Constantine to the People,*

We order that legal interest can be paid or promised for gold, silver, and clothing, where the loan is evidenced by a note.

26. *The Emperor Justinian to Menna, Prsetorian Prefect.*

We order that those who have been barred in a principal, a personal, or an hypothecary action, by the prescription of thirty or forty years, cannot raise any question with reference to interest, crops, or any time which has expired, under the pretext that they desire interest to be paid to them only for the time not included in the thirty or forty years which have elapsed, on the ground that their rights of action arise each year. For the principal action no longer existing, it is entirely unnecessary for the judge to take cognizance of any question relating either to the interest or the crops.

(1) We considered it necessary to promulgate a new and general law regulating the amount of interest, as We think the ancient law on this subject to be severe and extremely burdensome. Therefore, We order that illustrious persons, as well as those of higher rank, shall not be permitted to stipulate for interest exceeding the rate of four per cent, whether the contract be for a large or a small amount. Bankers, and those who conduct any lawful business, shall be limited in their stipulations to eight per cent. With reference to contracts for the transportation of coin, or for loans at interest of other articles than money, We order that it shall not be lawful to stipulate for, or to exceed the rate of twelve per cent, although this was permitted by the ancient laws. Other persons, however, can only stipulate for interest at six per cent, and this rate of interest can, under no circumstances, be exceeded in any of those cases in which interest is ordinarily collected without a stipulation; and no judge shall be permitted to increase the prescribed rate on account of any custom which may be observed in that part of the country.

If anyone should violate the provisions of this constitution, he shall not be entitled to any action to collect interest over and above the legal rate, and if he should receive it, he shall be compelled to credit it on the principal; and creditors are forbidden to deduct or retain any of the money lent at interest under the pretext of *silique* or *sportulse*, or for any other reason whatsoever. If anything of this kind should be done, the amount of the original debt shall be

diminished by the sum that the creditor has received, so that he shall be prohibited from collecting this portion of the debt, as well as the interest. With a view to preventing dishonest schemes of creditors who, being forbidden by this law to stipulate for higher interest, make use of other persons for this purpose, who are not prohibited from doing so, We order that if anything of this kind should be attempted, the interest shall be computed as would have been done if the person who made use of the other himself had concluded the stipulation, and in this instance We decree that the oath shall be tendered.

*27. The Same to Menna, Prsetorian Prefect.*

For the purpose of disposing of the improper interpretation which certain persons have applied to the law by which We have established the rate of interest, We order that those who have stipulated for a higher rate before the promulgation of that law shall reduce their claims in accordance with the one prescribed by it, from the time when the law was published; but that up to that date they shall have the right to collect interest in accordance with the tenor of the stipulation.

(1) We by no means permit more than double interest to be collected, not even where pledges have been given to the creditor to secure the debt, under which circumstances certain ancient laws authorized . more than double the interest to be collected.

We decree that this rule shall be observed in all *bona fide* contracts, and in all other cases in which interest can be collected.

*28. The Same to Demosthenes, Prsetorian Prefect.* It was provided by the ancient laws, but not explicitly enough, that interest on interest could not be collected from debtors; for if it was permitted to add it to the principal and stipulate for interest on the entire amount, what difference would it make for the debtors from whom interest on interest was actually collected? Certainly, this difference does not exist in the things themselves, but only in the phraseology, and therefore We clearly provide by this law that no one shall be permitted to add interest to the principal, either for past or future time, or to stipulate for interest to be paid upon it. When, however, this law is obeyed, interest will always remain interest, and there will be no augmentation of other interest, and the only accrual will be what is derived from the original principal.

TITLE XXXIII.

CONCERNING MARITIME LOANS.

*1. The Emperors Diocletian and Maximian to Honoratus.*

It is clear that money transported by sea, which is at the risk of the creditor, should be exempt from the law relating to interest only until the ship has arrived at her destination.

*2. The Same to Chosimania.*

As you state that you have lent money under the condition that it shall be repaid in the Imperial City of Rome, and allege that the uncertainty of the risk due to the perils of navigation has not been assumed by you, there is no doubt that you are not entitled to collect interest above the legal rate on the money loaned.

*3. The Same to Junia.*

As you state that you have negotiated a maritime loan under the condition that after the voyage, which your debtor stated that he was about to make to Africa, the ship having anchored in the harbor of the Salonitians, he agreed to pay you the money, so that you would only bear the risk of the voyage to Africa, and that through the fault of your debtor the course of the vessel was not directed towards the place agreed upon, and, he having purchased unlawful merchandise, the cargo of the ship was confiscated by the Treasury, the rule of public law does not permit that you should bear the loss of the merchandise which is stated

was not caused by a tempest, but was due to the inveterate avarice and unlawful boldness of your debtor.

4. *The Same to Eucharistus.*

The loss of money during its transport by sea, when it was not lent at the risk of the creditor, does not render the debtor liable before the ship arrives at her destination, but the debtor will not be released from the responsibility for loss by shipwreck, where no agreement of this kind was made.

TITLE XXXIV.

CONCERNING THE ACTION ON DEPOSIT, AND THE COUNTER ACTION.

1. *The Emperor Alexander to Mestenus.*

Where, through an attack by robbers or some other accident, certain ornaments deposited with a person who was killed are lost, the heir of him who received the deposit will not be responsible, as he is only liable for fraud or gross negligence; unless it was otherwise agreed upon. If, however, under the pretext of robbery having been committed, or of some other accident, the property held by the heir, or of which he has fraudulently relinquished possession, is not returned, the action of deposit, as well as that for the production of property, and one for the recovery of the same, will lie.

2. *The Emperor Gordian to Celsus.*

In the action of deposit, as in other *bona fide* actions, interest is usually calculated from the day when the party is in default.

3. *The Same to Austerus.*

If you bring the action of deposit against him, you will not unreasonably demand that he pay you interest, for he should congratulate himself that you do not bring the action of theft, as anyone who knowingly and designedly, and without the consent of the owner, converts to his own use property which has been deposited with him, becomes guilty of the crime of theft.

4. *The Same to Timocrates.*

When anyone who has received money on deposit makes use of it, there is no doubt that he should pay interest. Where, however, he is sued in the action of deposit, judgment is only rendered for the amount of the principal, and you cannot bring another suit for the interest, as there are not two actions, one for the principal and the other for the interest, but only one; and where judgment has been rendered in it, a renewal of the action will be barred by the exception on the ground of *res judicata*.

5. *The Emperors Valerian and Gallienus to Claudian.*

As you allege that you have deposited certain documents with your adversary in order that you may receive payment of the remaining money due for rent, if you have complied with what was agreed upon, you can bring suit to recover the property sequestered. Even though the said documents should not be returned to you, if you have paid all that was due under the contract to the person from whom you rented the premises, you will be protected by the said payment.

6. *The Emperors Diocletian and Maximian to Alexander.*

He with whom you allege that the two parties to the compromise have deposited the evidence of the same, or other documents, must observe the condition under which he received them.

7. *The Same to Atticus.*

Your claim does not conform to the rules of law, for if you have charge of a sum of money, and lent it to others, the instrument by which you acknowledge that it is to be repaid to you is evidence against you, and you are guilty of dishonesty in refusing to make restitution to the

person entitled to it.

8. *The Same to Alexander.*

If anyone who has received a deposit of money from you lends it either in your own name or that of someone else, it is perfectly clear that he must not only comply with his contract, but that his heirs will be liable to you. No action, however, will lie in your favor against the person who received the money, unless the actual sum is in existence, for then you can avail yourself of the action for recovery against the possessor.

9. *The Same to Menophyllus and Others.*

As an estate represents the person of the former owner, you can sue the heirs of the depositary before the Governor of the province for property which was deposited with him in good faith by a slave belonging to the estate, before you succeeded your father.

10. *The Same, and the Caesars, to Septima.*

Where anyone does not return a deposit, and is sued, and has judgment rendered against him in his own name, he will be compelled to make restitution, and runs the risk of being branded with infamy.

11. *The Emperor Justinian to Demosthenes.*

When anyone receives money or other property as a deposit, and refuses to surrender it to him who deposited it, he can be compelled by all legal means to return it immediately, and cannot plead any set-off, deduction, or exception of fraud, to avoid doing so, on the ground that he himself has certain personal, real or hypothecary causes of action against him who deposited the property, as he did not receive the deposit under the condition that he could retain it for what had not been paid, so that a contract entered into in good faith would end in perfidy.

Where, however, property was deposited by both parties with one another, the impediment of set-off does not arise in this case either, but the property or money deposited by each of them must be returned as soon as possible without the interposition of any obstacle, beginning with the one who first demands it, and afterwards his legal rights of action shall be restored to him unimpaired. This should take place (as has already been stated) when the deposit has been made by one of the parties, and a set-off is claimed by the other; so that all legal rights remaining unimpaired, the property or the money deposited may be returned in its original condition.

(1) When, however, notice in writing, which was not inspired by deceit or fraud, is sent by a third party to the depositary directing him

not to return the deposit, and the latter states this under oath, he who made the deposit, after having furnished good security that he will defend the case, shall be entitled to recover the property deposited without delay.

*Extract from Novel 88, Chapter I. Latin Text.*

It has, however, already been provided that no outside person can forbid a depositary to return the property, and if this is done, he who made the deposit, though technically in possession, can be sued by him who was responsible for the prohibition. But if the law should be violated, and any loss be sustained by the person who suffered violence, he who prohibited the return of the deposit shall be required to make it good, and shall also be liable for interest at four per cent from the time when issue was joined. He, also, who prevents a tenant from paying rent, or a public official from furnishing bread, shall be liable to the same penalty.

12. *The Same to John, Praetorian Prefect.*

For the purpose of abolishing a superfluous distinction adopted by the ancients, We decree that if anyone should deposit a certain weight of gold or silver, either manufactured or in bulk,

and appoint several heirs, and one of them should receive from the depositary the share to which he was entitled, and another should fail to do so, whether he was prevented by some accidental circumstance and the depositary afterwards met with misfortune, or the latter lost the deposit without being guilty of fraud, the co-heir will not be permitted to proceed against his co-heir and indemnify himself out of his share for what he himself was unable to obtain; just as if what the said co-heir had received was owned in common; for there is no doubt that if a certain sum of money was deposited, and one of the co-heirs should receive his share, he has a right to it, and the other ought not to claim it.

It does not seem to Us that the one who has received his share of the property either in bulk, in ingots, or in money, should be liable, and his diligence pay the penalty for another's negligence; for if the other heir had taken advantage of the opportune time as his co-heir did, and both had received their shares, no ground would be left for subsequent alterations.

#### TITLE XXXV.

##### CONCERNING THE ACTION OF MANDATE, AND THE COUNTER ACTION.

###### 1. *The Emperors Severus and Antoninus to Leonidas.*

You can avail yourself of the action on mandate for the collection of both principal and interest against the person whose business you transacted, when you have expended your own money in doing so, or have borrowed money from others for that purpose. You can also apply to the Governor of the province with reference to the salary promised you by your employer.

###### 2. *The Same to Marcellus.*

As you state that your father paid a certain sum of money as surety, you are entitled to an action on mandate by which you cannot only recover the money, but also the pledges given as security for the obligation.

###### 3. *The Same to Germanus.*

If your father directed you, being your own master, to sue his debtors, he himself could, if present, bring an action against them, just as if he had not employed you to do so. Therefore, if any proceedings should be instituted by him for this purpose in court, there is no reason to require them to be set aside.

###### 4. *The Emperor Alexander to Vulneratus.*

Even if those who have appointed you their attorney to conduct their cases on appeal should be defeated, if you were not to blame for this, you can bring a counter action on mandate against them to recover the reasonable expenses which you incurred in the matter.

###### 5. *The Same to Gallianus.*

If your sister's husband, whom you have appointed your attorney, is unwilling to demand for you the possession of the property, you should proceed against him; and you will probably gain your case if you can prove that you directed him to bring suit for the possession of the property, and he neglected to do so.

###### 6. *The Emperor Gordian to Socibius.*

When anyone becomes surety for a debtor with his consent, the latter can be sued in an action on mandate after the money has been paid by the surety, or judgment rendered against him.

###### 7. *The Same to Aurelian.*

Where, in order to carry out the written directions of the money-broker, you lent money to the person who delivered you his letter, you will not only have a right to bring a personal action for recovery against him who received the borrowed money from you, but also the action on mandate against him whose order you obeyed.

8. *The Emperors Valerian and Gallienus, and the Csesar Valerian, to Lucius.*

If the father of certain minors directed you to lend money to his slaves, to be employed for the benefit of his property, and if, in addition to this, you, under his direction, gave pledges as security, you can sue the minors in the action on mandate after the death of their father, and enforce the right attaching to the pledges, if payment should not be made.

9. *The Emperors Diocletian and Maximian to Marcellus.*

As you allege that your case has been endangered by the act of your attorney, an action on mandate will lie in your favor against him.

10. *The Same to Papius.*

If you have appeared either as surety or mandator for the party against whom you filed your petition, and judgment has not been rendered against you on this account, you cannot prove that he afterwards began to waste his property to such an extent as to give you just cause for apprehension, and that, in the beginning, you assumed the obligation in order to be able to sue him before payment was made; as it is certain that, by no rule of law, you can compel him to make payment before you yourself have satisfied the creditor.

Moreover, it is evident that where a trustee or a mandator, being entitled to an exception, lost his case through an unjust decision of the judge, and, contrary to good faith, neglected to take an appeal, he cannot bring the action on mandate.

11. *The Same to Gaius.*

An attorney will be liable not only for fraud but for negligence, both in cases where he has transacted business, and where he has undertaken to do so, and to be responsible not only for money which has been collected under the mandate, but also for any that had not been collected; and account should be taken of the expenses which he has incurred in good faith.

12. *The Same to Firmus.*

As you assert that you stated what should be done with reference to certain business which you wished to be transacted, it is proper that your attorney should comply with your directions in good faith. Therefore, if, contrary to the terms of the mandate, he sold the tract of land belonging to you, and you did not subsequently ratify the sale, you cannot be deprived of the ownership of the property.

13. *The Same to Zosimus.*

It is plainly stated by the law that an attorney is liable for fraud and every kind of negligence, but not for unforeseen accidents.

14. *The Same to Hermianus.*

If, in accordance with the mandate of Tripho and Felix, you purchased horses with your own money, or if, they having been delivered to you in payment by your own debtor, you voluntarily transferred them to one of the above-mentioned parties with the consent of both, good faith requires that they, having been sued in an action on mandate, should comply with their contracts.

15. *The Same to Precatius.*

A mandate is absolutely terminated by the death of the mandator.

16. *The Same to Uranius.*

Where money has been given to buy merchandise, and he who received it for that purpose abuses the confidence of his employer, he will be liable for any damage sustained by the latter.

17. *The Same to Gorgonius.*

A salary based upon an uncertain promise cannot be recovered by law.

18. *The Same to Tuscianus.*

Where payment has been made to the agent by someone who directed money to be lent, he can properly demand to be reimbursed what he paid by him in whose behalf he intervened, or his heirs, together with interest, after the party or parties have been in default..

19. *The Same to Eugenius.*

You cannot be compelled to pay interest above the legal rate of the price of property which you received for sale by virtue of a previous mandate; whether the interest was based on a stipulation or on default, even though pledges are proved to have been given.

20. *The Same to Epagathus.*

If you have purchased a right of action contrary to law, you will in vain demand compliance with such a prohibited agreement; but if you have gratuitously accepted a mandate, you can legally ask that the *bona fide* expenses incurred be refunded to you.

21. *The Emperor Constantine to Volusian, Praetorian Prefect.*

In cases of mandate, not only the money which is the especial object of the action on mandate, but also the risk of loss of reputation is at stake; for anyone who is the owner, and has control of his own property, does not transact all his business, but the greater portion of it, according to his own will. The affairs of others must, however, be attended to with the greatest care, and nothing connected with their administration which is neglected or improperly done is free from blame.

22. *The Emperor Anastasius to Eustaehius, Prsetorian Prefect.*

By two different reports which have been made to Us, We have ascertained that certain individuals, being desirous of obtaining the property and fortunes of others, have exerted themselves to have rights of action assigned to them by third parties, and in this way litigants are subjected to many annoyances; and as it is certain that, so far as undoubted obligations are concerned, men are more desirous of claiming their own rights than of transferring them to others, We order by this law that hereafter attempts of this kind shall be prohibited.

There is no doubt that those should be considered the purchasers of the rights of action of others who desire assignments of this kind to be made to them, so that if anyone, after having paid money, should obtain such an assignment, he shall only be permitted to bring the actions which he has purchased to the extent of the amount of money which he has paid, even though the term "sale" has been inserted in the instrument evidencing the assignment; with the exception, however, of such assignments of rights of action referring to an estate

which are usually made between heirs, and those which either a creditor or a party in possession of the property of another has received, either in the discharge of a debt, or on account of the protection and care of property which has been entrusted to him, as well as those made between legatees or beneficiaries of a trust, to whom either debts, rights of action, or other property has been left, for these things are often necessary.

The purchaser of a lawsuit does not come under this rule (as has been previously stated), but is one who acquires the rights of action of another by the payment of money. Where, however, an assignment is made as a donation, all persons are hereby informed that in such a case there is no ground for the application of this rule, but that the ancient laws must be observed; so that not only the assignments for the causes excepted and enumerated above, but also such as have been made, or are to be made, may acquire all the force of rights of action assigned without any restriction.



23. *The Emperor Justinian to John, Prsetorian Prefect.*

A constitution which abounded in humanity and benevolence was promulgated by the most just Emperor Anastasius, of Divine memory, to the effect that no one should become liable for the debt of another by an assignment made to him, and that nothing more could be recovered from a debtor than what he had paid to the party making the assignment, except in certain cases which are distinctly specified in this same law. As, however, those engaged in acquiring lawsuits are not inclined to observe this beneficent regulation, but devise means to evade it by transferring a certain part of the debt which was sold to another creditor afterwards, and assigning the remaining portion as a donation, We, for the purpose of generally confirming the Constitution of Anastasius, do hereby decree that it shall not be lawful for any person to dispose of any portion of a debt by a sale, and then transfer the remainder as a donation; but if the party in question desires to absolutely donate the entire debt, and to transfer the rights of action as a donation, he shall not receive money secretly and with clandestine artifice, in order to publicly effect the pretended donation, but he shall make it at all times absolutely and without any pretense, for We do not prohibit assignments of this kind.

(1) When, however, anyone attempts to perform some act secretly and receives money, and sells a part of the rights of action, and pretends to donate the remainder either to the person who has purchased the other part of the same, or to someone else who has been introduced for that purpose (as We have learned is frequently done), We absolutely annul all corrupt schemes of this kind, so that the purchaser, cannot receive more than he himself has actually paid under the contract; but that all over and above this amount which was transferred by a fictitious donation cannot be collected by either party, so that neither he who assigned the rights of action nor he to whom they were transferred shall obtain any profit or reward, or will be entitled to bring any action either against the debtor or his property.

(2) If, however, any person should pretend to have made a donation of the entire debt, and should receive something secretly as a consideration, in this instance he can only collect what he is proved to have lent, and when this has been paid by the debtor, neither the latter nor his property can be molested by virtue of this pretended donation.

(3) This salutary remedy was provided by Anastasius during his reign, for the benefit of debtors, but, notwithstanding this justice, there were men who were shrewd enough to think it could be evaded. But lest We may appear to countenance an enactment too severe for the benevolence of our times, We decree that the present law shall only be applicable to future cases, and that everything which has been devised against the Constitution of Anastasius shall hereafter be annulled by this Our Law.

TITLE XXXVI.

CONCERNING A SLAVE WHO HAS DIRECTED A STRANGER TO PURCHASE HIM.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Dionyna.*

If a slave should request a stranger to purchase him, even though it may not be believed that a right of action on mandate will arise on account of the act of the slave (because a freeman cannot give such a mandate), nor on account of the master, as the act of anyone who orders another to purchase something from himself is void; still, for the excellent reason that this is not done in order that a right of action on mandate may arise, but that such an action will lie on account of the mandate contained in another contract, it has been decided that an obligation of this kind is acquired by the master. Therefore, if, without the knowledge of your master, you'direct someone to purchase you, and you furnish money out of your *peculium* for this purpose, and it is paid by the purchaser, you can, by no means, acquire freedom by an act of this kind. For if you, being a female slave, have not been either delivered or manumitted, it is settled that your master will have the right to avail himself of the counter actions of mandate and purchase, to recover the price. It is, in fact, left to his choice either to recover you his

slave, or the price for which you were sold, for as the money was paid out of the *peculium*, which belonged to him, it could not release the purchaser from liability for the obligation.

#### TITLE XXXVII.

##### CONCERNING THE ACTION OF PARTNERSHIP.

1. *The Emperors Diocletian and Maximian, and the Csesars, to Aurelius.*

It has been decided that a partnership can be contracted where one of the parties furnished money and the other labor.

2. *The Same Emperors and Csesars to Pantonius.*

As you allege that you and your patron have purchased a field together, if both you and he have been placed in possession, the rule of law requires that the ownership of said land shall belong to you conjointly. However, as you say that the price as well as all the expenses have been paid by you, and that your partner has not contributed his share, you can, by an action of partnership, recover whatever he should have paid on this account.

3. *The Same Emperors and Csesars to Victorinus.*

As good faith should prevail in partnership contracts, it is demanded by the rules of equity that the profits should be equally divided between the partners; and if the Governor of the province should find that your father belonged to a partnership organized for the working of salt-pits, and died before having received his share of the common profits, he will order that portion of them to which you are actually entitled to be paid to you.

4. *The Same Emperors and Csesars to Celer.*

If it was agreed between you and Favia that a division of all the property to which you are entitled under the law of partnership, or under a stipulation for compromise, should be made equally between you, the division will be valid; and it makes no difference whether the person obligated executed a will, or died intestate.

5. *The Same Emperors and Csesars to Theodore.*

We decree that a partnership shall last as long as the consent of the parties to its continuance exists. Hence, if you have acquired a right of action on partnership, you will not be prevented from bringing it before a judge having jurisdiction.

6. *The Emperor Justinian to John, Prsetorian Prefect.*

It was doubted among the ancients whether a partnership could be formed under a condition, for instance, that the partnership should be formed if Such-and-Such a person should become consul. In order that hereafter no doubt may arise on this point, as was the case in former times, We decree that a partnership cannot only be formed absolutely, but also conditionally, for the wishes of persons who make legal contracts should by all means be considered.

7. *The Same to John, Prsetorian Prefect.*

For the purpose of removing the doubts of the ancient authorities, We decree that the curator of an insane person shall have power to dissolve a partnership of which the insane person is a member, and renounce all connections with his partners, if he should see fit to do so. And We grant him lawful authority, just as in all other contracts, and permit him in a case of this kind to provide in a proper manner for the benefit of the said insane person.

#### TITLE XXXVIII.

##### CONCERNING THE CONTRACT OF PURCHASE AND SALE.

1. *The Emperors Valerian and Gallienus to Paulus.* Sales which are made in some other place than that in which the property is situated are not, for this reason, considered void.

## *2. The Emperors Diocletian and Maximian to Avitus.*

It is evident that consent is required for purchase and sale, and that an insane person is not capable of consent. There is no doubt, however, that insane persons, who are more than twenty-five years of age, can make sales and any other contracts during their lucid intervals.

## *3. The Same to Valeria.*

When a fictitious contract of sale is made in order to effect a donation, it will be of no force or effect. If you have placed anyone in possession of property under the pretext of a sale, but really as a donation, in consideration that he will support you, such a donation, when perfected, cannot readily be rescinded, and it is proper for you to comply with the condition which you stated was imposed when you donated your property.

## *4. The Same to Lucian.*

You say that you purchased from the heir of the donor the property which she gave you, but you should be aware that your title to the same cannot be doubled; hence you have made your purchase in vain, as you had already become the owner by gift and delivery, and could obtain no additional advantage, unless it is proved that the title did not vest in you by virtue of the donation. And if, as you allege, all the property of the donor was given and delivered to you, a sale made by the son of his mother's property can be maintained, even if the donation was perfected, as the son could set this aside by filing a complaint that the will was inofficious.

## *5. The Same to Gratia.*

As a guardian himself is forbidden to purchase openly and in good faith any of the property of his ward which can be sold, there is much more reason why his wife should not be permitted to do so.

## *6. The Same to Lucretius.*

If Gaudentius transferred the ownership of a slave to your mother by a sale, and without fraud, her rights are in no way prejudiced for the reason that marriage and divorce are alleged to have afterwards taken place between them. Therefore you will not be prevented from bringing an action to recover the slave, if you prove that you have succeeded your mother.

## *7. The Same to Piso.*

If your mother falsely asserts that she received as a donation a female slave whom she herself had previously bought from her second husband, the pretense of this simulated donation can neither confirm her ownership nor deprive her of it.

## *8. The Same to Diogenes.*

If you have actually sold your vineyard, and not given it away, and the purchase-money has not been counted out to you, you will be entitled to an action to recover the price of the same, but not one to recover any articles which you may have donated.

## *9. The Same to Severus.*

A purchase or a sale made without a price is void. If, however, the price has not been paid, but possession has been delivered to the purchaser, a contract of this kind is not considered invalid; and therefore the person who made the purchase is none the less entitled to possession because he refuses to pay the price which he had agreed to give. When, however, delivery follows the sale of a tract of land made by way of donation, as no action will lie for the recovery of the price, the donation is perfected.

## *10. The Same to Georgius.*

If your mother bought her own land, believing that it was a part of the estate of your father, as the purchase of one's own property will not stand, and you allege that this one is fictitious, an

agreement of this kind cannot change the truth, or prejudice your mother's rights.

11. *The Same to Paterius.*

The prayer of the petitioner to be permitted to purchase or sell property against the consent of the party in possession of the same is not founded on just grounds.

12. *The Same to Paternus.*

A purchase is none the less complete for the reason that the purchaser did not receive a surety, or that an instrument showing that the property was unoccupied, was not drawn up; for anyone who takes possession with the consent of the vendor is legally the possessor. Where, however, it is proved that the price has not been paid, it can be demanded; for the desire of one of the parties to withdraw from the contract, although manifested immediately after it has been entered into, will not rescind it if it was executed with the consent of all concerned.

13. *The Same to Julian.*

The obligation of a contract for purchase or sale, which is drawn up under the condition that it will be dependent upon the will of the vendor or purchaser, is void, because it does not necessarily bind the contracting parties. Therefore neither the owner nor anyone else can be compelled to sell his own property under an agreement of this kind.

14. *The Emperors Valentinian, Theodosius, and Arcadius to Fabian, Prefect of Illyria and Italy.*

Near relatives were formerly permitted to exclude strangers from a purchase, so that persons could not voluntarily dispose of property which they desired to sell; but, for the reason that this seemed to cause serious injury (which was veiled by a vain pretext of honesty) by compelling men to alienate their property against their wishes, the former law being abolished, everyone can now, according to his own inclination, either seek or accept a purchaser, unless the law especially prohibits certain persons from doing so.

Given on the sixth of the *Kalends* of June, during the Consulate of Tatian and Symmachus, 391.

15. *The Emperor Justinian to Julian, Prtetorian Prefect.*

A serious doubt arose among the ancient authorities with reference to contracts of sale, where anyone made a purchase under the condition that the property should be sold for the price at which another would say that it was worth. We, intending to dispose of this doubt, do hereby decree that when an agreement of this kind, namely, that the sale shall be for the price that a third party may put upon the property is entered into, the sale shall be void, if made under such a condition; and when he who was mentioned states the price, and it is paid in accordance with his estimate, the sale shall take effect, whether the contract was reduced to writing or not; for where an agreement of this kind is reduced to writing, it will, in accordance with the provisions of Our Laws, be in all respects complete and absolute.

If, however, the person referred to should be unwilling or unable to fix the price, then the sale will be void, no price having been determined upon; and that neither oneiromancy nor divination shall, under any circumstances, hereafter be resorted to, to ascertain whether the contracting parties who made such an agreement selected any certain person, or relied upon the judgment of a reputable citizen; for the reason that it is impossible to place any confidence in such expedients, and We abolish them by the present law.

We decree that this rule shall also apply to leases of the same character.

TITLE XXXIX.

CONCERNING THE INHERITANCE OR SALE OF RIGHTS OF ACTION.

1. *The Emperors Severus and Antoninus to Geminius.*

It is absolutely certain that where an estate is sold in the name of the Treasury, the purchaser is liable for the debts, and the Treasury is not liable to the creditors of the estate.

2. *The Emperor Antoninus to Florian.*

The rule of law requires that you answer the creditors of the estate, as well as the legatees or beneficiaries of trusts who may bring actions against you; and that, on the other hand, you, in your turn, can proceed against the person to whom you sold the estate. It will, however, be too late to ask him to furnish you security, as this was not included in the contract at the time when the estate was sold. For even though someone made the purchase under the condition that he would satisfy the creditors of the estate, still, if he is unwilling, he cannot be compelled to accept actions brought on account of the estate.

3. *The Emperor Alexander to Timotheus.*

The sale of a claim can be made, even without the knowledge or consent of the party against whom suit is brought.

Given on the fifth of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Zelianus.

4. *The Same to Diogenes.*

He who is not yet certain of the value of the estate, but, having been persuaded by the purchaser, sold it for a small sum of money, cannot be sued in a *bona fide* proceeding, and compelled to deliver the property, or assign his rights of action, for he can also legally bring suit to recover the property.

5. *The Same to Onesimus.*

The purchaser of an estate, after the rights of action have been transferred to him, must make use of the same ones which the person whose place he occupies was entitled to; even though it was agreed that the praetorian rights of action against the debtors of the estate should be assigned to the purchaser.

6. *The Same to Pomponius.*

Anyone who has sold you an estate still remains the owner of the same until he delivers you the property, and hence by selling it to others he can transfer the ownership. But as he has broken the faith of the contract, if he should be sued in an action on purchase, he can be compelled to indemnify you for any loss which you may have sustained.

7. *The Emperors Diocletian and Maximian to Manassa.*

After it was settled that the contracts of debtors could be given in pledge, it seemed to be the rule that equitable actions could be granted to the creditor himself who made the demand (as has already been decided) after the sale of the claim.

8. *The Same Emperors and Csesars to Julian.*

By the sale of the claim the ownership of the property encumbered does not pass to the purchaser, but he either is appointed an attorney in his own behalf, or an equitable action, as in the case of a creditor, is granted in accordance with what has already been established.

9. *The Emperor Justinian to John, Praetorian Prefect.*

It is a certain and unquestionable rule of law that anyone who has purchased a real action can avail himself of his right, just as he who has purchased a personal action can do, and that he will be permitted to proceed legally in his own name. For as the designation is a general one, and is applicable to both real and personal actions, and among the ancient authorities was used to indicate both, there is no reason why any distinction should be made between praetorian actions of this kind.

## TITLE XL.

### WHAT PROPERTY CANNOT BE SOLD, AND WHAT PERSONS ARE FORBIDDEN TO SELL OR PURCHASE IT.

1. *The Emperors Gratian, Valentinian, and Theodosius to Faustus, Count of the Sacred Largesses.*

No private person shall have the right to dye either silk or wool with the colors called *blatta*, *oxyblatta*, or *hyacinthina*, or sell it after it has been dyed. If anyone should sell wool dyed with the colors aforesaid, he is hereby notified that he will incur the risk of losing his property and his life.

2. *The Same to Toriobandus, Duke of Mesopotamia.*

We order, as has already been decreed, that all barbarians, excepting the Count of Commerce, shall be deprived of the right to purchase silk.

3. *The Emperors Arcadius and Honorius to the Senate and the People.*

For the reason that grain destined for the public is said to be sometimes sold on various coasts, the vendors and purchasers of such merchandise are hereby informed that they are liable to capital punishment, and that commercial contracts of this kind made with a view to defrauding the public are prohibited.

4. *The Emperors Honorius and Theodosius to Faustus, Praetorian Prefect.*

In order to prevent the grain intended for Our most devoted army from being appropriated for the benefit of others, We order by this law that anyone who shall engage in this kind of traffic, if he is of high rank, shall be proscribed, and incur the loss of all his property, and that persons of inferior station shall suffer capital punishment.

## TITLE XLI.

### WHAT PROPERTY SHOULD NOT BE EXPORTED.

1. *The Emperors Valens and Gratian to Theodore, General of the Army.*

No one shall have authority to transport to the country of the barbarians either wine, oil, or other liquids, either for the purpose of consumption or for commercial purposes.

2. *The Emperor Martian to Aulus, Praetorian Prefect.*

Let no one presume to sell to barbarians of any race whatsoever, who have come to this City with an embassy, or on any other errand, or in any other city or place, cuirasses, shields, bows, arrows, double-edged swords, or ordinary swords; nor shall any darts or any other weapons made of iron, or the unfinished material for the same be sold to them by any person; for it is injurious to the Roman Empire, and resembles treason for barbarians, who should be deprived of them, to be furnished with weapons in order that they may become more formidable. Therefore, if anyone should in any place sell to foreign barbarians any kind of arms which have been forbidden by Our laws, We decree that his entire property shall immediately be confiscated, and that he shall suffer the penalty of death.

## TITLE XLII.

### CONCERNING EUNUCHS.

1. *The Emperor Constantine to Aurelius, Duke of Mesopotamia.*

If anyone, after the promulgation of this law, should make any eunuchs in the Roman Empire, he shall be punished with death; and the slave, as well as the place where the crime was committed with the knowledge of his master, even though the latter may feign ignorance, shall be confiscated.

2. *The Emperor Leo to Vivian, Prsetorian Prefect.*

We order that the ownership of men of the Roman race, who have been made eunuchs either in a barbarous country or on Roman soil, can, under no circumstances, be transferred to anyone; and that the severest penalty shall be inflicted upon those who have dared to commit such an offence, including the notary who drew up the instrument of sale or of any other kind of alienation; and he who received the *octava*, or anything else by way of tax, shall be subjected to the same penalty. We, however, grant authority to all traders to buy or sell, wherever they please, eunuchs of barbarous nations who have been made such outside the boundaries of Our Empire.

TITLE XLIII.

CONCERNING FATHERS WHO HAVE SOLD THEIR CHILDREN.

1. *The Emperors Diocletian and Maximian to Papiniana.*

It is a plain rule of law that children cannot be alienated by their parents, either through sale, donation, pledge, or in any other way, even under the pretext of the ignorance of the person who receives them.

2. *The Emperor Constantine to the People of the Provinces.* If any heartless person, induced by extreme poverty and want, should sell either his son or daughter for the purpose of obtaining

means wherewith to live, in a case of this kind the sale shall only be valid where the purchaser had a right to the service of the person sold, and he who made the sale, or the one to whom the child was alienated, shall have the right to restore it to its freeborn condition, provided he tenders its value to the owner, or furnishes him another slave in its stead.

TITLE XLIV.

CONCERNING THE RESCISSION OF A SALE.

1. *The Emperor Alexander to Maro.*

If your father, having been compelled by force, should sell his house, the sale will not be valid, because it was not made in good faith, and a purchase made in bad faith is void. Therefore, having applied in your own name to the Governor of the province, he will interpose his authority, above all if you state that you are prepared to refund to the purchaser the price which was paid.

2. *The Emperors Diocletian and Maximian to Lupus.*

If either you or your father should sell property for less than it is worth, and you refund the price to the purchasers, it is only just that you should recover the land which was sold by judicial authority; or, if the purchaser should prefer to do so, you should receive what is lacking of a fair price. A lower price is understood to be one which does not amount to half of the true value of the property.

3. *The Same to Martiana.*

Good faith does not permit a person, at any time, to repudiate a contract of sale or purchase made in accordance with law against the consent of either party, even by virtue of an Imperial rescript. It has frequently been decided that Our Treasury can make use of this right.

4. *The Same to Eudoxius.*

For the purpose of rescinding a sale, and proving bad faith, it is not sufficient for you to state that the land in question has been sold for less than half the amount for which it was purchased.

#### 5. *The Same to Rufus.*

If, after application has been made to the Governor of the province, he should decide that you made the sale of your land because you were deceived by the fraudulent representations of your adversary, and being aware that fraud is contrary to the good faith especially required in contracts of this kind, he must order the sale to be rescinded. If, however, it was perfected by a person more than twenty-five years of age, you understand that when this was done by common consent, the sale cannot be set aside.

#### 6. *The Same to Gratian.*

The reason for which you desire a sale made by common consent to be rescinded is not a proper one; for although you offer double the price to the purchaser, still, if he is unwilling, he cannot be compelled to rescind the sale.

#### 7. *The Same to Mucarolus and Other Soldiers.*

It is to your interest that the sales legally made should always remain valid. For if it is readily permitted to rescind a sale, whenever an offer to refund the purchase-money is made, the result will be that if you should buy anything either from Our Treasury, or from a private person, with the fruit of your labors, you can be sued under the same law which you now ask to have a right to avail yourself of.

#### 8. *The Same to Evodia.*

If your son should, with your consent, sell a tract of land belonging to you, and fraud resulting from cunning and treachery should be proved, or the fear of death, or if some threat of bodily injury should be disclosed, the sale shall not be considered valid. The sole reason which you give for rescinding the sale, namely, that the property was disposed of for a little less than its true value, is not sufficient. If, indeed, you bear in mind the nature of the contract of sale, and that the purchaser desiring to buy for a lower price, and the vendor desiring to sell for a higher one, have come to terms after much contention, the vendor, receding little by little from what he at first demanded, and the purchaser adding little by little to what he at first offered, until they finally agree upon the price, you will at once perceive that neither the good faith which protects contracts of purchase and sale nor any other reason will suffer an agreement concluded with mutual consent to be rescinded, because either immediately, or after the amount paid has been discussed in court, if less than half of the just price was not paid at the time of the sale, the purchaser had reserved the right to return the property on condition that the money was refunded.

Given on the *Kalends* of December, during the Consulate of the Caesars.

#### 9. *The Same to Domitius.*

A contract is not considered to be void where the price of the property was not counted out in money, but payment was made in cattle, with the consent of the vendor.

#### 10. *The Same to Severus.*

The fraud of the purchaser is established by the nature of the act, and not by the amount of the sum which was paid. If fraud is proved to have taken place, the vendor will not have a right to bring an action to recover the property against the person to whom the purchaser transferred the ownership, but he will be entitled to one for complete restitution from him with whom he made the contract.

#### 11. *The Same to Magna.*

The vendor can make a complaint for fraud committed by the purchaser, which was concealed from him at the time of the execution of the contract, and which he afterwards ascertained, but not when he was aware of what was being done at the time, and gave his consent to it. Therefore, as you allege that your father agreed to what was mentioned in the bill of sale,



namely, that a higher price should be paid than it was originally agreed that the property should be sold for, he will, in vain, complain of having been swindled on this ground. (1) Where, indeed, it is proved that the price agreed upon was not paid, or if it was provided, through an error of fact, that another debt should be set off against it, a demand can legally be made for its payment.

12. *The Same to Antiochus.*

The sale of the land in question is none the less valid because you allege that you disposed of it because you had a pressing need for the money in order to satisfy a public claim, and did not sell it for less than it was worth. Therefore, while abstaining from any unlawful demands, you had better demand the price, if it has not been paid in full.

13. *The Same Emperors and Cs&sars to Nica.*

If you, when you were more than twenty-five years of age, sold a tract of land, good faith does not permit the sale to be rescinded by you for the sole reason that your father-in-law notified the purchaser not to buy it.

14. *The Same Emperors and Caesars to Basilica.*

Estates having been sold upon condition that the person who brought them should pay what the vendor owed to the State, and payment having been made by the latter, he can bring suit for the amount to which he is entitled, but the contract shall not be declared void for the reason that the purchaser did not comply with his agreement.

15. *The Emperors Gratian, Valentinian, and Theodosius to Hypa-tius, Prsetorian Prefect.*

If anyone who has attained his majority should sell some lands situated in a distant country, he cannot recover the property sold under the pretext that it was disposed of for a little less than its real value, and he will not be permitted to cause delay by objections which are without foundation, as, for instance, to allege that the value of the property was not known to him, as he should have previously made himself familiar with the value, the advantages, and the profits of the same.

Given on the sixth of the *Kalends* of May, during the Consulship of Merobaudus, Consul for the second time, and Saturninus.

16. *The Emperors Valentinian, Theodosius, and Arcadius to Ma-gillus, Vicegerent of Africa.*

If the necessity imposed by public liabilities compels anyone oppressed by the weight of his debts to relinquish his property, the nature of the same and the amount of the income derived from it shall be estimated in order that there may be no ground for fraud under the pretext of a public sale, so that, it having been sold at too low a price, the collector of taxes will obtain more from the favor which he grants than the debtor will from the money which he receives. Those shall afterwards hold the property by a perpetual title, legally obtained by the sale, who paid to the Treasury as much as would have been given by a private person; for it is extremely unjust that where the property of another is sold as a favor, the Treasury should obtain but little, and the debtor lose everything.

17. *The Emperors Arcadius and Honorius to Messala.*

Those who, in order to avoid public charges to which they are liable, take to flight, or secretly make fraudulent contracts, are hereby notified that such schemes will not benefit them to any extent, and that if the purchaser is aware of their flight he shall be fined a sum equal to the price which he paid.

Given on the twelfth of the *Kalends* of September, during the fifth Consulate of Theodore, 399.

18. *The Emperors Arcadius, Honorius, and Theodosius to Nestorius, Count of Private Affairs.*

The Palatines are hereby informed that authority is refused them to purchase clothing, gold, silver, or slaves, whenever they are sold by Our subjects, under penalty of losing the price which they paid.

TITLE XLV.

WHEN IT IS PERMITTED TO REFUSE TO COMPLY WITH A CONTRACT OF SALE.

1. *The Emperor Gordian to Rufinus.*

When a contract of purchase and sale has not yet begun to be carried into effect, it can be rescinded with the acquiescence of both parties, for what has been agreed to by common consent can be dissolved in the same way. However, after delivery has been made, mere consent will not rescind a sale, unless a contract similar to the first one is drawn up, which retroactively puts an end to the transaction.

2. *The Emperors Diocletian and Maximian to Felix.*

It is established that a purchase and sale which has not begun to be executed can be rescinded by an agreement, and the consent of the parties. Therefore, if gold has been given by way of earnest money, you can recover it in accordance with the terms of the agreement. Where, however, you have paid part of the price, you will rather be entitled to an action to recover whatever the vendor is required to furnish you under the contract of sale than the amount of the price which he paid.

TITLE XLVI.

WHERE A SALE IS MADE ON ACCOUNT OF PUBLIC CONTRIBUTIONS.

1. *The Emperor Antoninus to Maternus.*

A sale should not be revoked on account of the non-payment of taxes, whether the former owner tenders the purchase-money, or a creditor interposes his right of hypothecation or pledge, as the claim, for the taxes is preferred, and all the property of the party in default is liable to it on the ground of priority.

2. *The Emperors Diocletian and Maximian to Plotius.*

If you have purchased lands taken from their owners on account of the non-payment of any taxes or of some balance due which were sold with the observance of the legal formalities, in good faith, and for a fair price with the permission of the Governor, by persons responsible for the collection of taxes, a sale made on account of public claims of this kind cannot be set aside. Where, however, the sale did not take place by the authority of the Governor previously obtained, the laws do not consider it to be valid, and therefore what was illegally done should be revoked in such a way that the payment of the taxes may, under all circumstances, be secured. All these things should be done in the presence of the person who you allege is the purchaser.

3. *The Emperor Constantine to the Governor Faustus.*

If anyone should buy at public sale a tract of land, a slave, or any other property, on account of default of the payment of taxes, or because of the seizure of clothing, gold, or silver which was due and payable annually and the debtor has been summoned and interrogated in court with reference to his failure to pay, We order that the sale shall be perpetually confirmed. If, however, the party interested is a minor, it is necessary that some person who can make a lawful defence should be present at the sale, and it makes no difference whether what was due was to be collected by Our attorney, or the Governor of the province.

Given on the day before the *Ides* of December, during the Consulate of Felicianus and Titian,

## TITLE XLVII.

LAND CANNOT BE PURCHASED WITHOUT THE PAYMENT OF TAXES OR  
BALANCES WHICH ARE DUE.1. *The Emperor Alexander to Capito.*

An action will not lie in your favor against your stepmother and your father under an agreement which you allege was entered into between them by which she gave a tract of land as dowry, and agreed to pay the taxes to which it was liable, and this is the case even if the agreement is proved to have contained a stipulation. If, however, the land has been appraised, in order, as was stated in the instrument, that it might be given by way of dowry, the action on sale will not lie, although the agreement may be enforced.

Given on the *Nones* of December, during the third Consulate of the same Emperor, Consul for the third time, and Dio, 230.

2. *The Emperor Constantine to Marcellus.*

While examining the question of public contributions with reference to provisions, We have ascertained that the principal reason why the tax due is not paid is because certain persons, taking advantage of the temporary necessities of others, purchase lands under the condition of not paying any taxes which might be due on them to the Treasury, and possessed them free from all encumbrance; therefore it has been decided that if it should be proved that anyone had made a contract of this kind, and had obtained possession under this condition, he shall not only be liable for the ordinary taxes on the land which was purchased, but also for all these remaining unpaid, and as the person who bought it is required to pay the taxes thereon, no one shall be permitted to purchase or sell any property free from tax.

Given at Agrippina, on the *Kalends* of July, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 319.

*Extract from Novel 17, Chapter Vill, Section 1.*

The vendor can, however, assume the payment of any taxes, if, after examination made before delivery, the purchaser should be found to be insolvent, for then the vendor will be compelled to acknowledge that the transfer was made at his risk, so far as the payment of taxes to the Treasury is concerned.

3. *The Emperor Julian to Secundus, Prsetorian Prefect.*

All persons shall be liable for the public taxes imposed upon the land in their possession, and they can obtain no advantage from agreements to the contrary, where either the vendor or the donor himself desires to assume the payment of the taxes under the terms of an unlawful contract, even if the name of the new owner has not yet been placed upon the tax register, but that of the former proprietor of the land still remains, the parties themselves having been guilty of dissimulation in order that those not in possession might be compelled to pay instead of the actual possessors.

Given at Antioch on the fourteenth of the *Kalends* of March, during the Consulate of Julian, Consul for the fourth time, and Sallust, 363.

## TITLE XLVIII.

## CONCERNING THE RISKS AND ADVANTAGES ATTACHING TO PROPERTY SOLD.

1. *The Emperor Alexander to Apollonius.*

After a sale has been perfected, every advantage and disadvantage which can affect the property disposed of will concern the purchaser, for the vendor, on his part, is only liable for

what may cause eviction, and originated during the time preceding the sale; hence if he is notified to appear at a proceeding of this kind, judgment will be rendered against him in the presence of the purchaser.

2. *The Same to Julian.*

As it is proper that wine-jars should be sold at a fixed price, before they have been delivered, and while the sale was as yet imperfect, the risk of having the wine changed will not be assumed by the purchaser, provided he was not in default in causing it to be measured. As, however, you allege that all the wine deposited in the warehouses was sold without having been measured, and the keys delivered to the purchaser, any loss which ensued from its having been changed after the sale was concluded must be assumed by the latter.

These rules not only apply to wine, but also oil, grain, and other articles of this kind which have been sold and have become deteriorated or entirely destroyed.

3. *The Same to Diaphania.*

It is an established rule of law that the fraud of the vendor cannot injure a *bona fide* purchaser.

4. *The Emperor Gordian to Silurus.*

When an agreement as to the price was made in a verbal contract between purchaser and vendor, and the vendor did not delay in delivering the property sold, there is no doubt that it will be at the risk of the purchaser.

5. *The Emperors Diocletian and Maximian to Leontius.*

As you state that the property sold was consumed by fire, and there was no condition which suspended the sale, you were not liable for the articles destroyed.

6. *The Same to Cerulus.*

The loss by death of the female slave who was sold must be borne by the purchaser, and not by the vendor, even if it occurred before the slave was delivered, provided the vendor was not in default; and as the slave did not die on account of some already existing defect the purchaser cannot legally refuse to pay the price.

TITLE XLIX.

CONCERNING THE ACTIONS OF PURCHASE AND SALE.

1. *The Emperor Antoninus to Deliana.*

Bring an action of sale against the person to whom you sold the land, for you are not entitled to one *in rem* against the purchaser, who is personally liable to you.

2. *The Emperors Valerian and Gallienus, and the Cæsar Valerian to Domitian.*

You can bring the action of sale against your adversary for the purpose of recovering the balance of the price. You cannot be opposed by having a set-off pleaded against you, as if you were indebted to one another; and if you should prove that, in a *bona fide* contract (on account of which persons over the age of twenty-five obtain relief through a judge on the ground that fraud has been committed), you have been led into a plausible error, or have been defrauded by your adversary, and have acknowledged a debt which, in fact, was not due.

You can also recover by the same action any crops which were gathered before the sale was contracted, and which were not included in it, but which you allege were appropriated by the purchaser.

3. *The Emperors Diocletian and Maximian to Serpodorus.*

A personal action in favor of the contracting parties is the only one which can be brought under an agreement where earnest money has been given.

4. *The Same to Mutian.*

If the delivery of the property sold did not, through the obstinacy of the vendor, take place in accordance with the terms of the contract, the Governor of the province must see that judgment is rendered against him to the extent of the interest which the purchaser had in having the sale concluded.

5. *The Same to Decima.*

The Governor of a province shall compel the purchaser to restore to you a part of the price with the interest if, after having obtained possession of the property, he has gathered the crops, and this rule is established because he has gathered them in favor of minority, even though the purchaser may not have been in default.

6. *The Same to Neractus.*

The action of sale (unless it was otherwise agreed in the beginning) will not readily lie to rescind a sale which has been perfected, but it can be brought for the purpose of collecting the purchase-money.

7. *The Same to Diodorus.*

If you sold certain slaves and received the price out of their *peculium*, which, in fact, belonged to you without knowing from whence it was derived, the result will be that you can bring suit to recover the price, as the payment of money belonging to the vendor does not release the purchaser from liability.

8. *The Same to Eusebius.*

If your father should sell a portion of his land, but does not place the purchaser in possession, it is certain that he will retain all his rights to said land; and even if the purchaser has paid the tax, as

where delivery has been made, he will still do so, for when a simulated act takes place it cannot alter the truth. Wherefore, if after application has been made to the Governor of the province, he should find that neither your father nor his successors had placed either the purchaser or his heirs in possession of any part of the property, he will have no hesitation in deciding that no transfer was made. But if he should learn that you have been sued in an action on purchase to compel you to place the purchaser in possession, he must then ascertain whether the price has been paid, and if this has not been done, he will see that the property is restored to you.

9. *The Same to Antipatra.*

If it should be stated by the vendor (either knowingly or ignorant-ly) that the tax on the land sold was less than it was afterwards found to be, suit can be brought against him for the amount which the purchaser would have been compelled to add to the price, if he had been aware of this in the first place. Where, however, he was aware of the actual amount of the tax which was due, he will have no right of action against the vendor.

10. *The Same to Attains.*

As you state that the vendor did not deliver you the meat at the time agreed upon, contrary to the terms of the contract, you can sue him before the Governor of the province in the action of purchase for the amount of the interest that you had in having the meat furnished you.

11. *The Same to Bucarpia.*

Where a vendor has manumitted a female slave delivered to you under a contract of sale, he cannot bestow freedom upon a slave which belonged to another. If, however, he manumitted the slave after the sale and before delivery, being still her owner in accordance with law, he will not be prevented from making her a Roman citizen, and you will be entitled to a personal

action against him for breach of contract.

12. *The Same to Crispinus.*

As any loss caused by having wine changed after it has been actually purchased is at the risk of the purchaser, so he will also be entitled to any advantage derived from an increase in price. For this reason the terms of a contract must be observed when wine of a certain kind and quantity is sold, and if it should not be delivered, an action will lie, not for the price, but for the amount of the interest which the purchaser had in having it delivered.

13. *The Same to Alexander.*

After a contract has been legally concluded, it is settled that the profits of the property will belong to the purchaser, just as he must be responsible for any encumbrance upon it. The vendor can also, by authority of the judge, collect not only the price, but also the interest on the same, if it shall be established that the purchaser is in default.

14. *The Same to Rufinus.*

The purchaser of slaves can properly demand that a guarantee be furnished for their delivery, and against their flight, as well as for their health and that they are not wanderers, or liable to be surrendered by way of reparation for damages.

15. *The Same to Antonius.*

A purchaser cannot collect any more than the amount of wheat sold to him, as stated in the contract, where the vendor is not in default in the delivery.

16. *The Same to Cyrillus.*

It is well known that after a sale has been perfected, the young of cattle should be delivered by the purchaser, and the vendor should be reimbursed his expenses, if they have been incurred in good faith.

17. *The Same to Hermianus and Lupus.*

When you allege that you have been violently expelled by Nero from lands to which you deny he is entitled, you show that you have no right of action against him, for you have obtained possession of the land by sale; and therefore you must be aware that you should institute proceedings against him by means of an interdict, or by the *Actio permissa*.

TITLE L.

WHERE ANYONE HAS PURCHASED PROPERTY FOR ANOTHER, OR FOR HIMSELF  
IN THE NAME OF ANOTHER, OR WITH MONEY BELONGING TO ANOTHER.

1. *The Emperor Antoninus to Secundinus.*

If lands or slaves have been bought with your father's "money, and you assert that, nevertheless, the purchases were made in your mother's name, you should not be ignorant that by delivery your mother will become the owner of the property. It is evident that if you think you have a right to collect the price paid for said property, because it has been counted out by your mother, you must sue her in a civil action.

2. *The Emperor Alexander to Septima and Others.*

If, after your emancipation, your father should deliver to you certain lands which he purchased in your name when you were under his control, or if you had been in possession of said lands with his con-, sent, you will acquire the ownership of the same.

3. *The Same to Patrimus.*

If the slaves whom you mention have, as you state, been purchased in your name and in that of your brothers to whom you have succeeded, and have been delivered to you, although in the

bill of sale it is stated that your mother paid the money for them, you will not be prevented from recovering them in the ordinary course of law.

4. *The Emperors Valerian and Gallienus, and the Csesar Valeria/n, to Cyrillus.*

Although you inserted the name of your mother-in-law in the bill of sale, still, if while in possession, you became the owner of the property, you will have no need to apprehend any annoyance from her on this account, even though she may have the written contract.

5. *The Emperors Diocletian and Maximian to Verus.*

You say that, after having purchased a tract of land with your own money, you only inserted the name of your wife in the contract of sale, and she, taking advantage of the said contract which had been entrusted to her, claimed the ownership of the land contrary to good faith. The Governor of the province, in the exercise of his authority, must provide that the donation of said property by your wife, who is not the owner of the same, to her daughter, will not prejudice your right of ownership, and when you prove the truth of the statements in your petition, he will see that possession is restored to you, after having made an estimate of the value of the crops.

6. *The Same to Dionysius.*

It makes a great deal of difference whether you counted out the money when your wife made the purchase, and possession was delivered to her, or whether the contract was made in your name, and you subsequently caused that of your wife to be inserted in the bill of sale. For if your wife purchased the property in her own name, and it was delivered to her, you will have no right to it, and you will only be entitled to an action against her for the amount by which you have become poorer, and she has become richer.

When, however, you yourself purchased the property, and possession was delivered to you, and the name of your wife was only inserted in the instrument of sale, what has actually been done is preferable to what has merely been stated in writing.

But if in the beginning you, while transacting the business of your wife, made the purchase in her name, you did not acquire the right of action on purchase against her, as you did not intend to and could not have done so; and therefore so far as the question involving ownership is concerned, the position of him to whom possession has been delivered by the owner of the property is preferable.

7. *The Same to Gerontius.*

As you state that you have bought oil through persons who are transacting your business, but, after the price was paid, the vendor violated his agreement, you have certainly acquired a right of action growing out of the purchase, through the contract of those legally subject to your authority; and the action can either be brought by you or by anyone whom you may direct.

If, however, persons who were their own masters made this contract in accordance with your mandate, they themselves have acquired the right of action on purchase, and therefore you must appear before a competent judge either by them or by those to whom they gave the mandate, and he will see that your claim is satisfied in accordance with the good faith which is ordinarily observed in contracts of this description.

8. *The Same to Valentina.*

Anyone who has made a purchase with money belonging to another will acquire the right of action on purchase for himself, and not for him to whom the money belongs, together with the ownership of the property, if possession was delivered to him. Therefore, as you state that your cousin bought property with money owned in common by you both, you will do well to sue him to recover your money, but you will not be entitled to an action *in rem* against him for the property purchased.

9. *The Same to Rufina.*

There is nothing to prevent the ownership of property from being transferred to another than the person who has counted out the money, with the consent of both of the contracting parties, or, indeed, with only that of the vendor; and for this reason it is perfectly clear that an agreement of this kind can be made between persons who are absent, through the agency of a third party, as for instance, a messenger, or even by means of a letter.

TITLE LI.

CONCERNING THE PROHIBITED ALIENATION AND HYPOTHECATION OF THE PROPERTY OF OTHERS.

1. *The Emperor Alexander to Cantianus.*

If it should be proved before the Governor of the province that Julian, without any right, sold your slaves to persons who knew that they did not belong to him, he must order the purchasers to restore your slaves to you. If, however, they were ignorant that this was the case, and the slaves were delivered to them, the Governor shall order Julian to pay you the price of said slaves.

2. *The Emperor Gordian to Gratia.*

If you did not give your consent to the sale of your property by your husband, although you sealed with your own signet the instrument of sale which was fraudulent, a swindle of this kind will afford no security to the purchaser, and he can, by no means, avail himself of the rights of usucaption, or prescription based upon long time.

3. *The Emperors Diocletian and Maximian to Valerian.* A vendor who succeeds by hereditary right is not permitted to rescind a sale which was legally made and perfected, and recover the ownership of the property; but if she makes a claim in her own right, you can protect yourself by means of an exception on the ground of fraud, if you prefer this method; or, in case of eviction, if you do not wish to make use of the above-mentioned defence, you can bring suit for the value of your interest in the matter.

4. *The Same to Affabilus.*

When your mother gave the slaves of your father, who had leased a tract of land of Philip, to the latter for the payment of debts, and the slaves were obtained by you through inheritance, she could not deprive you of anything. Therefore, if you are more than twenty-five years of age, and did not ratify the transaction, and the lessor did not sell the slaves as being encumbered to himself by the right of pledge, you can bring an action to recover them after tendering the amount of the indebtedness.

5. *The Same to JEgrus.*

If after your emancipation your father sold a tract of land belonging to you without your consent, and you did not become his heir, and were not protected by possession based upon long time, the Governor of the province will cause the land to be returned to you, if you institute proceedings for that purpose.

6. *The Same to Rufus.*

No one has been able to injure you by selling property which did not belong to him, and upon which he had no lien, and which he had no authority to dispose of.

7. *The Emperor Justinian to John, Prietorian Prefect.*

We decree that when the law forbids an alienation to be made, or this is done by a testator, or in compliance with an agreement between contracting parties, not only the alienation of ownership and the emancipation of slaves, but also the transfer of the usufruct, or the hypothecation or encumbrance of the property by way of pledge shall be absolutely prohibited.



In like manner, We decree that servitudes cannot be imposed upon the property, or emphyteutical contracts executed except in cases where the authority of the constitutions, the will of the testator, or the tenor of the agreement which forbade the alienation permits something of this kind to be done.

## TITLE LII.

### CONCERNING THE ALIENATION OF PROPERTY OWNED IN COMMON.

#### 1. *The Emperor Antoninus to Apollodorus.*

If the purchaser of the land which you allege was sold by the coheirs of your paternal uncle cannot avail himself of the privilege of usucaption, or of prescription founded upon long-continued silence, the right of action *in rem* will remain unimpaired, so far as your share is concerned. If, however, the law has given the purchaser security, you have a perfect right to sue those who consented to an unlawful sale of your portion of the property.

#### 2. *The Same to Terentianus.*

It makes a great deal of difference whether your co-heirs have sold property held in common, or whether the Treasury, which owned a part of the same, sold the whole of it on account of the peculiar privilege which it enjoyed; for if the sale was made by the Treasury, the law does not permit the good faith of it to be impugned. Where, however, the co-heirs sold the entire property, although the purchaser, having been delegated by them, may have paid a part of the price to the Treasury, and entered into an agreement to pay the balance, still, the sale cannot prevent you from obtaining your share.

#### 3. *The Emperors Diocletian and Maximian to Eusebius.*

You have been incorrectly informed that the undivided share of an estate which is held in common can only be sold to one of the joint-owners and not to a stranger, before judgment has been rendered in a suit for partition.

#### 4. *The Same to the Soldier Ulpian.*

Your brother had no right to alienate your share of the property, especially while you were in the army, but it is not in conformity with military dignity to demand that your share of it should be restored to you upon tendering the price.

#### 5. *The Same and the Csesars to Olympianus.*

If you, being more than twenty-five years of age at the time, sold an estate as yours, not knowing that it was jointly owned by you and your brothers, although no written instrument was drawn up as evidence of the sale, and no special agreement was made, you will be obliged to pay to the purchaser the amount of his interest, if the shares belonging to the others should be evicted.

## TITLE LIII.

### THOSE WHO HAVE CHARGE OF THE AFFAIRS OF OTHERS ARE NOT FORBIDDEN TO ALIENATE THEIR OWN PROPERTY.

#### 1. *The Emperors Severus and Antoninus to Publica.*

Guardians or curators are not forbidden to alienate their own property, even though they may have been legally declared indebted on account of their administration. Therefore, your curator was able to encumber his property with the lien upon it to Our Treasury, which he could also have done to a private person.

## TITLE LIV.

### CONCERNING AGREEMENTS ENTERED INTO BETWEEN VENDOR AND PURCHASER.

#### 1. *The Emperor Antoninus to Diotima.*

If you sold your estate under the condition that if the price should not be paid within a certain time, the purchaser would forfeit the earnest money, and the ownership revert to you, the terms of the contract must be observed.

#### 2. *The Emperor Alexander to Charisius.*

If your parents sold a tract of land under the condition that if they themselves, or their heirs, should indefinitely, or within a designated time, tender to the purchaser the price of the property he would restore it; and if you are ready to comply with the above-mentioned condition, and the heir of the purchaser refuses to fulfill the contract, the *Actio prsescriptis verbis*, or the action on sale, shall be granted you; and an account shall be rendered you of the amount of the crops taken from the land which have come into the hands of your adversary, after the price was tendered in compliance with the terms of the agreement.

#### 3. *The Same to the Soldier Felix.*

If anyone should sell an estate on condition that if the balance of the purchase-money was not paid within a certain time the property would revert to him, as he did not deliver possession under a precarious title, he cannot bring an action to recover the land, but he can bring one on account of the sale.

#### 4. *The Same to Julian.*

He cannot avail himself of the condition under which a sale was made who, after the day fixed for the payment of the purchase-money has arrived, does not choose to bring an action to recover the property, but prefers to bring one to collect the interest on the price.

#### 5. *The Emperor Gordian to Longinus.*

When, at the time of the sale, you agreed that, if the person to whom you sold the property should pay you interest on the price if it was not paid at the time appointed, you will be correct in thinking that, after having made application to the Governor of the province, you can compel its payment by the purchaser; but if you did not make such an agreement in the beginning, having begun suit, you will only legally be entitled to interest from the time when the buyer was in default, and you can proceed not only against the debtor himself, but also against anyone who has given security for the purchase.

#### 6. *The Emperors Cams, Carinus, and Numerian to Rimulus.*

You having stated that in consideration of a certain matter agreed upon between you, you transferred your land to another for a very

low price, you cannot be defrauded by this agreement; as, when the promise is not fulfilled, it is proper that the ownership of the property should revert to you. Therefore, having applied to a competent judge, he will take measures to have the land which you mention returned to you with its crops without delay; and especially if the other party has been repaid the money which you received from him, he cannot be considered to have sustained any loss.

#### 7. *The Emperors Diocletian and Maximian to Museus.*

If the person to whom he alludes purchased anything from you, and it was agreed that if a certain sum of money was not paid within a specified time the transaction should be void; you cannot legally demand, under Our Rescript, that this agreement be set aside. If, however, the purchaser withdraws, in order that he may retain the ownership of the property by law, you can protect your rights by the remedy of notice, sealing up of the money, and depositing it,

which has been established to prevent fraud.

8. *The Same Emperors and Csesars to Auxanon.*

It is certain that the agreement made between the purchaser and the vendor at the time of the contract must be inviolably observed, provided it was not annulled by a subsequent agreement.

9. *The Emperor Justinian to John, Prsetoricm Prefect.*

If someone in a contract of sale or alienation should agree that the new owner should not, under any circumstances, be permitted to erect a monument in the place which was sold, or transferred to him in any other way, or be deprived of any right to which men are ordinarily entitled, We order that an agreement of this kind shall be observed in accordance with Our law, and remain inviolate; although a doubt arose on this point among the ancients, for it is a matter of grave concern that the purchaser should become the neighbor of a person whom he did not wish to be such, and still more, if the latter had been expressly forbidden to reside near him. For when neither a vendor, nor anyone else who alienates property, permits his right to be transferred, except under such a condition, how can it be tolerated that he should suffer annoyance on account of a different interpretation of the contract?

TITLE LV.

WHERE A SLAVE IS SOLD FOR THE PURPOSE OF BEING SENT OUT OF THE COUNTRY.

1. *The Emperors Severus and Antoninus to Petronia.*

Slaves who have been sold under the condition of their being sent out of the country, or if this is not done, that they should be confiscated, can obtain their freedom from the purchaser, or anyone who succeeds to his place, before the terms of the contract are violated.

They can, however, be claimed by the Treasury after their manumission, and are liable under the same condition to be reduced to perpetual servitude if they should be found in those cities from which they are excluded by the contracting parties. The power of confiscation is, however, not refused before their manumission.

2. *The Same to Nedienu.*

When, however, you have provided that you shall have the right of seizure of a slave, you can avail yourself of it; but if you omitted to do this, and stipulated for a penalty, and the slave should be confiscated by the Treasury, you will be entitled to the action based on the stipulation. In every instance, however, inquiry should be made whether the slave came into the prohibited place with the consent of his master.

3. *The Emperor Alexander to Nonius.*

In a case where a female slave was sold to be sent out of the country, and this was not done, but while residing in the same city with the purchaser, the latter manumitted her, she could not become free contrary to the condition of the sale; and therefore if you apply to My attorney he will perform his duty.

4. *The Same to Papias.*

I am annoyed because you allege that you have been sold by slaves whose master you were, under the condition that you should not remain in the country, and you state that you have been manumitted by him to whom your first master sold you. For this reason a competent judge will examine the person who you say is present, and if the truth of the accusation is established, he must punish the detestable crime with the penalty of death. Your status, however, will be that of a slave after manumission, if you establish the truth of the accusation which you make.

5. *The Same to Seraphianus.*

A slave who has been sold by his master on condition of his removal from a city cannot reside in the City of Rome. Where, however, the condition applies to a certain province, he will be allowed to reside in Italy. Therefore, if you can prove that the condition agreed upon was violated, you can avail yourself of the right to which, for this reason, you are entitled.

TITLE LVI.

WHERE A SLAVE HAS BEEN SOLD ON CONDITION THAT HE SHOULD NOT BE PROSTITUTED.

1. *The Emperor Alexander to Socrates.*

Our friend, the Prefect of the City, will grant the power of arrest to anyone who is entitled to it, in accordance with the Constitution of the Divine Hadrian, where a slave has been sold under the condition that he or she should not be prostituted, and this has been done. If the Prefect should ascertain that the vendor, in violation of the condition which he himself prescribed, permitted the woman to obtain dishonorable gain in this manner, as she is entitled to freedom by the Constitution of the same Emperor, she should be brought before the Prsetor having jurisdiction of cases involving liberty, and he shall order proceedings to be instituted for that purpose at once; for the force of the condition after it has once been made is not lost because the ownership of the slave may have passed through several purchasers to the first one who prostituted her, without prescribing a similar condition.

2. *The Same to Severus, Przetorian Prefect.*

It is necessary for the woman, whom you allege was sold under the condition that she should not be prostituted, and in case this took place, she was to become free, to be legally produced before the tribunal; and if any controversy should arise with reference to the agreement (under which, if it is genuine and the condition has been fulfilled, the woman will be entitled to her freedom), the case shall proceed before the magistrate having jurisdiction of the same. This condition, however, although it may not have been inserted in the bill of sale, will be valid, if it is proved to have been made in a letter, or even if it has not been reduced to writing.

3. *The Same to Aurelius.*

A female slave, who has been sold under the condition that she does not make a shameful commerce of her body, must not prostitute herself in a tavern under the pretext of serving therein, in order to avoid a fraudulent evasion of the condition prescribed.

TITLE LVII.

WHERE A SLAVE HAS BEEN ALIENATED UNDER THE CONDITION THAT HE WILL OR WILL NOT BE MANUMITTED.

1. *The Emperor Alexander to Patricenstis.*

If Patroclus, after he donated you to Hermia under the condition that if you served her as a slave for sixteen continuous years, she would grant you your freedom, and you would then become a Roman citizen, provided Patroclus did not afterwards change his mind, or even if he died that you would be free; as it has been established that this condition not only applies to slaves who are sold, but also to such as are donated, you should be manumitted. The title to you having once been transferred to Hermia, Patroclus could not afterwards sell you to another; and therefore you should not contend that freedom which you have already obtained by the constitution ought to be granted you, but you should defend what you already have obtained.

2. *The Same to the Freedman Eutyichianus.*

If Chrestes sold his slave, who is also his natural son, on condition that the purchaser should

manumit him, even though this may not have been done, he will become free in accordance with the Constitution of the Divine Marcus and Commodus, addressed to Aufidius.

3. *The Same to Fulginius.*

If Justa sold Saturninus a slave girl named Firma, who was at that time seven years of age, under the condition that she should be free when she reached the age of twenty-five years, although in the agreement relating to her freedom, executed by the purchaser, this was not inserted, but it was merely stated, "that she should become free;" still, in this instance, there is ground for the application of the Constitution of the Divine Marcus and Commodus, included in the collection of laws entitled Semesters. Therefore, when Firma reaches her twenty-fifth year, she will become free, and it cannot be pleaded in opposition to this that she was manumitted in her twenty-seventh year, because she was already free under the terms of the constitution. Therefore, a child born of you and her, who was conceived after the twenty-fifth year of its mother, is freeborn.

4. *The Emperor Gordian to Jocunda.*

If anyone received a sum of money under the condition that he would grant you your freedom within a specified time, and he delayed in complying with his promise to liberate you, it is clear that you will be free from the moment when freedom should have been conferred upon you, and it was not done; and therefore, it is certain that any children born to you ought to be considered freeborn.

5. *The Same to Martian.*

Slaves, whose sale was made under the condition that they should not obtain their freedom, cannot do so even if they are manumitted; for a condition which attaches to a slave cannot be changed by the act of anyone who purchases him subject to it; nor can a penalty legally be exacted for non-compliance with the condition (if one was prescribed). Hence the person who imposed this condition in making the sale cannot call you before the Attorney of the Treasury, as it should not interfere with a private contract, and the letters which have been sent to you do not prove that you violated the condition, if you yourself did not manumit the slave.

6. *The Emperors Diocletian and Maximian, and the Csesars, to Rufinus.*

If you sold a young girl under the condition that she should be manumitted, and that, if this was not done, the purchaser must pay a hundred *aurei*, and the contract is not complied with, it is established that the slave shall, nevertheless, obtain the freedom which should have been granted her, nor can the money be lawfully collected, as in the case of the violation of a contract, since it has been decided, for excellent reasons, that where the vendor did not subsequently change his mind, compliance with the condition was not necessary for the purpose of manumission.

TITLE LVIII.

CONCERNING ^DILIAN ACTIONS.

1. *The Emperor Antoninus to Decensius.*

If someone, not in good faith, but with the intention of committing fraud, should sell you a slave who is in the habit of running away, or one with some other defect, without your being aware of it, and the said slave takes to flight, a competent judge (as has already been established) shall order that the vendor shall not only be liable for the price of the slave, but shall also make good any damage which you may have sustained on his account.

2. *The Emperor Gordian to Penthilius.*

As you state that a slave whom you purchased some time since ran away a year ago, I cannot

permit you on this account to hold the vendor responsible; as it is a plain rule of law that the *Actio redhibitoria* cannot be brought after six months, or the one *Quanta minoris* after a year.

### 3. *The Emperors Diocletian and Maximian to Mutian.*

The purchaser must bear the loss of the slave if he becomes a fugitive after the sale, and it is not proved that he ran away from his former master. If, however, the vendor should rashly guarantee that a slave had no vice, and that he would not have any hereafter, although this appears to be impossible, still there is no doubt that an action can be brought in accordance with the terms of the contract, made either before or at the time of the sale; for subsequent accidents are at the risk of the purchaser, not of the vendor. But as you state that the slave whom you purchased returned to the person who sold him, a competent judge, after having taken all the circumstances into consideration, will render a decision in accordance with the nature of the facts.

### 4. *The Same to Falsus.*

When anyone purchases a tract of land under the condition that if he should be displeased with it, it should be considered as not sold, it is clear that it having been returned as sold under a condition, the *Actio redhibitoria* will lie against the vendor.

The same rule shall be observed where the land is pestilential, that is to say, where it contains dangerous or poisonous herbs, and the purchaser was ignorant of this when it was sold, for it is established that in this case, also, the above-mentioned action can be brought.

### 5. *The Emperors Gratian, Valentinian, and Theodosius to Nephridius.*

Although a *bona fide* contract may have been made for a slave, and the latter may have been delivered, and the price paid, still, the right of recovery is granted to the person who purchased him if he can produce the slave, whom he alleges has taken to flight.

This rule should not only be observed with reference to barbarian slaves, but also concerning such as are natives of the provinces.

Given at Constantinople, on the third of the *Kalends* of July, during the Consulate of Honorius, Consul for the ninth time, and Evodius, Consul for the fifth time.

## TITLE LIX.

### CONCERNING MONOPOLIES, UNLAWFUL AGREEMENTS OF MERCHANTS, THE ARTIFICERS OR CONTRACTORS, AND THE ILLEGAL AND PROHIBITED PRACTICES OF BATH PROPRIETORS.

#### 1. *The Emperors Zeno to Constantine, Prætorian Prefect.*

We order that no one shall be so bold as to monopolize the sale of clothing of any kind, or of fish, combs, copper utensils, or anything else having reference to the nourishment or the common use of mankind, no matter of what material it may be composed, whether he does so by his own authority, or under that of a Rescript already promulgated, or which may hereafter be promulgated, or of a pragmatic sanction, or of any Imperial Annotation; and let no one conspire, or agree in any unlawful assembly, that any kind of merchandise which is an object of commerce shall not be sold for less than is agreed upon by the parties in question.

Builders of houses or contractors, and artificers of other different trades, as well as proprietors of baths, are absolutely forbidden from entering into agreements with one another, providing that where one of them is engaged to perform some work it cannot be done by another, or that one shall interfere to prevent another who has been employed to do it. Permission is hereby given to anyone to complete work which is unfinished and abandoned by another, without fearing to be subjected to expense by the latter, and to denounce all crimes of this kind without fear, and without being subjected to expense in court.

Moreover, if anyone should venture to practice monopoly, he shall be deprived of all his property, and sentenced to perpetual exile. Again, We decree that those who are at the head of other professions, and hereafter venture to fix the prices of their merchandise, or bind themselves by any illegal contracts of this kind, shall be punished by a fine of forty pounds of gold, and that your tribunal shall be condemned to pay a fine of fifty pounds of gold if it should happen that, either through venality, dissimulation, or some other vice, the provisions of Our most salutary Constitution with reference to prohibited monopolies and forbidden agreements of corporate bodies should not be executed.

#### TITLE LX. CONCERNING FAIRS AND MARKETS.

##### 1. *The Emperors Valens and Valentinian to Probus, Prsetorian Prefect.*

Persons who either by Our authority, or through the indulgence of Our predecessors enjoy the privilege of holding markets or fairs, obtain the benefit of rescripts to the extent that suit cannot be brought against them either on account of their business or their slaves, while the fairs or markets are being held; nor can they be compelled by any individual to pay a certain price for the places which they temporarily occupy; nor can they, under the pretext of a private debt, be subjected to any annoyance while they are there.

#### TITLE LXI.

#### CONCERNING DUTIES ON MERCHANDISE, AND OFFENCES TO WHICH THEY ARE SUBJECT.

##### 1. *The Emperors Severus and Antoninus to Victorinus.*

If you were legally manumitted before any question of the violation of the customs laws was raised, it is not just that you should be deprived of your status on this account.

##### 2. *The Same to Linuus.*

An offence of this kind cannot be punished if it is alleged to have been committed five years ago, provided suit has not been brought for the property within that time; nor can the price of it be demanded under such circumstances, if it does not exist, and has not been fraudulently suppressed.

##### 3. *The Same to the Soldier Ingenuus.*

We have consulted the welfare of all Our soldiers in not rendering them liable to the penalty for defrauding the customs by not making declarations. Therefore, dismissing any fear of this kind, if it is apparent that you owe any duties, pay them.

##### 4. *The Emperor Constantine to Rufus.*

In farming out the collection of taxes, he shall have the preference who offers the highest bid, and the lease shall be made for not less than a term of three years; nor shall the time prescribed for collection be subject to interruption in any way. The said term having expired, it will be necessary again to farm out the right to the highest bidder, in like manner, at auction.

Given on the tenth of the *Kalends* of July, during the Consulate of the Csesar-Crispus, Consul for the second time, and Constantine, 321.

##### 5. *The Same to Menander.*

No tax shall be collected by officials appointed for that purpose from residents in the provinces, on property employed for their own use, or on that of the Treasury, or on such as is used for cultivating the soil. We, however, subject all other property, exclusive of that above mentioned, or which is employed in trade, to the ordinary dues and charges; and the penalty of death is pronounced against the receivers of taxes, municipal employees, and other persons whose avarice tempts them to disobey this law.

6. *The Emperors Valens and Valentinian to Florentinus, Count of the Sacred Largesses.*

The same rule should be observed with reference to the property of persons in private life, so far as public duties are concerned. We mention this because some individuals produce rescripts by which they assert that they are released from the payment of taxes or duties on merchandise which it is customary to pay to the Treasury. Hence, if any private person should attempt to avail himself of a rescript of this kind, it shall be considered void, for the payment of duties is not unimportant, and should be made equally by all those who have charge of the sale or the transport of merchandise, with the exception of shipmasters, when they are proved to be transporting their own property.

7. *The Same and Gratian to Arckelaus, Count of the East.*

No one shall, under any circumstances, be permitted to pay less than one-eighth in the settlement of duties on merchandise, which is the usual amount fixed for all those who desire to engage in commerce, and no exception should be made in the case of soldiers.

8. *The Emperors Gratian, Valentinian, and Theodosius to Palladius, Count of the Sacred Largesses.*

Collectors of customs shall receive from the ambassadors of nations tributary to Our Empire, duties on merchandise, which they bring from their own country into this; but such merchandise as they are permitted by law to remove from Roman soil to their own country, they have a right to take away immune from payment, and free.

9. *The Same to the Same Count of the Sacred Largesses.*

We forbid any privilege to be exercised with reference to duties in Egypt and Augustanica, and We do not permit anyone to rashly claim the right to the transport of animals, which is only authorized when the ordinary duties are paid.

10. *The Emperors Arcadius and Honoring to Rufinus, Praetorian Prefect.*

We order that, whatever duties on merchandise municipalities may have established for their own advantage and that of their *curise* in order to defray expenses, whether this has been done for the benefit of the *curise*, or has been designed for some other use of the said municipalities, shall be confirmed, and remain in force for all time; and that no annoyance need be apprehended from persons petitioning against the collection of said duties.

11. *The Same to Lampadius, Prtetorian Prefect.*

If anyone, without the authority of the public lessees of saltpits, should purchase salt, or attempt to sell it, whether he acts upon his own responsibility, or is provided with one of Our Rescripts; this salt, together with the price paid for the same, shall be adjudged to the said lessees.

12. *The Emperors Honorius and Theodosius to Cuso, Count of the Sacred Largesses.*

We decree that where anything granted by pragmatic sanctions or Imperial Annotations, against the collection of taxes, has been bestowed as a favor, it shall be of no force or effect.

13. *The Emperors Theodosius and Valentinian to Flavian, Prse-torian Prefect.*

With the exception of those duties on merchandise which have always formed a part of Our Imperial patrimony, all duties shall be reserved for the cities of the Empire, after the expenses required for public necessities have been deducted. As the former rule was that two-thirds of these imposts should be paid into Our Treasury, We now order that the remaining third shall be at the disposal of the different cities and municipalities, that they may learn that these duties have been established more for their advantage than for that of others; therefore, the enjoyment of the portion designated shall be permitted to these cities so that they will have full power to farm them out to the extent of their interest in the same.



## TITLE LXII.

### NEW DUTIES ON MERCHANDISE CANNOT BE ESTABLISHED.

#### 1. *The Emperor Severus and Antoninus to Vietorinus.*

The collection of new duties should not be rashly permitted, but if your city is so poor that extraordinary means must be taken to relieve it, state to the Governor of the province what you have set forth in your petition. He, after having diligently examined the matter with a view to the common welfare, shall write to Us what he has ascertained, and We will decide your case as We think best.

#### 2. *The Same to Callistianus.*

New duties on merchandise cannot be established by the ordinance of a municipality.

#### 3. *The Emperors Gallienus and Valerian to Tuscits and Others.*

New duties are not usually established by Emperors without reflection, and therefore a competent judge will forbid anything to be collected which is illegally demanded, and if what has been collected has been extorted contrary to law, he must order it to be returned.

#### 4. *The Emperor Constantine to Felix, Prsetorian Prefect.*

If complaint of the greed of farmers of the Revenue should be made by the subjects of Our provinces, and it is proved that they have violated the ancient custom, as well as Our regulations, those who are guilty of so serious a crime shall be punished with perpetual exile.

The supervision of this employment is hereby conferred upon you and your successors.

## TITLE LXIII.

### CONCERNING COMMERCE AND MERCHANTS.

#### 1. *The Emperors Valens and Valentinian to Julian, Count of the East.*

Merchants who are attached to Our palace, as well as those forming part of the households of nobles, are admonished to acknowledge any claims which they owe (as honesty demands), in order that their example may be followed by all those who obtain profit from trade.

Given at Constantinople, on the fifteenth of the *Kalends* of May, during the Consulate of the Divine Jovian, and Varronian, 364.

#### 2. *The Emperors Gratian, Valentinian, and Theodosius to Tatian, Count of the Sacred Largesses.*

Not only shall no gold be furnished to barbarians, but even if any should be found in their possession they must be deprived of it by artifice. If, however, gold should hereafter be given to barbarians by traders, in payment for slaves or other merchandise, they shall not be fined, but shall suffer death; and when a judge does not punish such a crime after he has discovered it, or conceals it, he shall be punished as an accomplice.

#### 3. *The Emperors Honorius and Theodosius to Theodore, Prsetorian Prefect.*

We forbid persons of noble birth, or those who are conspicuous through the honors they enjoy, or are wealthy, to carry on any trade which is injurious to cities, in order that the power to purchase and sell may be rendered more easy between plebeians and merchants.

#### 4. *The Same to Anthemim, Prsetorian Prefect.*

Not only merchants who owe allegiance to Our government, but also those who are subject to the King of the Persians, must not hold markets beyond the places agreed upon at the time of the treaty concluded with the above-mentioned nation, in order to prevent the secrets of either kingdom from being disclosed (which is improper). Therefore, no subject of Our Empire shall

hereafter presume to travel for the purpose of selling merchandise beyond Nisibis, Callinicum, and Artaxata, nor think that he can exchange merchandise anywhere beyond the above-mentioned cities. All persons are hereby notified that if one makes a contract under such circumstances, any merchandise which has been either sold or purchased beyond said cities shall be confiscated by Our Treasury, and, in addition to this, the price which was paid, or any articles given in exchange shall be surrendered, and the offender sentenced to the penalty of perpetual exile.

Judges, and their subordinates also, shall be condemned to pay thirty pounds of gold for every contract entered into beyond the abovementioned limits, whenever any Romans or Persians have passed the said frontier to the forbidden ground, for the purpose of trade; with the exception of those envoys of the Persians who have at some time been despatched to Us and have brought merchandise to be exchanged, to whom, for the sake of humanity and on account of their character as ambassadors, We do not refuse the privilege of trading beyond the prescribed limits; unless, under the pretext of belonging to an embassy, and having remained for a long time in some province, they do not return to their own country; for, as they engage in trade, the penalty of this law will not unreasonably be imposed upon them, as well as upon those with whom they have contracted or resided.

*5. The Same to ZEtius, Praetorian Prefect.*

With a view to disposing of any attempt or claim to increase it, the membership of the association of merchants is hereby fixed at five hundred and sixty-three, and none shall be added to it, nor the number be altered; nor shall anyone have authority to substitute another in the place of a member who dies, but those who have died shall be replaced by others selected by your tribunal from the same class to which the deceased belonged, in the presence of the corporate body; and no privilege shall be granted to anyone of the members to exceed the above-mentioned number.

*6. The Same to Maximus, Count of the Sacred Lar'gesses.*

If those who have been convicted of having gone beyond the cities named in the ancient laws, or of having entertained foreign merchants for the purpose of trade, without the consent of the Count of Commerce; they cannot escape the confiscation of their property

and the penalty of perpetual exile. Therefore, all persons, whether they are in private life, hold some civil office, or belong to the army, are informed that they must absolutely abstain from any rash behavior of this kind, or be subjected to the punishments above mentioned.

TITLE LXIV.

CONCERNING THE EXCHANGE OF PROPERTY AND THE ACTIO PRASSCRIPTIS  
VERBIS.

*1. The Emperor Gordian to Therasa.*

If your paternal uncle had land for sale, and your father gave him another tract by way of price, although the value was not appraised, and you state that what you purchased was evicted, not on account of the injustice of the judge, but through your father's negligence, it is not unreasonable for you to ask to recover the amount of your interest by the action on purchase, if you have succeeded to the rights of your father. Where, however, the land was not for sale, but an exchange was made, and what you received from the other party was evicted, you can reasonably demand the tract given in exchange, for it should be returned if you desire this to be done.

*2. The Emperors Diocletian and Maximian to Primitiva.* It is a well-known rule of law that an exchange made of property in good faith such as you mention is equivalent to a sale.

### 3. *The Same Emperors and Csesars to Leontius.*

It is established that no one will obtain a right of action by virtue of a contract for exchange, where nothing was done, unless the stipulation based upon the obligation created by the words acquires one for the parties.

### 4. *The Same Emperors and Csesars to the Same Leontius.*

As you state in your petition that a contract for exchange was made between you and another person, and the land which, was given by you has been sold, you are advised that you will not be entitled to any action against the purchaser, as he has received the title to the property from him to whom you do not deny that you transferred it by way of exchange.

If, however, a stipulation has been added to the contract, you will not be prevented from suing the creditors of the person with whom you made it. But where no stipulation was added, you will be entitled to bring the *Actio prasscriptis verbis*, so that either the terms of the contract may be observed in your behalf, or that what you gave in exchange for the land of the other party may be restored to you, as the contract was not executed.

### 5. *The Same Emperors and Caesars to Theodolana.*

As you allege that your father conveyed a certain tract of land to the person against whom you filed your petition, on condition that he would receive a certain house in exchange, he having appeared before the Governor of the province, the latter will order the other party to comply with his agreement, for if he should find that the consideration for the conveyance of the land was not transferred, he shall order that whatever was given conditionally shall be restored to you.

### 6. *The Same Emperors and Csesars to Protogencs.*

The authority of the law shows that where property has been delivered under a certain condition, the uncertain civil action *prse-scriptis verbis* should be granted, if the condition is not complied with.

### 7. *The Same Emperors and Csesars to Timotheus.*

It has long since been decided that a sale cannot take place by giving property instead of money. Therefore, as you assert that you have delivered a certain amount of grain to Callimacus and Acamatus, under the condition that they would furnish you a specified quantity of oil, if no stipulation was made, and they do not fulfill the contract, you can bring a personal action to recover the amount of grain which you gave, on the ground that the contract was not carried out, if you desire to do so.

### 8. *The Same Emperors and Cassars to Paulina.*

Property having been given to Candidus in consideration that he would furnish you every month or every year with what was agreed upon, as an agreement of this kind cannot be considered to be one without consideration, because the condition has been fortified by the delivery of the property, you will be entitled to the *Actio prtscriptis verbis* to compel the fulfillment of the contract in accordance with your demand.

## TITLE LXV.

### CONCERNING LEASING AND HIRING.

#### 1. *The Emperor Antoninus to Agrippina.*

The owner of a warehouse is not liable to the lessee for the exertion of superior force, or the breaking in of robbers. Where, however, neither of these things take place, if any property which has been deposited in the warehouses should be destroyed, the owner must indemnify the lessee for the loss of the same.

## *2. The Same to Epictetus.*

If you bring an action on lease against persons by whom you have been employed in the construction of a building, you will recover by this action, which is one of good faith, whatever is due to you, with interest.

## *3. The Same to Callimorphonia.*

If you have paid to the owner the entire amount of the rent of a house, which you say that you have leased, you cannot be ejected against your consent, unless the owner can prove that the building is required for his own use, or he desires to repair it, or you have not acted as you should have done with reference to the property leased.

## *4. The Emperor Alexander to Sabinus.*

Certain rules are founded on the Rescripts of the Emperor Antoninus Pius, namely, that the owners of warehouses which have been broken into shall be compelled to produce before the persons making complaint the guards who were placed over the said warehouses, and if they do so, they shall not incur any further responsibility; and you, having applied to the Governor of the province, can cause this to be done.

Where, however, circumstances demand the infliction of a more severe penalty, the magistrate must send the culprit to Domitius Ulpian, Prastorian Prefect, and My relative. If the owners of the warehouses specifically promised that they themselves would guard them, they themselves should be produced.

## *5. The Same to Petroma.*

It is a certain rule of law that property which tenants, with the consent of their masters, have brought upon leased land, will be liable by the right of pledge to the owners of the said land. When, however, a house is leased, it is not necessary for the owner to know that articles have been brought into it, in order to subject them to the right of pledge.

## *6. The Same to Victorinus.*

No one is prevented from leasing to another property which he himself has rented for his own enjoyment, if nothing to the contrary has been agreed upon.

## *7. The Same to Terentianus.*

If Henries leased the collection of taxes for the continuous term of five years, and you became his surety; and, after the said term has elapsed, he renews the lease, and is considered solvent, and you have not consented, but have requested the return of your bond, a competent judge will understand that you must not be rendered liable for any time subsequent to the term of five years.

## *8. The Same to Higinus.*

If you have leased a tract of land for a certain quantity of something to be furnished every year, although this may not have been stated in the lease (as the custom of the country demanded), so that if, on account of the effect of bad weather or some other accident, loss should result, you will be responsible; and if it is proved that any barren years were not compensated by the abundance of others, you will, in accordance with good faith, be justified in asking to be released from your promise, and the judge who decides the appeal must observe this rule.

## *9. The Same to Fuscus.*

It is not necessary for the purchaser of land to permit the tenant to whom the former owner leased it to remain until his lease has expired, unless he bought the property under this condition. If, however, it is proved by any agreement that he did consent that the tenant should remain until the expiration of his lease, even though this may not have been reduced to

writing, he will be compelled by an action of good faith to comply with the contract which he made.

10. *The Emperor Gordian to Pomponius.*

You are departing from the truth, if you assume that the heirs of a lessee do not succeed him in a lease; for, whether the lease is perpetual or temporary, it descends to the heirs, and where it is temporary, the heir is bound by the provisions of the contract for the unexpired part of the term.

11. *The Emperor Philip to Theodora.*

It has frequently been stated in Rescripts that lessees or their heirs, after the expiration of their terms, cannot be compelled to remain against their consent.

12. *The Same to Nica.*

With reference to the damage committed by robbers against the property which you have leased, you have no reason to demand indemnification by the owner of said property, whom you do not accuse of being guilty of any offence.

13. *The Emperors Valerian and Gallienus, and the Csesar Valerian, to Heraclida.*

If a lease has been divided so that each party has a share, some of you cannot be sued by the others. If, however, all the lessees have bound themselves to the lessor, he should not be deprived of the right of proceeding against any one of the lessees whom he may select. You, however, will have the power to tender what is due to the lessor, so that you yourselves can demand that the obligations, for which you have been sued by the others under the terms of the said lease, shall be transferred to you.

14. *The Same Emperors and Csesars, to Julian and Others.*

If those who were employed by you to purchase wheat and barley for public subsistence, after having received the money, failed to carry out their contracts, you can bring the action on hiring against them.

15. *The Same Emperors and Csesars to Euphrosina.*

If you have been ejected from the land by the lessee, as you can bring suit against him under the lease, you can also exact and retain from the lessor the penalty which it was agreed upon should be paid if the terms of the lease were violated.

16. *The Same Emperors and Csesars to Timotheus.*

The provisions of a lease must be observed, and no more than was agreed upon can be demanded as rent. If, however, the term for which the land was leased has expired, and the lessee remains in possession, it is considered that the lease and the obligation of pledge are both renewed by tacit consent.

17. *The Emperors Diocletian and Maximian to Hosalius.*

The Governor of the province shall see that what is due as rent is paid without delay, and he is aware that as an action on leasing and hiring is one of good faith, it admits of the collection of legal interest when there is any delay.

18. *The Same to Amnus.*

The Governor of the province shall order any crops collected during the time following that when the locusts by their ravages caused sterility to be returned to you, if it is established that you are entitled to them in accordance with the custom of former times.

19. *The Same to Valerius.*

The terms of a contract with reference to leasing and hiring shall, by all means, be observed,

where nothing contrary to the custom of the country has been expressly provided. If, however, certain persons, in opposition to the provisions of the contract and the custom of the country, have remitted the payment of rent, this cannot prejudice the rights of the others.

*20. The Same to Carpophorus.*

Anyone who leases his own property, thinking that it belongs to another, does not transfer the ownership of the same, but makes a lease which is void.

*21. The Same Emperors and C&sars to Antonia.*

If, for a certain quantity of oil, you have leased the crops of your land for a year, you cannot withdraw from the contract, if it was made in good faith, for the reason that someone else offered you a larger quantity of oil.

*22. The Same Emperors and Ctesars to Papinianus.*

If those against whom you have filed your petition leased their services to you for a certain time, a competent judge, after proper cause is shown, shall order the agreement to be observed, so far as good faith demands.

*23. The Same Emperors and Csesars to Priscus.*

In order to establish the proof of ownership of property, or to defend the title to the same, it will not be sufficient to plead that a lease was made to him who subsequently claimed it, as the ignorance or

mistake of the owner does not confer consent; but if the latter should be defeated in the end, the contract of the lease is held never to have existed, for no one can legally transfer his own property to himself.

*24. The Same Emperors and Czsars to Antoninus.*

A contract of leasing and hiring is considered valid, even if no instrument evidencing it has been drawn up; in accordance with which you cannot sue the wife of the lessor, even though the lease may not have been reduced to writing. However, with reference to the subsequent time during which you allege that the woman has been your lessee, after having proved the statements in your petition, notify her to pay you the rent in full.

*25. The Same and the Caesars to Epagathus.*

When anyone has received a field, or any other property whatsoever under a lease, he should first restore possession of it, and then litigate as to the ownership of the same.

*26. The Same Emperors and Cassars to Oplo and Hermogenes.*

If you have complied with the provisions of the lease, any instrument drawn up with reference to the same loses its effect. Where, however, anything of yours remains upon the land, or has been forcibly removed therefrom, the Governor of the province shall order it to be returned to you.

*27. The Same Emperors and Cassars to Nero.*

If the owner of land has promised to pay you, as stipulator, any expenses you may have incurred under the lease in behalf of the tenants, a competent judge will order you to be reimbursed. When, however, the agreement was made without a stipulation, you are informed that a right of action does not arise from a contract without consideration.

*28. The Same Emperors and Ctesars to the Same Nero.*

In contracts of leasing and hiring it is established that the lessor can bring suit on the ground of fraud or want of care, but not for unavoidable accident.

29. *The Same Emperors and Csesars to Julian.*

As you allege that the lessor destroyed buildings which he received in good condition, the Governor of the province shall order the said buildings to be restored by his heirs in accordance with the contract made between you.

30. *The Emperors Theodosius and Valerian to Florentius, Prs&-torian Prefect.*

A decurion cannot be the attorney, the lessee, the surety, or the mandator of a lessor, and, moreover, We decree that no obligation arising from a contract of this kind shall bind either the lessee or lessor.

31. *The Emperor Leo to Aspar, Officer of the Army.*

We forbid our soldiers to become either the lessees of the property of others, or the attorneys, sureties, or mandators of lessees, lest, by neglecting the practice of arms, they may devote themselves to rural labors, and, on account of their being in military service, may become a menace to their neighbors. Therefore, let them devote themselves with arms, and not to private matters, so that, always being with their companies and their standards, they may be able to protect the government, by which they are supported, from all the calamities of war.

32. *The Emperor Zeno to Adamantius, Prsetorian Prefect.*

No one who has rented a house, a shop, or a farm shall, after his lease has expired, be permitted to bring suit against a person who has leased the same property on the same terms, with the consent of its owner, on the ground that the lease is unlawful, or attempt to injure him thereby, but every facility shall be afforded the owners of property to lease their houses, their lands, or their shops to anyone they wish, and those who have leased them shall, by all means, be protected from any annoyance of this kind; unless contracts especially entered into in writing with the owners, or with those who afterwards leased the property, and which were drawn up according to law, should justify them in instituting proceedings.

Where, however, anyone in private life thinks that he has a right to raise a controversy of this kind forbidden by Our Sacred Constitutions, after having been severely whipped, he shall suffer the penalty of exile, and if a public official does so, he shall be fined ten pounds of gold.

33. *The Same to Sebastian, Praetorian Prefect.*

If lessees of the property of others, or those who have precarious possession of the same, or their heirs, do not surrender it when the owners desire to recover it, but wait until final judgment has been rendered against them, they shall not only be compelled to return the land which was leased, but also to pay the successful party a sum equal to its value, as in the case of one who seizes the property of another.

34. *The Emperor Justinian to the Senate.*

Although it is well known that former Emperors have promulgated many decrees with regard to soldiers who lease the lands or houses of others; still, because the subject has been so neglected, and soldiers, not being mindful of the limits prescribed by Our Sacred Constitutions, venture to employ themselves in base occupations of this kind, and having abandoned the public welfare and their victorious standards, are only too eager to rent the property of others, and not to manifest the power of their arms against the enemy, but to turn them against their neighbors, and even against the unfortunate tenants whom they have undertaken to protect, We have considered it necessary to publish this most Sacred Constitution for the purpose of thoroughly and completely correcting this abuse.

Hence We order that all who are serving in the army, whether they are of age or minors (and We designate as soldiers not only those who, enrolled in the military service, and serving under distinguished commanders, but also such as are included in the eleven faithful divisions

called *scholse*, as well as those who have received the name of "confederates," and are commanded by different subordinate officers), shall hereafter absolutely abstain from leasing the property of others; and they are hereby notified that, under a contract of this kind, from the very beginning, they will forfeit their rank and privileges without the performance of any other act, and without any sentence being passed upon them; and that they cannot be restored to their former positions either through the indulgence of the Emperor, or by the consent or permission of any military magistrate, to whose command they are subject; in order that they may not think that by leasing the property of others they will not lose their reputation, and from soldiers become civilians, and from being honored become infamous; and that they shall be compelled to restore, without delay or procrastination, whatever they may have received from the public, if they have made a contract of this kind which We have absolutely forbidden. Those who, after the promulgation of this law, permit their property to be leased to persons of this kind, are also notified that, having by their efforts, violated Our law, they shall not be permitted to collect anything; so that, as in the case of a person who attempts to seize the property of another, anyone who selects a soldier as his agent shall be deprived of any profit which may be due to him.

Moreover, all persons shall have a right to bring an accusation under this law before a competent judge, and he who, under such circumstances, appears as an informer shall be understood to be more worthy of praise than blame. The penalty which We have decreed shall be enforced in future cases against soldiers who have violated Our law and those persons who have allowed them to rent their property.

#### TITLE LXVI.

#### CONCERNING THE LAW OF EMPHYTEUSIS.

##### 1. *The Emperor Zeno to Sebastian, Praetorian Prefect.*

The right of emphyteusis should not be classed with those conferred by lease or alienation, but We have decreed that it shall constitute a third species of contract, separate from and without resemblance to either of those previously mentioned, and shall have its own nature and definition, and be a just and valid agreement by which everything that was consented to between the contracting parties in all cases, even in those which are accidental, shall, if reduced to writing, remain under all circumstances, firm and inviolable; so that if no provision has been made for the occurrence of accidents, and if, through some unforeseen event which may arise, the property which was the subject of the emphyteusis should be destroyed, the loss will be borne, not by the emphyteuta, who had nothing left, but by the owner of the property who, for the reason that it was the result of a fatality, must be responsible for it, as the contract contained nothing with reference to the liability of the other party. When, however, the damage is trifling, and only affected a portion of the property, or the substance of the latter was uninjured, the emphyteuta should not hesitate to assume the loss himself.

##### 2. *The Emperor Justinian to Demosthenes, Prsetoricm Prefect.*

With reference to emphyteutical contracts, We decree that if any agreements should be inserted in them, they shall be observed with all the other provisions, and even in the case of the ejection for non-compliance of the person who undertook to carry them out, this shall still apply if he does not produce receipts to show that the rent or public taxes on the land have been paid. Where, however, nothing was agreed on this point, and he did not pay to the owner either the rent or the taxes for the entire term of three years, or produce receipts for the same, and the latter should desire to do so, he can eject him from the land, and the former cannot oppose him on the ground of improvements made by him or of such ameliorations as are designated *emponemata*, or by demanding a penalty; but, if the owner prefers, he can be unconditionally ejected, even though the former may allege that he has never been annoyed by what is assigned as the reason for his expulsion; for no one should wait for an agreement or notice, but should appear in person of his own accord, and spontaneously discharge his



indebtedness, in accordance with what has been provided in general terms by one of Our former laws.

However, in order that the owner of the land may not under this pretext make use of his power to expel his tenants, and refuse to receive the rent, and thus, by means of an artifice of this kind, the term of three years having expired, he who received the emphyteusis be deprived of his right, We grant him permission to tender the rent in the presence of witnesses, and having sealed it up, and deposited it, as prescribed by law, to entertain no fear of ejection.

### *3. The Same to Julian, Prsetorian Prefect.*

As a doubt arose whether the emphyteuta should obtain the consent of the owner of the land to alienate his improvements which are called by the Greek word *empomenata*, and whether he was required also to obtain his consent to transfer his emphyteutical right to another, We decree that when an emphyteutical instrument contains any provisions on this point they shall be observed. If, however, no contract of this kind was made, or the instrument containing the emphyteutical contract has been lost, the emphyteuta can under no circumstances be permitted to sell his improvements, or transfer his rights under the emphyteusis to others, without the consent of the owner of the land. But lest owners, taking advantage of this opportunity, may not permit their emphyteutas to receive the cost of the improvements which they made, but deceive them, and in this manner the advantage to which the emphyteuta is entitled will be lost, We decree that notice shall be given to the owner in which the statement is made of the price which he could obtain from another, and if the owner should prefer to pay it himself, and give as much as the emphy-teuta could actually obtain from a third party, the owner himself should by all means be preferred in making the sale.

When, however, the term of two months has elapsed after he was notified, and the owner refuses to do this, permission is granted to the emphyteuta to sell his improvements to anyone whom he wishes, without the consent of the owner, provided he disposes of them to such persons as are not usually forbidden by emphyteutical contracts to make such purchases.

Where improvements are sold to others in the manner above stated, the owner shall be required to accept the new emphyteuta, as, where the former one prefers to transfer his right to persons who are not prohibited from receiving it, but to those to whom it is permitted to do so, and are solvent according to the emphyteutical law, the owners cannot oppose it, but must permit the new emphyteuta to enter into possession, not by someone to whom they have farmed it out, or by an attorney, but by themselves, or by their letters, or (if they cannot, or are unwilling to do so) by their declaration made in this City before the illustrious Superintendent of Taxes, or by an attestation made in the province, in the presence of notaries, and before the Governors or defenders of the same.

And in order to prevent owners tempted by avarice from extorting a large sum of money on this account (which We have ascertained has been done up to the present time), they shall not, in consideration of their signature or their declarations, be permitted to receive more than the fiftieth part of the price, or of the appraisement of the land which is transferred to the other party.

When the owner of the property absolutely refuses to accept the new emphyteuta or purchaser of the improvements, and he neglects to do this within two months after notice has been served upon him, the emphyteuta shall be permitted to transfer to others, either his right or his improvements, even against the consent of the owner. If, however, the emphyteuta should conduct himself otherwise than is prescribed by Our Constitution, he shall forfeit his emphyteutical right.